

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1215 False Personation
SPONSOR(S): Watson
TIED BILLS: **IDEN./SIM. BILLS:** SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer. The offense is reclassified to a second degree felony or a first degree felony in specified instances.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle. The prohibited words and insignia include words such as "police," "patrolman," "sheriff," and "deputy."

The bill amends s. 843.08, F.S., to add "firefighter" to the list of officers that may not be falsely personated. The bill also amends s. 843.085, F.S., to:

- Expand its application to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Address a 2005 Florida Supreme Court decision by requiring proof that the offender had the "intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency" (rather than requiring proof that a reasonable person could be deceived into believing that the vehicle is authorized by a law enforcement agency).

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, in 2013, CJIC determined that HB 271, which is similar to this bill, would have a negative insignificant prison bed impact. The bill may also have a negative jail bed impact on local governments, because it expands the application of s. 843.085, F.S.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term “watchman” is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add “firefighter” to the list of officers described above, and defines the term “watchman” as a security officer licensed under ch. 493, F.S.⁵

The bill amends the title of this offense to “false personation” and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² Section 843.08, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 493.6101(19), F.S., defines a “security officer” as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Indicia of Authority

Section 843.085, F.S., makes it a first degree misdemeanor⁶ for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff;” or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085, F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- “Police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff.”¹⁰

In *Sult v. State*,¹¹ the Florida Supreme Court held that this statute was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The “could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.”¹²

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to include vehicles marked or identified by the word “fire department,” or any lettering, marking, insignia, or colorable imitation thereof. Additionally, the bill allows fraternal associations to use the term “fire department” in the official name of their association. The bill addresses the *Sult v. State* decision by requiring proof that the offender had the “intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term “criminal justice agency” as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

¹¹ 906 So.2d 1013 (Fla. 2005).

¹² *Sult*, 906 So.2d at 1021.

authorized to be used by that agency” (rather than requiring proof that a reasonable person could be deceived).

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of this bill. However, in 2013, CJIC determined that HB 271, which is similar to this bill, would have a negative insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word “fire department,” or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES