

By Senator Sebesta

16-1010-03

1 A bill to be entitled
2 An act relating to offenses by public servants;
3 creating the "Citizens' Right to Honest
4 Government Act"; amending s. 16.56, F.S.;
5 authorizing the Office of Statewide Prosecution
6 to prosecute violations of ch. 838, F.S.;
7 amending s. 838.014, F.S.; revising, providing,
8 and deleting definitions; amending ss. 838.015,
9 838.016, F.S.; increasing penalties for bribery
10 and for unlawful compensation for official
11 behavior; creating ss. 838.022, 838.20, 838.21,
12 838.22, 838.23, 838.24, F.S.; providing
13 criminal penalties for official misconduct,
14 criminal misuse of official position,
15 disclosure or use of confidential criminal
16 justice information, and bid tampering;
17 providing status of confidential informants or
18 confidential sources; authorizing public
19 servants who are subjected to an investigation
20 for official misconduct to recover attorney's
21 fees; amending s. 837.02, F.S.; providing a
22 criminal penalty for perjury in an official
23 proceeding by a public servant; amending s.
24 921.0022, F.S.; deleting specified felonies
25 from and adding specified felonies to the
26 Criminal Punishment Code offense severity
27 ranking chart; repealing s. 838.15, F.S.,
28 relating to commercial bribe receiving;
29 repealing s. 838.16, F.S., relating to
30 commercial bribery; amending ss. 112.3173,
31 121.091, F.S., to conform cross-references;

1 amending s. 905.34, F.S.; expanding the
2 jurisdiction of the statewide grand jury to
3 include violations of ch. 838, F.S.; providing
4 an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. This act may be cited as the "Citizens'
9 Right to Honest Government Act."

10 Section 2. Paragraph (a) of subsection (1) of section
11 16.56, Florida Statutes, is amended to read:

12 16.56 Office of Statewide Prosecution.--

13 (1) There is created in the Department of Legal
14 Affairs an Office of Statewide Prosecution. The office shall
15 be a separate "budget entity" as that term is defined in
16 chapter 216. The office may:

17 (a) Investigate and prosecute the offenses of:

18 1. Bribery, any violation of chapter 838, burglary,
19 criminal usury, extortion, gambling, kidnapping, larceny,
20 murder, prostitution, perjury, robbery, carjacking, and
21 home-invasion robbery;

22 2. Any crime involving narcotic or other dangerous
23 drugs;

24 3. Any violation of the provisions of the Florida RICO
25 (Racketeer Influenced and Corrupt Organization) Act, including
26 any offense listed in the definition of racketeering activity
27 in s. 895.02(1)(a), providing such listed offense is
28 investigated in connection with a violation of s. 895.03 and
29 is charged in a separate count of an information or indictment
30 containing a count charging a violation of s. 895.03, the
31 prosecution of which listed offense may continue independently

1 if the prosecution of the violation of s. 895.03 is terminated
2 for any reason;

3 4. Any violation of the provisions of the Florida
4 Anti-Fencing Act;

5 5. Any violation of the provisions of the Florida
6 Antitrust Act of 1980, as amended;

7 6. Any crime involving, or resulting in, fraud or
8 deceit upon any person;

9 7. Any violation of s. 847.0135, relating to computer
10 pornography and child exploitation prevention, or any offense
11 related to a violation of s. 847.0135; or

12 8. Any violation of the provisions of chapter 815;

13

14 or any attempt, solicitation, or conspiracy to commit any of
15 the crimes specifically enumerated above. The office shall
16 have such power only when any such offense is occurring, or
17 has occurred, in two or more judicial circuits as part of a
18 related transaction, or when any such offense is connected
19 with an organized criminal conspiracy affecting two or more
20 judicial circuits.

21 Section 3. Section 838.014, Florida Statutes, is
22 amended to read:

23 838.014 Definitions.--As used in ~~For the purposes of~~
24 this chapter, the term ~~unless a different meaning plainly is~~
25 ~~required:~~

26 (1) "Benefit" means gain or advantage, or anything
27 regarded by the person to be benefited as a gain or advantage,
28 including the doing of an act beneficial to any person in
29 whose welfare he or she is interested, including any
30 commission, gift, gratuity, property, commercial interest, or
31 any other thing of economic value.

1 (2) "Corruptly" or "with corrupt intent" means done
2 with knowledge that the act is wrongful.

3 (3) "Harm" means pecuniary or other loss,
4 disadvantage, or injury to the person affected, including
5 loss, disadvantage, or injury to any other person in whose
6 welfare he or she is interested.

7 (4) "Public servant" means:

8 (a) Any officer or employee of a state, county,
9 municipal, or special district agency or entity;

10 (b) Any legislative or judicial officer or employee;

11 (c) Any officer, director, partner, manager,
12 representative, or employee of a nongovernmental entity that
13 is authorized by law or contract to perform a governmental
14 function or provide a governmental service on behalf of a
15 state, county, municipal, or special district agency or entity
16 to the extent that the individual's conduct relates to the
17 performance of the governmental function or provision of the
18 governmental service;

19 (d) Any person who holds an office in a political
20 party or political party committee;

21 (e) Any person, except a witness, who acts as a
22 master, receiver, auditor, juror, arbitrator, umpire, referee,
23 consultant, or hearing officer while performing a governmental
24 function; or

25 (f) A candidate for election or appointment to any of
26 the positions listed in this subsection, or an individual who
27 has been elected to, but has yet to officially assume the
28 responsibilities of, public office.

