

By Senator Wise

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1 A bill to be entitled
2 An act relating to criminal justice; amending s.
3 112.313, F.S.; providing criminal penalties for
4 certain violations of standards of conduct for public
5 officials in addition to existing penalties; amending
6 s. 287.175, F.S.; conforming a provision relating to
7 penalties for violations relating to standards of
8 conduct for public officials to changes made by this
9 act; creating s. 775.0862, F.S.; defining the term
10 "under color of law"; providing for reclassification
11 of offenses committed if the commission of the offense
12 was furthered or facilitated by a person acting under
13 color of law; providing an exception; providing for
14 ranking of reclassified offenses for purposes of the
15 offense severity ranking chart; amending s. 838.022,
16 F.S.; defining the term "willfully"; prohibiting a
17 public servant from willfully depriving one or more
18 individuals or the government of the right to have the
19 public servant's duties performed honestly by
20 committing specified acts; providing penalties;
21 amending s. 914.04, F.S.; providing for use of certain
22 immunized testimony or evidence produced for purposes
23 of prosecutions for falsification or obstruction of
24 justice committed while giving such testimony or
25 producing such evidence; providing that testimony or
26 production of evidence pursuant to a grand jury
27 subpoena may be received against a person for all
28 purposes and without limitation provided that before
29 testifying or producing such evidence specified

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30 provisions are withdrawn and the witness is advised of
31 specified rights; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

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35 Section 1. Subsections (2), (4), and (6) of section
36 112.313, Florida Statutes, are amended to read:

37 112.313 Standards of conduct for public officers, employees
38 of agencies, and local government attorneys.—

39 (2) SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer,
40 employee of an agency, local government attorney, or candidate
41 for nomination or election shall solicit or accept anything of
42 value to the recipient, including a gift, loan, reward, promise
43 of future employment, favor, or service, based upon any
44 understanding that the vote, official action, or judgment of the
45 public officer, employee, local government attorney, or
46 candidate would be influenced thereby. In addition to being
47 subject to penalties under s. 112.317, a person who violates
48 this subsection commits a misdemeanor of the first degree,
49 punishable as provided in s. 775.082 or s. 775.083.

50 (4) UNAUTHORIZED COMPENSATION.—No public officer, employee
51 of an agency, or local government attorney or his or her spouse
52 or minor child shall, at any time, accept any compensation,
53 payment, or thing of value when such public officer, employee,
54 or local government attorney knows, or, with the exercise of
55 reasonable care, should know, that it was given to influence a
56 vote or other action in which the officer, employee, or local
57 government attorney was expected to participate in his or her
58 official capacity. In addition to being subject to penalties

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59 under s. 112.317, a person who violates this subsection commits
60 a misdemeanor of the first degree, punishable as provided in s.
61 775.082 or s. 775.083.

62 (6) MISUSE OF PUBLIC POSITION.—No public officer, employee
63 of an agency, or local government attorney shall corruptly use
64 or attempt to use his or her official position or any property
65 or resource which may be within his or her trust, or perform his
66 or her official duties, to secure a special privilege, benefit,
67 or exemption for himself, herself, or others. This section shall
68 not be construed to conflict with s. 104.31. In addition to
69 being subject to penalties under s. 112.317, a person who
70 violates this subsection commits a misdemeanor of the first
71 degree, punishable as provided in s. 775.082 or s. 775.083.

72 Section 2. Section 287.175, Florida Statutes, is amended to
73 read:

74 287.175 Penalties.—A violation of this part or a rule
75 adopted hereunder, pursuant to applicable constitutional and
76 statutory procedures, constitutes misuse of public position as
77 defined in s. 112.313(6), and is punishable as provided in s.
78 112.313 or s. 112.317. The Chief Financial Officer shall report
79 incidents of suspected misuse to the Commission on Ethics, and
80 the commission shall investigate possible violations of this
81 part or rules adopted hereunder when reported by the Chief
82 Financial Officer, notwithstanding the provisions of s. 112.324.
83 Any violation of this part or a rule adopted hereunder shall be
84 presumed to have been committed with wrongful intent, but such
85 presumption is rebuttable. Nothing in this section is intended
86 to deny rights provided to career service employees by s.
87 110.227.

