

By Representative C. Smith

1 A bill to be entitled
2 An act relating to white collar crime; creating
3 s. 775.088, F.S.; defining "white collar
4 crime"; providing penalties; specifying
5 circumstances in which a white collar crime
6 becomes an aggravated white collar crime;
7 providing increased penalties for aggravated
8 white collar crimes; defining "victim";
9 creating s. 775.0881, F.S.; providing for
10 preservation of property in cases of aggravated
11 white collar crime; providing for fines and
12 restitution; providing for notice; providing
13 for preliminary injunctions, hearings, and
14 injunctive relief; authorizing the sale of
15 certain property under specified conditions;
16 requiring proceeds from such sale to be
17 deposited with the court or as directed by the
18 court; providing for appraisal of property
19 under certain circumstances; providing for
20 protection of interests of innocent third
21 persons; authorizing the court to liquidate
22 property and assets under certain
23 circumstances; providing conditions for seizure
24 and forfeiture of property under the Florida
25 Contraband Forfeiture Act; providing for
26 severability; providing legislative intent with
27 regard to rules changes; providing an effective
28 date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 775.088, Florida Statutes, is
2 created to read:

3 775.088 White collar crime; aggravated white collar
4 crime; definition; penalties.--

5 (1) For the purposes of this section, "white collar
6 crime" means:

7 (a) The commission of or a conspiracy to commit any
8 felony offense specified in the following chapters of the
9 Florida Statutes:

10 1. Chapter 560, relating to the Money Transmitters'
11 Code;

12 2. Chapter 812, relating to theft, robbery, and
13 related crimes;

14 3. Chapter 815, relating to computer-related crimes;

15 4. Chapter 817, relating to fraudulent practices;

16 5. Chapter 825, relating to abuse, neglect, and
17 exploitation of elderly persons and disabled adults;

18 6. Chapter 831, relating to forgery and
19 counterfeiting;

20 7. Chapter 832, relating of violations involving
21 checks and drafts;

22 8. Chapter 838, relating to bribery and misuse of
23 public office;

24 9. Chapter 839, relating to offenses by public
25 officers and employees;

26 10. Chapter 895, relating to offenses concerning
27 racketeering and illegal debts; or

28 11. Chapter 896, relating to offenses related to
29 financial transactions;

30 (b) A felony offense committed with the intent to
31 defraud, or the conspiracy to commit such an offense;

1 (c) A felony offense committed with the intent to
2 temporarily or permanently deprive a person of his or her
3 property, or the conspiracy to commit such an offense; or

4 (d) A felony offense, the commission of which involves
5 or results in a fraud or deceit upon any person, or the
6 conspiracy to commit such an offense.

7 (2) A person who commits a white collar crime and, in
8 so doing:

9 (a) Victimizes 10 or more elderly persons, as defined
10 in s. 825.101(5);

11 (b) Victimizes 20 or more persons, as defined in s.
12 1.01; or

13 (c) Victimizes the state, any state agency, any of the
14 state's political subdivisions, or any agency of the state's
15 political subdivisions

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17 and thereby obtains or attempts to obtain \$100,000 or more
18 commits an aggravated white collar crime, and, following
19 conviction, in addition to a sentence otherwise authorized by
20 law, such person shall be sentenced to a mandatory minimum
21 term of imprisonment of 3 years unless sentenced under
22 subsection (3).

23 (3) A person who commits an aggravated white collar
24 crime and, in so doing:

25 (a) Victimizes 20 or more elderly persons, as defined
26 in s. 825.101(5);

27 (b) Victimizes 30 or more persons, as defined in s.
28 1.01; or

29 (c) Victimizes the state, any state agency, any of the
30 state's political subdivisions, or any agency of the state's
31 political subdivisions

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2 and thereby obtains or attempts to obtain \$250,000 or more,
3 following conviction, in addition to a sentence otherwise
4 authorized by law, shall be sentenced to a mandatory minimum
5 term of imprisonment of 7 years.

6 (4) A person having previously been convicted of an
7 aggravated white collar crime who thereafter commits another
8 aggravated white collar crime, following conviction, in
9 addition to a sentence otherwise authorized by law, shall be
10 sentenced to a mandatory minimum term of imprisonment of 15
11 years.

12 (5) In addition to a sentence otherwise authorized by
13 law, a person convicted of an aggravated white collar crime
14 shall also be liable for a fine not to exceed \$500,000 or
15 double the value of the pecuniary gain or loss, whichever is
16 greater.

