

**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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 890

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: False Personation

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Cantral</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 890 provides for various penalties for false personation of a firefighter.

The bill also punishes 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”) with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, 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).

SB 890 has an insignificant fiscal impact. The Criminal Justice Impact Conference met on February 27, 2013 and determined the original bill would have an insignificant impact on prison beds. The bill further limits penalties to false personation of firefighters.

The bill has an effective date of October 1, 2013.

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.<sup>1</sup> However, a person who falsely personates any such officer/position during the course of the commission of a felony commits a second degree felony<sup>2</sup> or, if the commission of the felony results in the death or personal injury of another human being, a first degree felony.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

### **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.<sup>4</sup> 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.<sup>5</sup>

### **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 firefighter.<sup>6</sup>

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”) with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, 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 inclusion of specific intent language is intended to address the case of *Sult v. State*, *supra*, and, if constitutionally sufficient, would make s. 843.085(2), F.S., enforceable both for unlawfully owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department and for owning or operating a motor vehicle

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<sup>4</sup> 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.

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

<sup>6</sup> 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.

marked or identified with various indicia indicating the vehicle is used by a law enforcement agency.

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 official estimate of the prison bed impact, if any, of legislation, estimated that the original bill would have an insignificant prison bed impact. The penalty provisions of the bill are only modified by the committee substitute to the extent that they apply to false personation of firefighters only (original bill also included various “criminal justice agency” personnel).

**VI. Technical Deficiencies:**

None.

**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.)

**CS by Criminal Justice on April 1, 2013:**

- Punishes only false personation of a firefighter (original bill also included various “criminal justice agency” personnel).
- Punishes 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”) with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, 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).

- B. **Amendments:**

None.