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 HB 0847, Engrossed 2

2003 Legislature

A bill to be entitled

An act relating to violations of citizens' right to honest government; providing a popular name; amending s. 838.014, F.S.; revising, providing, and deleting definitions; amending s. 838.015, F.S.; revising the definition of "bribery" and increasing the penalty therefor; amending s. 838.016, F.S.; increasing the penalty for unlawful compensation for official behavior; creating ss. 838.022, 838.21, and 838.22, F.S.; providing criminal penalties for official misconduct, disclosure or use of confidential criminal justice information, and bid tampering; providing definitions; amending s. 921.0022, F.S.; deleting specified felonies from and adding specified felonies to the Criminal Punishment Code offense severity ranking chart; repealing s. 839.25, F.S., relating to official misconduct; amending ss. 112.534 and 117.01, F.S.; conforming cross references to changes made by the act; providing an effective date.

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

Section 1. This act may be known by the popular name the "Paul Mendelson Citizens' Right to Honest Government Act."

Section 2. Section 838.014, Florida Statutes, is amended to read:

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



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(1) "Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

(2) "Bid" includes a response to an "invitation to bid," "invitation to negotiate," "request for a quote," or "request for proposals" as those terms are defined in s. 287.012.

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

(4) "Corruptly" or "with corrupt intent" means acting knowingly and dishonestly for a wrongful purpose.

(5) "Harm" means pecuniary or other loss, disadvantage, or injury to the person affected.

(6) "Public servant" means:

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

(b) Any legislative or judicial officer or employee;

(c) Any person, except a witness, who acts as a master, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or

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



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

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

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

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

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

~~(6) "Corruptly" means done with a wrongful intent and for the purpose of obtaining or compensating or receiving~~



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~~compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.~~

Section 3. Subsections (1) and (3) of section 838.015, Florida Statutes, are amended to read:

838.015 Bribery.--

(1) "Bribery" means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

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

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

838.016 Unlawful compensation or reward for official behavior.--

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

Section 5. Sections 838.022, 838.21, and 838.22, Florida Statutes, are created to read:

838.022 Official misconduct.--



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

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

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

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

(2) For the purposes of this section:

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

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

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

838.21 Disclosure or use of confidential criminal justice information.--It is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information as defined in chapter 119 or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or



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criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position. Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

838.22 Bid tampering.--

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

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

(b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

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

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a



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public servant acting in violation of subsection (1) or subsection (2).

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

Section 6. Paragraphs (a), (d), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.--

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(a) LEVEL 1
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)(a)- (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued



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- driver's license; possession of simulated identification.
- 322.212(4) 3rd Supply or aid in supplying unauthorized driver's license or identification card.
- 322.212(5)(a) 3rd False application for driver's license or identification card.
- 370.13(3)(a) 3rd Molest any stone crab trap, line, or buoy which is property of licenseholder.
- 370.135(1) 3rd Molest any blue crab trap, line, or buoy which is property of licenseholder.
- 372.663(1) 3rd Poach any alligator or crocodilia.
- 414.39(2) 3rd Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
- 414.39(3)(a) 3rd Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
- 443.071(1) 3rd False statement or representation to obtain or increase unemployment compensation benefits.
- 509.151(1) 3rd Defraud an innkeeper, food or lodging value greater than \$300.
- 517.302(1) 3rd Violation of the Florida Securities and Investor Protection Act.
- 562.27(1) 3rd Possess still or still apparatus.
- 713.69 3rd Tenant removes property upon which lien has accrued, value more than \$50.
- 812.014(3)(c) 3rd Petit theft (3rd conviction); theft of



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		any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05(2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.



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838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a) - (d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication. (d) LEVEL 4
316.1935(3)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a marked patrol



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- vehicle with siren and lights activated.

784.07(2)(b) 3rd Battery of law enforcement officer, firefighter, intake officer, etc.
- 784.074(1)(c) 3rd Battery of sexually violent predators facility staff.
- 784.075 3rd Battery on detention or commitment facility staff.
- 784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
- 784.08(2)(c) 3rd Battery on a person 65 years of age or older.
- 784.081(3) 3rd Battery on specified official or employee.
- 784.082(3) 3rd Battery by detained person on visitor or other detainee.
- 784.083(3) 3rd Battery on code inspector.
- 784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
- 787.03(1) 3rd Interference with custody; wrongly takes child from appointed guardian.
- 787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
- 787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to



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- designated person.
- 790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.
- 790.115(2)(b) 3rd Possessing electric weapon or device, destructive device, or other weapon on school property.
- 790.115(2)(c) 3rd Possessing firearm on school property.
- 800.04(7)(d) 3rd Lewd or lascivious exhibition; offender less than 18 years.
- 810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
- 810.02(4)(b) 3rd Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
- 810.06 3rd Burglary; possession of tools.
- 810.08(2)(c) 3rd Trespass on property, armed with firearm or dangerous weapon.
- 812.014(2)(c)3 3rd Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
- 812.014(2)(c)4 3rd Grand theft, 3rd degree, a will, .-10. firearm, motor vehicle, livestock, etc.
- 812.0195(2) 3rd Dealing in stolen property by use of the Internet; property stolen \$300 or more.
- 817.563(1) 3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
- 817.568(2)(a) 3rd Fraudulent use of personal



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- 817.625(2)(a) 3rd Fraudulent use of scanning device or reencoder.
- 828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
- 837.02(1) 3rd Perjury in official proceedings.
- 837.021(1) 3rd Make contradictory statements in official proceedings.
- 838.022 3rd Official misconduct.
- 839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.
- 839.13(2)(c) 3rd Falsifying records of the Department of Children and Family Services.
- 843.021 3rd Possession of a concealed handcuff key by a person in custody.
- 843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
- 843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).
- 874.05(1) 3rd Encouraging or recruiting another to join a criminal street gang.
- 893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
- 914.14(2) 3rd Witnesses accepting bribes.