29 ~~(2) "Pecuniary benefit" is benefit in the form of any~~
30 ~~commission, gift, gratuity, property, commercial interest, or~~
31 ~~any other thing of economic value.~~

1 ~~(3) "Harm" means loss, disadvantage, or injury to the~~
2 ~~person affected, including loss, disadvantage, or injury to~~
3 ~~any other person in whose welfare he or she is interested.~~

4 ~~(4) "Public servant" means any public officer, agent,~~
5 ~~or employee of government, whether elected or appointed,~~
6 ~~including, but not limited to, any executive, legislative, or~~
7 ~~judicial officer; any person who holds an office or position~~
8 ~~in a political party or political party committee, whether~~
9 ~~elected or appointed; and any person participating as a~~
10 ~~special master, receiver, auditor, juror, arbitrator, umpire,~~
11 ~~referee, consultant, administrative law judge, hearing~~
12 ~~officer, or hearing examiner, or person acting on behalf of~~
13 ~~any of these, in performing a governmental function; but the~~
14 ~~term does not include witnesses. Such term shall include a~~
15 ~~candidate for election or appointment to any such office,~~
16 ~~including any individual who seeks or intends to occupy any~~
17 ~~such office. It shall include any person appointed to any of~~
18 ~~the foregoing offices or employments before and after he or~~
19 ~~she qualifies.~~

20 ~~(5) "Government" includes the state government and any~~
21 ~~city or county government or any branch, political~~
22 ~~subdivision, or agency of the state, county, or city~~
23 ~~government.~~

24 ~~(6) "Corruptly" means done with a wrongful intent and~~
25 ~~for the purpose of obtaining or compensating or receiving~~
26 ~~compensation for any benefit resulting from some act or~~
27 ~~omission of a public servant which is inconsistent with the~~
28 ~~proper performance of his or her public duties.~~

29 Section 4. Subsection (3) of section 838.015, Florida
30 Statutes, is amended to read:

31 838.015 Bribery.--

1 (3) Any person who commits bribery commits ~~is guilty~~
2 ~~of~~ a felony of the second ~~third~~ degree, punishable as provided
3 in s. 775.082, s. 775.083, or s. 775.084.

4 Section 5. Subsection (4) of section 838.016, Florida
5 Statutes, is amended to read:

6 838.016 Unlawful compensation or reward for official
7 behavior.--

8 (4) Whoever violates the provisions of this section
9 commits ~~shall be guilty of~~ a felony of the second ~~third~~
10 degree, punishable as provided in s. 775.082, s. 775.083, or
11 s. 775.084.

12 Section 6. Sections 838.022, 838.20, 838.21, 838.22,
13 838.23, and 838.24, Florida Statutes, are created to read:

14 838.022 Official misconduct.--

15 (1) It is unlawful for a public servant, with corrupt
16 intent to obtain a benefit for any person or to cause harm to
17 another, to:

18 (a) Falsify, or cause another person to falsify, any
19 official record or official document;

20 (b) Conceal, cover up, destroy, mutilate, or alter any
21 official record or official document or cause another person
22 to perform such an act; or

23 (c) Obstruct, delay, or prevent the communication of
24 information relating to the commission of a felony that
25 directly involves or affects the public agency or public
26 entity served by the public servant.

27 (2) For the purposes of this section:

28 (a) The term "public servant" does not include a
29 candidate who does not otherwise qualify as a public servant.

30 (b) An official record or official document includes
31 only public records.

1 (3) Any person who violates this section commits a
2 felony of the second degree, punishable as provided in s.
3 775.082, s. 775.083, or s. 775.084.

4 838.20 Criminal misuse of official position.--

5 (1) It is unlawful for any public officer or public
6 employee to corruptly use or attempt to use his or her
7 official position, or any public property or public resource
8 within his or her trust, to:

9 (a) Establish any business relationship between the
10 public officer's or public employee's own agency and any
11 business entity in which the public officer or public employee
12 receives or has an expectation of receiving a benefit; or

13 (b) Perform his or her official duties to secure for
14 himself or herself a benefit that is not generally available
15 to the public.

16 (2) Any person who violates this section commits a
17 felony of the second degree, punishable as provided in s.
18 775.082, s. 775.083, or s. 775.084.

19 838.21 Disclosure or use of confidential criminal
20 justice information.--It is unlawful for a public servant,
21 with intent to obstruct, impede, or prevent a criminal
22 investigation or a criminal prosecution, to disclose active
23 criminal investigative or intelligence information as defined
24 in chapter 119 or to disclose or use information regarding
25 either the efforts to secure or the issuance of a warrant,
26 subpoena, or other court process or court order relating to a
27 criminal investigation or criminal prosecution when such
28 information is not available to the general public and is
29 gained by reason of the public servant's official position.
30 Any person who violates this section commits a felony of the

31

1 third degree, punishable as provided in s. 775.082, s.
2 775.083, or s. 775.084.

3 838.22 Bid tampering.--

4 (1) As used in this section, the term:

5 (a) "Bid" includes a response to an "invitation to
6 bid" or "request for proposals" as those terms are defined in
7 s. 287.012.

8 (b) "Commodity" means any goods, merchandise, wares,
9 produce, chose in action, land, article of commerce, or other
10 tangible or intangible property, real, personal, or mixed, for
11 use, consumption, production, enjoyment, or resale.

12 (c) "Service" means any kind of activity performed in
13 whole or in part for economic benefit.

14 (2) It is unlawful for a public servant, with corrupt
15 intent to influence or attempt to influence the competitive
16 bidding process undertaken by any state, county, municipal, or
17 special district agency, or any other public entity, for the
18 procurement of commodities or services, to:

19 (a) Disclose material information concerning a bid or
20 other aspects of the competitive bidding process when such
21 information is not publicly disclosed.

22 (b) Establish a bid specification, contract
23 specification, request for proposal, invitation to bid, or
24 other material aspect of the competitive bidding process that
25 provides an unfair competitive advantage to any person who
26 submits a bid.

27 (c) Alter or amend a submitted bid, documents or other
28 materials supporting a submitted bid, or bid results for the
29 purpose of providing an unfair competitive advantage to any
30 person who submits a bid.

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1 (3) It is unlawful for a public servant, with corrupt
2 intent to obtain a benefit for any person or to cause unlawful
3 harm to another, to circumvent a competitive bidding process
4 required by law or rule by using a sole-source contract for
5 commodities or services.

6 (4) It is unlawful for any person to knowingly agree,
7 conspire, combine, or confederate, directly or indirectly,
8 with a public servant to violate subsection (2) or subsection
9 (3).

10 (5) It is unlawful for any person to knowingly enter
11 into a contract for commodities or services which was secured
12 by a public servant acting in violation of subsection (2) or
13 subsection (3).

14 (6) Any person who violates this section commits a
15 felony of the second degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

17 838.23 Status of confidential informants and
18 confidential sources.--A person who provides information
19 regarding suspected criminal violations committed by a public
20 servant as defined in s. 838.014 shall be considered a
21 confidential informant or confidential source pursuant to s.
22 119.07(3)(c).