17 (6) A person convicted of an aggravated white collar
18 crime shall be liable for all costs and any restitution to
19 victims of all crimes, whether or not the victim is named in
20 the information or indictment. For the purpose of this
21 subsection, "victim" means a person directly and proximately
22 harmed as a result of the commission of an offense for which
23 restitution may be ordered, including, in the case of an
24 offense that involves as an element a scheme, conspiracy, or
25 pattern of criminal activity, any person directly harmed by
26 the defendant's criminal conduct in the course of the scheme,
27 conspiracy, or pattern. Hearings to determine the identity of
28 qualifying victims and the extent of restitution due them
29 shall be held following the defendant's conviction, in
30 accordance with this section and s. 775.089.
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1 Section 2. Section 775.0881, Florida Statutes, is
2 created to read:

3 775.0881 Aggravated white collar crime; preservation
4 of assets.--

5 (1) If a person commits an aggravated white collar
6 crime, as described in s. 775.088, which involves the
7 pecuniary gain or loss of \$100,000 or more, any asset or
8 property within or outside the state that is presently in the
9 control of that person, or any asset or property within or
10 outside the state that has been transferred by that person in
11 a manner which would constitute a preference under federal
12 bankruptcy laws or any transfer to some third party subsequent
13 to the commission of any criminal act, unless the transfer was
14 pursuant to a bona fide purchase for value, may be preserved
15 by the court in order to pay restitution and fines imposed
16 pursuant to s. 775.088. Upon conviction under s. 775.088,
17 property preserved under this section may be levied on to pay
18 restitution and fines imposed by the court.

19 (2) To prevent dissipation or secreting of assets or
20 property, the prosecutor may, at the same time as or
21 subsequent to the filing of an indictment or information
22 charging an aggravated white collar crime, file a petition to
23 be heard by the criminal trial judge in the county in which
24 the accusatory pleading was filed seeking a preliminary
25 injunction, the appointment of a receiver, or any other
26 protective relief necessary to preserve the property or
27 assets. This petition shall commence a proceeding that shall
28 be pendent to the criminal proceeding and maintained solely to
29 effect the criminal remedies provided for in this section.
30 The proceeding shall not be subject to or governed by the
31 provisions of the Florida Rules of Civil Procedure. The

1 petition shall allege that the defendant has been charged with
2 an aggravated white collar crime. The petition shall identify
3 that criminal proceeding and the assets and property to be
4 affected by an order issued under this section.

5 (3) A notice regarding the petition shall be provided,
6 by personal service or registered mail, to every person who
7 may have an interest in the property specified in the
8 petition. Additionally, the notice shall be published for at
9 least 3 successive weeks in a newspaper of general circulation
10 in the county where the property affected by an order issued
11 pursuant to this section is located. The notice shall state
12 that any interested person may file a claim with the criminal
13 trial court stating the nature and amount of the person's
14 claimed interest. The notice shall set forth the time within
15 which a claim of interest in the protected property is
16 required to be filed.

17 (4) If the property to be preserved is real property,
18 the prosecutor shall record, at the time of filing the
19 petition, a lis pendens in each county in which the real
20 property is situated that specifically identifies the property
21 by legal description and the name of the owner of record.

22 (5) If the property to be preserved is an asset under
23 the control of a banking or financial institution, the
24 prosecutor, at the time of the filing of the petition, may
25 obtain an order from the criminal trial judge directing the
26 banking or financial institution to immediately disclose the
27 account numbers and value of the assets of the accused held by
28 the banking or financial institution. The prosecutor shall
29 file a supplemental petition, specifically identifying which
30 banking or financial institution accounts shall be subject to
31 a preliminary injunction or other protective remedy.

1 (6) A person claiming an interest in the protected
2 property may, at any time within 30 days after the date of the
3 first publication of the notice of the petition, or within 30
4 days after receipt of actual notice, file a claim stating the
5 nature and amount of his or her interest in the property or
6 assets with the criminal trial court of the county in which
7 the action is pending. A copy of the claim shall be served by
8 the claimant on the prosecutor.

9 (7) Before the filing of a criminal case, a judge who
10 is assigned to the criminal division of the circuit court in
11 the county where the petition is filed may issue a preliminary
12 injunction in conjunction with, or subsequent to, the filing
13 of an allegation pursuant to this section. After the filing
14 of an information or indictment in the underlying criminal
15 case, any hearing on a petition under this section shall be
16 heard by the criminal trial judge assigned to that case. The
17 imposition of fines and restitution pursuant to this section
18 shall be determined by the criminal trial judge before whom
19 the underlying offense is sentenced.

