

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 Rules

BILL: CS/HB 9

INTRODUCER: Judiciary Committee and Representative Zika and others

SUBJECT: Protecting Consumers Against Pandemic-related Fraud

DATE: March 23, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Phelps	RC	Favorable

I. Summary:

CS/HB 9 provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration.

The bill also provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19 or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information, or to obtain or receive any money or other valuable consideration.

A second or subsequent violation of the previously-described offenses is a second degree felony. Prosecution for either offense may be brought on behalf of the state by any state attorney or by the statewide prosecutor. Further, if the Attorney General reasonably believes that a person has committed either offense, the Attorney General may institute a civil action for the violation or to prevent the violation. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

The bill also amends the offense severity level ranking chart of the Criminal Punishment Code to rank the new offenses.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

COVID-19

A pandemic is an “[e]vent in which a disease spreads across several countries and affects a large number of people.”¹ 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.² Prior to 2019, the most recent pandemic occurred in 2009 when a new strain of H1N1 caused the “swine flu,” killing between 151,700 and 575,400 people worldwide during the first year it circulated.³

Coronaviruses are a family of viruses that can cause upper-respiratory tract illnesses. In the past, small outbreaks of coronaviruses have occurred in the United States (U.S.), including an outbreak of the SARS coronavirus in November 2002, and the MERS coronavirus in September 2012. Most recently, in December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, emerged in China. The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide.⁴ COVID-19 causes a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose. Older adults and people who have severe underlying medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.⁵

¹ *COVID-19 (Identifying the source of the outbreak)* (July 1, 2020), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/about-epidemiology/identifying-source-outbreak.html#:~:text=Pandemic%3A%20Event%20in%20which,large%20number%20of%20people> (last visited March 22, 2021).

² *Influenza (Flu) (1918 Pandemic (H1N1 virus))*, (March 20, 2019), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> (last visited March 22, 2021).

³ *Influenza (Flu) (2009 H1N1 Pandemic (H1N1pdm09 virus))* (June 11, 2019), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html> (last visited March 22, 2021).

⁴ *Coronaviruses*, National Institute of Allergy and Infectious Diseases, available at <https://www.niaid.nih.gov/diseases-conditions/coronaviruses> (last visited March 22, 2021); *Naming the coronavirus disease (COVID-19) and the virus that causes it*, World Health Organization, available at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last visited March 22, 2021).

⁵ *COVID-19 (Symptoms of Coronavirus)* (Feb. 22, 2021), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited March 22, 2021).

The U.S. reported its first known case of COVID-19 in January 2020,⁶ and its first known death in February 2020.⁷ In March 2020, Florida reported its first known COVID-19 case and death.⁸ On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.⁹

In response to the COVID-19 pandemic, the federal government initiated “Operation Warp Speed” and a partnership was formed among the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC), the National Institutes of Health, the Biomedical Advanced Research and Development Authority, and the Department of Defense. These agencies and entities began to strategize how to accelerate the development, manufacture, and distribution of COVID-19 countermeasures, including vaccines, therapeutics, and diagnostics.¹⁰

The CDC issued social distancing guidelines and instructions for wearing face coverings.¹¹ In an effort to limit the spread of COVID-19, Florida Governor DeSantis issued a series of executive orders¹² declaring a public health emergency.¹³ Florida also listed personal protective equipment, sanitizing and disinfecting supplies, and COVID-19 test kits as essential commodities.¹⁴

Personal Protective Equipment

“Personal protective equipment” (PPE) refers to protective clothing, helmets, gloves, face shields, goggles, facemasks, respirators, or other equipment designed to protect a person from injury or the spread of infection or illness. PPE is commonly used in health care settings to act as a barrier between infectious materials such as viral and bacterial contaminants and a person’s skin, mouth, nose, or eyes, to block transmission of contaminants from blood, bodily fluids, or

⁶ Michelle L. Holshue, M.P.H., *First case of 2019 novel coronavirus in the United States* (March 5, 2020), *N Engl J Med* 2020; 382:929-936, available at <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191> (last visited March 22, 2021).

⁷ *Washington state reports first COVID-19 death* (Feb. 29, 2020), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited March 22, 2021).

⁸ Steve Patrick, *From 1st cases to 1.9 million: 1 year of COVID-19 in Florida* (March 1, 2021), News4JAX, available at <https://www.news4jax.com/news/florida/2021/03/01/from-1st-cases-to-19-million-1-year-of-covid-19-in-florida/> (last visited March 22, 2021).

