

1 A bill to be entitled

2 An act relating to public assistance fraud; amending
3 s. 414.39, F.S.; specifying acts that constitute
4 trafficking in food assistance benefits and are
5 subject to criminal penalties; prohibiting specified
6 acts relating to the possession and sale of electronic
7 benefit transfer cards for food assistance benefits
8 that were issued to other persons; providing criminal
9 penalties; amending s. 921.0022, F.S.; deleting a
10 reference to s. 414.39(2), F.S., relating to the
11 unauthorized use, possession, forgery, or alteration
12 of certain food assistance program and Medicaid
13 identification, from the offense severity ranking
14 chart; reenacting ss. 414.41(1)(b), 772.102(1)(a),
15 895.02(1)(a), and 1002.91(5), F.S., relating to
16 recovery of payments made due to mistake or fraud,
17 definitions for civil remedies for criminal practices,
18 definitions for racketeering, and investigations of
19 fraud or overpayment, respectively, to incorporate the
20 amendment made by this act to s. 414.39, F.S., in
21 references thereto; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (2) of section 414.39, Florida
26 Statutes, is amended to read:

27 414.39 Fraud.—
 28 (2) (a) Any person who knowingly:
 29 ~~1.(a)~~ Uses, transfers, acquires, traffics, alters, forges,
 30 or possesses;
 31 ~~2.(b)~~ Attempts to use, transfer, acquire, traffic, alter,
 32 forge, or possess; or
 33 ~~3.(c)~~ Aids and abets another person in the use, transfer,
 34 acquisition, traffic, alteration, forgery, or possession of,
 35
 36 a food assistance identification card, an authorization,
 37 including, but not limited to, an electronic authorization, for
 38 the expenditure of food assistance benefits, a certificate of
 39 eligibility for medical services, or a Medicaid identification
 40 card in any manner not authorized by law commits a crime and
 41 shall be punished as provided in subsection (5).
 42 (b) For purposes of this subsection, the term "traffic,"
 43 as it relates to food assistance benefits, includes:
 44 1. Buying, selling, stealing, or otherwise effecting an
 45 exchange of food assistance benefits for cash or consideration
 46 other than eligible food, either directly, indirectly, in
 47 complicity or collusion with others, or acting alone;
 48 2. Intentionally reselling a product purchased with food
 49 assistance benefits in exchange for cash or consideration other
 50 than eligible food; or
 51 3. Intentionally purchasing a product originally purchased
 52 with food assistance benefits using cash or consideration other

53 than eligible food.

54 (c)1. Notwithstanding subsection (5), a person who
 55 knowingly possesses in any manner not authorized by law two or
 56 more electronic benefit transfer cards for food assistance
 57 benefits that were issued to other persons and who sells or
 58 attempts to sell one or more of such cards commits a felony of
 59 the third degree, punishable as provided in s. 775.082, s.
 60 775.083, or s. 775.084. Each electronic benefit transfer card
 61 possessed, sold, or attempted to be sold in violation of this
 62 subparagraph constitutes a separate offense.

63 2. In addition to any other penalty, a person who commits
 64 a violation of subparagraph 1. shall be ordered by the court to
 65 serve at least 40 hours of community service. If the court
 66 determines that the community service can be performed at a
 67 nonprofit entity that provides the community with food services
 68 for the needy, the court shall order that the community service
 69 be performed at such an entity.

70 Section 2. Paragraph (a) of subsection (3) of section
 71 921.0022, Florida Statutes, is amended to read:

72 921.0022 Criminal Punishment Code; offense severity
 73 ranking chart.—

74 (3) OFFENSE SEVERITY RANKING CHART

75 (a) LEVEL 1

76

Florida	Felony	
Statute	Degree	Description

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77	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
78	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
79	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
80	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
81	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
82	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
83	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
84			

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2016

85	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
86	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
87	322.212 (5) (a)	3rd	False application for driver license or identification card.
88	414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
89	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
	443.071 (1)	3rd	False statement or representation to obtain or increase reemployment

			assistance benefits.
90	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
91	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.
92	562.27 (1)	3rd	Possess still or still apparatus.
93	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
94	812.014 (3) (c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
95	812.081 (2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
96	815.04 (5) (a)	3rd	Offense against intellectual

property (i.e., computer programs, data).

