

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 205 Unlawful Use of Uniforms, Medals, or Insignia

SPONSOR(S): Criminal Justice Subcommittee, Local, Federal & Veterans Affairs Subcommittee, Avila and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 0 N, As CS	Renner	Miller
2) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Rochester	Hall
3) State Affairs Committee			

SUMMARY ANALYSIS

The Federal Stolen Valor Act of 2013 prohibits a person from claiming to have served in the military, from embellishing any rank attained, or from fraudulently claiming to have received a valor award, when he or she does so with the intent to obtain money, property, or other tangible benefit.

Similarly, Florida law prohibits an unauthorized person from misrepresenting himself or herself as a member or veteran of the United States Air Force, Army, Coast Guard, Marine Corps, Navy, or National Guard, or from wearing a uniform, or any medal or insignia authorized for use by members or veterans of those entities, while soliciting charitable contributions or for the purpose of material gain. A violation of the prohibition is a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. The law does not specify that a person who makes such misrepresentations for the purpose of obtaining employment or public office commits a criminal offense.

CS/CS/HB 205 specifies that an unauthorized person is prohibited from using a military uniform, medal, or insignia or misrepresenting himself or herself as a military member or veteran for the purpose of material gain including, but not limited to, obtaining employment or political office resulting in receiving compensation. The bill updates Florida's law to more closely mirror the Federal Stolen Valor Act of 2013.

The bill may have an insignificant prison bed impact on the Department of Corrections by expanding the conduct prohibited as a third degree felony.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Stolen Valor Act

In 2005, President George W. Bush signed into law the first Stolen Valor Act (the Act).¹ The law broadened provisions of federal law prohibiting the unauthorized wearing, manufacture, or sale of any military decorations and medals. Under the law, it was a federal misdemeanor to falsely represent oneself as having received any U.S. military decoration or medal.

In 2012, the United States Supreme Court overturned the Act. In *United States v. Alvarez*,² the Court ruled that the Act violated the First Amendment's guarantee to free speech and was therefore unconstitutional. In considering whether the conduct prohibited by the statute was protected free speech, the Court noted that "(t)he statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain."³

Consequently, President Barack Obama signed into law the Stolen Valor Act of 2013.⁴ The Act amended the federal criminal code to prohibit a person from claiming to have served in the military, from embellishing the rank attained, or from fraudulently claiming to have received a valor award with the intention of obtaining money, property, or other tangible benefit.

Solicitation While Wearing a Military Uniform (Florida)

Section 817.312, F.S., prohibits an unauthorized person from representing himself or herself as a member or veteran of the United States Air Force, Army, Coast Guard, Marine Corps, Navy or National Guard or from wearing a uniform, or any medal or insignia authorized for use by members or veterans of the United States military in order to solicit charitable contributions or for the purpose of material gain.⁵ A person who commits such an offense is guilty of a third degree felony.⁶ Wearing such uniforms, medals or insignia while engaging in a theatrical performance is not a violation.

Current law does not specify that a person who makes such misrepresentations for the purpose of obtaining employment or public office is guilty of a criminal offense. For example, in 2016, a Groveland mayoral candidate's campaign website claimed he had been awarded two Bronze Stars and a Purple Heart while serving in the Army.⁷ It was later discovered that the candidate had neither a Purple Heart, which is awarded to soldiers who were killed or injured in combat, nor a Bronze Star, awarded to soldiers who showed meritorious achievement.⁸

Other areas of Florida law prohibit similar conduct. Florida's Military Code prohibits similar acts relating to a United States military uniform, but does not require that the offender have an intent to deceive another person while committing the act. Section 250.43, F.S., prohibits an unauthorized person from

¹ GovTrack, Stolen Valor Act of 2005, Pub. L. No. 109-437, S. 1998, 109th Cong. (Dec. 20, 2006), available at <https://www.govtrack.us/congress/bills/109/s/1998> (last visited Jan. 15, 2020).

² *United States v. Alvarez*, 567 U.S. 709, 132 S. Ct. 2537, 183 L. Ed. 2d 574 (2012).

³ *Id.* at 2547.

⁴ 18 U.S.C. § 704. See also GovTrack, Stolen Valor Act of 2013, Pub. L. No. 113-12, H.R. 258, 113th Cong. (June 3, 2013), available at <https://www.govtrack.us/congress/bills/113/hr/258> (last visited Jan. 15, 2020).

⁵ S. 817.312, F.S.

⁶ A third degree felony is punishable by up to five years in prison and a fine up to \$5,000. See ss. 775.082 and 775.083, F.S.

⁷ Ryan Gillespie, *Vets Find Military Records, Including Lake Candidate, Often Embellished*, Orlando Sentinel (Oct. 22, 2016), <http://www.orlandosentinel.com/news/lake/os-groveland-stolen-valor-20161021-story.html> (last visited Jan. 15, 2020).