⁹ *WHO Director-General’s opening remarks at the media briefing on COVID-19* (March 11, 2020), World Health Organization, available at <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 March 22, 2021).

¹⁰ *Fact Sheet: Explaining Operation Warp Speed*, U.S. Department of Health & Human Services, available at <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus-lpha/pdf/fact-sheet-operation-warp-speed.pdf> (last visited March 22, 2021).

¹¹ *COVID-19 (Social Distancing)* (Nov. 17, 2020), Centers for Disease Control and Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited March 22 2021).

¹² *See 2020 Executive Orders*, Office of the Governor, available at <https://www.flgov.com/2020-executive-orders/> (last visited March 22, 2021).

¹³ Fla. Exec. Order No. 20-51 (March 1, 2020), Office of the Governor, available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf (last visited March 22, 2021).

¹⁴ *COVID-19 Resources to Stay Informed*, Office of the Attorney General, available at <http://www.myfloridalegal.com/covid19> (last visited March 22, 2021).

respiratory secretions. PPE is also used to protect patients who are at high risk for contracting infections brought in by visitors and healthcare workers.¹⁵

The COVID-19 pandemic increased the need for PPE for healthcare workers, patients, and the general public, resulting in PPE shortages nationwide. Some healthcare facilities were unable to access appropriate PPE, forcing them to identify alternative means to protect healthcare workers and provide adequate patient care.¹⁶

According to the Department of Homeland Security, more than 19,000 new websites selling PPE emerged as COVID-19 began to spread in the U.S., resulting in numerous reports of sites taking orders, accepting payment, and failing to deliver products.¹⁷ In April 2020, a Georgia man was arrested after making a series of fraudulent misrepresentations to secure \$750 million from the Department of Veterans Affairs for 125 million facemasks and other PPE, knowing he was unable to fulfill the orders.¹⁸ In January 2021, a Philadelphia man was arrested after fraudulently claiming to be a PPE provider and entering into agreements for over \$700 million to provide PPE to the City of New York.¹⁹

Florida's Attorney General (AG) has issued numerous consumer alerts warning Floridians about emerging COVID-19 related scams, including one in May 2020, urging Floridians to be on the lookout for fraudulent websites purporting to sell PPE.²⁰ As of December 2020, the Better Business Bureau had received 96 complaints in Florida related to COVID-19.²¹

COVID-19 Vaccine

In December 2020, the Food and Drug Administration (FDA) granted Pfizer/BioNTech's and Moderna's COVID-19 vaccines emergency use authorization.²² On February 27, 2021, the FDA

¹⁵ *Personal Protective Equipment for Infection Control* (Feb. 10, 2021), U.S. Food and Drug Administration, available at <https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/personal-protective-equipment-infection-control> (last visited March 22, 2021).

¹⁶ *Strategies for Optimizing PPE Supplies During Shortages*, COCA Now, Centers for Disease Control and Prevention, available at <https://emergency.cdc.gov/newsletters/coca/010521.htm> (last visited March 22, 2021).

¹⁷ *Consumer Alert: New Websites Selling PPE Take Money, Don't Deliver Gear* (May 14, 2020), Office of the Attorney General, available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DD06CDD09BE8587B85258568004EC790> (last visited March 22, 2021).

¹⁸ Johnny Diaz and Aimee Ortiz, *Man Charged in Scheme to Sell 125 Million Nonexistent Masks* (Apr. 11, 2020), *The New York Times*, available at <https://www.nytimes.com/2020/04/11/us/coronavirus-face-mask-fraud-christopher-parris.html> (last visited March 22, 2021).

¹⁹ *Philadelphia Man Arrested for COVID-19 PPE Fraud* (Jan. 20, 2021), U.S. Attorney's Office, District of New Jersey, available at <https://www.justice.gov/usao-nj/pr/philadelphia-man-arrested-covid-19-ppe-fraud> (last visited March 22, 2021).

²⁰ *VIDEO CONSUMER ALERT: New Websites Selling PPE Take Money, Don't Deliver Gear* (May 14, 2021), Office of the Attorney General available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DD06CDD09BE8587B85258568004EC790> (last visited March 22, 2021).

