

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 Criminal Justice

BILL: CS/SB 190

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: False Personation

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 190 provides that it is a third degree felony to falsely personate a firefighter. It is a second degree felony to falsely personate a firefighter during the course of the commission of a felony. It is a first degree felony to falsely personate a firefighter 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 false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

The bill provides that it is a first degree misdemeanor to own or operate 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 the vehicle is an official vehicle of the fire department and is authorized to be used by the department, unless a specified exception applies.

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 or other specified person. A person commits this false personation offense if he or she falsely assumes or pretends to be any of the following officers/persons 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/person:

- 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.¹ However, a person who falsely personates any such officer/position during the course of the commission of a felony commits a second degree felony² or, if the commission of the felony results in the death or personal injury of another human being, a first degree felony.³

¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or prison and a fine. 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 prison and a fine. 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 prison and a fine. 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 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 defined in s. 943.045, F.S.;
- The use of the wording on the vehicle could deceive a reasonable person into believing that the vehicle is authorized by any of these agencies for use by the person operating the motor vehicle; and
- A specified exception does not apply.

Exceptions include:

- 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).

This offense is punishable as a first degree misdemeanor.⁴ Section 843.085, F.S., is cumulative to any law now in force in the state.

In *Sult v. State*,⁵ the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutionally overbroad and vague, and also violates a person’s 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.

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., to provide that it is a third degree felony to falsely personate a firefighter.⁶ It is a second degree felony to falsely personate a firefighter during the course of the commission of a felony. It is a first degree felony to falsely personate a firefighter 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.

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

⁵ 906 So.2d 1013 (Fla. 2005).

⁶ 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/persons 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. 112.81(1), 633.102(9), and 784.07(1)(b), F.S.

The false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

The bill also amends s. 843.085, F.S., to provide that it is a first degree misdemeanor to own or operate 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 the vehicle is an official vehicle of the fire department and is authorized to be used by the department, unless a specified exception applies.

Exceptions include:

- 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).⁷

The inclusion of specific intent language appears to be intended to address the case of *Sult v. State, supra*, and, if constitutionally sufficient, would make s. 843.085(2), F.S., enforceable for unlawfully owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department. This change will also apply to the current offense covered by this paragraph: unlawfully owning or operating a motor vehicle 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. It does not change the current ranking of the offense.

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ The bill also amends s. 843.085, F.S., to specify 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.

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, has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates the bill will have an insignificant prison bed impact.

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 Substantial Changes:**

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

CS by Criminal Justice on March 24, 2014:

The false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

B. Amendments:

None.