20 (8) Concurrent with or subsequent to the filing of the
21 petition, the prosecutor may move the criminal trial court
22 for, and the criminal trial court may issue, the following
23 orders to preserve the status quo of the property alleged in
24 the petition:

25 (a) An injunction to restrain any person from
26 transferring, encumbering, hypothecating, or otherwise
27 disposing of the property.

28 (b) An order for appointment of a receiver to take
29 possession of, care for, manage, and operate the assets and
30 property so that the property may be maintained and preserved.
31 In appropriate cases, the court may order that a receiver

1 appointed pursuant to this section be compensated for
2 reasonable expenditures made or incurred in connection with
3 the possession, care, management, and operation of any
4 property or assets subject to the provisions of this section.

5 (c) An order for a bond or other undertaking by the
6 defendant of a value sufficient to ensure the satisfaction of
7 restitution and fines imposed pursuant to this section. No
8 bond shall be required to be furnished by the prosecutor in
9 order to proceed under this section.

10 (9) A preliminary injunction shall not be granted nor
11 shall a receiver be appointed by the court until notice that
12 meets the requirements of subsection (3) has been provided to
13 all known and reasonably ascertainable interested parties and
14 until a hearing has been held to determine that an order is
15 necessary to preserve the property, pending the outcome of the
16 criminal proceedings. Upon the application of the prosecutor,
17 a preliminary injunction may be issued by the court, ex parte,
18 pending a hearing in conjunction with or subsequent to the
19 filing of the petition. The preliminary injunction may be
20 based on the sworn declaration of a peace officer with
21 personal knowledge of the criminal investigation that
22 establishes probable cause to believe that an aggravated white
23 collar crime has taken place and that the amount of
24 restitution and fines established by this section exceeds or
25 equals the worth of the assets subject to the preliminary
26 injunction. The declaration may include the hearsay
27 statements of witnesses to establish the necessary facts. Upon
28 a showing of good cause to the court, the preliminary
29 injunction may be issued without notice.

30 (10) The defendant, or a person who has filed a claim
31 as provided in subsection (6), shall have the right to have

1 the court conduct a hearing on the order to show cause within
2 10 days after the service of the request for hearing upon the
3 prosecutor, in order to determine whether the preliminary
4 injunction should remain in effect, whether relief should be
5 granted from any lis pendens recorded pursuant to subsection
6 (4), or whether any existing order should be modified in the
7 interests of justice.

8 (11) In determining whether to issue a preliminary
9 injunction in a proceeding brought by a prosecutor under this
10 section, the criminal trial court has the discretion to
11 consider any matter that it deems reliable and appropriate,
12 including hearsay statements, in order to reach a just and
13 equitable decision. The court shall weigh the relative degree
14 of certainty of the outcome on the merits and the consequences
15 to each of the parties of granting the interim relief. If the
16 prosecution is likely to prevail on the merits and the risk of
17 the dissipation of assets outweighs the potential harm to the
18 defendants and the interested parties, the court shall grant
19 injunctive relief. The court shall give significant weight to
20 the following factors:

21 (a) The public interest in preserving the property or
22 assets throughout the litigation.

23 (b) The difficulty of preserving the property or
24 assets throughout the litigation when the underlying alleged
25 crimes involve issues of fraud and moral turpitude.

26 (c) The fact that the requested relief is being sought
27 by a public prosecutor or behalf of victims of aggravated
28 white collar crimes.

29 (d) The likelihood that substantial public harm has
30 occurred when aggravated white collar crime is alleged to have
31 been committed.

1 (e) The significant public interest involved in
2 compensating the victims of white collar crime and paying
3 court-imposed restitution and fines.

4 (12) The criminal trial court in making its orders may
5 consider a defendant's request for the release of a portion of
6 the property affected by this section in order to pay
7 reasonable legal fees in connection with the criminal
8 proceeding and any necessary and appropriate living expenses
9 pending trial and sentencing, and for the purpose of posting
10 bail. The court shall weigh the needs of the public to retain
11 the property against the needs of the defendant to retain a
12 portion of the property. The court shall consider the factors
13 listed in subsection (11) prior to making any order to release
14 property for these purposes.