²¹ Merris Badcock, *COVID-19 Vaccine Scams at Center of New Crime-Fighting Effort* (Dec. 7, 2020), ClickOrlando.com (Graham Media Group), available at <https://www.clickorlando.com/news/local/2020/12/08/covid-19-vaccine-scams-at-center-of-new-crime-fighting-effort/> (last visited March 22, 2021).

²² *Pfizer-BioNTech COVID-19 Vaccine*, (Feb. 3, 2021), U.S. Food and Drug Administration, available at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine> (last visited March 22, 2021). Emergency use authorization is a mechanism for facilitating the availability and use of medical countermeasures, such as vaccines, during public health emergencies. *See Emergency Use Authorization for*

granted emergency use authorization to Janssen Biotech Inc., a Janssen Pharmaceutical Company of Johnson & Johnson, to distribute the Janssen COVID-19 vaccine in the United States.²³

Governor DeSantis recently issued an executive order, effective March 9, 2021, which updates an earlier issued executive order on vaccine administration.²⁴ This updated order provides that, during this first phase of vaccine administration, all providers administering any COVID-19 vaccine shall only vaccinate the following populations:

- Long-term care facility residents and staff;
- Persons 60 years of age and older;
- Health care personnel with direct patient contact;
- K-12 school employees 50 years of age and older;
- Sworn law enforcement officers 50 years of age and older; and
- Firefighters 50 years of age and older.²⁵

The executive order further provides that all individuals authorized by law to administer COVID-19 vaccinations may vaccinate persons determined by a physician to be extremely vulnerable to COVID-19. Such physician determinations shall include a statement that the patient meets the defined eligibility criteria established by a form prescribed by the Florida Department of Health.²⁶

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;²⁷ 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.²⁸

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

Vaccines Explained, (Nov. 20, 2020), U.S. Food and Drug Administration, <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> (last visited March 22, 2021).

²³ *FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine* (Feb. 27, 2021), U.S. Food and Drug Administration, available at <https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine> (last visited March 22, 2021). The first shipment of that vaccine arrived in Florida on March 4, 2021. *First shipment of Johnson & Johnson vaccine arrives in Florida, DeSantis to address distribution Friday afternoon* (March 5, 2021), ABC7 (WWSB) (Sarasota, FL), available at <https://www.mysuncoast.com/2021/03/05/first-shipment-johnson-johnson-vaccine-arrives-florida/> (last visited March 22, 2021).

²⁴ Fla. Exec. Order No. 21-62 (March 9, 2021), Office of the Governor, available at https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-62.pdf (last visited March 22, 2021).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 812.014(1)(a), F.S.

²⁸ Section 812.014(1)(b), F.S.

levels for theft crimes based on property value range from a second degree misdemeanor²⁹ to a first degree felony.³⁰ Enhanced penalty provisions are also provided for certain theft offenses committed after a declaration of an emergency by the Governor that are facilitated by conditions arising from that emergency.³¹

Fraudulent Practices

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

- Providing misleading advertisements (first or second degree misdemeanor);³²
- Misleading solicitation of payments (second degree misdemeanor fine);³³
- Obtaining property by fraudulent promise to furnish inside information (third degree felony);³⁴ and
- Unlawful possession of the personal identification information of another person (first degree misdemeanor or third degree felony).³⁵

Criminal Use of Personal Identification Information

Section 817.568, F.S., prohibits the criminal use of another person's personal identification information (PII).³⁶ 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-issued 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;

²⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

³⁰ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

³¹ See s. 812.014, F.S.

³² Sections 817.06, 817.44, and 817.45, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000 fine. Sections 775.082 and 775.083, F.S.

³³ Section 817.061, F.S. A second degree misdemeanor fine is a fine of up to \$500. Section 775.083, F.S.

³⁴ Section 817.11, F.S. A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

³⁵ Section 817.5685, F.S.

³⁶ Section 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 sanctions³⁷ 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.³⁸

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

The Attorney General and Statewide Prosecutor

The Attorney General may institute a civil action for a violation, or to prevent a violation, of certain activities. For example, the Attorney General may institute a civil action to:

- Stop a violation of, or prevent a violation of, certain voter registration and ballot initiative laws;³⁹
- Seek declaratory or injunctive relief against an entity violating federal immigration policies;⁴⁰
- Maintain an action for injunctive relief against any person or entity violating the Environmental Protection Act;⁴¹
- 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;⁴² and
- Seek damages, injunctive relief, or specified civil penalties against a person or group the Attorney General has reasonable cause to believe has engaged in a pattern or practice of discrimination as defined by the laws of this state.⁴³

The Office of Statewide Prosecution (OSP) within the Department of Legal Affairs is authorized to investigate and prosecute an offense listed in s. 16.56, F.S., which is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial

³⁷ 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.