23 838.24 Attorney's fees.--If a public servant is
24 arrested or prosecuted for an alleged violation of this
25 chapter and either the criminal charges are dismissed or the
26 public servant is acquitted, the public servant may petition
27 the employing public agency to award attorney's fees for the
28 costs incurred by the public servant in defending against
29 those charges. The employing public agency shall award
30 attorney's fees to the public servant upon a finding that the
31 public servant's actions arose out of or in connection with

1 the performance of his or her official duties and served a
2 public purpose.

3 Section 7. Section 837.02, Florida Statutes, is
4 amended to read:

5 837.02 Perjury in official proceedings.--

6 (1) Except as provided in subsections ~~subsection~~ (2)
7 and (3), whoever makes a false statement, which he or she does
8 not believe to be true, under oath in an official proceeding
9 in regard to any material matter, commits a felony of the
10 third degree, punishable as provided in s. 775.082, s.
11 775.083, or s. 775.084.

12 (2) Whoever makes a false statement, which he or she
13 does not believe to be true, under oath in an official
14 proceeding that relates to the prosecution of a capital
15 felony, commits a felony of the second degree, punishable as
16 provided in s. 775.082, s. 775.083, or s. 775.084.

17 (3) Any public servant, as defined in s. 838.014, who
18 makes a false statement, which he or she does not believe to
19 be true, under oath in an official proceeding in regard to any
20 material matter that relates to his or her duties or actions
21 as a public servant commits a felony of the second degree,
22 punishable as provided in s. 775.082, s. 775.083, or s.
23 775.084.

24 (4)~~(3)~~ Knowledge of the materiality of the statement
25 is not an element of the crime of perjury under subsection
26 (1), ~~or~~ subsection (2), or subsection (3), and the defendant's
27 mistaken belief that the statement was not material is not a
28 defense.

29 Section 8. Paragraphs (a), (f), and (g) of subsection
30 (3) of section 921.0022, Florida Statutes, are amended to
31 read:

1 921.0022 Criminal Punishment Code; offense severity
2 ranking chart.--
3 (3) OFFENSE SEVERITY RANKING CHART
4
5 Florida Felony
6 Statute Degree Description
7
8 (a) LEVEL 1
9 24.118(3)(a) 3rd Counterfeit or altered state
10 lottery ticket.
11 212.054(2)(b) 3rd Discretionary sales surtax;
12 limitations, administration, and
13 collection.
14 212.15(2)(b) 3rd Failure to remit sales taxes,
15 amount greater than \$300 but less
16 than \$20,000.
17 319.30(5) 3rd Sell, exchange, give away
18 certificate of title or
19 identification number plate.
20 319.35(1)(a) 3rd Tamper, adjust, change, etc., an
21 odometer.
22 320.26(1)(a) 3rd Counterfeit, manufacture, or sell
23 registration license plates or
24 validation stickers.
25 322.212
26 (1)(a)-(c) 3rd Possession of forged, stolen,
27 counterfeit, or unlawfully issued
28 driver's license; possession of
29 simulated identification.
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|----|---------------|-----|-----------------------------------|
| 1 | 322.212(4) | 3rd | Supply or aid in supplying |
| 2 | | | unauthorized driver's license or |
| 3 | | | identification card. |
| 4 | 322.212(5)(a) | 3rd | False application for driver's |
| 5 | | | license or identification card. |
| 6 | 370.13(3)(a) | 3rd | Molest any stone crab trap, line, |
| 7 | | | or buoy which is property of |
| 8 | | | licenseholder. |
| 9 | 370.135(1) | 3rd | Molest any blue crab trap, line, |
| 10 | | | or buoy which is property of |
| 11 | | | licenseholder. |
| 12 | 372.663(1) | 3rd | Poach any alligator or |
| 13 | | | crocodilia. |
| 14 | 414.39(2) | 3rd | Unauthorized use, possession, |
| 15 | | | forgery, or alteration of food |
| 16 | | | stamps, Medicaid ID, value |
| 17 | | | greater than \$200. |
| 18 | 414.39(3)(a) | 3rd | Fraudulent misappropriation of |
| 19 | | | public assistance funds by |
| 20 | | | employee/official, value more |
| 21 | | | than \$200. |
| 22 | 443.071(1) | 3rd | False statement or representation |
| 23 | | | to obtain or increase |
| 24 | | | unemployment compensation |
| 25 | | | benefits. |
| 26 | 509.151(1) | 3rd | Defraud an innkeeper, food or |
| 27 | | | lodging value greater than \$300. |
| 28 | 517.302(1) | 3rd | Violation of the Florida |
| 29 | | | Securities and Investor |
| 30 | | | Protection Act. |
| 31 | 562.27(1) | 3rd | Possess still or still apparatus. |

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|----|---------------|-----|-----------------------------------|
| 1 | 713.69 | 3rd | Tenant removes property upon |
| 2 | | | which lien has accrued, value |
| 3 | | | more than \$50. |
| 4 | 812.014(3)(c) | 3rd | Petit theft (3rd conviction); |
| 5 | | | theft of any property not |
| 6 | | | specified in subsection (2). |
| 7 | 812.081(2) | 3rd | Unlawfully makes or causes to be |
| 8 | | | made a reproduction of a trade |
| 9 | | | secret. |
| 10 | 815.04(4)(a) | 3rd | Offense against intellectual |
| 11 | | | property (i.e., computer |
| 12 | | | programs, data). |
| 13 | 817.52(2) | 3rd | Hiring with intent to defraud, |
| 14 | | | motor vehicle services. |
| 15 | 817.569(2) | 3rd | Use of public record or public |
| 16 | | | records information to facilitate |
| 17 | | | commission of a felony. |
| 18 | 826.01 | 3rd | Bigamy. |
| 19 | 828.122(3) | 3rd | Fighting or baiting animals. |
| 20 | 831.04(1) | 3rd | Any erasure, alteration, etc., of |
| 21 | | | any replacement deed, map, plat, |
| 22 | | | or other document listed in s. |
| 23 | | | 92.28. |
| 24 | 831.31(1)(a) | 3rd | Sell, deliver, or possess |
| 25 | | | counterfeit controlled |
| 26 | | | substances, all but s. 893.03(5) |
| 27 | | | drugs. |
| 28 | 832.041(1) | 3rd | Stopping payment with intent to |
| 29 | | | defraud \$150 or more. |
| 30 | | | |
| 31 | | | |

