
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1920 **Hearing Date:** June 12, 2018
Author: Grayson
Version: March 13, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Impersonation: Search and Rescue Personnel*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: SB 702 (Anderson), Ch. 514, Stats. of 2014
AB 1829 (Cook), Ch. 366, Stats. of 2010
AB 1448 (Niello), Ch. 241, Stats. of 2007

Support: California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California Narcotic Officers Association; California Police Chiefs Association; Los Angeles County Professional Peace Officers Association; Personal Insurance Federation of California

Opposition: California Public Defenders Association

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to specify that it is a misdemeanor to intentionally and fraudulently impersonate a member of a search and rescue team.

Existing law provides that any person other than one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card, or writing, of a peace officer, with the intent of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor. (Pen. Code, § 538d, subd. (a).)

Existing law requires vendors of law enforcement uniforms to verify that any person who purchases a uniform is a law enforcement employee. A vendor who fails to do so is guilty of a misdemeanor. (Pen. Code, § 538d, subd. (e).)

Existing law provides that a person who falsely represents himself or herself to be a public officer, investigator, or inspector of a state department and who, in that assumed character, does any of the following is guilty of an alternate felony/misdemeanor:

- Arrests, detains, or threatens to arrest or detain any person;
- Otherwise intimidates any person;
- Searches any person, building, or other property of any person; or,
- Obtains money, property, or other thing of value. (Pen. Code, § 146a, subd. (b).)

Existing law makes it a misdemeanor for a person to impersonate without authority, or to wear the badge of, a member of the California Highway Patrol with the intent to deceive. (Veh. Code, § 27.)

Existing law makes it an alternate felony or misdemeanor for any person to falsely personate another in either his or her private or official capacity, and in that assumed character do any of the following:

- Become bail or surety for any party in any proceeding whatever, before any court or officer authorized to take that bail or surety.
- Verify, publish, acknowledge, or prove, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true.
- Do any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person. (Pen. Code, § 529.)

This bill provides that any person, other than an officer or a member of a government-agency managed or affiliated search and rescue team, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card or writing of a person on such a team is guilty of a misdemeanor when done in any of the following situations:

- With the intent of fraudulently impersonating a member of the search and rescue team;
- With the intent of fraudulently inducing the belief that he or she is a member of the search and rescue team; or,
- Using the same to obtain aid, money, or assistance within the state.

This bill provides that any person, other than one who is a lawful officer or member of a government-agency-managed or affiliated search and rescue team, who willfully wears, exhibits, or uses the badge of such a team is guilty of a misdemeanor when done in any of the following situations:

- With the intent of fraudulently impersonating an officer or member of the search and rescue team; or,
- With the intent of fraudulently inducing the belief that he or she is a member of the search and rescue team.

This bill provides that any person who willfully wears or uses a fake badge purporting to be the badge of a government-agency-managed or affiliated search and rescue team, or one that resembles such a badge as would deceive an ordinary reasonable person, is guilty of a misdemeanor when done for the purpose of:

- Fraudulently impersonating an officer or member of the search and rescue team; or,
- Fraudulently inducing the belief that he or she is a member of the search and rescue team.

This bill defines “search and rescue unit or team” as “an entity engaged in the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person that becomes lost, injured, or is killed while outdoors or as a result of a natural or manmade disaster, including instances involving searches for downed or missing aircraft.”

This bill defines “member” as “any natural person who is registered with an accredited disaster council for the purpose of engaging in disaster service without pay or other consideration. Food and lodging provided, or expenses reimbursed for these items, during a member’s activation does not constitute other consideration.”

COMMENTS

1. Need for This Bill

According to the author:

Current law makes it a crime to impersonate a police officer, firefighter, veteran, or public utility employee, yet there are currently no provisions in existing statute penalizing individuals or organizations that fraudulently present themselves as ‘Search and Rescue’ entities. In many instances, these entities and individuals are not accredited nor are they affiliated with any charities or law enforcement group. Yet, they solicit funds through phone and direct mail, giving the public the impression that they are operating lawfully and in accord with local and state law enforcement. Often, citizens do not know that these groups are not vetted, trained, certified, or insured, and are misled into donating money to what they believe is a good cause. AB 1920 makes it a misdemeanor to fraudulently impersonate a government-affiliated search and rescue team, protecting the public and ensuring the integrity of professional search and rescue personnel who are officially registered, trained, and affiliated with government jurisdictions.

