

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 Sabatini

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	24 Y, 0 N	Renner	Williamson

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.

The bill specifies that "material gain" for purposes of the prohibition pertaining to using a military uniform, medal, or insignia or misrepresenting himself or herself as a military member or veteran for the purpose of material gain, includes, but is not limited to, obtaining employment or political office resulting in receiving compensation. The bill updates Florida's law to mirror more closely 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.

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 first 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 United States military decoration or medal.

In 2012, the United States Supreme Court overturned the first Act. In *United States v. Alvarez*,² the Court ruled that the first 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 (the 2013 Act).⁴ The 2013 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 "material gain" includes a person who makes such misrepresentations for the purpose of obtaining employment or public office. 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 Because the law did not clearly prohibit this behavior, the candidate was not prosecuted.

Florida's Military Code prohibits similar acts relating to a United States military uniform. Section 250.43, F.S., prohibits an unauthorized person from wearing a United States military uniform, any part of such uniform, or any similar uniform. The prohibition does not require an intent to deceive. A violation of the

¹ GovTrack, Stolen Valor Act of 2005, Pub. L. No. 109-437, S. 1998, 109th Cong. (Dec. 20, 2006), <https://www.govtrack.us/congress/bills/109/s1998> (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), <https://www.govtrack.us/congress/bills/113/hr258> (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.*

prohibition is a first degree misdemeanor.⁹ The law was challenged on First Amendment grounds. In *State v. Montas*, the Florida Fifth District Court of Appeals noted 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

Effect of the Bill

The bill specifies that "material gain" includes, but is not limited to, obtaining employment or political office resulting in the receipt of compensation. As such, 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 mirror more closely the 2013 Act.

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.

D. FISCAL COMMENTS:

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

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).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, s. 18 of the Florida Constitution because it is a criminal law.

2. Other:

The bill amends s. 817.312, F.S., to prohibit the misrepresentation of military status or wearing of 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 the receipt of compensation.

As discussed in the body of the analysis, when examining both state and federal statutes prohibiting similar conduct, courts have emphasized that such laws should be narrowly tailored and require the intent to deceive another person for the purpose of obtaining money or other valuable consideration.¹¹ As such, it appears this bill is narrowly tailored to achieve its objective.

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 clarified 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 2013 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 approved by the Criminal Justice Subcommittee.

¹¹ *Alvarez*, 132 S. Ct. at 2547. *Montas*, 993 So. 2d at 1129.
STORAGE NAME: h0205e.SAC
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