

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Smith offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) of section 414.39, Florida

Statutes, is amended to read:

414.39 Fraud.—

(2) (a) Any person who knowingly:

1.-(a) Uses, transfers, acquires, traffics, alters, forges,
or possesses;

2.-(b) Attempts to use, transfer, acquire, traffic, alter,
forge, or possess; or

3.-(c) Aids and abets another person in the use, transfer,
acquisition, traffic, alteration, forgery, or possession of,

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15
16 a food assistance identification card, an authorization,
17 including, but not limited to, an electronic authorization, for
18 the expenditure of food assistance benefits, a certificate of
19 eligibility for medical services, or a Medicaid identification
20 card in any manner not authorized by law commits a crime and
21 shall be punished as provided in subsection (5).

22 (b) For purposes of this subsection, the term "traffic,"
23 as it relates to food assistance benefits, includes:

24 1. Buying, selling, stealing, or otherwise effecting an
25 exchange of food assistance benefits for cash or consideration
26 other than eligible food, either directly, indirectly, in
27 complicity or collusion with others, or acting alone;

28 2. Intentionally reselling a product purchased with food
29 assistance benefits in exchange for cash or consideration other
30 than eligible food; or

31 3. Intentionally purchasing a product originally purchased
32 with food assistance benefits using cash or consideration other
33 than eligible food.

34 (c)1. Notwithstanding subsection (5), a person who
35 knowingly possesses in any manner not authorized by law two or
36 more electronic benefit transfer cards for food assistance
37 benefits that were issued to other persons and who sells or
38 attempts to sell one or more of such cards commits a felony of
39 the third degree, punishable as provided in s. 775.082, s.
40 775.083, or s. 775.084. Each electronic benefit transfer card

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41 possessed, sold, or attempted to be sold in violation of this
42 subparagraph constitutes a separate offense.

43 2. In addition to any other penalty, a person who commits
44 a violation of subparagraph 1. shall be ordered by the court to
45 serve at least 40 hours of community service. If the court
46 determines that the community service can be performed at a
47 nonprofit entity that provides the community with food services
48 for the needy, the court shall order that the community service
49 be performed at such an entity.

50 Section 2. Paragraph (a) of subsection (3) of section
51 921.0022, Florida Statutes, is amended to read:

52 921.0022 Criminal Punishment Code; offense severity
53 ranking chart.—

- 54 (3) OFFENSE SEVERITY RANKING CHART
- 55 (a) LEVEL 1

56

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.

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60	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
61	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
62	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
63	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
64	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
65	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or

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66			identification card.
66	322.212 (5) (a)	3rd	False application for driver license or identification card.
67	414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
68	414.39(3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
69	443.071 (1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
70	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
71	517.302 (1)	3rd	Violation of the Florida Securities and Investor

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72			Protection Act.
	562.27(1)	3rd	Possess still or still apparatus.
73			
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
74			
	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
75			
	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
76			
	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
77			
	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
78			
	817.569(2)	3rd	Use of public record or public records information or

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			providing false information to facilitate commission of a felony.
79			
	826.01	3rd	Bigamy.
80			
	828.122 (3)	3rd	Fighting or baiting animals.
81			
	831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
82			
	831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
83			
	832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
84			
	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.

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	838.15 (2)	3rd	Commercial bribe receiving.
86			
	838.16	3rd	Commercial bribery.
87			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
88			
	847.011 (1) (a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
89			
	849.01	3rd	Keeping gambling house.
90			
	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.
91			
	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
92			
	849.25 (2)	3rd	Engaging in bookmaking.
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- 94 860.08 3rd Interfere with a railroad
signal.
- 95 860.13(1) (a) 3rd Operate aircraft while under
the influence.
- 96 893.13(2) (a)2. 3rd Purchase of cannabis.
- 97 893.13(6) (a) 3rd Possession of cannabis (more
than 20 grams).
- 98 934.03(1) (a) 3rd Intercepts, or procures any
other person to intercept, any
wire or oral communication.