15 (13) The criminal trial court in making its orders
16 shall seek to protect the interests of any innocent third
17 person, including an innocent spouse, who can show that he or
18 she was not involved in the commission of any criminal
19 activity.

20 (14) Based upon a noticed motion brought by the
21 receiver appointed pursuant to subsection (2), the criminal
22 trial court may order an interlocutory sale of property named
23 in the petition when the property is liable to perish, waste,
24 or be significantly reduced in value, or when the expenses of
25 maintaining the property are disproportionate to the value
26 thereof. The proceeds of the interlocutory sale shall be
27 deposited with the court or as directed by the court pending
28 determination of the proceeding pursuant to this section.

29 (15) The criminal trial court may make any orders that
30 are necessary to preserve the continuing viability of any
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1 lawful business enterprise that is affected by the issuance of
2 a preliminary injunction issued pursuant to this section.

3 (16) The criminal trial court in making its orders
4 shall seek to prevent any asset subject to a preliminary
5 injunction under this section from perishing, spoiling, going
6 to waste, or otherwise being significantly reduced in value.
7 When the potential for diminution in value exists, the court
8 shall appoint a receiver to dispose of or otherwise protect
9 the value of the property or asset.

10 (17) A preservation order shall not be issued against
11 any assets of a business that are not likely to be dissipated
12 and that may be subject to levy or attachment to meet the
13 purposes of this section.

14 (18) If the allegation that the defendant has
15 committed an aggravated white collar crime is dismissed or
16 found by the trier of fact to be untrue, any preliminary
17 injunction issued pursuant to this section shall be dissolved.
18 If a jury is the trier of fact and the jury is unable to reach
19 a unanimous verdict, the court shall have the discretion to
20 continue or dissolve all or a portion of the preliminary
21 injunction based upon the interests of justice. However, if
22 the prosecutor elects not to retry the case, any preliminary
23 injunction issued pursuant to this section shall be dissolved.

24 (19) If the defendant is convicted of aggravated white
25 collar crime, the criminal trial judge shall continue the
26 preliminary injunction until the date of the criminal
27 sentencing and shall make a finding at that time as to what
28 portion, if any, of the property or assets subject to the
29 preliminary injunction shall be levied on to pay fines and
30 restitution to victims of the crime. The order imposing fines
31 and restitution may exceed the total worth of the property or

1 assets subjected to the preliminary injunction. The court may
2 order the immediate transfer of the property or assets to
3 satisfy any judgment and sentence made pursuant to this
4 section. Additionally, upon motion of the prosecutor, the
5 court may enter an order as part of the judgment and sentence
6 making the order imposing fines and restitution pursuant to
7 this section enforceable under chapter 55.

8 (a) Additionally, the court shall order the defendant
9 to make full restitution to the victim or to make restitution
10 to the victim based on his or her ability to pay. The payment
11 of the restitution ordered by the court pursuant to this
12 section shall be made a condition of any probation granted by
13 the court. Notwithstanding any other provision of law, the
14 court may order that the period of probation continue for up
15 to 10 years or until full restitution is made to the victim,
16 whichever is earlier.

17 (b) The sentencing court shall retain jurisdiction to
18 enforce the order to pay additional fines and restitution and,
19 in appropriate cases, may initiate probation violation
20 proceedings or contempt of court proceedings against a
21 defendant who is found to have willfully failed to comply with
22 any lawful order of the court.

23 (c) If the execution of judgment is stayed pending an
24 appeal of an order of the court pursuant to this section, the
25 preliminary injunction shall be maintained in full force and
26 effect during the pendency of the appellate period.

27 (20) The order imposing fines and restitution shall
28 not affect the interest of any third party in real property
29 that was acquired by a bona fide purchaser for value prior to
30 the recording of the lis pendens. If any assets or property
31 affected by this section are subject to a valid lien,

1 mortgage, security interest, or interest under a conditional
2 sales contract and the amount due to the holder of the lien,
3 mortgage, interest, or contract is less than the appraised
4 value of the property, that person may pay to the state or the
5 local governmental entity that initiated the proceeding the
6 amount of the difference between the appraised value of the
7 property and the amount of the lien, mortgage, security
8 interest, or interest under a conditional sales contract. The
9 state or local governmental entity shall relinquish all claims
10 to the property upon receipt of such payment. If the holder of
11 the interest elects not to make such payment to the state or
12 local governmental entity, the interest in the property shall
13 be deemed transferred to the state or local governmental
14 entity and any indication of ownership of the property shall
15 be confirmed by the state or local governmental entity. The
16 appraised value shall be determined by the date judgment is
17 entered either by agreement between the holder of the lien,
18 mortgage, security interest, or interest under a conditional
19 sales contract and the governmental entity involved, or, if
20 they cannot agree, by a court-appointed appraiser for the
21 county in which the action is brought. A person holding a
22 valid lien, mortgage, security interest, or interest under a
23 conditional sales contract shall be paid the appraised value
24 of his or her interest.