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| 1 | 832.05 | | |
| 2 | (2)(b)&(4)(c) | 3rd | Knowing, making, issuing |
| 3 | | | worthless checks \$150 or more or |
| 4 | | | obtaining property in return for |
| 5 | | | worthless check \$150 or more. |
| 6 | 838.015(3) | 3rd | Bribery. |
| 7 | 838.016(1) | 3rd | Public servant receiving unlawful |
| 8 | | | compensation. |
| 9 | 838.15(2) | 3rd | Commercial bribe receiving. |
| 10 | 838.16 | 3rd | Commercial bribery. |
| 11 | 843.18 | 3rd | Fleeing by boat to elude a law |
| 12 | | | enforcement officer. |
| 13 | 847.011(1)(a) | 3rd | Sell, distribute, etc., obscene, |
| 14 | | | lewd, etc., material (2nd |
| 15 | | | conviction). |
| 16 | 849.01 | 3rd | Keeping gambling house. |
| 17 | 849.09(1)(a)-(d) | 3rd | Lottery; set up, promote, etc., |
| 18 | | | or assist therein, conduct or |
| 19 | | | advertise drawing for prizes, or |
| 20 | | | dispose of property or money by |
| 21 | | | means of lottery. |
| 22 | 849.23 | 3rd | Gambling-related machines; |
| 23 | | | "common offender" as to property |
| 24 | | | rights. |
| 25 | 849.25(2) | 3rd | Engaging in bookmaking. |
| 26 | 860.08 | 3rd | Interfere with a railroad signal. |
| 27 | 860.13(1)(a) | 3rd | Operate aircraft while under the |
| 28 | | | influence. |
| 29 | 893.13(2)(a)2. | 3rd | Purchase of cannabis. |
| 30 | 893.13(6)(a) | 3rd | Possession of cannabis (more than |
| 31 | | | 20 grams). |

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|----|---------------|-----|-----------------------------------|
| 1 | 934.03(1)(a) | 3rd | Intercepts, or procures any other |
| 2 | | | person to intercept, any wire or |
| 3 | | | oral communication. |
| 4 | | | (f) LEVEL 6 |
| 5 | 316.027(1)(b) | 2nd | Accident involving death, failure |
| 6 | | | to stop; leaving scene. |
| 7 | 316.193(2)(b) | 3rd | Felony DUI, 4th or subsequent |
| 8 | | | conviction. |
| 9 | 775.0875(1) | 3rd | Taking firearm from law |
| 10 | | | enforcement officer. |
| 11 | 775.21(10) | 3rd | Sexual predators; failure to |
| 12 | | | register; failure to renew |
| 13 | | | driver's license or |
| 14 | | | identification card. |
| 15 | 784.021(1)(a) | 3rd | Aggravated assault; deadly weapon |
| 16 | | | without intent to kill. |
| 17 | 784.021(1)(b) | 3rd | Aggravated assault; intent to |
| 18 | | | commit felony. |
| 19 | 784.041 | 3rd | Felony battery. |
| 20 | 784.048(3) | 3rd | Aggravated stalking; credible |
| 21 | | | threat. |
| 22 | 784.048(5) | 3rd | Aggravated stalking of person |
| 23 | | | under 16. |
| 24 | 784.07(2)(c) | 2nd | Aggravated assault on law |
| 25 | | | enforcement officer. |
| 26 | 784.074(1)(b) | 2nd | Aggravated assault on sexually |
| 27 | | | violent predators facility staff. |
| 28 | 784.08(2)(b) | 2nd | Aggravated assault on a person 65 |
| 29 | | | years of age or older. |
| 30 | 784.081(2) | 2nd | Aggravated assault on specified |
| 31 | | | official or employee. |

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|----|---------------|-----|-----------------------------------|
| 1 | 784.082(2) | 2nd | Aggravated assault by detained |
| 2 | | | person on visitor or other |
| 3 | | | detainee. |
| 4 | 784.083(2) | 2nd | Aggravated assault on code |
| 5 | | | inspector. |
| 6 | 787.02(2) | 3rd | False imprisonment; restraining |
| 7 | | | with purpose other than those in |
| 8 | | | s. 787.01. |
| 9 | 790.115(2)(d) | 2nd | Discharging firearm or weapon on |
| 10 | | | school property. |
| 11 | 790.161(2) | 2nd | Make, possess, or throw |
| 12 | | | destructive device with intent to |
| 13 | | | do bodily harm or damage |
| 14 | | | property. |
| 15 | 790.164(1) | 2nd | False report of deadly explosive, |
| 16 | | | weapon of mass destruction, or |
| 17 | | | act of arson or violence to state |
| 18 | | | property. |
| 19 | 790.19 | 2nd | Shooting or throwing deadly |
| 20 | | | missiles into dwellings, vessels, |
| 21 | | | or vehicles. |
| 22 | 794.011(8)(a) | 3rd | Solicitation of minor to |
| 23 | | | participate in sexual activity by |
| 24 | | | custodial adult. |
| 25 | 794.05(1) | 2nd | Unlawful sexual activity with |
| 26 | | | specified minor. |
| 27 | 800.04(5)(d) | 3rd | Lewd or lascivious molestation; |
| 28 | | | victim 12 years of age or older |
| 29 | | | but less than 16 years; offender |
| 30 | | | less than 18 years. |
| 31 | | | |

