

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 9 Protecting Consumers Against Fraud During a Pandemic

**SPONSOR(S):** Zika

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	16 Y, 0 N	Landry	Hall
2) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Frost	Hall
3) Judiciary Committee			

### SUMMARY ANALYSIS

A pandemic is an outbreak of disease over multiple parts of the world. The most severe pandemic in recent history occurred in 1918 and killed approximately 50 million people worldwide. Prior to 2019, the most recent pandemic occurred in 2009 when the “swine flu” killed between 151,700 and 575,400 people worldwide during the first year it circulated.

Coronaviruses are a family of viruses that cause mild to fatal upper-respiratory tract illnesses. In December 2019, a new strain of coronavirus emerged in Wuhan, China. The disease caused by the virus, COVID-19, quickly spread worldwide. In March 2020, the World Health Organization declared COVID-19 a pandemic, and the United States (U.S.) Federal Government began funding vaccine research, clinical trials, and manufacturing capabilities. By early November, two vaccines with nearly 95 percent efficacy were ready for review by the U.S. Food and Drug Administration (FDA). In December, the FDA approved the Pfizer-BioNTech and Moderna COVID-19 vaccines for emergency use.

Since receiving COVID-19 vaccine doses, Florida’s vaccine distribution strategy continues to evolve. The evolving distribution strategy and limited dosages have prompted scammers to prey on persons seeking vaccination. In Florida, Internet pages posing as the Pasco and Pinellas County Health Departments charged money for fake vaccination appointments and scammers attempting to obtain credit card information in return for a vaccine appointment intercepted calls made to the Lee County COVID-19 vaccine registration hotline. Other similar scams have appeared in Florida and other states. While some COVID-19 or other pandemic vaccine scams may be criminalized under current law, other vaccine scams may not qualify as a crime and stopping the fraudulent activity may be difficult.

HB 9 prohibits a person from knowingly and willfully making a false or misleading statement or disseminating false or misleading information regarding the availability of, or access to, a vaccine for COVID-19 or any other pandemic disease in marketing or advertising materials; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, for the purpose of obtaining another's personal identification information or money or other valuable consideration. A first offense is a third degree felony ranked at a level 7 on the offense severity ranking chart, while a second or subsequent offense is a second degree felony ranked at a level 8. The rankings provided by the bill subject an offender to a state prison sentence for any violation.

The bill authorizes the Florida Attorney General to initiate a civil action for an injunction, restraining order, or other appropriate relief when he or she reasonably believes the crime has been committed. This authority allows the Attorney General to shut down websites or other media platforms disseminating false information about a vaccine for COVID-19 or any other pandemic disease, when done with fraudulent intent.

The bill may have a positive indeterminate impact on prison beds.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Pandemics

A pandemic is an outbreak of disease over multiple parts of the world.<sup>1</sup> The most severe pandemic in recent history occurred in 1918 from a strain of the H1N1 influenza virus (H1N1) with genes of avian origin, and killed approximately 50 million people worldwide.<sup>2</sup> Prior to 2019, the most recent pandemic occurred in 2009 when a new strain of H1N1 with genes of swine origin caused the “swine flu,” killing between 151,700 and 575,400 people worldwide during the first year it circulated.<sup>3</sup>

##### *COVID-19*

Coronaviruses, named for crown-like spikes on the virus’s surface, are a family of viruses that can cause upper-respiratory tract illnesses.<sup>4</sup> There are seven known types of coronaviruses which can cause mild to moderate symptoms, similar to the common cold, or more serious or fatal diseases. The United States (U.S.) has previously experienced small outbreaks of coronaviruses. In November 2002, SARS coronavirus, which causes severe acute respiratory syndrome (SARS), emerged, and in September 2012, MERS coronavirus, which causes Middle East respiratory syndrome (MERS), emerged.<sup>5</sup>

Most recently, in December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, began in Wuhan, China.<sup>6</sup> The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide. Persons diagnosed with COVID-19 report a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose. Adults aged 65 years or older and people with preexisting underlying medical conditions, such as lung disease or diabetes, are at higher risk of developing more serious COVID-19 complications.<sup>7</sup>

In January 2020, the U.S. reported its first known case of COVID-19.<sup>8</sup> Shortly thereafter, in February 2020, the first known death was reported in the U.S.<sup>9</sup> In March 2020, Florida reported both the state’s first COVID-19 case and death.<sup>10</sup> On March 11, 2020, the World Health Organization (WHO) declared

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<sup>1</sup> Johns Hopkins University & Medicine, *Module 4: Epidemiology: Understanding the Spread of COVID-19*, <https://coronavirus.jhu.edu/covid-19-basics/understanding-covid-19/module-4-epidemiology-understanding-the-spread-of-covid-19/> (last visited Feb. 10, 2021).