99 Section 3. For the purpose of incorporating the amendment
100 made by this act to section 414.39, Florida Statutes, in a
101 reference thereto, paragraph (b) of subsection (1) of section
102 414.41, Florida Statutes, is reenacted to read:

103 414.41 Recovery of payments made due to mistake or fraud.—

104 (1) Whenever it becomes apparent that any person or
105 provider has received any public assistance under this chapter
106 to which she or he is not entitled, through either simple
107 mistake or fraud on the part of the department or on the part of
108 the recipient or participant, the department shall take all
109 necessary steps to recover the overpayment. Recovery may include

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110 Federal Income Tax Refund Offset Program collections activities
111 in conjunction with the Food and Nutrition Service and the
112 Internal Revenue Service to intercept income tax refunds due to
113 clients who owe food assistance or temporary cash assistance
114 debt to the state. The department will follow the guidelines in
115 accordance with federal rules and regulations and consistent
116 with the Food Assistance Program. The department may make
117 appropriate settlements and shall establish a policy and cost-
118 effective rules to be used in the computation and recovery of
119 such overpayments.

120 (b) When the intentional program violation or case facts
121 do not warrant criminal prosecution for fraud as defined in s.
122 414.39, the department will initiate an administrative
123 disqualification hearing. The administrative disqualification
124 hearing will be initiated regardless of the individual's current
125 eligibility.

126 Section 4. For the purpose of incorporating the amendment
127 made by this act to section 414.39, Florida Statutes, in a
128 reference thereto, paragraph (a) of subsection (1) of section
129 772.102, Florida Statutes, is reenacted to read:

130 772.102 Definitions.—As used in this chapter, the term:

131 (1) "Criminal activity" means to commit, to attempt to
132 commit, to conspire to commit, or to solicit, coerce, or
133 intimidate another person to commit:

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

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- 136 1. Section 210.18, relating to evasion of payment of
137 cigarette taxes.
- 138 2. Section 414.39, relating to public assistance fraud.
- 139 3. Section 440.105 or s. 440.106, relating to workers'
140 compensation.
- 141 4. Part IV of chapter 501, relating to telemarketing.
- 142 5. Chapter 517, relating to securities transactions.
- 143 6. Section 550.235 or s. 550.3551, relating to dogracing
144 and horseracing.
- 145 7. Chapter 550, relating to jai alai frontons.
- 146 8. Chapter 552, relating to the manufacture, distribution,
147 and use of explosives.
- 148 9. Chapter 562, relating to beverage law enforcement.
- 149 10. Section 624.401, relating to transacting insurance
150 without a certificate of authority, s. 624.437(4)(c)1., relating
151 to operating an unauthorized multiple-employer welfare
152 arrangement, or s. 626.902(1)(b), relating to representing or
153 aiding an unauthorized insurer.
- 154 11. Chapter 687, relating to interest and usurious
155 practices.
- 156 12. Section 721.08, s. 721.09, or s. 721.13, relating to
157 real estate timeshare plans.
- 158 13. Chapter 782, relating to homicide.
- 159 14. Chapter 784, relating to assault and battery.
- 160 15. Chapter 787, relating to kidnapping or human
161 trafficking.

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- 162 16. Chapter 790, relating to weapons and firearms.
- 163 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
164 relating to prostitution.
- 165 18. Chapter 806, relating to arson.
- 166 19. Section 810.02(2)(c), relating to specified burglary
167 of a dwelling or structure.
- 168 20. Chapter 812, relating to theft, robbery, and related
169 crimes.
- 170 21. Chapter 815, relating to computer-related crimes.
- 171 22. Chapter 817, relating to fraudulent practices, false
172 pretenses, fraud generally, and credit card crimes.
- 173 23. Section 827.071, relating to commercial sexual
174 exploitation of children.
- 175 24. Chapter 831, relating to forgery and counterfeiting.
- 176 25. Chapter 832, relating to issuance of worthless checks
177 and drafts.
- 178 26. Section 836.05, relating to extortion.
- 179 27. Chapter 837, relating to perjury.
- 180 28. Chapter 838, relating to bribery and misuse of public
181 office.
- 182 29. Chapter 843, relating to obstruction of justice.
- 183 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
184 s. 847.07, relating to obscene literature and profanity.
- 185 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
186 849.25, relating to gambling.

