

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 Community Affairs

BILL: SB 1010

INTRODUCER: Senator Braynon

SUBJECT: False Personation

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1010 amends s. 843.08, F.S., relating to false personation of law enforcement officers and other specified persons, to add firefighters and fire or arson investigators of the Department of Financial Services. As a result of this change, false personation of these persons would be prohibited and subject to current penalties. Specifically, it would be:

- A third degree felony to falsely personate a firefighter or a fire or arson investigator of the Department of Financial Services;
- A second degree felony to commit this false personation during the course of the commission of a felony; and
- A first degree felony to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

The bill also amends various offenses in s. 843.085, F.S., relating to unlawful use of badges or other indicia of authority, to make those offenses applicable to unauthorized wearing, display, sale, etc., of fire department badges and unauthorized ownership or operation of a motor vehicle marked or identified as a fire department vehicle. Further, the bill amends criminal intent language relevant to those offenses to address a 2005 Florida Supreme Court decision that held that the intent language is unconstitutional.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Persons

Section 843.08, F.S., punishes false personation of a law enforcement officer or other specified person. A person commits this false personation offense if he or she falsely assumes or pretends to be a law enforcement officer or other person specified in the statute 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 specified person. The list of specified persons includes:

- 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; and
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony¹ to commit this offense. It is a second degree felony² to commit this false personation during the course of the commission of a felony. It is a first degree felony³ to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Unauthorized Wearing or Display of Indicia of Authority

Section 843.085(1) and (5), F.S., provides that it is a first degree misdemeanor⁴ to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or other criminal justice agency⁵ as now or hereafter defined in s. 943.045, F.S., which:

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. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), 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.

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

⁵ The statute references the definition of “criminal justice agency” in s. 943.045, F.S. Section 943.045(11), F.S., defines a “criminal justice agency” as: a court; the Florida Department of Law Enforcement; the Department of Juvenile Justice; the

- Could deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it; or
- Displays in any manner or combination the word or words “police,” “patrolman,” “agent,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “state attorney,” “public defender,” “marshal,” “constable,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it.

This offense does not apply to:

- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers);
- A person authorized to wear or display the indicia of authority by the appropriate agency;
- A person who displays the indicia of authority in a closed or mounted case as a collection or exhibit; or
- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, that uses the words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff” in the official name of the organization or association.

Unauthorized Ownership or Operation of Motor Vehicles with Certain Markings

Section 843.085(2) and (5), F.S., provides that it is a first degree misdemeanor to own or operate a motor vehicle if:

- The vehicle is 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;
- The wording is 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 now or hereafter defined in s. 943.045, F.S.; and
- The use of the wording on the vehicle could deceive a reasonable person into believing that the vehicle is authorized by the appropriate agency for use by the person operating the motor vehicle.

This offense does not apply if:

- The vehicle is owned or operated by the appropriate agency and its use is authorized by the agency;
- The local law enforcement agency authorizes the use of the vehicle;
- The person owning or operating the marked vehicle is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers); or
- The words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,”

protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

or “bailiff” are used by a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, in the official name of the organization or association.

Unauthorized Sale or Transfer of a Badge

Section 843.085(3) and (5), F.S., provides that it is a first degree misdemeanor to sell, transfer, or give away the authorized badge, or a colorable imitation of the badge, including miniatures, of any criminal justice agency as now or hereafter defined in s. 943.045, F.S., or bearing in any manner or combination the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” “agent,” “state attorney,” “public defender,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by any of those agencies.

This offense does not apply to:

- Agency purchases or upon the presentation and recordation of both a driver license and other identification showing any transferee to actually be a member of such criminal justice agency;
- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers); or
- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, that uses the words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff” in the official name of the organization or association.