<sup>2</sup> Centers for Disease Control and Prevention, *1918 Pandemic (H1N1 virus)*, <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> (last visited Feb. 10, 2021).

<sup>3</sup> Centers for Disease Control and Prevention, *2009 H1N1 Pandemic (H1N1pdm09 virus)*, <https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html> (last visited Feb. 10, 2021).

<sup>4</sup> Centers for Disease Control and Prevention, *Human Coronavirus Types*, <https://www.cdc.gov/coronavirus/types.html> (last visited Feb. 10, 2021).

<sup>5</sup> National Institute of Allergy and Infectious Diseases, *Coronaviruses*, <https://www.niaid.nih.gov/diseases-conditions/coronaviruses> (last visited Feb. 10, 2021).

<sup>6</sup> World Health Organization, *Novel coronavirus—China*, <https://www.who.int/csr/don/12-january-2020-novel-coronavirus-china/en/> (last visited Feb. 10, 2021).

<sup>7</sup> Centers for Disease Control and Prevention, *Symptoms of Coronavirus*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Feb. 10, 2021).

<sup>8</sup> Michelle L. Holshue, M.P.H., *First case of 2019 novel coronavirus in the United States*, *The New England Journal of Medicine* (March 5, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191> (last visited Feb. 10, 2021).

<sup>9</sup> Centers for Disease Control and Prevention, *Washington state reports first COVID-19 death*, <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited Feb. 10, 2021).

<sup>10</sup> Florida Department of Health, *Department of Health Announces Two Presumptive Positive COVID-19 Cases in Florida*, <http://www.floridahealth.gov/newsroom/2020/03/030120-two-presumptive-positive-covid19-cases.pr.html> (last visited Feb. 10, 2021).

COVID-19 a pandemic.<sup>11</sup> As the virus spreads, the number of reported cases nationally and in Florida continues to increase. As of February 3, 2021, Florida confirmed 1,744,619 positive cases of COVID-19 since the start of the pandemic.<sup>12</sup>

## COVID-19 Response

In an effort to limit the spread of COVID-19, in March 2020, Governor DeSantis began issuing a series of executive orders<sup>13</sup> declaring a public health emergency, shutting down non-essential businesses and schools, and encouraging citizens to stay at home.<sup>14</sup> The Centers for Disease Control and Prevention (CDC) issued social distancing guidelines and instructions for wearing face coverings.<sup>15</sup>

The Federal Government initiated “Operation Warp Speed” (OWS), launching a partnership among the U.S. Department of Health and Human Services, the CDC, the National Institutes of Health, the Biomedical Advanced Research and Development Authority, and the Department of Defense. As part of a broader strategy to accelerate the development, manufacture, and distribution of COVID-19 countermeasures, including vaccines, therapeutics, and diagnostics, OWS's primary goal is to produce and deliver safe and effective vaccines. OWS pledged that any vaccine or therapeutic doses purchased with U.S. taxpayer money would be administered to Americans at no cost.<sup>16</sup>

In December 2020, the U.S. Food and Drug Administration (FDA) granted Pfizer/BioNTech's and Moderna's COVID-19 vaccines Emergency Use Authorization.<sup>17</sup> Both vaccines require two separate doses. On December 23, 2020, Governor DeSantis issued Executive Order 20-315 prioritizing vaccine recipients. The order requires administering COVID-19 vaccines only to priority populations, including:

- Long term care facility residents and staff;
- Persons 65 years of age or older;
- Health care personnel with direct patient contact; or
- Any person a hospital provider deems to be extremely vulnerable to COVID-19.<sup>18</sup>