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88 Section 3. Section 775.0862, Florida Statutes, is created
89 to read:

90 775.0862 Acting under color of law to facilitate crime;
91 reclassification.-

92 (1) As used in this section, the term "under color of law"
93 means action based on public authority or position or the
94 assertion of such authority or position.

95 (2) The penalty for any felony or misdemeanor shall be
96 reclassified as provided in this subsection if the commission of
97 such felony or misdemeanor was furthered or facilitated by a
98 person acting under color of law:

99 (a) A misdemeanor of the second degree is reclassified to a
100 misdemeanor of the first degree.

101 (b) A misdemeanor of the first degree is reclassified to a
102 felony of the third degree.

103 (c) A felony of the third degree is reclassified to a
104 felony of the second degree.

105 (d) A felony of the second degree is reclassified to a
106 felony of the first degree.

107 (e) A felony of the first degree is reclassified to a life
108 felony.

109 (3) This section does not apply to a misdemeanor or felony
110 that has conduct "under color of law" as an element of the
111 offense.

112 (4) For purposes of sentencing under chapter 921, a felony
113 offense that is reclassified under this section is ranked one
114 level above the ranking under s. 921.0022 or s. 921.0023 of the
115 offense committed.

116 Section 4. Section 838.022, Florida Statutes, is amended to

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117 read:

118 838.022 Official misconduct.—

119 (1)~~(2)~~ For the purposes of this section:120 (a) The term "public servant" does not include a candidate
121 who does not otherwise qualify as a public servant.122 (b) The term "willfully" means to act intentionally with
123 the specific intent to commit an illegal act.124 (c)~~(b)~~ An official record or official document includes
125 only public records.126 (2)~~(1)~~ It is unlawful for a public servant, with corrupt
127 intent to obtain a benefit for any person or to cause harm to
128 another, to:129 (a) Falsify, or cause another person to falsify, any
130 official record or official document;131 (b) Conceal, cover up, destroy, mutilate, or alter any
132 official record or official document or cause another person to
133 perform such an act; or134 (c) Obstruct, delay, or prevent the communication of
135 information relating to the commission of a felony that directly
136 involves or affects the public agency or public entity served by
137 the public servant.138 (3) It is unlawful for a public servant to willfully
139 deprive one or more individuals or the government of the right
140 to have the public servant's duties performed honestly by:141 (a) Failing to disclose a direct or indirect financial
142 interest in a public matter within the public servant's official
143 duties; or144 (b) Failing to disclose a fact or information otherwise
145 required to be disclosed by law, custom, or statute concerning

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146 an official act.

147 ~~(4)-(3)~~ Any person who violates this section commits a
148 felony of the third degree, punishable as provided in s.
149 775.082, s. 775.083, or s. 775.084.

150 Section 5. Section 914.04, Florida Statutes, is amended to
151 read:

152 914.04 Witnesses; person not excused from testifying or
153 producing evidence in certain prosecutions on ground testimony
154 might incriminate him or her; use of testimony given or evidence
155 produced.—

156 (1) No person who has been duly served with a subpoena or
157 subpoena duces tecum shall be excused from attending and
158 testifying or producing any book, paper, or other document
159 before any court having felony trial jurisdiction, grand jury,
160 or state attorney upon investigation, proceeding, or trial for a
161 violation of any of the criminal statutes of this state upon the
162 ground or for the reason that the testimony or evidence,
163 documentary or otherwise, required of the person may tend to
164 convict him or her of a crime or to subject him or her to a
165 penalty or forfeiture, but no testimony so given or evidence so
166 produced shall be received against the person upon any criminal
167 investigation or proceeding. Such testimony or evidence,
168 however, may be received against the person upon any criminal
169 investigation or proceeding for perjury, falsification, or
170 obstruction of justice committed while giving such testimony or
171 producing such evidence or for any perjury, falsification, or
172 obstruction of justice subsequently committed.

173 (2) Notwithstanding subsection (1), testimony or production
174 of any book, paper, or other document pursuant to a grand jury

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175 subpoena may be received against a person for all purposes and
176 without limitation provided that prior to testifying or
177 producing such evidence:

178 (a) The witness is informed that the provisions of
179 subsection (1) regarding immunized testimony are withdrawn; and

180 (b) The witness has been advised of his or her due process
181 right against self-incrimination pursuant to the Fifth Amendment
182 to the United States Constitution and s. 9, Art. I of the State
183 Constitution.

184 Section 6. This act shall take effect July 1, 2010.