³⁸ *See* s. 817.568(2)-(11), F.S.

³⁹ *See* ss. 97.0575(4) and 100.371(8), F.S.

⁴⁰ Section 908.107(2), F.S.

⁴¹ Section 403.412(2)(a), F.S.

⁴² Sections 501.201-213, F.S.

⁴³ Section 760.021, F.S.

circuits.⁴⁴ The OSP may also be authorized to prosecute an offense by another statute. For example, s. 817.568, F.S. (criminal use of personal identification information), authorizes the statewide prosecutor to prosecute violations of that statute.⁴⁵

Criminal Punishment Code

The Criminal Punishment Code⁴⁶ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).⁴⁷ Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁴⁸ Absent mitigation,⁴⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁵⁰

III. Effect of Proposed Changes:

The bill creates s. 817.418, F.S., which provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information relating to the characteristics, authenticity, effectiveness, or availability of personal protective equipment in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain or receive any money or other valuable consideration.

The bill also creates s. 817.504, F.S., which provides that it is a third degree felony to knowingly and willfully make a materially false or misleading statement or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19 or a vaccine for any other pandemic disease in any marketing or advertising material; on a website, social media platform, or other media; or by telephone, text message, mail, or e-mail, with the intent to obtain another person's personal identification information, or to obtain or receive any money or other valuable consideration.

⁴⁴ Section 16.56(1), F.S.

⁴⁵ Section 817.568(16), F.S.

⁴⁶ Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁴⁷ Offenses are ranked either in the offense severity level ranking chart in s. 921.0022, F.S., or by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁴⁹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁵⁰ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

A second or subsequent violation of the previously-described offenses is a second degree felony.⁵¹ Prosecution for either offense may be brought on behalf of the state by any state attorney or by the statewide prosecutor. Further, if the Attorney General reasonably believes that a person has committed either offense, the Attorney General may institute a civil action for the violation or to prevent the violation. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate relief.

The bill also amends the offense severity level ranking chart of the Code to rank the offenses as follows:

- Offering for sale or advertising personal protective equipment with intent to defraud (third degree felony) is a Level 7 offense;
- Offering or advertising a vaccine with intent to defraud (third degree felony) is a Level 7 offense);
- Offering for sale or advertising personal protective equipment with intent to defraud; second or subsequent offense (second degree felony) is a Level 8 offense; and
- Offering or advertising a vaccine with intent to defraud; second or subsequent offense (second degree felony) is a Level 8 offense.

All of these offenses would score a prison sentence as the lowest permissible sentence under the Code.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁵¹ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

E. Other Constitutional Issues:

None identified.

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 final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).⁵²

The EDR provided the following information relevant to its preliminary estimate:

Per Office of Attorney General, they have heard from 115 complainants against 83 unique subjects regarding potential scams/frauds related to selling or advertising personal protective equipment. They have also heard from 22 complainants against 20 unique subjects regarding offering or advertising a coronavirus vaccine with the intent to defraud. Per U.S. Immigration and Customs Enforcement, Operation Stolen Promise has made 225 criminal arrests so far associated with fraud related to the coronavirus. It is not known how many of these arrests fit the definitions outlined in this bill, nor is it known how many of these arrests were made in connection with fraud activity in Florida. It is possible that a certain number of these offenders fall under Federal jurisdiction, thus limiting the pool of those potentially entering state prison. Furthermore, many of those offenders might already be eligible under the theft statute, s. 812.014, F.S., or Chapter 817, relating to fraudulent practices, though the severity of the act might not reach the incarceration rate of a Level 7, 3rd degree felony (FY 18-19: 47.4%, FY 19-20: 42.9%) or a Level 8, 2nd degree felony (FY 18-19: 65.8%, FY 19-20: 63.6%). Finally, it is not known how long such illicit activity will persist, especially once the vaccine has inoculated the population.⁵³

VI. Technical Deficiencies:

None.

⁵² The EDR's preliminary estimate is on file with the Senate Committee on Rules.

⁵³ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0022 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 817.418 and 817.504.

IX. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.