97

817.52 (2) 3rd Hiring with intent to defraud, motor vehicle services.

98

817.569 (2) 3rd Use of public record or public records information or providing false information to facilitate commission of a felony.

99

826.01 3rd Bigamy.

100

828.122 (3) 3rd Fighting or baiting animals.

101

831.04 (1) 3rd Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.

102

831.31 (1) (a) 3rd Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03 (5) drugs.

103

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104	832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
105	832.05 (2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
106	838.15 (2)	3rd	Commercial bribe receiving.
107	838.16	3rd	Commercial bribery.
108	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
109	847.011 (1) (a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
110	849.01	3rd	Keeping gambling house.
	849.09 (1) (a) - (d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money

by means of lottery.

111

849.23 3rd Gambling-related machines;
"common offender" as to
property rights.

112

849.25 (2) 3rd Engaging in bookmaking.

113

860.08 3rd Interfere with a railroad
signal.

114

860.13 (1) (a) 3rd Operate aircraft while under
the influence.

115

893.13 (2) (a) 2. 3rd Purchase of cannabis.

116

893.13 (6) (a) 3rd Possession of cannabis (more
than 20 grams).

117

934.03 (1) (a) 3rd Intercepts, or procures any
other person to intercept, any
wire or oral communication.

118

119 Section 3. For the purpose of incorporating the amendment
120 made by this act to section 414.39, Florida Statutes, in a
121 reference thereto, paragraph (b) of subsection (1) of section

122 414.41, Florida Statutes, is reenacted to read:

123 414.41 Recovery of payments made due to mistake or fraud.—

124 (1) Whenever it becomes apparent that any person or
 125 provider has received any public assistance under this chapter
 126 to which she or he is not entitled, through either simple
 127 mistake or fraud on the part of the department or on the part of
 128 the recipient or participant, the department shall take all
 129 necessary steps to recover the overpayment. Recovery may include
 130 Federal Income Tax Refund Offset Program collections activities
 131 in conjunction with the Food and Nutrition Service and the
 132 Internal Revenue Service to intercept income tax refunds due to
 133 clients who owe food assistance or temporary cash assistance
 134 debt to the state. The department will follow the guidelines in
 135 accordance with federal rules and regulations and consistent
 136 with the Food Assistance Program. The department may make
 137 appropriate settlements and shall establish a policy and cost-
 138 effective rules to be used in the computation and recovery of
 139 such overpayments.

140 (b) When the intentional program violation or case facts
 141 do not warrant criminal prosecution for fraud as defined in s.
 142 414.39, the department will initiate an administrative
 143 disqualification hearing. The administrative disqualification
 144 hearing will be initiated regardless of the individual's current
 145 eligibility.

146 Section 4. For the purpose of incorporating the amendment
 147 made by this act to section 414.39, Florida Statutes, in a

148 reference thereto, paragraph (a) of subsection (1) of section
149 772.102, Florida Statutes, is reenacted to read:

150 772.102 Definitions.—As used in this chapter, the term:

151 (1) "Criminal activity" means to commit, to attempt to
152 commit, to conspire to commit, or to solicit, coerce, or
153 intimidate another person to commit:

154 (a) Any crime that is chargeable by indictment or
155 information under the following provisions:

156 1. Section 210.18, relating to evasion of payment of
157 cigarette taxes.

158 2. Section 414.39, relating to public assistance fraud.

159 3. Section 440.105 or s. 440.106, relating to workers'
160 compensation.

161 4. Part IV of chapter 501, relating to telemarketing.

162 5. Chapter 517, relating to securities transactions.

163 6. Section 550.235 or s. 550.3551, relating to dogracing
164 and horseracing.

165 7. Chapter 550, relating to jai alai frontons.

166 8. Chapter 552, relating to the manufacture, distribution,
167 and use of explosives.

168 9. Chapter 562, relating to beverage law enforcement.

169 10. Section 624.401, relating to transacting insurance
170 without a certificate of authority, s. 624.437(4)(c)1., relating
171 to operating an unauthorized multiple-employer welfare
172 arrangement, or s. 626.902(1)(b), relating to representing or
173 aiding an unauthorized insurer.