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|----|-----------------|-----|------------------------------------|
| 1 | 800.04(6)(b) | 2nd | Lewd or lascivious conduct; |
| 2 | | | offender 18 years of age or |
| 3 | | | older. |
| 4 | 806.031(2) | 2nd | Arson resulting in great bodily |
| 5 | | | harm to firefighter or any other |
| 6 | | | person. |
| 7 | 810.02(3)(c) | 2nd | Burglary of occupied structure; |
| 8 | | | unarmed; no assault or battery. |
| 9 | 812.014(2)(b)1. | 2nd | Property stolen \$20,000 or more, |
| 10 | | | but less than \$100,000, grand |
| 11 | | | theft in 2nd degree. |
| 12 | 812.014(2)(b)2. | 2nd | Property stolen; cargo valued at |
| 13 | | | less than \$50,000, grand theft in |
| 14 | | | 2nd degree. |
| 15 | 812.015(9) | 2nd | Retail theft; property stolen |
| 16 | | | \$300 or more; second or |
| 17 | | | subsequent conviction. |
| 18 | 812.13(2)(c) | 2nd | Robbery, no firearm or other |
| 19 | | | weapon (strong-arm robbery). |
| 20 | 817.034(4)(a)1. | 1st | Communications fraud, value |
| 21 | | | greater than \$50,000. |
| 22 | 817.4821(5) | 2nd | Possess cloning paraphernalia |
| 23 | | | with intent to create cloned |
| 24 | | | cellular telephones. |
| 25 | 825.102(1) | 3rd | Abuse of an elderly person or |
| 26 | | | disabled adult. |
| 27 | 825.102(3)(c) | 3rd | Neglect of an elderly person or |
| 28 | | | disabled adult. |
| 29 | 825.1025(3) | 3rd | Lewd or lascivious molestation of |
| 30 | | | an elderly person or disabled |
| 31 | | | adult. |

| | | | |
|----|----------------|------------|--|
| 1 | 825.103(2)(c) | 3rd | Exploiting an elderly person or |
| 2 | | | disabled adult and property is |
| 3 | | | valued at less than \$20,000. |
| 4 | 827.03(1) | 3rd | Abuse of a child. |
| 5 | 827.03(3)(c) | 3rd | Neglect of a child. |
| 6 | 827.071(2)&(3) | 2nd | Use or induce a child in a sexual |
| 7 | | | performance, or promote or direct |
| 8 | | | such performance. |
| 9 | 836.05 | 2nd | Threats; extortion. |
| 10 | 836.10 | 2nd | Written threats to kill or do |
| 11 | | | bodily injury. |
| 12 | <u>838.21</u> | <u>3rd</u> | <u>Disclosure or use of confidential</u> |
| 13 | | | <u>criminal justice information.</u> |
| 14 | 843.12 | 3rd | Aids or assists person to escape. |
| 15 | 847.0135(3) | 3rd | Solicitation of a child, via a |
| 16 | | | computer service, to commit an |
| 17 | | | unlawful sex act. |
| 18 | 914.23 | 2nd | Retaliation against a witness, |
| 19 | | | victim, or informant, with bodily |
| 20 | | | injury. |
| 21 | 943.0435(9) | 3rd | Sex offenders; failure to comply |
| 22 | | | with reporting requirements. |
| 23 | 944.35(3)(a)2. | 3rd | Committing malicious battery upon |
| 24 | | | or inflicting cruel or inhuman |
| 25 | | | treatment on an inmate or |
| 26 | | | offender on community |
| 27 | | | supervision, resulting in great |
| 28 | | | bodily harm. |
| 29 | 944.40 | 2nd | Escapes. |
| 30 | 944.46 | 3rd | Harboring, concealing, aiding |
| 31 | | | escaped prisoners. |

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|----|-----------------|-----|----------------------------------|
| 1 | 944.47(1)(a)5. | 2nd | Introduction of contraband |
| 2 | | | (firearm, weapon, or explosive) |
| 3 | | | into correctional facility. |
| 4 | 951.22(1) | 3rd | Intoxicating drug, firearm, or |
| 5 | | | weapon introduced into county |
| 6 | | | facility. |
| 7 | | | (g) LEVEL 7 |
| 8 | 316.193(3)(c)2. | 3rd | DUI resulting in serious bodily |
| 9 | | | injury. |
| 10 | 327.35(3)(c)2. | 3rd | Vessel BUI resulting in serious |
| 11 | | | bodily injury. |
| 12 | 402.319(2) | 2nd | Misrepresentation and negligence |
| 13 | | | or intentional act resulting in |
| 14 | | | great bodily harm, permanent |
| 15 | | | disfiguration, permanent |
| 16 | | | disability, or death. |
| 17 | 409.920(2) | 3rd | Medicaid provider fraud. |
| 18 | 456.065(2) | 3rd | Practicing a health care |
| 19 | | | profession without a license. |
| 20 | 456.065(2) | 2nd | Practicing a health care |
| 21 | | | profession without a license |
| 22 | | | which results in serious bodily |
| 23 | | | injury. |
| 24 | 458.327(1) | 3rd | Practicing medicine without a |
| 25 | | | license. |
| 26 | 459.013(1) | 3rd | Practicing osteopathic medicine |
| 27 | | | without a license. |
| 28 | 460.411(1) | 3rd | Practicing chiropractic medicine |
| 29 | | | without a license. |
| 30 | 461.012(1) | 3rd | Practicing podiatric medicine |
| 31 | | | without a license. |

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| 1 | 462.17 | 3rd | Practicing naturopathy without a |
| 2 | | | license. |
| 3 | 463.015(1) | 3rd | Practicing optometry without a |
| 4 | | | license. |
| 5 | 464.016(1) | 3rd | Practicing nursing without a |
| 6 | | | license. |
| 7 | 465.015(2) | 3rd | Practicing pharmacy without a |
| 8 | | | license. |
| 9 | 466.026(1) | 3rd | Practicing dentistry or dental |
| 10 | | | hygiene without a license. |
| 11 | 467.201 | 3rd | Practicing midwifery without a |
| 12 | | | license. |
| 13 | 468.366 | 3rd | Delivering respiratory care |
| 14 | | | services without a license. |
| 15 | 483.828(1) | 3rd | Practicing as clinical laboratory |
| 16 | | | personnel without a license. |
| 17 | 483.901(9) | 3rd | Practicing medical physics |
| 18 | | | without a license. |
| 19 | 484.013(1)(c) | 3rd | Preparing or dispensing optical |
| 20 | | | devices without a prescription. |
| 21 | 484.053 | 3rd | Dispensing hearing aids without a |
| 22 | | | license. |
| 23 | 494.0018(2) | 1st | Conviction of any violation of |
| 24 | | | ss. 494.001-494.0077 in which the |
| 25 | | | total money and property |
| 26 | | | unlawfully obtained exceeded |
| 27 | | | \$50,000 and there were five or |
| 28 | | | more victims. |
| 29 | | | |
| 30 | | | |
| 31 | | | |