Florida's strategy for administering the COVID-19 vaccine is continuously evolving. The state continues to receive additional shipments of the vaccine, but availability remains limited. As of February 2, 2021, 1,375,554 people have received the first vaccine dose, while 372,207 people have completed the vaccination series.<sup>19</sup> The Governor frequently announces updates as the state receives additional vaccine shipments and private and local distribution partnerships are established. Counties are authorized to implement local processes for administering the vaccine to people over the age of 65. Several counties have opted to use Eventbrite, a digital event management and ticketing website, which allows residents to register online for vaccine appointments.<sup>20</sup>

## COVID-19 Scams

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<sup>11</sup> World Health Organization, WHO Director-General, Speeches, *WHO Director-General's opening remarks at the media briefing on COVID-19*, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited Feb. 10, 2021).

<sup>12</sup> Florida Department of Health, *Florida's COVID-19 Data and Surveillance Dashboard, Florida Cases*, <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429/> (last visited Feb. 10, 2021).

<sup>13</sup> Florida Governor Ron DeSantis, *2020 Executive Orders*, <https://www.flgov.com/2020-executive-orders/> (last visited Feb. 10, 2021).

<sup>14</sup> Fla. Exec. Order No. 20-51 (Mar. 1, 2020).

<sup>15</sup> Centers for Disease Control and Prevention, *COVID-19, Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited Feb. 10, 2021).

<sup>16</sup> U.S. Department of Health & Human Services, *Fact Sheet: Explaining Operation Warp Speed*, <https://www.hhs.gov/coronavirus/explaining-operation-warp-speed/index.html> (last visited Feb. 10, 2021).

<sup>17</sup> U.S. Food and Drug Administration, *Pfizer-BioNTech COVID-19 Vaccine*, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine> (last visited Feb. 10, 2021). Emergency use authorization is a mechanism for facilitating the availability and use of medical countermeasures, such as vaccines, during public health emergencies. See U.S. Food and Drug Administration, *Emergency Use Authorization for Vaccines Explained*, <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> (last visited Feb. 10, 2021).

<sup>18</sup> Fla. Exec. Order No. 20-315 (Dec. 23, 2020).

<sup>19</sup> Florida Department of Health, *COVID-19: Vaccine Summary*, [http://ww11.doh.state.fl.us/comm/partners/covid19\\_report\\_archive/vaccine/vaccine\\_report\\_latest.pdf](http://ww11.doh.state.fl.us/comm/partners/covid19_report_archive/vaccine/vaccine_report_latest.pdf) (last visited Feb. 10, 2021).

<sup>20</sup> Siladitya Ray, *Florida Seniors Duped Into Paying For Covid Vaccination Appointments On Eventbrite*, *Forbes* (Jan. 5, 2021), <https://www.forbes.com/sites/siladityaray/2021/01/05/florida-seniors-duped-into-paying-for-covid-vaccination-appointments-on-eventbrite/?sh=4ae21e2a4933> (last visited Feb. 10, 2021).

The high demand for COVID-19 vaccines or other treatments has created an opportunity for criminals seeking to profit from desperate consumers by offering or selling counterfeit or substandard vaccines and treatments.<sup>21</sup> The Department of Homeland Security launched Operation Stolen Promises 2.0, aimed at identifying and preventing the production, sale, and distribution of unapproved or unauthorized COVID-19 products and drugs and combatting the threat of counterfeit vaccines, treatments, and supplies.<sup>22</sup>

Emerging scams have also prompted Federal, state, and local authorities to issue warnings to the public to avoid fraudulent activity related to the COVID-19 vaccine. The Federal Trade Commission published guidance on how to identify and avoid COVID-19 vaccine scams, warning consumers not to:

- Pay to put their name on a list to get the vaccine;
- Pay to gain early access to the vaccine; or
- Provide their social security number, bank account, or credit card number to get the vaccine.<sup>23</sup>

The U.S. Department of Health and Human Services,<sup>24</sup> U.S. Department of Justice,<sup>25</sup> and Federal Bureau of Investigation<sup>26</sup> have issued similar warnings and released information on how to report a suspected COVID-19 related scam. Since the COVID-19 emergency declaration in March 2020, Florida's Attorney General (AG) has issued more than 30 consumer alerts warning Floridians about emerging scams and providing tips to avoid falling victim to fraud.<sup>27</sup>