- 174 11. Chapter 687, relating to interest and usurious
175 practices.
- 176 12. Section 721.08, s. 721.09, or s. 721.13, relating to
177 real estate timeshare plans.
- 178 13. Chapter 782, relating to homicide.
- 179 14. Chapter 784, relating to assault and battery.
- 180 15. Chapter 787, relating to kidnapping or human
181 trafficking.
- 182 16. Chapter 790, relating to weapons and firearms.
- 183 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
184 relating to prostitution.
- 185 18. Chapter 806, relating to arson.
- 186 19. Section 810.02(2)(c), relating to specified burglary
187 of a dwelling or structure.
- 188 20. Chapter 812, relating to theft, robbery, and related
189 crimes.
- 190 21. Chapter 815, relating to computer-related crimes.
- 191 22. Chapter 817, relating to fraudulent practices, false
192 pretenses, fraud generally, and credit card crimes.
- 193 23. Section 827.071, relating to commercial sexual
194 exploitation of children.
- 195 24. Chapter 831, relating to forgery and counterfeiting.
- 196 25. Chapter 832, relating to issuance of worthless checks
197 and drafts.
- 198 26. Section 836.05, relating to extortion.
- 199 27. Chapter 837, relating to perjury.

200 28. Chapter 838, relating to bribery and misuse of public
201 office.

202 29. Chapter 843, relating to obstruction of justice.

203 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
204 s. 847.07, relating to obscene literature and profanity.

205 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
206 849.25, relating to gambling.

207 32. Chapter 893, relating to drug abuse prevention and
208 control.

209 33. Section 914.22 or s. 914.23, relating to witnesses,
210 victims, or informants.

211 34. Section 918.12 or s. 918.13, relating to tampering
212 with jurors and evidence.

213 Section 5. For the purpose of incorporating the amendment
214 made by this act to section 414.39, Florida Statutes, in a
215 reference thereto, paragraph (a) of subsection (1) of section
216 895.02, Florida Statutes, is reenacted to read:

217 895.02 Definitions.—As used in ss. 895.01-895.08, the
218 term:

219 (1) "Racketeering activity" means to commit, to attempt to
220 commit, to conspire to commit, or to solicit, coerce, or
221 intimidate another person to commit:

222 (a) Any crime that is chargeable by petition, indictment,
223 or information under the following provisions of the Florida
224 Statutes:

225 1. Section 210.18, relating to evasion of payment of

- 226 cigarette taxes.
- 227 2. Section 316.1935, relating to fleeing or attempting to
- 228 elude a law enforcement officer and aggravated fleeing or
- 229 eluding.
- 230 3. Section 403.727(3)(b), relating to environmental
- 231 control.
- 232 4. Section 409.920 or s. 409.9201, relating to Medicaid
- 233 fraud.
- 234 5. Section 414.39, relating to public assistance fraud.
- 235 6. Section 440.105 or s. 440.106, relating to workers'
- 236 compensation.
- 237 7. Section 443.071(4), relating to creation of a
- 238 fictitious employer scheme to commit reemployment assistance
- 239 fraud.
- 240 8. Section 465.0161, relating to distribution of medicinal
- 241 drugs without a permit as an Internet pharmacy.
- 242 9. Section 499.0051, relating to crimes involving
- 243 contraband and adulterated drugs.
- 244 10. Part IV of chapter 501, relating to telemarketing.
- 245 11. Chapter 517, relating to sale of securities and
- 246 investor protection.
- 247 12. Section 550.235 or s. 550.3551, relating to dogracing
- 248 and horseracing.
- 249 13. Chapter 550, relating to jai alai frontons.
- 250 14. Section 551.109, relating to slot machine gaming.
- 251 15. Chapter 552, relating to the manufacture,

252 distribution, and use of explosives.

253 16. Chapter 560, relating to money transmitters, if the
254 violation is punishable as a felony.

255 17. Chapter 562, relating to beverage law enforcement.

256 18. Section 624.401, relating to transacting insurance
257 without a certificate of authority, s. 624.437(4)(c)1., relating
258 to operating an unauthorized multiple-employer welfare
259 arrangement, or s. 626.902(1)(b), relating to representing or
260 aiding an unauthorized insurer.