⁸ *Id.*

wearing a United States military uniform, any part of such uniform, or any similar uniform. A violation of the prohibition is a first degree misdemeanor.⁹

Similar to the Stolen Valor Act, the law was challenged on First Amendment grounds. In *State v. Montas*, the Florida Fifth District Court of Appeals pointed out that s. 250.43, F.S., prohibits a child from wearing his parent's Army boots or a person from wearing an imitation military uniform for Halloween, and is therefore unconstitutionally overbroad as it bans both protected and unprotected speech.¹⁰ When examining both state and federal statutes prohibiting similar conduct, courts have emphasized that such laws should be narrowly tailored to require an offender to make such a misrepresentation with the intent to deceive another person and for the purpose of obtaining money or other valuable consideration.¹¹

Effect of the Bill

CS/CS/HB 205 specifies that an unauthorized person is prohibited from using a military uniform, medal, or insignia or misrepresenting himself or herself as a military member or veteran for the purpose of material gain including, but not limited to, obtaining employment or political office resulting in receiving compensation. The bill updates Florida's law to more closely mirror the Federal Stolen Valor Act of 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.312, F.S., relating to unlawful use of uniforms, medals, or insignia.

Section 2: 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁹ A first degree misdemeanor is punishable by up to one year in county jail and a fine up to \$1,000. See ss. 775.082 and 775.083, F.S.

¹⁰ *State v. Montas*, 993 So. 2d 1127 (Fla. 5th Dist. 2008). The constitutional implications of this bill are discussed under CONSTITUTIONAL ISSUES.

¹¹ *Alvarez*, 132 S. Ct. at 2547. *Montas*, 993 So. 2d at 1129.

D. FISCAL COMMENTS:

The bill may have a positive insignificant bed impact on the Department of Corrections and county detention facilities by expanding the conduct prohibited as a third degree felony.

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:

The bill amends s. 817.312, F.S., to prohibit misrepresentation of military status or wearing a United States military uniform, medal or insignia without authorization while soliciting for charitable contributions, or for the purpose of material gain, including obtaining employment or public office resulting in receiving compensation.

As previously noted, the issue of misrepresentation of military service has been considered by the United States Supreme Court. In *United States v. Alvarez*, the Court considered the case of an official who was convicted of violating the Stolen Valor Act, 18 U.S.C. § 704(b), for falsely stating at a public meeting that he was a recipient of the Congressional Medal of Honor.¹² The Court found that the Stolen Valor Act, which made it a crime to lie about receiving military medals or honors, violated the First Amendment's guarantee to free speech. In considering whether the conduct prohibited by the statute was protected speech, the Court noted that "(t)he statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain."¹³ The Court also noted: "Where false claims are made to effect a fraud or secure moneys or other valuable considerations, [...], it is well established that the Government may restrict speech without affronting the First Amendment."¹⁴

The Stolen Valor Act of 2013¹⁵ amended the federal criminal code to make it a crime for a person to claim they have served in the military, embellish their rank, or fraudulently claim to have received a valor award with the intention of obtaining money, property, or other tangible benefit.

The prohibition against unauthorized wearing of a military uniform, medal, or insignia is subject to similar analysis. As previously noted, the Florida Fifth District Court of Appeals found that the prohibition in s. 250.43, F.S., did not include specific intent to deceive as an element of the offense, and that there was no way to narrowly interpret the statute to include such an element. This focus on "intent to deceive" is consistent with the reasoning in *United States v. Perelman*, which upheld 18 U.S.C. § 704(a), against a challenge that its prohibition against unauthorized wearing of United States military medals or decorations was overbroad on its face and thus unconstitutional.¹⁶ In that case, the federal appellate court interpreted the statute to reflect Congressional intent that it required "intent to deceive," even though such intent was not explicitly stated.¹⁷

Unlike s. 250.43, F.S., the bill's proposed changes to s. 817.312, F.S., would prohibit unauthorized wearing of a United States military uniform, medal, or insignia only in limited circumstances. The restriction of the prohibition to times when the wearer is soliciting for charitable contributions, or

¹² *Supra* note 2 at 2537.

¹³ *Supra* note 3.

¹⁴ *Id.*

¹⁵ *Supra* note 4.

¹⁶ *United States v. Perelman*, 695 F. 3d 866 (9th Cir. 2012).

¹⁷ *Id.*

seeking material gain, including obtaining employment or public office resulting in receiving compensation indicates that the bill is intended to prevent deception of potential donors, benefactors, or professionals or for political benefits.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that a person obtaining employment or public office cannot misuse a military uniform, medal or insignia or misrepresent oneself as a member or veteran of the military for the purpose of material gain to ensure conformity with the federal Stolen Valor Act.

On January 15, 2020, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a non-substantive, technical correction to a drafting error.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.