| | | | |
|----|-----------------|-----|-----------------------------------|
| 1 | 560.123(8)(b)1. | 3rd | Failure to report currency or |
| 2 | | | payment instruments exceeding |
| 3 | | | \$300 but less than \$20,000 by |
| 4 | | | money transmitter. |
| 5 | 560.125(5)(a) | 3rd | Money transmitter business by |
| 6 | | | unauthorized person, currency or |
| 7 | | | payment instruments exceeding |
| 8 | | | \$300 but less than \$20,000. |
| 9 | 655.50(10)(b)1. | 3rd | Failure to report financial |
| 10 | | | transactions exceeding \$300 but |
| 11 | | | less than \$20,000 by financial |
| 12 | | | institution. |
| 13 | 782.051(3) | 2nd | Attempted felony murder of a |
| 14 | | | person by a person other than the |
| 15 | | | perpetrator or the perpetrator of |
| 16 | | | an attempted felony. |
| 17 | 782.07(1) | 2nd | Killing of a human being by the |
| 18 | | | act, procurement, or culpable |
| 19 | | | negligence of another |
| 20 | | | (manslaughter). |
| 21 | 782.071 | 2nd | Killing of human being or viable |
| 22 | | | fetus by the operation of a motor |
| 23 | | | vehicle in a reckless manner |
| 24 | | | (vehicular homicide). |
| 25 | 782.072 | 2nd | Killing of a human being by the |
| 26 | | | operation of a vessel in a |
| 27 | | | reckless manner (vessel |
| 28 | | | homicide). |
| 29 | 784.045(1)(a)1. | 2nd | Aggravated battery; intentionally |
| 30 | | | causing great bodily harm or |
| 31 | | | disfigurement. |

| | | | |
|----|-----------------|-----|-----------------------------------|
| 1 | 784.045(1)(a)2. | 2nd | Aggravated battery; using deadly |
| 2 | | | weapon. |
| 3 | 784.045(1)(b) | 2nd | Aggravated battery; perpetrator |
| 4 | | | aware victim pregnant. |
| 5 | 784.048(4) | 3rd | Aggravated stalking; violation of |
| 6 | | | injunction or court order. |
| 7 | 784.07(2)(d) | 1st | Aggravated battery on law |
| 8 | | | enforcement officer. |
| 9 | 784.074(1)(a) | 1st | Aggravated battery on sexually |
| 10 | | | violent predators facility staff. |
| 11 | 784.08(2)(a) | 1st | Aggravated battery on a person 65 |
| 12 | | | years of age or older. |
| 13 | 784.081(1) | 1st | Aggravated battery on specified |
| 14 | | | official or employee. |
| 15 | 784.082(1) | 1st | Aggravated battery by detained |
| 16 | | | person on visitor or other |
| 17 | | | detainee. |
| 18 | 784.083(1) | 1st | Aggravated battery on code |
| 19 | | | inspector. |
| 20 | 790.07(4) | 1st | Specified weapons violation |
| 21 | | | subsequent to previous conviction |
| 22 | | | of s. 790.07(1) or (2). |
| 23 | 790.16(1) | 1st | Discharge of a machine gun under |
| 24 | | | specified circumstances. |
| 25 | 790.165(2) | 2nd | Manufacture, sell, possess, or |
| 26 | | | deliver hoax bomb. |
| 27 | 790.165(3) | 2nd | Possessing, displaying, or |
| 28 | | | threatening to use any hoax bomb |
| 29 | | | while committing or attempting to |
| 30 | | | commit a felony. |
| 31 | | | |

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|----|----------------|-----|-----------------------------------|
| 1 | 790.166(3) | 2nd | Possessing, selling, using, or |
| 2 | | | attempting to use a hoax weapon |
| 3 | | | of mass destruction. |
| 4 | 790.166(4) | 2nd | Possessing, displaying, or |
| 5 | | | threatening to use a hoax weapon |
| 6 | | | of mass destruction while |
| 7 | | | committing or attempting to |
| 8 | | | commit a felony. |
| 9 | 796.03 | 2nd | Procuring any person under 16 |
| 10 | | | years for prostitution. |
| 11 | 800.04(5)(c)1. | 2nd | Lewd or lascivious molestation; |
| 12 | | | victim less than 12 years of age; |
| 13 | | | offender less than 18 years. |
| 14 | 800.04(5)(c)2. | 2nd | Lewd or lascivious molestation; |
| 15 | | | victim 12 years of age or older |
| 16 | | | but less than 16 years; offender |
| 17 | | | 18 years or older. |
| 18 | 806.01(2) | 2nd | Maliciously damage structure by |
| 19 | | | fire or explosive. |
| 20 | 810.02(3)(a) | 2nd | Burglary of occupied dwelling; |
| 21 | | | unarmed; no assault or battery. |
| 22 | 810.02(3)(b) | 2nd | Burglary of unoccupied dwelling; |
| 23 | | | unarmed; no assault or battery. |
| 24 | 810.02(3)(d) | 2nd | Burglary of occupied conveyance; |
| 25 | | | unarmed; no assault or battery. |
| 26 | 812.014(2)(a) | 1st | Property stolen, valued at |
| 27 | | | \$100,000 or more; cargo stolen |
| 28 | | | valued at \$50,000 or more; |
| 29 | | | property stolen while causing |
| 30 | | | other property damage; 1st degree |
| 31 | | | grand theft. |