261 19. Section 655.50, relating to reports of currency
262 transactions, when such violation is punishable as a felony.

263 20. Chapter 687, relating to interest and usurious
264 practices.

265 21. Section 721.08, s. 721.09, or s. 721.13, relating to
266 real estate timeshare plans.

267 22. Section 775.13(5)(b), relating to registration of
268 persons found to have committed any offense for the purpose of
269 benefiting, promoting, or furthering the interests of a criminal
270 gang.

271 23. Section 777.03, relating to commission of crimes by
272 accessories after the fact.

273 24. Chapter 782, relating to homicide.

274 25. Chapter 784, relating to assault and battery.

275 26. Chapter 787, relating to kidnapping or human
276 trafficking.

277 27. Chapter 790, relating to weapons and firearms.

278 28. Chapter 794, relating to sexual battery, but only if
 279 such crime was committed with the intent to benefit, promote, or
 280 further the interests of a criminal gang, or for the purpose of
 281 increasing a criminal gang member's own standing or position
 282 within a criminal gang.

283 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 284 796.05, or s. 796.07, relating to prostitution.

285 30. Chapter 806, relating to arson and criminal mischief.

286 31. Chapter 810, relating to burglary and trespass.

287 32. Chapter 812, relating to theft, robbery, and related
 288 crimes.

289 33. Chapter 815, relating to computer-related crimes.

290 34. Chapter 817, relating to fraudulent practices, false
 291 pretenses, fraud generally, and credit card crimes.

292 35. Chapter 825, relating to abuse, neglect, or
 293 exploitation of an elderly person or disabled adult.

294 36. Section 827.071, relating to commercial sexual
 295 exploitation of children.

296 37. Section 828.122, relating to fighting or baiting
 297 animals.

298 38. Chapter 831, relating to forgery and counterfeiting.

299 39. Chapter 832, relating to issuance of worthless checks
 300 and drafts.

301 40. Section 836.05, relating to extortion.

302 41. Chapter 837, relating to perjury.

303 42. Chapter 838, relating to bribery and misuse of public

304 office.

305 43. Chapter 843, relating to obstruction of justice.

306 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

307 s. 847.07, relating to obscene literature and profanity.

308 45. Chapter 849, relating to gambling, lottery, gambling

309 or gaming devices, slot machines, or any of the provisions

310 within that chapter.

311 46. Chapter 874, relating to criminal gangs.

312 47. Chapter 893, relating to drug abuse prevention and

313 control.

314 48. Chapter 896, relating to offenses related to financial

315 transactions.

316 49. Sections 914.22 and 914.23, relating to tampering with

317 or harassing a witness, victim, or informant, and retaliation

318 against a witness, victim, or informant.

319 50. Sections 918.12 and 918.13, relating to tampering with

320 jurors and evidence.

321 Section 6. For the purpose of incorporating the amendment

322 made by this act to section 414.39, Florida Statutes, in a

323 reference thereto, subsection (5) of section 1002.91, Florida

324 Statutes, is reenacted to read:

325 1002.91 Investigations of fraud or overpayment;

326 penalties.—

327 (5) If a school readiness program provider or a Voluntary

328 Prekindergarten Education Program provider, or an owner,

329 officer, or director thereof, is convicted of, found guilty of,

330 or pleads guilty or nolo contendere to, regardless of
331 adjudication, public assistance fraud pursuant to s. 414.39, or
332 is acting as the beneficial owner for someone who has been
333 convicted of, found guilty of, or pleads guilty or nolo
334 contendere to, regardless of adjudication, public assistance
335 fraud pursuant to s. 414.39, the early learning coalition shall
336 refrain from contracting with, or using the services of, that
337 provider for a period of 5 years. In addition, the coalition
338 shall refrain from contracting with, or using the services of,
339 any provider that shares an officer or director with a provider
340 that is convicted of, found guilty of, or pleads guilty or nolo
341 contendere to, regardless of adjudication, public assistance
342 fraud pursuant to s. 414.39 for a period of 5 years.

343 Section 7. This act shall take effect October 1, 2016.