Despite public warnings, on January 4, 2021, scammers created fake Eventbrite accounts posing as the Pasco and Pinellas County Health Departments offering to take payment in exchange for COVID-19 vaccination appointments.<sup>28</sup> On the same day, scammers attempting to obtain credit card information in return for a vaccine appointment intercepted calls made to the Lee County COVID-19 vaccine registration hotline.<sup>29</sup> In response to these new scams, on January 7, 2021, the AG warned Florida consumers to avoid COVID-19 vaccine scams that involve misleading webpages charging for vaccine appointments.<sup>30</sup> Most recently, on January 20, 2021, the Florida Department of Health issued a warning regarding more fake Eventbrite sites posing as the Department of Health and offering appointments for vaccines in Martin County.<sup>31</sup>

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<sup>21</sup> Department of Homeland Security, *Homeland Security Investigations: Operation Stolen Promise-An Initiative Targeting Covid-19 Fraud*, [https://www.ice.gov/topics/operation-stolen-promise#:~:text=S.%20Immigration%20and%20Customs%20Enforcement%20\(ICE\)%20Homeland%20Security,threat%20posed%20by%20COVID-19-related%20fraud%20and%20criminal%20activity](https://www.ice.gov/topics/operation-stolen-promise#:~:text=S.%20Immigration%20and%20Customs%20Enforcement%20(ICE)%20Homeland%20Security,threat%20posed%20by%20COVID-19-related%20fraud%20and%20criminal%20activity) (last visited Feb. 10, 2021).

<sup>22</sup> U.S. Immigration and Customs Enforcement, Department of Homeland Security, *ICE pivots to combat COVID-19 vaccine fraud with launch of Operation Stolen Promise 2.0*, <https://www.ice.gov/news/releases/ice-pivots-combat-covid-19-vaccine-fraud-launch-operation-stolen-promise-20> (last visited Feb. 10, 2021).

<sup>23</sup> Federal Trade Commission, *FTC Issues Consumer Tips for Avoiding COVID-19 Vaccine Scams*, <https://www.ftc.gov/news-events/press-releases/2020/12/ftc-issues-consumer-tips-avoiding-covid-19-vaccine-scams> (last visited Feb. 10, 2021).

<sup>24</sup> U.S. Department of Health & Human Services, Office of Inspector General, *COVID-19 Fraud*, [https://oig.hhs.gov/coronavirus/fraud-alert-covid19.asp?utm\\_source=web&utm\\_medium=web&utm\\_campaign=covid19-fraud-alert](https://oig.hhs.gov/coronavirus/fraud-alert-covid19.asp?utm_source=web&utm_medium=web&utm_campaign=covid19-fraud-alert) (last visited Feb. 10, 2021).

<sup>25</sup> U.S. Department of Justice, *Combating Coronavirus Fraud*, <https://www.justice.gov/coronavirus> (last visited Feb. 10, 2021).

<sup>26</sup> Federal Bureau of Investigation, *FBI Urges Vigilance During COVID-19 Pandemic*, <https://www.fbi.gov/coronavirus> (last visited Feb. 10, 2021).

<sup>27</sup> ABC7 News Staff, *AG Moody warns of COVID vaccine appointment scams*, (January 7, 2021), <https://www.msn.com/en-us/news/politics/ag-moody-warns-of-covid-vaccine-appointment-scams/ar-BB1cyX98?ocid=uxbndlbing> (last visited Feb. 10, 2021).

<sup>28</sup> *Supra* note 22.

<sup>29</sup> David Dorsey, *Scammers intercept unknown number of Lee County COVID-19 vaccine hotline calls*, News-Press (January 6, 2021), <https://www.news-press.com/story/news/2021/01/06/scammers-intercept-unknown-number-lee-county-covid-19-vaccine-hotline-calls/6561370002/> (last visited Feb. 10, 2021).