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187 32. Chapter 893, relating to drug abuse prevention and
188 control.

189 33. Section 914.22 or s. 914.23, relating to witnesses,
190 victims, or informants.

191 34. Section 918.12 or s. 918.13, relating to tampering
192 with jurors and evidence.

193 Section 5. For the purpose of incorporating the amendment
194 made by this act to section 414.39, Florida Statutes, in a
195 reference thereto, paragraph (a) of subsection (1) of section
196 895.02, Florida Statutes, is reenacted to read:

197 895.02 Definitions.—As used in ss. 895.01-895.08, the
198 term:

199 (1) "Racketeering activity" means to commit, to attempt to
200 commit, to conspire to commit, or to solicit, coerce, or
201 intimidate another person to commit:

202 (a) Any crime that is chargeable by petition, indictment,
203 or information under the following provisions of the Florida
204 Statutes:

205 1. Section 210.18, relating to evasion of payment of
206 cigarette taxes.

207 2. Section 316.1935, relating to fleeing or attempting to
208 elude a law enforcement officer and aggravated fleeing or
209 eluding.

210 3. Section 403.727(3)(b), relating to environmental
211 control.

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- 212 4. Section 409.920 or s. 409.9201, relating to Medicaid
213 fraud.
- 214 5. Section 414.39, relating to public assistance fraud.
- 215 6. Section 440.105 or s. 440.106, relating to workers'
216 compensation.
- 217 7. Section 443.071(4), relating to creation of a
218 fictitious employer scheme to commit reemployment assistance
219 fraud.
- 220 8. Section 465.0161, relating to distribution of medicinal
221 drugs without a permit as an Internet pharmacy.
- 222 9. Section 499.0051, relating to crimes involving
223 contraband and adulterated drugs.
- 224 10. Part IV of chapter 501, relating to telemarketing.
- 225 11. Chapter 517, relating to sale of securities and
226 investor protection.
- 227 12. Section 550.235 or s. 550.3551, relating to dogracing
228 and horseracing.
- 229 13. Chapter 550, relating to jai alai frontons.
- 230 14. Section 551.109, relating to slot machine gaming.
- 231 15. Chapter 552, relating to the manufacture,
232 distribution, and use of explosives.
- 233 16. Chapter 560, relating to money transmitters, if the
234 violation is punishable as a felony.
- 235 17. Chapter 562, relating to beverage law enforcement.
- 236 18. Section 624.401, relating to transacting insurance
237 without a certificate of authority, s. 624.437(4)(c)1., relating

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238 to operating an unauthorized multiple-employer welfare
239 arrangement, or s. 626.902(1)(b), relating to representing or
240 aiding an unauthorized insurer.

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

243 20. Chapter 687, relating to interest and usurious
244 practices.

245 21. Section 721.08, s. 721.09, or s. 721.13, relating to
246 real estate timeshare plans.

247 22. Section 775.13(5)(b), relating to registration of
248 persons found to have committed any offense for the purpose of
249 benefiting, promoting, or furthering the interests of a criminal
250 gang.

251 23. Section 777.03, relating to commission of crimes by
252 accessories after the fact.

253 24. Chapter 782, relating to homicide.

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

255 26. Chapter 787, relating to kidnapping or human
256 trafficking.

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

258 28. Chapter 794, relating to sexual battery, but only if
259 such crime was committed with the intent to benefit, promote, or
260 further the interests of a criminal gang, or for the purpose of
261 increasing a criminal gang member's own standing or position
262 within a criminal gang.

