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1
2 An act relating to offenses involving electronic
3 benefits transfer cards; amending s. 414.39, F.S.;
4 specifying acts that constitute trafficking in food
5 assistance benefits cards and are subject to criminal
6 penalties; providing criminal penalties; amending s.
7 921.0022, F.S.; deleting a reference to s. 414.39(2),
8 F.S., relating to the unauthorized use, possession,
9 forgery, or alteration of certain food assistance
10 program and Medicaid identification, from the offense
11 severity ranking chart; reenacting ss. 414.41(1)(b),
12 772.102(1)(a), 895.02(1)(a), and 1002.91(5), F.S.,
13 relating to recovery of payments made due to mistake
14 or fraud, definitions for civil remedies for criminal
15 practices, definitions for racketeering, and
16 investigations of fraud or overpayment, respectively,
17 to incorporate the amendment made by this act to s.
18 414.39, F.S., in references thereto; providing an
19 effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Subsection (2) of section 414.39, Florida
24 Statutes, is amended to read:

25 414.39 Fraud.—

26 (2) (a) Any person who knowingly:

27 1. ~~(a)~~ Uses, transfers, acquires, traffics, alters, forges,
28 or possesses;

29 2. ~~(b)~~ Attempts to use, transfer, acquire, traffic, alter,

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30 forge, or possess; or

31 ~~3.(e)~~ Aids and abets another person in the use, transfer,
32 acquisition, traffic, alteration, forgery, or possession of,

33
34 a food assistance identification card, an authorization,
35 including, but not limited to, an electronic authorization, for
36 the expenditure of food assistance benefits, a certificate of
37 eligibility for medical services, or a Medicaid identification
38 card in any manner not authorized by law commits a crime and
39 shall be punished as provided in subsection (5).

40 (b) As used in this subsection, the term "traffic"
41 includes:

42 1. Buying, selling, stealing, or otherwise effecting an
43 exchange of food assistance benefits issued and accessed via
44 electronic benefits transfer (EBT) cards, electronic benefits
45 transfer (EBT) card numbers and personal identification numbers
46 (PINs), or by manual voucher and signature, for cash or
47 consideration other than eligible food, either directly,
48 indirectly, in complicity or collusion with others, or acting
49 alone;

50 2. Attempting to buy, sell, steal, or otherwise effect an
51 exchange of food assistance benefits issued and accessed via
52 electronic benefits transfer (EBT) cards, electronic benefits
53 transfer (EBT) card numbers and personal identification numbers
54 (PINs), or by manual voucher and signature, for cash or
55 consideration other than eligible food, either directly,
56 indirectly, in complicity or collusion with others, or acting
57 alone;

58 3. Exchanging firearms, ammunition, explosives, or

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59 controlled substances, as defined in s. 893.02, for food
60 assistance benefits;

61 4. Purchasing with food assistance benefits a product with
62 the intent of obtaining cash or consideration other than
63 eligible food by reselling the product, and subsequently
64 intentionally reselling the product purchased with food
65 assistance benefits in exchange for cash or consideration other
66 than eligible food; or

67 5. Intentionally purchasing products originally purchased
68 with food assistance benefits in exchange for cash or
69 consideration other than eligible food.

70 (c) Any person who has possession of two or more electronic
71 benefits transfer (EBT) cards issued to other persons and who
72 sells or attempts to sell one or more of these cards commits a
73 misdemeanor of the first degree, punishable as provided in s.
74 775.082 or s. 775.083. A second or subsequent violation of this
75 paragraph constitutes a felony of the third degree, punishable
76 as provided in s. 775.082, s. 775.083, or s. 775.084.

77 (d) In addition to any other penalty, a person who commits
78 a violation of paragraph (c) shall be ordered by the court to
79 serve at least 20 hours of community service. If the court
80 determines that the community service can be performed at a
81 nonprofit entity that provides the community with food services
82 for the needy, the court shall order that the community service
83 be performed at such an entity.

84 Section 2. Paragraph (a) of subsection (3) of section
85 921.0022, Florida Statutes, is amended to read:

86 921.0022 Criminal Punishment Code; offense severity ranking
87 chart.-

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88 (3) OFFENSE SEVERITY RANKING CHART
89 (a) LEVEL 1

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| Florida Statute | Felony Degree | Description |
|-----------------|---------------|---|
| 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. |
| 316.1935(1) | 3rd | Fleeing or attempting to elude law enforcement officer. |
| 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 |

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assistance benefits.

105

509.151(1) 3rd Defraud an innkeeper, food or
lodging value greater than
\$300.