25 (21) In making its final order, the court shall seek
26 to protect the legitimately acquired interests of any innocent
27 third person, including an innocent spouse, who can show that
28 he or she was not involved in the commission of any criminal
29 act.

30 (22) In all cases in which property is to be levied on
31 pursuant to this section, a receiver appointed by the court

1 shall be empowered to liquidate all property or assets which
2 shall be distributed in the following order of priority:
3 (a) To any bona fide holder of a valid lien, mortgage,
4 or security interest that has been perfected in the manner
5 prescribed by law prior to the institution of proceedings
6 under this section, up to the amount of that interest in the
7 property or proceeds.
8 (b) To any victim as restitution for any fraudulent or
9 unlawful act alleged in the indictment or information.
10 (c) To any victim as restitution for any fraudulent or
11 unlawful act connected to or involved in the crimes alleged,
12 whether or not the victim is specifically named.
13 (d) To the receiver or court-appointed appraiser for
14 reasonable expenditures incurred in connection with the sale
15 of the property or liquidation of assets, including reasonable
16 expenditures for any necessary repairs, storage, or
17 transportation of any property levied on under this section.
18 (e) For payment of any fine imposed pursuant to this
19 section. The proceeds obtained in payment of a fine shall be
20 paid to the fine and forfeitures fund of the county in which
21 the judgment was entered. The proceeds from the fine first
22 shall be used by a county to reimburse prosecutors and law
23 enforcement agencies for the reasonable costs of investigation
24 and prosecution of cases brought under this section.
25 (23) Unless otherwise expressly provided by law, the
26 remedies or penalties provided by this section are cumulative
27 to each other and to the remedies or penalties available under
28 all other laws of this state. If a fine is imposed under this
29 section, it shall be in lieu of all other fines that may be
30 imposed pursuant to any other provision of law for the crimes
31 for which the defendant has been convicted in the action.

1 (24) If, at any time following the institution of a
2 proceeding under this section, the state can establish that
3 property preserved under this section or some portion thereof
4 is subject to the provisions of the Florida Contraband
5 Forfeiture Act, that property or portion thereof may be seized
6 and proceedings for forfeiture may be instituted under that
7 act.

8 (25) It is the intent of this section and the
9 Legislature to accord the utmost comity and respect to the
10 constitutional prerogatives of Florida's judiciary, and
11 nothing in this act should be construed as an effort to
12 impinge upon those prerogatives. To that end, should any court
13 of competent jurisdiction enter a final judgment concluding or
14 declaring that any provision of this section improperly
15 encroaches upon the authority of the Florida Supreme Court to
16 determine the rules of practice and procedure in Florida
17 courts, the Legislature hereby declares its intent that any
18 such provision be construed as a request for rule change
19 pursuant to s. 2, Art. V of the State Constitution and not as
20 a mandatory legislative directive.

21 Section 3. If any provision of this act, or the
22 application thereof to any person or circumstance is held
23 invalid, the invalidity shall not affect other provisions or
24 applications of the act which can be given effect without the
25 invalid provision or application, and to this end the
26 provisions of this act are declared severable.

27 Section 4. This act shall take effect October 1, 2000.
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HOUSE SUMMARY

Defines the offense "white collar crime." Provides penalties. Specifies circumstances in which a white collar crime becomes an aggravated white collar crime. Provides increased penalties for aggravated white collar crimes. Provides for preservation of property in cases of aggravated white collar crime. Defines "victim." Provides for fines and restitution. Provides for notice. Provides for preliminary injunctions, hearings, and injunctive relief. Authorizes the sale of certain property under specified conditions. Requires proceeds from such sale to be deposited with the court or as directed by the court. Provides for appraisal of property under certain circumstances. Provides for protection of interests of innocent third persons. Authorizes the court to liquidate property and assets under certain circumstances. Provides conditions for seizure and forfeiture of property under the Florida Contraband Forfeiture Act. Provides for severability. Provides legislative intent with regard to authority of the Florida Supreme Court to determine rules of practice and procedure.