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- 263 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
264 796.05, or s. 796.07, relating to prostitution.
- 265 30. Chapter 806, relating to arson and criminal mischief.
- 266 31. Chapter 810, relating to burglary and trespass.
- 267 32. Chapter 812, relating to theft, robbery, and related
268 crimes.
- 269 33. Chapter 815, relating to computer-related crimes.
- 270 34. Chapter 817, relating to fraudulent practices, false
271 pretenses, fraud generally, and credit card crimes.
- 272 35. Chapter 825, relating to abuse, neglect, or
273 exploitation of an elderly person or disabled adult.
- 274 36. Section 827.071, relating to commercial sexual
275 exploitation of children.
- 276 37. Section 828.122, relating to fighting or baiting
277 animals.
- 278 38. Chapter 831, relating to forgery and counterfeiting.
- 279 39. Chapter 832, relating to issuance of worthless checks
280 and drafts.
- 281 40. Section 836.05, relating to extortion.
- 282 41. Chapter 837, relating to perjury.
- 283 42. Chapter 838, relating to bribery and misuse of public
284 office.
- 285 43. Chapter 843, relating to obstruction of justice.
- 286 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
287 s. 847.07, relating to obscene literature and profanity.

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288 45. Chapter 849, relating to gambling, lottery, gambling
289 or gaming devices, slot machines, or any of the provisions
290 within that chapter.

291 46. Chapter 874, relating to criminal gangs.

292 47. Chapter 893, relating to drug abuse prevention and
293 control.

294 48. Chapter 896, relating to offenses related to financial
295 transactions.

296 49. Sections 914.22 and 914.23, relating to tampering with
297 or harassing a witness, victim, or informant, and retaliation
298 against a witness, victim, or informant.

299 50. Sections 918.12 and 918.13, relating to tampering with
300 jurors and evidence.

301 Section 6. For the purpose of incorporating the amendment
302 made by this act to section 414.39, Florida Statutes, in a
303 reference thereto, subsection (5) of section 1002.91, Florida
304 Statutes, is reenacted to read:

305 1002.91 Investigations of fraud or overpayment;
306 penalties.—

307 (5) If a school readiness program provider or a Voluntary
308 Prekindergarten Education Program provider, or an owner,
309 officer, or director thereof, is convicted of, found guilty of,
310 or pleads guilty or nolo contendere to, regardless of
311 adjudication, public assistance fraud pursuant to s. 414.39, or
312 is acting as the beneficial owner for someone who has been
313 convicted of, found guilty of, or pleads guilty or nolo

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314 | contendere to, regardless of adjudication, public assistance
 315 | fraud pursuant to s. 414.39, the early learning coalition shall
 316 | refrain from contracting with, or using the services of, that
 317 | provider for a period of 5 years. In addition, the coalition
 318 | shall refrain from contracting with, or using the services of,
 319 | any provider that shares an officer or director with a provider
 320 | that is convicted of, found guilty of, or pleads guilty or nolo
 321 | contendere to, regardless of adjudication, public assistance
 322 | fraud pursuant to s. 414.39 for a period of 5 years.

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

324 | -----

325 | **T I T L E A M E N D M E N T**

326 | Remove everything before the enacting clause and insert:

327 | A bill to be entitled

328 | An act relating to public assistance fraud; amending
 329 | s. 414.39, F.S.; specifying acts that constitute
 330 | trafficking in food assistance benefits and are
 331 | subject to criminal penalties; prohibiting specified
 332 | acts relating to the possession and sale of electronic
 333 | benefit transfer cards for food assistance benefits
 334 | that were issued to other persons; providing criminal
 335 | penalties; amending s. 921.0022, F.S.; deleting a
 336 | reference to s. 414.39(2), F.S., relating to the
 337 | unauthorized use, possession, forgery, or alteration
 338 | of certain food assistance program and Medicaid
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340 identification, from the offense severity ranking
341 chart; reenacting ss. 414.41(1)(b), 772.102(1)(a),
342 895.02(1)(a), and 1002.91(5), F.S., relating to
343 recovery of payments made due to mistake or fraud,
344 definitions for civil remedies for criminal practices,
345 definitions for racketeering, and investigations of
346 fraud or overpayment, respectively, to incorporate the
347 amendment made by this act to s. 414.39, F.S., in
348 references thereto; providing an effective date.

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