<sup>30</sup> Attorney General Ashley Moody, *CONSUMER ALERT: Do Not Pay to Reserve a COVID-19 Vaccine Appointment*, <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/B2E0EC4EB79177A085258656006133B1> (last visited Feb. 10, 2021).

<sup>31</sup> Renay Rouse, *DOH-Martin-Use Caution Booking Online Appointments: news release* (Jan. 20, 2021), <http://martin.floridahealth.gov/newsroom/2021/01/covid19pr.html> (last visited Feb. 10, 2021).

## Current Crimes

### *Theft*

A person commits theft when he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property;<sup>32</sup> or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>33</sup>

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds range from a second degree misdemeanor to a first degree felony.<sup>34</sup>

### *Fraudulent Practices*

Chapter 817, F.S., prohibits fraudulent practices against individuals, corporations, and governments, including, in relevant part:

- Providing misleading advertisements<sup>35</sup> – a first or second degree misdemeanor;<sup>36</sup>
- Misleading solicitation of payments – a second degree misdemeanor fine;<sup>37</sup>
- Obtaining property by fraudulent promise to furnish inside information<sup>38</sup> – a third degree felony;<sup>39</sup> and
- Unlawful possession of the personal identification information of another person<sup>40</sup> – a first degree misdemeanor or third degree felony.

### *Criminal Use of Personal Identification Information*

Section 817.568, F.S., prohibits the criminal use of another person's personal identification information (PII).<sup>41</sup> PII is a name or number that may be used, alone or in conjunction with any other information, to identify a specific person. Section 817.568(1)(f), F.S., lists several examples of PII, including:

- A name;
- An address;
- Contact information, such as a telephone number or email address;
- A social security number;
- A date of birth;
- A mother's maiden name;
- An official state- or federally-issued driver license or identification number;
- Another identification number, such as an alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank, credit, or debit card number;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;

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<sup>32</sup> S. 812.014(1)(a), F.S.

<sup>33</sup> S. 812.014(1)(b), F.S.

<sup>34</sup> See ch. 812, F.S. 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.

<sup>35</sup> Ss. 817.06 and 817.44, F.S.

<sup>36</sup> S. 817.45, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine and a second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>37</sup> Ss. 817.061 and 775.083, F.S.

<sup>38</sup> S. 817.11, F.S.

<sup>39</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>40</sup> S. 817.5685, F.S.

<sup>41</sup> S. 817.568, F.S.

- Medical records;
- Telecommunication identifying information or access device; or
- Any other number or information that can be used to access a person's financial resources.

Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, another person's PII without that person's consent, commits the offense of fraudulent use of personal identification information, a third degree felony. However, the offense level and potential sanctions<sup>42</sup> increase for a violation, based on the dollar amount of the benefit or value received by an offender, the dollar amount of the injury or fraud perpetrated on a victim, the number of victims from which an offender takes PII, the age or status of the victim or victims, and the offender's relationship to the victim.<sup>43</sup>

Florida does not specifically criminalize fraud relating to vaccine scams intended to obtain money or personal identification information from another person. While some COVID-19 or other pandemic vaccine scams may be prosecuted under current law, other fraudulent vaccine scams may not qualify as a crime and stopping the fraudulent activity may be difficult.

### Venue

Venue means the county, district, or other geographical area or location in which a cause of action is to be tried. In a criminal case, venue is the county in which the information or indictment is filed and the trial takes place. An accused person has the right to a speedy and public trial by an impartial jury in the county where the crime was committed.<sup>44</sup> Venue for out-of-state crimes may be determined by the legislature.<sup>45</sup>

Generally, when a crime is commenced outside the state but completed within the state or commenced within the state but completed outside the state, venue is proper in the county where the in-state portion of the crime took place.<sup>46</sup> However, a person charged with committing any crime facilitated by communication by mail, telephone, newspaper, radio, television, Internet, or any other means of electronic data communication may be charged and tried in the county in which: the dissemination originated; the dissemination was made; or any act necessary to consummate the offense occurred.<sup>47</sup> Any communication made by or made available through the use of the Internet is considered to be made in every county within the state.<sup>48</sup>