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- 914.22(1) 3rd Force, threaten, etc., witness, victim,
or informant.
- 914.23(2) 3rd Retaliation against a witness, victim,
or informant, no bodily injury.
- 918.12 3rd Tampering with jurors.
- 934.215 3rd Use of two-way communications device to
facilitate commission of a crime.
(g) LEVEL 7
- 316.193(3)(c)2 3rd DUI resulting in serious bodily injury.
- .
327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily
injury.
- 402.319(2) 2nd Misrepresentation and negligence or
intentional act resulting in great
bodily harm, permanent disfigurement,
permanent disability, or death.
- 409.920(2) 3rd Medicaid provider fraud.
- 456.065(2) 3rd Practicing a health care profession
without a license.
- 456.065(2) 2nd Practicing a health care profession
without a license which results in
serious bodily injury.
- 458.327(1) 3rd Practicing medicine without a license.
- 459.013(1) 3rd Practicing osteopathic medicine without
a license.
- 460.411(1) 3rd Practicing chiropractic medicine without
a license.
- 461.012(1) 3rd Practicing podiatric medicine without a



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		license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
560.123(8)(b)1	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
560.125(5)(a)	3rd	Money transmitter business by



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- unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
- 655.50(10)(b)1 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
- 782.051(3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
- 782.07(1) 2nd Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
- 782.071 2nd Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
- 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
- 784.045(1)(a)1 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.
- 784.045(1)(a)2 2nd Aggravated battery; using deadly weapon.
- 784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.
- 784.048(4) 3rd Aggravated stalking; violation of injunction or court order.
- 784.07(2)(d) 1st Aggravated battery on law enforcement



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		officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
796.03	2nd	Procuring any person under 16 years for



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- prostitution.
- 800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
- 800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
- 806.01(2) 2nd Maliciously damage structure by fire or explosive.
- 810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed; no assault or battery.
- 810.02(3)(b) 2nd Burglary of unoccupied dwelling; unarmed; no assault or battery.
- 810.02(3)(d) 2nd Burglary of occupied conveyance; unarmed; no assault or battery.
- 812.014(2)(a) 1st Property stolen, valued at \$100,000 or more; cargo stolen valued at \$50,000 or more; property stolen while causing other property damage; 1st degree grand theft.
- 812.014(2)(b)3 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.
- 812.0145(2)(a) 1st Theft from person 65 years of age or older; \$50,000 or more.
- 812.019(2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
- 812.131(2)(a) 2nd Robbery by sudden snatching.



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812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
<u>838.015</u>	<u>2nd</u>	<u>Bribery.</u>
<u>838.016</u>	<u>2nd</u>	<u>Unlawful compensation or reward for official behavior.</u>
<u>838.021(3)(a)</u>	<u>2nd</u>	<u>Unlawful harm to a public servant.</u>
<u>838.22</u>	<u>2nd</u>	<u>Bid tampering.</u>
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet



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- of a child care facility or school.
- 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
- 893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
- 893.135(1)(a)1 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
- 893.135(1)(b)1 1st Trafficking in cocaine, more than 28 .a. grams, less than 200 grams.
- 893.135(1)(c)1 1st Trafficking in illegal drugs, more than .a. 4 grams, less than 14 grams.
- 893.135(1)(d)1 1st Trafficking in phencyclidine, more than . 28 grams, less than 200 grams.
- 893.135(1)(e)1 1st Trafficking in methaqualone, more than . 200 grams, less than 5 kilograms.
- 893.135(1)(f)1 1st Trafficking in amphetamine, more than 14 . grams, less than 28 grams.
- 893.135(1)(g)1 1st Trafficking in flunitrazepam, 4 grams or .a. more, less than 14 grams.
- 893.135(1)(h)1 1st Trafficking in gamma-hydroxybutyric acid .a. (GHB), 1 kilogram or more, less than 5 kilograms.
- 893.135(1)(j)1 1st Trafficking in 1,4-Butanediol, 1



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- .a. kilogram or more, less than 5 kilograms.
- 893.135(1)(k)2 1st Trafficking in Phenethylamines, 10 grams
- .a. or more, less than 200 grams.
- 896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.
- 896.104(4)(a)1 3rd Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

Section 7. Section 839.25, Florida Statutes, is repealed.

Section 8. Subsection (2) of section 112.534, Florida Statutes, is amended to read:

112.534 Failure to comply; official misconduct.--

(2) All the provisions of s. 838.022 ~~839.25~~ shall apply to this part.

Section 9. Paragraph (d) of subsection (4) of section 117.01, Florida Statutes, is amended to read:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.--

(4) The Governor may suspend a notary public for any of the grounds provided in s. 7, Art. IV of the State Constitution. Grounds constituting malfeasance, misfeasance, or neglect of duty include, but are not limited to, the following:

(d) Official misconduct as defined in s. 838.022 ~~839.25~~.

Section 10. This act shall take effect October 1, 2003.