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| 1 | 812.014(2)(b)3. | 2nd | Property stolen, emergency |
| 2 | | | medical equipment; 2nd degree |
| 3 | | | grand theft. |
| 4 | 812.0145(2)(a) | 1st | Theft from person 65 years of age |
| 5 | | | or older; \$50,000 or more. |
| 6 | 812.019(2) | 1st | Stolen property; initiates, |
| 7 | | | organizes, plans, etc., the theft |
| 8 | | | of property and traffics in |
| 9 | | | stolen property. |
| 10 | 812.131(2)(a) | 2nd | Robbery by sudden snatching. |
| 11 | 812.133(2)(b) | 1st | Carjacking; no firearm, deadly |
| 12 | | | weapon, or other weapon. |
| 13 | 817.234(11)(c) | 1st | Insurance fraud; property value |
| 14 | | | \$100,000 or more. |
| 15 | 825.102(3)(b) | 2nd | Neglecting an elderly person or |
| 16 | | | disabled adult causing great |
| 17 | | | bodily harm, disability, or |
| 18 | | | disfigurement. |
| 19 | 825.103(2)(b) | 2nd | Exploiting an elderly person or |
| 20 | | | disabled adult and property is |
| 21 | | | valued at \$20,000 or more, but |
| 22 | | | less than \$100,000. |
| 23 | 827.03(3)(b) | 2nd | Neglect of a child causing great |
| 24 | | | bodily harm, disability, or |
| 25 | | | disfigurement. |
| 26 | 827.04(3) | 3rd | Impregnation of a child under 16 |
| 27 | | | years of age by person 21 years |
| 28 | | | of age or older. |
| 29 | <u>837.02(3)</u> | <u>2nd</u> | <u>Perjury by a public servant in an</u> |
| 30 | | | <u>official proceeding.</u> |
| 31 | | | |

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| 1 | 837.05(2) | 3rd | Giving false information about |
| 2 | | | alleged capital felony to a law |
| 3 | | | enforcement officer. |
| 4 | <u>838.015</u> | <u>2nd</u> | <u>Bribery.</u> |
| 5 | <u>838.016</u> | <u>2nd</u> | <u>Unlawful compensation or reward</u> |
| 6 | | | <u>for official behavior.</u> |
| 7 | <u>838.021(3)(a)</u> | <u>2nd</u> | <u>Unlawful harm to a public</u> |
| 8 | | | <u>servant.</u> |
| 9 | <u>838.022</u> | <u>2nd</u> | <u>Official misconduct.</u> |
| 10 | <u>838.20</u> | <u>2nd</u> | <u>Criminal misuse of official</u> |
| 11 | | | <u>position.</u> |
| 12 | <u>838.22</u> | <u>2nd</u> | <u>Bid tampering.</u> |
| 13 | 872.06 | 2nd | Abuse of a dead human body. |
| 14 | 893.13(1)(c)1. | 1st | Sell, manufacture, or deliver |
| 15 | | | cocaine (or other drug prohibited |
| 16 | | | under s. 893.03(1)(a), (1)(b), |
| 17 | | | (1)(d), (2)(a), (2)(b), or |
| 18 | | | (2)(c)4.) within 1,000 feet of a |
| 19 | | | child care facility or school. |
| 20 | 893.13(1)(e)1. | 1st | Sell, manufacture, or deliver |
| 21 | | | cocaine or other drug prohibited |
| 22 | | | under s. 893.03(1)(a), (1)(b), |
| 23 | | | (1)(d), (2)(a), (2)(b), or |
| 24 | | | (2)(c)4., within 1,000 feet of |
| 25 | | | property used for religious |
| 26 | | | services or a specified business |
| 27 | | | site. |
| 28 | 893.13(4)(a) | 1st | Deliver to minor cocaine (or |
| 29 | | | other s. 893.03(1)(a), (1)(b), |
| 30 | | | (1)(d), (2)(a), (2)(b), or |
| 31 | | | (2)(c)4. drugs). |

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|----|-----------------|-----|-----------------------------------|
| 1 | 893.135(1)(a)1. | 1st | Trafficking in cannabis, more |
| 2 | | | than 25 lbs., less than 2,000 |
| 3 | | | lbs. |
| 4 | 893.135 | | |
| 5 | (1)(b)1.a. | 1st | Trafficking in cocaine, more than |
| 6 | | | 28 grams, less than 200 grams. |
| 7 | 893.135 | | |
| 8 | (1)(c)1.a. | 1st | Trafficking in illegal drugs, |
| 9 | | | more than 4 grams, less than 14 |
| 10 | | | grams. |
| 11 | 893.135 | | |
| 12 | (1)(d)1. | 1st | Trafficking in phencyclidine, |
| 13 | | | more than 28 grams, less than 200 |
| 14 | | | grams. |
| 15 | 893.135(1)(e)1. | 1st | Trafficking in methaqualone, more |
| 16 | | | than 200 grams, less than 5 |
| 17 | | | kilograms. |
| 18 | 893.135(1)(f)1. | 1st | Trafficking in amphetamine, more |
| 19 | | | than 14 grams, less than 28 |
| 20 | | | grams. |
| 21 | 893.135 | | |
| 22 | (1)(g)1.a. | 1st | Trafficking in flunitrazepam, 4 |
| 23 | | | grams or more, less than 14 |
| 24 | | | grams. |
| 25 | 893.135 | | |
| 26 | (1)(h)1.a. | 1st | Trafficking in |
| 27 | | | gamma-hydroxybutyric acid (GHB), |
| 28 | | | 1 kilogram or more, less than 5 |
| 29 | | | kilograms. |
| 30 | | | |
| 31 | | | |

1 893.135
2 (1)(j)1.a. 1st Trafficking in 1,4-Butanediol, 1
3 kilogram or more, less than 5
4 kilograms.
5 893.135
6 (1)(k)2.a. 1st Trafficking in Phenethylamines,
7 10 grams or more, less than 200
8 grams.
9 896.101(5)(a) 3rd Money laundering, financial
10 transactions exceeding \$300 but
11 less than \$20,000.
12 896.104(4)(a)1. 3rd Structuring transactions to evade
13 reporting or registration
14 requirements, financial
15 transactions exceeding \$300 but
16 less than \$20,000.
17 Section 9. Sections 838.15 and 838.16, Florida
18 Statutes, are repealed.
19 Section 10. Paragraph (e) of subsection (2) of section
20 112.3173, Florida Statutes, is amended to read:
21 112.3173 Felonies involving breach of public trust and
22 other specified offenses by public officers and employees;
23 forfeiture of retirement benefits.--
24 (2) DEFINITIONS.--As used in this section, unless the
25 context otherwise requires, the term:
26 (e) "Specified offense" means:
27 1. The committing, aiding, or abetting of an
28 embezzlement of public funds;
29 2. The committing, aiding, or abetting of any theft by
30 a public officer or employee from his or her employer;
31

1 3. Bribery in connection with the employment of a
2 public officer or employee;

3 4. Any felony specified in chapter 838, ~~except ss.~~
4 ~~838.15 and 838.16;~~

5 5. The committing of an impeachable offense; or

6 6. The committing of any felony by a public officer or
7 employee who, willfully and with intent to defraud the public
8 or the public agency for which the public officer or employee
9 acts or in which he or she is employed of the right to receive
10 the faithful performance of his or her duty as a public
11 officer or employee, realizes or obtains, or attempts to
12 realize or obtain, a profit, gain, or advantage for himself or
13 herself or for some other person through the use or attempted
14 use of the power, rights, privileges, duties, or position of
15 his or her public office or employment position.