### The Attorney General

The Attorney General (AG) is charged with performing the duties prescribed by the Florida Constitution and such other duties appropriate to his or her office as may be required by law or by resolution of the Legislature.<sup>49</sup> The AG is recognized as the chief law officer of the State and is also the head of the Department of Legal Affairs (DLA). DLA is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Office of Statewide Prosecution (OSP) is a part of the DLA and is responsible for prosecuting crimes impacting two or more judicial circuits in the state. The OSP focuses mainly on complex, often large scale, organized criminal activity.<sup>50</sup>

As chief legal officer of the State, the AG may bring actions on behalf of Floridians.<sup>51</sup> The AG may also institute a civil action for a violation, or to prevent a violation, of certain activities. For example, the AG is authorized to institute a civil action to:

<sup>42</sup> Several offenses include a mandatory minimum sentence. See ss. 817.568(2)(b)-(c), 817.568(3), and 817.568(8)(b)-(c), F.S.

<sup>43</sup> See s. 817.568(2)-(11), F.S.

<sup>44</sup> Art. 1, s. 16, Fla. Const.; S. 910.03, F.S.

<sup>45</sup> *Id.*

<sup>46</sup> S. 910.01, F.S.

<sup>47</sup> S. 910.15, F.S.

<sup>48</sup> *Id.*

<sup>49</sup> S. 16.01(2), F.S.

<sup>50</sup> Ss. 896.101 and 16.56(1)(a)13., F.S.

<sup>51</sup> See e.g., s. 736.0110, F.S., relating to charitable trusts.

- Stop a violation of, or prevent a violation of, certain voter registration and ballot initiative laws;<sup>52</sup>
- Seek declaratory or injunctive relief<sup>53</sup> against an entity violating federal immigration policies;<sup>54</sup>
- Maintain an action for injunctive relief against any person or entity violating the Environmental Protection Act;<sup>55</sup> or
- Enjoin any person who has violated, is violating, or is otherwise likely to violate any portion of the Florida Deceptive and Unfair Trade Practices Act.<sup>56</sup>

## Effect of Proposed Changes

HB 9 creates a crime to penalize a person who, for the purpose of obtaining another's PII or money or other valuable consideration, knowingly and willfully makes a false or misleading statement or disseminates false or misleading information regarding the availability of, or access to, a vaccine for COVID-19 or any other pandemic disease via:

- Marketing or advertising materials;
- Website, social media platform, or other media; or
- Telephone, text message, mail, or e-mail.

Under the bill, PII has the same meaning as provided in s. 817.568(1)(f), F.S., and generally includes any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including, but not limited to, information such as a person's name, postal or e-mail address, telephone number, social security number, date of birth, driver license or identification number, government passport number, bank account, credit, or debit card number, or medical records.

A first offense of offering or advertising a vaccine with intent to defraud is a third degree felony ranked at a level 7 on the offense severity ranking chart,<sup>57</sup> while a second or subsequent offense is a second degree felony ranked at a level 8. The rankings provided by the bill subject an offender to a state prison sentence for any violation.

The bill authorizes the AG to initiate a civil action for an injunction, restraining order, or other appropriate relief if he or she reasonably believes the crime has been committed or to prevent the commission of the crime. Such authority gives the AG the ability to shut down websites and other media platforms disseminating false information about the availability of a vaccine for COVID-19 or any other pandemic disease for the purpose of obtaining PII or money or other valuable consideration.

The bill ensures that an individual perpetrating a vaccine scam during a pandemic may be prosecuted, and his or her illegal activity stopped.

The bill is effective upon becoming a law.

<sup>52</sup> See ss. 97.0575(4) and 100.371(8), F.S.

<sup>53</sup> An injunction is a court order requiring a person to do or stop doing a specific action. S. 60.05(2), F.S.

<sup>54</sup> S. 908.107(2), F.S.

<sup>55</sup> S. 403.412(2)(a), F.S.

<sup>56</sup> Ss. 501.201-213, F.S.

<sup>57</sup> Felony offenses subject to the criminal punishment code are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure. S. 921.0022, F.S.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 817.504, F.S., relating to offering or advertising vaccine with intent to defraud.  
**Section 2:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.  
**Section 3:** Provides an effective date of upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on prison beds by creating a new felony offense of offering or advertising a vaccine with intent to defraud.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**