

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 890

INTRODUCER: Senator Braynon

SUBJECT: False Personation

DATE: March 26, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 890 provides for various penalties for false personation of a firefighter and any personnel or representative of a criminal justice agency, if the person's action could deceive a reasonable person into believing that he or she is a bona fide law enforcement official.

The bill also punishes owning or operating a motor vehicle marked or indented with various indicia indicating the vehicle is used by a fire department, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, or the fire department authorizes the use of the vehicle or the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

This bill substantially amends the following sections of the Florida Statutes: 843.08; 843.085; and 921.0022.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Officers/Positions (s. 843.08, F.S.)

Section 843.08, F.S., punishes false personation of a law enforcement officer and other specified persons. A person commits this false personation offense if he or she falsely assumes or pretends to be any of the following officers/positions and takes upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer/position:

- A sheriff.
- Officer of the Florida Highway Patrol.
- Officer of the Fish and Wildlife Conservation Commission.
- Officer of the Department of Transportation.
- Officer of the Department of Financial Services.
- Officer of the Department of Corrections.
- Correctional probation officer.
- Deputy sheriff.
- State attorney or assistant state attorney.
- Statewide prosecutor or assistant statewide prosecutor.
- State attorney investigator.
- Coroner.
- Police officer.
- Lottery special agent or lottery investigator.
- Beverage enforcement agent.
- Watchman.
- Any member of the Parole Commission and any administrative aide or supervisor employed by the commission.
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE).
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony to commit this offense.¹ However, a person who falsely personates any such officer/position during the course of the commission of a felony commits a second degree felony² or, if the commission of the felony results in the death or personal injury of another human being, a first degree felony.³

Definition of “Criminal Justice Agency” (s. 943.045, F.S.)

Section 943.045(10), F.S., defines “criminal justice agency” as any of the following:

- A court.
- The FDLE.
- The Department of Juvenile Justice.
- The protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect.
- Any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice. According to information provided

¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

² A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

³ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

by FDLE, the department interprets this definition to not include law enforcement agencies of foreign countries but to include:

- State and local law enforcement agencies in Florida and other states.
- Federal law enforcement agencies.
- Tribal law enforcement agencies in Florida and other states.
- Law enforcement agencies in U.S. Territories.

Unlawful Marking of a Motor Vehicle (s. 843.085, F.S.)

Section 843.085(2), F.S., provides that it is unlawful for a person to own or operate a motor vehicle marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff,” or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as defined in s. 943.045, F.S., which could deceive a reasonable person into believing that such vehicle is authorized by any of these agencies for use by the person operating the motor vehicle, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

This offense is punishable as a first degree misdemeanor.⁴ Section 843.085, F.S., is cumulative to any law now in force in the state

In *Sult v. State*, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that s. 843.085, F.S., (2001), is unconstitutional as overbroad and vague, and also violates the right to substantive due process. The Court only discusses subsection (1) of this statute but the intent language the Court found objectionable also appears in subsections (2) and (3) of the statute.⁵

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., to provide for various penalties (see “Present Situation” section of this analysis) for false personation of a firefighter⁶ and any personnel or representative of a criminal justice agency (whether federal, state, local, municipal, tribal, or territorial), if the person’s action could deceive a reasonable person into believing that he or she is a bona fide law enforcement official.

The bill also amends s. 843.085, F.S., to punish owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words “fire department”), unless the vehicle is owned or operated by the appropriate

⁴ A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁵ The bill does not amend current intent language in s. 843.085(2), F.S.

⁶ The bill does not define “firefighter” by reference to any specific definition of the term in the Florida Statutes. However, most of the descriptive terms for officers/positions listed in the statute are not defined by reference to a statutory definition (e.g., “police officer”). Statutory definitions of “firefighter” vary. *See e.g.*, ss. 633.30(1), 633.802(1), and 784.07(1)(b), F.S.

agency and its use is authorized by the agency, or the fire department authorizes the use of the vehicle or the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, corrective change to descriptive language regarding the current ranking of false personation under s. 843.08, F.S.

The effective date of the bill is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

The bill, in part, adds to the list of specified officers/positions in s. 843.08, F.S., any personnel or representative of a criminal justice agency (whether federal, state, local, municipal, tribal, or territorial), if the person's action could deceive a reasonable person into believing that he or she is a bona fide law enforcement official. This language is problematic for a number of reasons:

- Since the false personation only applies if the person's action could deceive a reasonable person into believing that he or she is a bona fide law enforcement official, this begs the

question of whether “law enforcement official” is limiting language, narrowing the group consisting of any personnel or representative of a criminal justice agency to law enforcement officials. The definition of “criminal justice agency in s. 943.045(10), F.S., is not limited to just law enforcement agencies.

- It is unclear what persons fall under the designation “law enforcement official.” Does this term apply to all employees of a law enforcement agency, law enforcement officers, senior law enforcement staff, or the head of a law enforcement agency? If the term “law enforcement official” applies to law enforcement officers, s. 843.08, F.S., already covers sheriffs, deputy sheriffs, police officers, and federal law enforcement officers.
- The language “if the person’s action could deceive a reasonable person into believing that he or she is a bona fide law enforcement official” creates a requirement limited only to this subset of officers/positions listed in the statute and begs the question why only this subset? Further, it is unclear how this requirement works with the elements of the offense which require the person to falsely assume or pretend to be the officer/position and take upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of the officer/position.

Section 3 of the bill amends s. 843.085(2), F.S. As previously noted in this analysis, the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutional as overbroad and vague, and also violates the right to substantive due process.⁷ The Court only discusses subsection (1) of this statute but the intent language the Court found objectionable also appears in subsections (2) and (3) of the statute. If subsection (2) is constitutionally defective than the subsection, as amended by the bill, would be unenforceable.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁷ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).