

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 167 Offenses Against Veterans

SPONSOR(S): Payne and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Mawn	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Jones	Gusky
3) Judiciary Committee	15 Y, 0 N	Mawn	Luczynski

SUMMARY ANALYSIS

A “veteran” is a person who served in the active military, naval, or air service and was discharged or released under honorable conditions or later received an upgraded discharge under honorable conditions. Florida has the third largest veteran population in the United States, with approximately 1,525,400 veterans residing in the state.

Research shows that a veteran is twice as likely as a non-veteran to be the target of a scam. Such scams may include a “white collar crime,” defined by The Florida White Collar Crime Victim Protection Act (“the Act”) as the commission of, or conspiracy to commit, specified offenses involving theft and fraudulent practices. Under the Act, “aggravated white collar crime” means engaging in two or more white collar crimes with the same or similar intents, results, accomplices, victims, or commission methods, or that are otherwise interrelated and are not isolated incidents. Currently, a person who commits an aggravated white collar crime and obtains or attempts to obtain \$50,000 or more is guilty of a first degree felony, separate from and in addition to the underlying offenses, if the victims of the crime include:

- 10 or more elderly persons;
- 20 or more persons; or
- The State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions.

Penalties apply even if an offender did not know his or her victims belong to a specified group or did not specifically intend to target such group, and include:

- Ranking the offense at a level 9 on the offense severity ranking chart of the Criminal Punishment Code;
- A \$500,000 fine or double the value of the financial gain or loss, whichever is greater; and
- Victim restitution as a term of any court-ordered probation.

HB 167 adds veterans to the list of aggravated white collar crime victims provided additional protection under the law. The bill authorizes a separate first degree felony offense to be charged against and increased fines and restitution to be imposed upon an offender who victimizes 10 or more veterans and obtains, or attempts to obtain, \$50,000 or more.

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on prison beds, meaning an increase of 10 or fewer beds.

The bill provides an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Veterans

A “veteran” is a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions¹ or who later received an upgraded discharge² under honorable conditions.³ Florida has the third largest veteran population in the United States, with approximately 1,525,400 veterans residing in the state.⁴

Scams Targeting Veterans

Research shows that a veteran is twice as likely as a non-veteran to be the target of a scam, and 78 percent of veterans targeted by scammers reported that the scam involved their veteran status.⁵ Additionally, Federal Trade Commission Consumer Sentinel Program data reveals a 63 percent increase in fraud complaints filed by veterans in the last five years, and that the median loss amongst veterans due to such fraud is 44 percent higher than the general population’s median loss.⁶

To address the heightened vulnerability of veterans, the Florida Attorney General’s Office created the Military and Veterans Assistance Program to educate service members and veterans on potential scams and to assist them in scam resolution.⁷ Additionally, the United States Postal Inspection Service⁸ and the AARP⁹ Fraud Watch Network launched Operation Protect Veterans, a similar nationwide campaign.¹⁰ Recently identified scams include a:

- Phishing scam, in which a caller claiming to work for the federal government requests a veteran’s social security number and financial information to update military records.
- Phony employment scam, in which a scammer collects a veteran’s personal information by advertising a fake position seeking a candidate with past military experience.¹¹

¹ Military discharge forms are: honorable; general under honorable conditions; other than honorable; entry-level separation; bad conduct/dismissal; and dishonorable. See Veterans Anonymous, *Forms of Military Discharge*, <https://va.org/forms-of-military-discharge/> (last visited Feb. 6, 2020).

² Each military service has a discharge review board with authority to change, correct, or modify discharges not issued by a sentence of a general court-martial. See Veterans Benefits Administration, U.S. Department of Veterans Affairs, *Character of Discharge*, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited Feb. 6, 2020).

³ S. 1.01(14), F.S.

⁴ See Florida Department of Veterans’ Affairs, *Fast Facts*, <http://floridavets.org/our-veterans/profilefast-facts/> (last visited Feb. 6, 2020).

⁵ Doug Shadel and Karla Pak, *Under Fire: Military Veterans and Consumer Fraud*. Washington DC: AARP Research, November 2017, <https://doi.org/10.26419/res.00182.001> (last visited Feb. 6, 2020).

⁶ Monica Vaca, Federal Trade Commission, Division of Consumer Response and Operations, *Military Consumers and Sentinel: a Deeper Dive*, (March 9, 2018), <https://www.consumer.ftc.gov/blog/2018/03/military-consumers-and-sentinel-deeper-dive> (last visited Feb. 6, 2020).

⁷ See Florida Department of Veterans’ Affairs, *Military and Veteran Consumer Protection*, <http://floridavets.org/resources/military-and-veteran-consumer-protection/> (last visited Feb. 6, 2020).

⁸ The United States Postal Inspection Service enforces the laws defending the nation’s mail system from illegal or dangerous use. See USA.gov, *U.S. Postal Inspection Service, Index of U.S. Agencies and Departments*, <https://www.usa.gov/federal-agencies/u-s-postal-inspection-service> (last visited Feb. 6, 2020).

⁹ AARP develops public policy recommendations that serve the interests of Americans 50 years of age and older. See AARP, *AARP Policy Book*, <https://policybook.aarp.org/> (last visited Feb. 6, 2020).

¹⁰ *Id.*

¹¹ See Florida Department of Veterans’ Affairs, *supra* note 7.

