

**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.)

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Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

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BILL: SB 402

INTRODUCER: Senator Wright

SUBJECT: Unlawful Use of Uniforms, Medals, or Insignia

DATE: March 11, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Proctor</u>	<u>Proctor</u>	<u>MS</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 402 amends s. 817.312 F.S., to replace a list of specified armed forces with *armed forces as defined in s. 250.01, F.S.* Current law provides it is a third degree felony for a person to misrepresent himself or herself as a member or veteran of such specified armed forces, or to wear the uniform or insignia of specified armed forces, under certain circumstances.

The bill ensures that the same branches of armed forces are listed in each provision of the statute. Under s. 250.01, F.S., “armed forces,” includes the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.

The bill takes effect on October 1, 2025.

## II. Present Situation:

### Armed Forces

The Department of Defense is America’s largest government agency and is composed of 3.4 million service members and civilians. The department’s mission is to provide the armed forces needed to deter war and ensure our nation’s security.<sup>1</sup> Section 250.01, F.S., provides that “armed forces” means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.<sup>2</sup> The National Guard is defined separately as the Army National Guard and the Air National Guard, both of which specify that part of the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia, active or inactive, which is:

- Trained, and has its officers appointed, under the United States Constitution;
- Organized, armed, and equipped wholly or partially at federal expense; and

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<sup>1</sup> U.S. Department of Defense, *About*, available at: <https://www.defense.gov/About/> (last visited March 3, 2025).

<sup>2</sup> Section 250.01(4), F.S.

- Federally recognized.<sup>3</sup>

The United States Space Force was established in 2019, creating the first new branch of the armed services since 1947. “The military and civilian guardians who work for the Space Force protect and defend American interests in space to ensure that our forces, our allies, and our people have the ability to harness space whenever and wherever they need it.”<sup>4</sup>

### ***Armed Forces Uniforms and Insignia***

A person commits a third degree felony<sup>5</sup> if, while in the process of soliciting for charitable donations or for the purpose of material gain, including but not limited to, obtaining employment or public office resulting in receiving compensation, such person misrepresents himself or herself as a member or veteran<sup>6</sup> of the:

- United States Air Force;
- United States Army;
- United States Coast Guard;
- United States Marine Corps;
- United States Navy;
- United States Space Force; or,
- National Guard.

Additionally, a person commits a third degree felony if, while in the process of soliciting for charitable donations or material gain, such person wears the uniform of, or any medal or insignia authorized for use by members or veterans<sup>7</sup> of the:

- United States Air Force;
- United States Army;
- United States Coast Guard;
- United States Marine Corps;
- United States Navy; or,
- The National Guard.

These crimes do not apply to persons in the theatrical profession while engaged in such profession.

In 2022, SB 438 amended the definition of “armed forces” in s. 250.01, F.S., to incorporate the newly established Space Force, and amended s. 817.312(1)(a)1., F.S., to prohibit a person from misrepresenting himself or herself as a member or veteran of the United States Space Force. However, that bill did not include Space force in s. 817.312(1)(a)2., F.S. Therefore, there is no prohibition for wearing the uniform of or any medal or insignia of the United States Space Force.

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<sup>3</sup> Sections 250.01(2)(b)-(d) and 250.01(6)(b)-(d), F.S.

<sup>4</sup> United States Space Force, *About Us*, available at <https://www.spaceforce.mil/About-Us/> (last visited March 3, 2025).

<sup>5</sup> A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Section 775.082 and 775.083, F.S.

<sup>6</sup> Section 817.312(1)(a)1., F.S.

<sup>7</sup> Section 817.312(1)(a)2., F.S.

### *Similar Provisions of Law*

Other provisions of Florida law and Federal law govern wearing a uniform or insignia of rank, some of which have been held unconstitutional by the courts.

In 2005, President George W. Bush signed into law the first Stolen Valor Act (the Act).<sup>8</sup> 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*,<sup>9</sup> 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."<sup>10</sup>

Consequently, President Barack Obama signed into law the Stolen Valor Act of 2013.<sup>11</sup> 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.

Similarly, s. 250.43, F.S., provides it is a first degree misdemeanor<sup>12</sup> for a person, other than persons entitled, to wear the uniform or insignia of rank worn by officers of the Florida National Guard. Additionally, every person other than an officer or enlisted person of a specified entity<sup>13</sup> who wears the uniform or any part of such uniform, or imitation thereof, of the United States Army, Navy, Marine Corps, Air Force, Space Force, National Guard, Naval Militia, or Marine Corps commits a first degree misdemeanor.

In *State v. Montas*,<sup>14</sup> the district court held that s. 250.43, F.S., was overbroad and a violation of due process because the statute has the potential to criminalize activities protected by the First Amendment. However, s. 817.312, F.S. addresses the intent element, by prohibiting the unlawful use of uniforms, medals, or insignia *while soliciting for charitable donations or for the purpose of material gain*.

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<sup>8</sup> GovTrack, Stolen Valor Act of 2005, Pub. L. No. 109-437, S. 1998, 109<sup>th</sup> Cong. (December 20, 2006), available at: <https://www.govtrack.us/congress/bills/109/s1998> (last visited March 3, 2025).

<sup>9</sup> *United States v. Alvarez*, 567, U.S. 709, 132 S. Ct. 2537, 183 L. Ed. 2d 574 (2012).

<sup>10</sup> *Id.* at 2547.

<sup>11</sup> 18 U.S.C. § 704. See GovTrack, Stolen Valor Act of 2013, Pub. L. No. 113-12, H.R. 258, 113<sup>th</sup> Cong. (June 3, 2013), available at: <https://www.govtrack.us/congress/bills/113/hr258> (last visited March 3, 2025).

<sup>12</sup> A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>13</sup> Section 250.43(2), F.S., Specified entities include Florida National Guard, naval militia, or marine corps of this state, any other state, Puerto Rico, or the District of Columbia, or of the United States Army, Navy, Marine Corps, Air Force, or Space Force.

<sup>14</sup> *State v. Montas*, 993 So. 2d 1127 (Fla. 5th DCA 2008).

### III. Effect of Proposed Changes:

The bill amends s. 817.312, F.S., which provides that it is a third degree felony for a person to misrepresent himself or herself as a member or veteran of specified armed forces, or to wear the uniform or insignia of specified armed forces, under certain circumstances.

Specifically the bill amends s. 817.312(1)(a)1., F.S., to replace “United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, and United States Space Force” with “*armed forces as defined in s. 250.01.*”

Additionally, s. 817.312(1)(a)2., F.S., is amended to replace “United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy” with “*armed forces as defined in s. 250.01.*”

The bill ensures that the same branches of armed forces are listed in each provision of the statute. Under s. 250.01, F.S., “armed forces,” includes the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.

The bill takes effect on October 1, 2025.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The bill relates to criminal laws prohibiting wearing specified uniforms or insignia, and criminal laws are exempt from the requirements of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

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

**VI. Technical Deficiencies:****VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 817.312 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

## B. Amendments:

None.