

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1455 Misrepresentation of Military Status

SPONSOR(S): Sachs and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 1824

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Billmeier	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 1455 creates a new third degree felony to prohibit a person from wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States Armed Forces or the organized militia (1) for commercial purposes and (2) with the intent to misrepresent himself or herself as a member of the United States Armed Forces or the organized militia. The bill provides that the new crime does not apply to members of veterans' organizations that are congressionally chartered under title 36 U.S.C. while the members are engaged in planning, conducting, or executing a solicitation or charitable or sponsor sales promotion.

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Armed Forces or the organized militia in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

On March 17, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides an effective date of October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Current Law*

Florida's "Solicitations of Contributions Act"<sup>1</sup> is intended "recognize the right of persons or organizations to conduct solicitation activities. The Act provides that it is "the intent of the Legislature to protect the public by requiring full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. It is further the intent of the Legislature to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions."<sup>2</sup>

Section 496.415, Florida Statutes, provides that it is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion<sup>3</sup> to falsely state that the person is a member of or a representative of a charitable organization or sponsor, or falsely state or represent that the person is a member of or represents a law enforcement or emergency service organization.

##### *Effect of the Bill*

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Armed Forces<sup>4</sup> or the organized militia<sup>5</sup> in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

HB 1455 creates a new crime to prohibit a person from wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States Armed Forces or the organized militia (1) for commercial purposes and (2) with the intent to misrepresent himself or herself as a member of the United States Armed Forces or the organized militia. The bill provides that a person that commits the new crime is guilty of a third degree felony.<sup>6</sup> The bill provides that the new crime does not apply to

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<sup>1</sup> Sections 496.401-496.424, Florida Statutes.

<sup>2</sup> Section 496.402, Florida Statutes.

<sup>3</sup> See s. 496.404(23), Florida Statutes ("Sponsor sales promotion" means "an advertising or sales campaign conducted by a commercial co-venturer who represents that the purchase or use of goods or services offered by the commercial co-venturer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services to a sponsor does not, in itself, constitute a sponsor sales promotion").

<sup>4</sup> "United States Armed Forces" is not defined by the bill. See Drafting Issues or Other Comments" in this analysis.

<sup>5</sup> "Organized militia" is not defined by the bill. See Drafting Issues or Other Comments in this analysis.

<sup>6</sup> A third degree felony is punishable by up to 5 years in prison and a fine up to \$5,000. See ss. 775.082, 775.083, F.S.

members of veterans' organizations that are congressionally chartered under title 36 U.S.C.<sup>7</sup> while the members are engaged in planning, conducting, or executing a solicitation or charitable or sponsor sales promotion.

The fiscal impact of the bill is not known. The Criminal Justice Impact Conference reported the expected prison bed impact as "insignificant."

The bill provides an effective date of October 1, 2010.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 496.415, F.S., relating to prohibited acts

Section 2. Creates an unnumbered section of law relating to misrepresenting one's self as a member of the United States Armed Forces.

Section 3. Creates an unnumbered section of law exempting members of veterans' organizations from the new law.

Section 4. Provides an effective date of October 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

This bill creates a new third degree felony. The Criminal Justice Impact Conference considered the bill on March 17, 2010, and reported the expected prison bed impact as "insignificant."

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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<sup>7</sup> Title 36 United States Code Chapters 201-2401 creates over 90 federally chartered corporations. It is not clear how many of these organizations are veteran's organizations.

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Chapter 496, Florida Statutes, has generally been upheld against constitutional challenges.<sup>8</sup> This bill has two provisions that might be subject to constitutional challenge. The bill makes it a crime to falsely represent one's self as representative of the United States Armed Forces or organized militia in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion. The bill also makes it a crime to misrepresent one's self as a member of the United States Armed Forces for commercial purposes and wear the uniform or insignia authorized for use by members or veterans of the United States Armed Forces or organized militia. It could be argued that these provisions violate the First Amendment prohibition on laws restricting the freedom of speech.

In State v. Montas,<sup>9</sup> the court held that a statute that prohibited the wearing of military uniforms by non-military personnel was overbroad because it criminalized potentially innocent conduct. This bill could be subject to First Amendment challenges under Montas. This bill attempts to avoid the infirmity of Montas by holding that one cannot falsely claim to be a member of the United States Armed Forces.

Section 2 of the bill could be subject to challenge because it imposes criminal penalties for potential innocent conduct, such as the wearing of a military uniform during a theater production.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the phrase "United States Armed Forces" but does not define the phrase. The phrase "United States Armed Forces" is generally thought to mean the Air Force, Army, Coast Guard<sup>10</sup>, Navy, and Marines.<sup>11</sup> The phrase "United States Armed Forces" is used a number of times within the Florida Statutes but is never defined. Section 92.51(1), Florida Statutes, appears to include the Army, Air Force, Marines, Navy, and Coast Guard within the meaning of the term while section 379.354(4)(j), Florida Statutes, appears to exclude the Coast Guard from the phrase. This bill uses the phrase within a criminal statute so there is a potential for litigation over the meaning of the phrase.

The bill uses the phrase "organized militia" but does not define the phrase. Section 250.02(2), Florida Statutes, states, "the organized militia is composed of the National Guard and any other organized military forces that are authorized by law." A court could, but is not required to, apply this definition to "organized militia" in this new section of law.

The bill provides that members of veteran's organizations chartered by Congress under 36 United States Code may falsely represent that they are members of the United States Armed Forces.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

<sup>8</sup> See Wickman v. Firestone, 500 So. 2d 740 (Fla. 4<sup>th</sup> DCA 1987).

<sup>9</sup> 993 So. 2d 1127 (Fla. 5<sup>th</sup> DCA 2008).

<sup>10</sup> See <http://www.uscg.mil/top/about/> ("The legal basis for the Coast Guard is Title 14 of the United States Code, which states: "The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times." Upon the declaration of war or when the President directs, the Coast Guard operates under the authority of the Department of the Navy"). Accessed March 17, 2010.

<sup>11</sup> See [http://www.navy.org/which\\_branch/](http://www.navy.org/which_branch/) ("The US Armed Forces consist of several services. These are the US Army, US Navy, US Air Force, US Marine Corps and US Coast Guard"). Accessed March 17, 2010.