16 Section 11. Paragraph (f) of subsection (5) of section
17 121.091, Florida Statutes, is amended to read:

18 121.091 Benefits payable under the system.--Benefits
19 may not be paid under this section unless the member has
20 terminated employment as provided in s. 121.021(39)(a) or
21 begun participation in the Deferred Retirement Option Program
22 as provided in subsection (13), and a proper application has
23 been filed in the manner prescribed by the department. The
24 department may cancel an application for retirement benefits
25 when the member or beneficiary fails to timely provide the
26 information and documents required by this chapter and the
27 department's rules. The department shall adopt rules
28 establishing procedures for application for retirement
29 benefits and for the cancellation of such application when the
30 required information or documents are not received.

31

1 (5) TERMINATION BENEFITS.--A member whose employment
2 is terminated prior to retirement retains membership rights to
3 previously earned member-noncontributory service credit, and
4 to member-contributory service credit, if the member leaves
5 the member contributions on deposit in his or her retirement
6 account. If a terminated member receives a refund of member
7 contributions, such member may reinstate membership rights to
8 the previously earned service credit represented by the refund
9 by completing 1 year of creditable service and repaying the
10 refunded member contributions, plus interest.

11 (f) Any member who has been found guilty by a verdict
12 of a jury, or by the court trying the case without a jury, of
13 committing, aiding, or abetting any embezzlement or theft from
14 his or her employer, bribery in connection with the
15 employment, or other felony specified in chapter 838, ~~except~~
16 ~~ss. 838.15 and 838.16~~, committed prior to retirement, or who
17 has entered a plea of guilty or of nolo contendere to such
18 crime, or any member whose employment is terminated by reason
19 of the member's admitted commitment, aiding, or abetting of an
20 embezzlement or theft from his or her employer, bribery, or
21 other felony specified in chapter 838, except ss. 838.15 and
22 838.16, shall forfeit all rights and benefits under this
23 chapter, except the return of his or her accumulated
24 contributions as of the date of termination.

25 Section 12. Section 905.34, Florida Statutes, is
26 amended to read:

27 905.34 Powers and duties; law applicable.--The
28 jurisdiction of a statewide grand jury impaneled under this
29 chapter shall extend throughout the state. The subject matter
30 jurisdiction of the statewide grand jury shall be limited to
31 the offenses of:

- 1 (1) Bribery, any violation of chapter 838, burglary,
2 carjacking, home-invasion robbery, criminal usury, extortion,
3 gambling, kidnapping, larceny, murder, prostitution, perjury,
4 and robbery;
- 5 (2) Crimes involving narcotic or other dangerous
6 drugs;
- 7 (3) Any violation of the provisions of the Florida
8 RICO (Racketeer Influenced and Corrupt Organization) Act,
9 including any offense listed in the definition of racketeering
10 activity in s. 895.02(1)(a), providing such listed offense is
11 investigated in connection with a violation of s. 895.03 and
12 is charged in a separate count of an information or indictment
13 containing a count charging a violation of s. 895.03, the
14 prosecution of which listed offense may continue independently
15 if the prosecution of the violation of s. 895.03 is terminated
16 for any reason;
- 17 (4) Any violation of the provisions of the Florida
18 Anti-Fencing Act;
- 19 (5) Any violation of the provisions of the Florida
20 Antitrust Act of 1980, as amended;
- 21 (6) Any violation of the provisions of chapter 815;
- 22 (7) Any crime involving, or resulting in, fraud or
23 deceit upon any person;
- 24 (8) Any violation of s. 847.0135, s. 847.0137, or s.
25 847.0138 relating to computer pornography and child
26 exploitation prevention, or any offense related to a violation
27 of s. 847.0135, s. 847.0137, or s. 847.0138;
28
29 or any attempt, solicitation, or conspiracy to commit any
30 violation of the crimes specifically enumerated above, when
31 any such offense is occurring, or has occurred, in two or more

1 judicial circuits as part of a related transaction or when any
2 such offense is connected with an organized criminal
3 conspiracy affecting two or more judicial circuits. The
4 statewide grand jury may return indictments and presentments
5 irrespective of the county or judicial circuit where the
6 offense is committed or triable. If an indictment is
7 returned, it shall be certified and transferred for trial to
8 the county where the offense was committed. The powers and
9 duties of, and law applicable to, county grand juries shall
10 apply to a statewide grand jury except when such powers,
11 duties, and law are inconsistent with the provisions of ss.
12 905.31-905.40.

13 Section 13. This act shall take effect October 1,
14 2003.

15
16 *****

17 SENATE SUMMARY

18 Creates the "Citizens' Right to Honest Government Act."
19 Authorizes the Office of Statewide Prosecution to
20 investigate and prosecute violations of ch. 838, F.S.
21 Authorizes a statewide grand jury to investigate
22 violations of ch. 838, F.S. Revises, provides, and
23 deletes definitions. Increases the penalties for bribery
24 and unlawful compensation or reward for official behavior
25 to a second-degree felony. Provides penalties for
26 official misconduct, criminal misuse of official
27 position, disclosure or use of confidential criminal
28 justice information by a public servant, and bid
29 tampering. Provides status of confidential informants or
30 confidential sources. Authorizes public servants who are
31 subjected to an investigation for official misconduct to
recover attorney's fees. Provides a penalty for perjury
by a public servant in an official proceeding. Ranks
violations of ch. 838, F.S., in the Criminal Punishment
Code offense severity ranking chart. Repeals provisions
relating to commercial bribe receiving and commercial
bribery.