White Collar Crime Victim Protection Act

White Collar Crime

A scam targeting a veteran may qualify as a “white collar crime,” defined by the White Collar Crime Victim Protection Act (“the Act”) as the commission of, or conspiracy to commit, a specified felony¹² relating to:

- Money services business (ch. 560, F.S.);
- Theft, robbery, and related crimes (ch. 812, F.S.);
- Computer-related crimes (ch. 815, F.S.);
- Fraudulent practices (ch. 817, F.S.);
- Abuse, neglect, and exploitation of elderly persons and disabled adults (ch. 825, F.S.);
- Forgery and counterfeiting (ch. 831, F.S.);
- Issuance of worthless checks and drafts (ch. 832, F.S.);
- Bribery and misuse of public office (ch. 838, F.S.);
- Offenses by public officers and employees (ch. 839, F.S.);
- Offenses concerning racketeering and illegal debts (ch. 895, F.S.); or
- Offenses related to financial transactions (ch. 896, F.S.).

“White collar crime” also includes a felony offense that:

- Is committed with intent to defraud or involves a conspiracy to defraud.¹³
- Is committed with intent to either temporarily or permanently deprive a person of his or her property or involves a conspiracy to do the same.¹⁴
- Involves or results in the commission of, or involves a conspiracy to commit, fraud or deceit upon a person.¹⁵

Aggravated White Collar Crime

A person commits aggravated white collar crime by committing at least two white collar crimes with the same or similar intents, results, accomplices, victims, or commission methods, or that are otherwise interrelated and not isolated incidents.¹⁶ An offender may be convicted of both an aggravated white collar crime and the underlying offenses, as the legislature intended to make aggravated white collar crime a separate and distinct offense from the crime’s predicate offenses.¹⁷

Currently, a person who commits an aggravated white collar crime and obtains or attempts to obtain \$50,000 or more is guilty of a first degree felony if the victims of the crime include:

- 10 or more elderly persons;¹⁸
- 20 or more persons;¹⁹ or
- The State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions.²⁰

¹² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

¹³ S. 775.0844(3)(b), F.S.

¹⁴ S. 775.0844(3)(c), F.S.

¹⁵ S. 775.0844(3)(d), F.S.

¹⁶ S. 775.0844(4), F.S.

¹⁷ See *Headley v. State*, 90 So. 3d 912 (Fla. 3d DCA 2012). See also *State v. Levitan*, 115 So. 3d 1065 (Fla. 1st DCA 2013).

¹⁸ S. 775.044(5)(a), F.S.; “Elderly person” means a person 60 years of age or older suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the person’s ability to provide adequately for his or her own care or protection is impaired. S. 825.101(4), F.S.

¹⁹ S. 775.0844(5)(b), F.S.; “Person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. S. 1.01(3), F.S.

²⁰ S. 775.0844(5)(c), F.S.

The penalties apply even if an offender did not know that his or her victims belonged to a specified group or did not specifically intend to target such group,²¹ and include:

- Ranking the offense at a level 9 on the offense severity ranking chart²² of the Criminal Punishment Code;²³
- A \$500,000 fine or double the value of the financial gain or loss, whichever is greater;²⁴ and
- Victim restitution as a term of any court-ordered probation.²⁵

White Collar Crime Convictions

The Department of Corrections reported four aggravated white collar crime convictions in FY 2018-19, and 60,384 white collar crime convictions during the same period:²⁶

Offense	Convictions
Money services businesses offenses (ch. 560, F.S.)	18
Theft, robbery, and related crimes (ch. 812, F.S.)	45,328
Computer-related crimes (ch. 815, F.S.)	63
Fraudulent practices (ch. 817, F.S.)	8,253
Abuse, neglect, and exploitation of elderly persons and disabled adults (ch. 825, F.S.)	301
Forgery and counterfeiting (ch. 831, F.S.)	5,315
Issuance of worthless checks and drafts (ch. 832, F.S.)	570
Bribery and misuse of public office (ch. 838, F.S.)	205
Offenses by public officers and employees (ch. 839, F.S.)	14
Offenses concerning racketeering and illegal debts (ch. 895, F.S.)	224
Offenses related to financial transactions (ch. 896, F.S.)	93

Effect of the Proposed Changes

HB 167 adds veterans to the list of aggravated white collar crime victims provided additional protection under the law. The bill authorizes a separate first degree felony offense to be charged against and increased fines and restitution to be imposed upon an offender who victimizes 10 or more veterans and obtains, or attempts to obtain, \$50,000 or more.

The bill may better protect Florida's veteran population from being targeted by scammers by subjecting such offenders to a separate first degree felony offense in addition to increased fines, restitution, and any other penalty imposed for the underlying offenses making up the aggravated white collar crime.

The bill provides an effective date of October 1, 2020.

²¹ S. 775.0844(6), F.S.

²² The offense severity ranking chart has 10 offense levels ranked from least severe (level 1) to most severe (level 10). Each felony is assigned to a level according to the severity of the offense. The court uses sentence points associated with each level to determine the length of any prison or jail term an offender will serve. See ch. 921, F.S.

²³ S. 775.0844(6), F.S.

²⁴ S. 775.0844(7), F.S.

²⁵ The court may place an offender on probation for up to 10 years, or until he or she pays full restitution. S. 775.0844(8), F.S.

²⁶ Email from Chris Taylor, Legislative Specialist, Florida Department of Corrections, White Collar Crime Data Request (Dec. 20, 2019).

B. SECTION DIRECTORY:

Section 1: Provides this act may be cited as the “Florida Veteran’s Protection Act.”

Section 2: Amends s. 775.0844, F.S., relating to White Collar Crime Victim Protection Act.

Section 3: Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on prison beds, meaning an increase of 10 or fewer beds.²⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce financial loss experienced by Florida veterans resulting from aggravated white collar crime.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

²⁷ Criminal Justice Impact Conference, Office of Economic and Demographic Research, SB 294 – Crimes Against Veterans (Identical HB 167) (Jan. 27, 2020).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES