

By Senator Campbell

33-1439-00

See HB

1 A bill to be entitled
2 An act relating to white collar crime; creating
3 s. 775.088, F.S.; defining the term "white
4 collar 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 the term
9 "victim"; creating s. 775.0881, F.S.; providing
10 for preservation of property in cases of
11 aggravated white collar crime; providing for
12 fines and restitution; providing for notice;
13 providing for preliminary injunctions,
14 hearings, and injunctive relief; authorizing
15 the sale of certain property under specified
16 conditions; requiring proceeds from such sale
17 to be deposited with the court or as directed
18 by the court; providing for appraisal of
19 property under certain circumstances; providing
20 for 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; amending s. 921.002,
26 F.S.; providing for ranking the offense of
27 aggravated white collar crime under the offense
28 severity ranking chart; providing for
29 severability; providing legislative intent with
30 regard to rules changes; providing an effective
31 date.

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 775.088, Florida Statutes, is
4 created to read:

5 775.088 White collar crime; aggravated white collar
6 crime; definition; penalties.--

7 (1) For the purposes of this section, the term "white
8 collar crime" means:

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

12 1. Chapter 560, relating to the Money Transmitters'
13 Code;

14 2. Chapter 812, relating to theft, robbery, and
15 related crimes;

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

17 4. Chapter 817, relating to fraudulent practices;

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

20 6. Chapter 831, relating to forgery and
21 counterfeiting;

22 7. Chapter 832, relating of violations involving
23 checks and drafts;

24 8. Chapter 838, relating to bribery and misuse of
25 public office;

26 9. Chapter 839, relating to offenses by public
27 officers and employees;

28 10. Chapter 895, relating to offenses concerning
29 racketeering and illegal debts; or

30 11. Chapter 896, relating to offenses related to
31 financial transactions;

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

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

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

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

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

13 (b) Victimizes 20 or more persons, as defined in s.
14 1.01; or

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

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19 and thereby obtains or attempts to obtain \$100,000 or more
20 commits an aggravated white collar crime, punishable as
21 provided in s. 775.082, s. 775.083, or s. 775.084.

22 Notwithstanding the existing listing of any qualifying offense
23 at a particular level within the offense severity ranking
24 chart, any aggravated white collar crime shall be listed as
25 follows:

26 (a) Conviction of a third-degree felony as an
27 aggravated white collar crime is ranked in level 7 of the
28 offense severity ranking chart.

29 (b) Conviction of a second-degree felony as an
30 aggravated white collar crime is ranked in level 8 of the
31 offense severity ranking chart.

1 (c) Conviction of a first-degree felony as an
2 aggravated white collar crime is ranked in level 9 of the
3 offense severity ranking chart.

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

9 (4) A person convicted of an aggravated white collar
10 crime shall be liable for all costs and any restitution to
11 victims of all crimes, whether or not the victim is named in
12 the information or indictment. For the purpose of this
13 subsection, the term "victim" means a person directly and
14 proximately harmed as a result of the commission of an offense
15 for which restitution may be ordered, including, in the case
16 of an offense that involves as an element a scheme,
17 conspiracy, or pattern of criminal activity, any person
18 directly harmed by the defendant's criminal conduct in the
19 course of the scheme, conspiracy, or pattern. Hearings to
20 determine the identity of qualifying victims and the extent of
21 restitution due them shall be held following the defendant's
22 conviction, in accordance with this section and s. 775.089.

23 Section 2. Section 775.0881, Florida Statutes, is
24 created to read:

25 775.0881 Aggravated white collar crime; preservation
26 of assets.--

27 (1) If a person commits an aggravated white collar
28 crime, as described in s. 775.088, which involves the
29 pecuniary gain or loss of \$100,000 or more, any asset or
30 property within or outside the state that is presently in the
31 control of that person, or any asset or property within or

1 outside the state that has been transferred by that person in
2 a manner which would constitute a preference under federal
3 bankruptcy laws or any transfer to some third party subsequent
4 to the commission of any criminal act, unless the transfer was
5 pursuant to a bona fide purchase for value, may be preserved
6 by the court in order to pay restitution and fines imposed
7 pursuant to s. 775.088. Upon conviction under s. 775.088,
8 property preserved under this section may be levied on to pay
9 restitution and fines imposed by the court.

10 (2) To prevent dissipation or secreting of assets or
11 property, the prosecutor may, at the same time as or
12 subsequent to the filing of an indictment or information
13 charging an aggravated white collar crime, file a petition to
14 be heard by the criminal trial judge in the county in which
15 the accusatory pleading was filed seeking a preliminary
16 injunction, the appointment of a receiver, or any other
17 protective relief necessary to preserve the property or
18 assets. This petition shall commence a proceeding that shall
19 be pendent to the criminal proceeding and maintained solely to
20 effect the criminal remedies provided for in this section.
21 The proceeding shall not be subject to or governed by the
22 provisions of the Florida Rules of Civil Procedure. The
23 petition shall allege that the defendant has been charged with
24 an aggravated white collar crime. The petition shall identify
25 that criminal proceeding and the assets and property to be
26 affected by an order issued under this section.

27 (3) A notice regarding the petition shall be provided,
28 by personal service or registered mail, to every person who
29 may have an interest in the property specified in the
30 petition. Additionally, the notice shall be published for at
31 least 3 successive weeks in a newspaper of general circulation

1 in the county where the property affected by an order issued
2 pursuant to this section is located. The notice shall state
3 that any interested person may file a claim with the criminal
4 trial court stating the nature and amount of the person's
5 claimed interest. The notice shall set forth the time within
6 which a claim of interest in the protected property is
7 required to be filed.

8 (4) If the property to be preserved is real property,
9 the prosecutor shall record, at the time of filing the
10 petition, a lis pendens in each county in which the real
11 property is situated that specifically identifies the property
12 by legal description and the name of the owner of record.

13 (5) If the property to be preserved is an asset under
14 the control of a banking or financial institution, the
15 prosecutor, at the time of the filing of the petition, may
16 obtain an order from the criminal trial judge directing the
17 banking or financial institution to immediately disclose the
18 account numbers and value of the assets of the accused held by
19 the banking or financial institution. The prosecutor shall
20 file a supplemental petition, specifically identifying which
21 banking or financial institution accounts shall be subject to
22 a preliminary injunction or other protective remedy.

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

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

12 (8) Concurrent with or subsequent to the filing of the
13 petition, the prosecutor may move the criminal trial court
14 for, and the criminal trial court may issue, the following
15 orders to preserve the status quo of the property alleged in
16 the petition:

17 (a) An injunction to restrain any person from
18 transferring, encumbering, hypothecating, or otherwise
19 disposing of the property.

20 (b) An order for appointment of a receiver to take
21 possession of, care for, manage, and operate the assets and
22 property so that the property may be maintained and preserved.
23 In appropriate cases, the court may order that a receiver
24 appointed pursuant to this section be compensated for
25 reasonable expenditures made or incurred in connection with
26 the possession, care, management, and operation of any
27 property or assets subject to the provisions of this section.

28 (c) An order for a bond or other undertaking by the
29 defendant of a value sufficient to ensure the satisfaction of
30 restitution and fines imposed pursuant to this section. No
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1 bond shall be required to be furnished by the prosecutor in
2 order to proceed under this section.

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

23 (10) The defendant, or a person who has filed a claim
24 as provided in subsection (6), shall have the right to have
25 the court conduct a hearing on the order to show cause within
26 10 days after the service of the request for hearing upon the
27 prosecutor, in order to determine whether the preliminary
28 injunction should remain in effect, whether relief should be
29 granted from any lis pendens recorded pursuant to subsection
30 (4), or whether any existing order should be modified in the
31 interests of justice.

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

14 (a) The public interest in preserving the property or
15 assets throughout the litigation.

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

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

22 (d) The likelihood that substantial public harm has
23 occurred when aggravated white collar crime is alleged to have
24 been committed.

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

28 (12) The criminal trial court in making its orders may
29 consider a defendant's request for the release of a portion of
30 the property affected by this section in order to pay
31 reasonable legal fees in connection with the criminal

1 proceeding and any necessary and appropriate living expenses
2 pending trial and sentencing, and for the purpose of posting
3 bail. The court shall weigh the needs of the public to retain
4 the property against the needs of the defendant to retain a
5 portion of the property. The court shall consider the factors
6 listed in subsection (11) prior to making any order to release
7 property for these purposes.

8 (13) The criminal trial court in making its orders
9 shall seek to protect the interests of any innocent third
10 person, including an innocent spouse, who can show that he or
11 she was not involved in the commission of any criminal
12 activity.

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

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

26 (16) The criminal trial court in making its orders
27 shall seek to prevent any asset subject to a preliminary
28 injunction under this section from perishing, spoiling, going
29 to waste, or otherwise being significantly reduced in value.
30 When the potential for diminution in value exists, the court
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1 shall appoint a receiver to dispose of or otherwise protect
2 the value of the property or asset.

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

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

17 (19) If the defendant is convicted of aggravated white
18 collar crime, the criminal trial judge shall continue the
19 preliminary injunction until the date of the criminal
20 sentencing and shall make a finding at that time as to what
21 portion, if any, of the property or assets subject to the
22 preliminary injunction shall be levied on to pay fines and
23 restitution to victims of the crime. The order imposing fines
24 and restitution may exceed the total worth of the property or
25 assets subjected to the preliminary injunction. The court may
26 order the immediate transfer of the property or assets to
27 satisfy any judgment and sentence made pursuant to this
28 section. Additionally, upon motion of the prosecutor, the
29 court may enter an order as part of the judgment and sentence
30 making the order imposing fines and restitution pursuant to
31 this section enforceable under chapter 55.

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

10 (b) The sentencing court shall retain jurisdiction to
11 enforce the order to pay additional fines and restitution and,
12 in appropriate cases, may initiate probation violation
13 proceedings or contempt of court proceedings against a
14 defendant who is found to have willfully failed to comply with
15 any lawful order of the court.

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

20 (20) The order imposing fines and restitution shall
21 not affect the interest of any third party in real property
22 that was acquired by a bona fide purchaser for value prior to
23 the recording of the lis pendens. If any assets or property
24 affected by this section are subject to a valid lien,
25 mortgage, security interest, or interest under a conditional
26 sales contract and the amount due to the holder of the lien,
27 mortgage, interest, or contract is less than the appraised
28 value of the property, that person may pay to the state or the
29 local governmental entity that initiated the proceeding the
30 amount of the difference between the appraised value of the
31 property and the amount of the lien, mortgage, security

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

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

23 (22) In all cases in which property is to be levied on
24 pursuant to this section, a receiver appointed by the court
25 shall be empowered to liquidate all property or assets which
26 shall be distributed in the following order of priority:

27 (a) To any bona fide holder of a valid lien, mortgage,
28 or security interest that has been perfected in the manner
29 prescribed by law prior to the institution of proceedings
30 under this section, up to the amount of that interest in the
31 property or proceeds.

1 **(b) To any victim as restitution for any fraudulent or**
2 **unlawful act alleged in the indictment or information.**

3 **(c) To any victim as restitution for any fraudulent or**
4 **unlawful act connected to or involved in the crimes alleged,**
5 **whether or not the victim is specifically named.**

6 **(d) To the receiver or court-appointed appraiser for**
7 **reasonable expenditures incurred in connection with the sale**
8 **of the property or liquidation of assets, including reasonable**
9 **expenditures for any necessary repairs, storage, or**
10 **transportation of any property levied on under this section.**

11 **(e) For payment of any fine imposed pursuant to this**
12 **section. The proceeds obtained in payment of a fine shall be**
13 **paid to the fine and forfeitures fund of the county in which**
14 **the judgment was entered. The proceeds from the fine first**
15 **shall be used by a county to reimburse prosecutors and law**
16 **enforcement agencies for the reasonable costs of investigation**
17 **and prosecution of cases brought under this section.**

18 **(23) Unless otherwise expressly provided by law, the**
19 **remedies or penalties provided by this section are cumulative**
20 **to each other and to the remedies or penalties available under**
21 **all other laws of this state. If a fine is imposed under this**
22 **section, it shall be in lieu of all other fines that may be**
23 **imposed pursuant to any other provision of law for the crimes**
24 **for which the defendant has been convicted in the action.**

25 **(24) If, at any time following the institution of a**
26 **proceeding under this section, the state can establish that**
27 **property preserved under this section or some portion thereof**
28 **is subject to the provisions of the Florida Contraband**
29 **Forfeiture Act, that property or portion thereof may be seized**
30 **and proceedings for forfeiture may be instituted under that**
31 **act.**

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

14 Section 3. Present subsection (4) of section 921.002,
15 Florida Statutes, is redesignated as subsection (5), and a new
16 subsection (4) is added to that section, to read:

17 921.002 The Criminal Punishment Code.--The Criminal
18 Punishment Code shall apply to all felony offenses, except
19 capital felonies, committed on or after October 1, 1998.

20 (4) Any aggravated white collar crime, as defined in
21 s. 775.088, is listed within the offense severity ranking
22 chart as follows:

23 (a) Conviction of a third-degree felony as an
24 aggravated white collar crime is ranked in level 7 of the
25 offense severity ranking chart.

26 (b) Conviction of a second-degree felony as an
27 aggravated white collar crime is ranked in level 8 of the
28 offense severity ranking chart.

29 (c) Conviction of a first-degree felony as an
30 aggravated white collar crime is ranked in level 9 of the
31 offense severity ranking chart.