2. Search and Rescue

According to the Governor’s Office of Emergency Services (CalOES) website: “Search and Rescue in California is the responsibility of each County's Sheriff's Office, except within certain National Parks. Cal OES provides support to each Sheriffs' Office through Mutual Aid and our State SAR Resource Teams. Volunteers for these teams are covered by the Disaster Service Worker Program.”¹

¹ <http://www.caloes.ca.gov/For-Individuals-Families/Law-Enforcement-Volunteering>

3. Free Speech Issues

The First Amendment of the United States Constitution prohibits Congress from passing laws prohibiting free speech. (U.S. Const., 1st Amend.) State action restricting free speech is likewise prohibited by the Due Process Clause of the Fourteenth Amendment. (*First Nat. Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 779.) Not all speech is protected but categories of unprotected speech should be well-defined and narrowly limited. For example, obscenity, defamation, fraud, incitement, and speech integral to criminal conduct are unprotected categories of speech. (*U.S. v. Stevens* (2010) 559 U.S. 460, 468-469.) If speech does not fall into one of these well-defined categories, then that speech enjoys at least some level of First Amendment protection.

To determine what level of protection certain speech is given, a court must first determine whether the speech is content-based or content-neutral. (*Madsen v. Women's Health Center, Inc.*, (1994) 512 U.S. 763, 763-764.) Content-based restrictions on speech receive the strictest level of scrutiny. Therefore, a content-based restriction will only survive if the government has a compelling interest in regulating the speech and the restriction is the least restrictive means of regulating such speech. (*McIntyre v. Elections Comm'n* (1995) 514 U.S. 334, 346-47.) On the other hand, content-neutral speech is subject to the less restrictive intermediate scrutiny test, which only requires that the government have a legitimate interest and the means of regulating speech is narrowly tailored to achieve the government's ends. In contrast to strict scrutiny, the means chosen need not be the least restrictive means. (*Ward v. Rock Against Racism* (1989) 491 U.S. 781, 798-800.)

The Supreme Court has ruled on the speech similar to that implicated in this bill when it examined the federal Stolen Valor Act of 2005 in *United States v. Alvarez* (2012) 132 S.Ct. 2537 [183 L.Ed.2d 547]. The relevant language of the Act reads:

"Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both."

The plurality held this provision content-based and therefore subject to strict scrutiny. (*Alvarez, supra*, 132 S.Ct. at p. 2543.) Critical to their holding is that the statute prohibited false claims without any requirement of cognizable harm as a result of the false claims. The plurality stated that the government's interest is compelling, but that other means exist to achieve their ends without restricting protected speech. In particular, the Court held the combination of a database for medal recipients coupled with public condemnation would serve just as well to deter false claims regarding military service. (*Alvarez, supra*, at pp. 132 S.Ct. at pp. 2550-2551.) Because alternative means exist to address the government's ends, the Court held the statutory provision unconstitutional. (*Ibid.*)

The concurring Justices applied intermediate scrutiny because they found the false speech to be of limited value. (*Alvarez, supra*, 132 S.Ct. at p. 2552.) The false claims at issue here were easily verifiable, and therefore unlikely to aid in the debate of public issues which is the heart of the First Amendment's speech protections. However, the Court still held the statutory provision unconstitutional because of its potential to chill protected speech. Critical to the concurring Justices was the lack of intent to cause some legally cognizable harm, such as obtaining unearned benefits from the VA or unearned employment preferences. (*Id.* at pp. 2555-2556.)

As pertains to this bill, each prohibition appears to require more than just a false claim. The proscribed conduct requires either (1) the intent to *fraudulently* impersonate, (2) the intent to *fraudulently* induce belief in another, or (3) that the impersonator actually obtain some form of aid, money, or assistance.

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