

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 Rules

BILL: SB 294

INTRODUCER: Senators Wright and Baxley

SUBJECT: Crimes Against Veterans

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 294 creates the “Florida Veterans Protection Act,” which amends the “White Collar Crime Victim Protection Act” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Criminal Punishment Code (Code). Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Veterans and Fraud

According to the Federal Trade Commission, in 2018, Florida ranked first in the nation in fraud and fourth in the nation in identity theft.¹ Although veterans are less than 10 percent of the

¹ *Consumer Sentinel Network Data Book 2018* (Feb. 2019), pp. 4, 20-21, Federal Trade Commission, , available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (last visited on Dec. 17, 2019). There were 210,174 fraud reports (1,002 per 100K population) and 37,797 identity theft reports (180 per 100,000 population). *Id.* at pp. 20-21.

population in the United States, they represent one-third of the victims of investment fraud.² Data provided from the Federal Trade Commission’s Consumer Sentinel program, the largest repository of fraud complaints in the nation, reveals an increase by 63 percent of complaints filed by military veterans over the past five years.³

In a 2017 survey conducted by the American Association of Retired Persons (AARP), researchers reported that of those surveyed, during the five years prior, twice as many veterans as nonveterans lost money to fraudulent scams (16 percent veterans to 8 percent non-veterans).⁴ And nearly 8 in 10 veterans (78 percent) reported having received a scam attempt in the last five years that was seeking to take advantage of their status as a military veteran.⁵

Statutory Definition of “Veteran”

A “veteran” is defined in s. 1.01, F.S., as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later was upgraded to a discharge under honorable conditions, regardless of a designation by the United States Department of Veterans Affairs as an other than honorable discharge or release.⁶

White Collar Crime Victims Protection Act

Section 775.0844, F.S., the “White Collar Crime Victims Protection Act” (Act), punishes a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes:

- 10 or more elderly persons, as defined in s. 825.101, F.S.;⁷
- 20 or more persons as defined in s. 1.01, F.S.;⁸ or
- The State of Florida, any state agency, any of the state’s political subdivisions, or any agency of the state’s political subdivisions.⁹

The Act defines a “white collar crime” as any of the following offenses:

- The commission of, or a conspiracy to commit, any felony offense specified in:
 - Ch. 560, F.S., relating to the Money Transmitters’ Code.
 - Ch. 812, F.S., relating to theft, robbery, and related crimes.
 - Ch. 815, F.S., relating to computer-related crimes.

² *Under Fire: Military Veterans and Consumer Fraud in the United States* (Nov. 2017), p. 2, AARP Washington State, available at https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2017/military-veterans-consumer-fraud.doi.10.26419%252Fres.00182.001.pdf (last visited on Dec. 17, 2019).

³ *Id.*

⁴ *Id.* at p. 3.

⁵ “Examples include improving your VA loan, taking advantage of a little-known government program[s] for vets or paying for a back, knee, or arm brace because of one’s military service.” *Id.* at p. 3.

⁶ Section 1.01(14), F.S.

⁷ Section 825.101(4), F.S., defines an “elderly person” as a person 60 years of age or older who is 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 ability of the person to provide adequately for the person’s own care or protection is impaired.

⁸ Section 1.01(3), F.S., provides that the word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁹ Section 775.0844(5), F.S.

- Ch. 817, F.S., relating to fraudulent practices.
- Ch. 825, F.S., relating to abuse, neglect, and exploitation of elderly persons and disabled adults.
- Ch. 831, F.S., relating to forgery and counterfeiting.
- Ch. 832, F.S., relating to the issuance of worthless checks and drafts.
- Ch. 838, F.S., relating to bribery and misuse of public office.
- Ch. 839, F.S., relating to offenses by public officers and employees.
- Ch. 895, F.S., relating to offenses concerning racketeering and illegal debts.
- Ch. 896, F.S., relating to offenses related to financial transactions.
- A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud.
- A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.
- A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.¹⁰

The Act defines an “aggravated white collar crime” as engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred after the effective date of the Act.

The commission of an aggravated white collar crime under the Act is a first degree felony,¹¹ which is ranked in level 9 of the offense severity ranking chart of the Code (see discussion, *supra*).

In addition to a sentence otherwise authorized by law, a person convicted of an aggravated white collar crime under the Act may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater.¹² This person is also liable for all court costs and must make restitution to each victim of the crime.¹³

The court must hold a hearing to determine the identity of qualifying victims and order the defendant to pay restitution based on his or her ability to pay, in accordance with the Act and s. 775.089, F.S., relating to restitution. The court must also make the payment of restitution a condition of any probation granted to the defendant by the court. Notwithstanding any other law,

¹⁰ Section 775.0844(3), F.S.

¹¹ Section 775.0844(5), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹² Section 775.0844(7), F.S.

¹³ A victim of the offense does not have to be named in the information or indictment. A victim is a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including any person directly harmed by the defendant’s criminal conduct in the course of the commission of the aggravated white collar crime. Section 775.0844(8), F.S.

the court may order continued probation for a defendant convicted under the Act for up to 10 years or until full restitution is made to the victim, whichever occurs earlier.¹⁴

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹⁵ (Code) as “Florida’s primary sentencing policy.”¹⁶ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁷ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.¹⁸ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation,¹⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.²⁰

III. Effect of Proposed Changes:

The bill creates the “Florida Veterans Protection Act,” which amends s. 775.0844, F.S., the “White Collar Crime Victim Protection Act,” to punish a person who obtains or attempts to obtain \$50,000 or more by committing an aggravated white collar crime that victimizes 10 or more veterans. The commission of this act is a first degree felony ranked in level 9 of the offense severity ranking chart of the Code. Additionally, a person convicted of an aggravated white collar crime may pay a fine of \$500,000 or double the value of the pecuniary gain or loss, whichever is greater. This person is also liable for all court costs and must make restitution to each victim of the crime.

The term “veteran” is defined pursuant to the definition of that term in s. 1.01, F.S. (See “Present Situation” section of this analysis.)

The bill takes effect October 1, 2020.

¹⁴ Section 775.0844(8)(a), F.S. The court retains jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court. Section 775.0844(8)(b), F.S.

¹⁵ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁶ *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf (last visited on Dec. 17, 2019).

¹⁷ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁹ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None identified.

B. Private Sector Impact:

To the extent that this bill acts as a deterrent, fewer veterans may experience financial loss as a result of fraud and related offenses.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.²¹

VI. Technical Deficiencies:

None.

²¹ The preliminary EDR estimate is on file with the Senate Committee on Criminal Justice. According to the Department of Corrections, in FY 18-19, the court sentenced two offenders to prison for violating s. 775.0844, F.S. Given the low level of offenders, this expansion should not have a significant impact on prison beds. *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.0844 of the Florida Statutes.

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.

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