Sult v. State

In *Sult v. State*,⁶ the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutionally overbroad, vague, and violates substantive due process. The Court only discusses subsection (1) of this statute in its analysis but the intent language the Court found objectionable (“could deceive a reasonable person”) also appears in subsections (2) and (3) of the statute. Specifically, the Court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The “could deceive a reasonable person” element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, results in a virtually boundless and uncertain restriction on expression.⁷

The Court also found that s. 843.085(1), F.S., “because of its imprecision, ... fails to give fair notice of what conduct is prohibited. The statute fails to delineate when the displaying or

⁶ 906 So.2d 1013 (Fla. 2005).

⁷ *Sult*, 906 So.2d at 1021.

wearing of the prohibited words will subject the person to prosecution, thus inviting arbitrary and discriminatory enforcement and making entirely innocent activities subject to prosecution.”⁸

The Legislature has never amended the intent language to address the *Sult* decision.

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., relating to false personation of law enforcement officers and other specified persons, to add firefighters⁹ and fire or arson investigators of the Department of Financial Services.¹⁰ As a result of this change, false personation of these persons would be prohibited and subject to current penalties. Specifically, it would be:

- A third degree felony to falsely personate a firefighter or a fire or arson investigator of the Department of Financial Services;
- A second degree felony to commit this false personation during the course of the commission of a felony; and
- A first degree felony to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Currently, s. 843.08, F.S., prohibits false personation of a watchman. The term “watchman” is undefined. The bill defines a “watchman” as a security officer licensed under ch. 493, F.S.¹¹

Currently, s. 843.08, F.S., prohibits false personation of an officer of the Department of Transportation. In 2011, the Office of Motor Carrier Compliance was transferred from the Department of Transportation to the Department of Highway Safety and Motor Vehicles Division of the Florida Highway Patrol (FHP).¹² FHP “troopers” perform the commercial motor vehicles inspection functions that used to be performed by Motor Carrier Compliance officers.¹³ Consistent with this development, the bill removes reference to an officer of the Department of Transportation. FHP troopers are already covered under the statute (“officer of the Florida Highway Patrol”).

The bill also amends various offenses in s. 843.085, F.S., relating to unlawful use of badges or other indicia of authority, to make those offenses applicable to unauthorized wearing, display,

⁸ *Sult*, 906 So.2d at 1022 (citation omitted).

⁹ 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 or persons listed in the statute are not defined by reference to a statutory definition (e.g., “police officer”). A person is certified as a “firefighter” pursuant to the requirements of Part IV of ch. 633, F.S.

¹⁰ The Division of State Fire Marshal is a division of the Department of Financial Services. Section 20.121(2)(b), F.S. The Chief Financial Officer is designated as the “State Fire Marshal.” Section 633.104(1), F.S. One of the duties of the State Fire Marshal is to enforce all laws and provisions of ch. 633, F.S. (fire prevention and control), and any rules adopted pursuant to that chapter, relating to the suppression of arson and the investigation of the cause, origin, and circumstances of fire. Section 633.104(2)(e), F.S.

¹¹ Section 493.6101(19), F.S., defines a “security officer” as any individual who, for consideration: advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return of those items.

¹² Chapter 2011-66, L.O.F.

¹³ See <http://www.flhsmv.gov/news/pdfs/PR062911.pdf> (last visited on April 1, 2015).

sale, etc., of fire department badges and unauthorized ownership or operation of a motor vehicle marked or identified as a fire department vehicle. The bill specifies that the statute does not prohibit a fraternal, benevolent, or labor organization or association, or their subsidiaries or chapters, from using the words “fire department,” in any manner or in any combination, if those words appear in the official name of the organization or association.

To address the Florida Supreme Court decision, in *Sult v. State*, the bill replaces current criminal intent language relevant to offenses in s. 843.085, F.S., (“could deceive a reasonable person”) with specific intent language (“intent to mislead or cause another person to believe”).

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. It does not change the current ranking of the offense.

The bill takes effect on October 1, 2015.

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 the bill will have a positive insignificant prison bed impact (the bill may increase the Department of Corrections’ prison bed population by 10 or fewer beds annually).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.