106

517.302(1) 3rd Violation of the Florida
Securities and Investor
Protection Act.

107

562.27(1) 3rd Possess still or still
apparatus.

108

713.69 3rd Tenant removes property upon
which lien has accrued, value
more than \$50.

109

812.014(3)(c) 3rd Petit theft (3rd conviction);
theft of any property not
specified in subsection (2).

110

812.081(2) 3rd Unlawfully makes or causes to
be made a reproduction of a
trade secret.

111

815.04(5)(a) 3rd Offense against intellectual
property (i.e., computer
programs, data).

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| | | | |
|-----|-----------------------------|-----|---|
| 113 | 817.52 (2) | 3rd | Hiring with intent to defraud, motor vehicle services. |
| 114 | 817.569 (2) | 3rd | Use of public record or public records information or providing false information to facilitate commission of a felony. |
| 115 | 826.01 | 3rd | Bigamy. |
| 116 | 828.122 (3) | 3rd | Fighting or baiting animals. |
| 117 | 831.04 (1) | 3rd | Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28. |
| 118 | 831.31 (1) (a) | 3rd | Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03 (5) drugs. |
| 119 | 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 |

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for worthless check \$150 or
more.

120

838.15(2) 3rd Commercial bribe receiving.

121

838.16 3rd Commercial bribery.

122

843.18 3rd Fleeing by boat to elude a law
enforcement officer.

123

847.011(1)(a) 3rd Sell, distribute, etc.,
obscene, lewd, etc., material
(2nd conviction).

124

849.01 3rd Keeping gambling house.

125

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.

126

849.23 3rd Gambling-related machines;
"common offender" as to
property rights.

127

849.25(2) 3rd Engaging in bookmaking.

128

860.08 3rd Interfere with a railroad

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signal.

129

860.13(1)(a) 3rd Operate aircraft while under
the influence.

130

893.13(2)(a)2. 3rd Purchase of cannabis.

131

893.13(6)(a) 3rd Possession of cannabis (more
than 20 grams).

132

934.03(1)(a) 3rd Intercepts, or procures any
other person to intercept, any
wire or oral communication.

133

134 Section 3. For the purpose of incorporating the amendment
135 made by this act to section 414.39, Florida Statutes, in a
136 reference thereto, paragraph (b) of subsection (1) of section
137 414.41, Florida Statutes, is reenacted to read:

138 414.41 Recovery of payments made due to mistake or fraud.—

139 (1) Whenever it becomes apparent that any person or
140 provider has received any public assistance under this chapter
141 to which she or he is not entitled, through either simple
142 mistake or fraud on the part of the department or on the part of
143 the recipient or participant, the department shall take all
144 necessary steps to recover the overpayment. Recovery may include
145 Federal Income Tax Refund Offset Program collections activities
146 in conjunction with the Food and Nutrition Service and the
147 Internal Revenue Service to intercept income tax refunds due to
148 clients who owe food assistance or temporary cash assistance

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149 debt to the state. The department will follow the guidelines in
150 accordance with federal rules and regulations and consistent
151 with the Food Assistance Program. The department may make
152 appropriate settlements and shall establish a policy and cost-
153 effective rules to be used in the computation and recovery of
154 such overpayments.

155 (b) When the intentional program violation or case facts do
156 not warrant criminal prosecution for fraud as defined in s.
157 414.39, the department will initiate an administrative
158 disqualification hearing. The administrative disqualification
159 hearing will be initiated regardless of the individual's current
160 eligibility.

161 Section 4. For the purpose of incorporating the amendment
162 made by this act to section 414.39, Florida Statutes, in a
163 reference thereto, paragraph (a) of subsection (1) of section
164 772.102, Florida Statutes, is reenacted to read:

165 772.102 Definitions.—As used in this chapter, the term:

166 (1) "Criminal activity" means to commit, to attempt to
167 commit, to conspire to commit, or to solicit, coerce, or
168 intimidate another person to commit:

169 (a) Any crime that is chargeable by indictment or
170 information under the following provisions:

171 1. Section 210.18, relating to evasion of payment of
172 cigarette taxes.

173 2. Section 414.39, relating to public assistance fraud.

174 3. Section 440.105 or s. 440.106, relating to workers'
175 compensation.

176 4. Part IV of chapter 501, relating to telemarketing.

177 5. Chapter 517, relating to securities transactions.

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- 178 6. Section 550.235 or s. 550.3551, relating to dogracing
179 and horseracing.
- 180 7. Chapter 550, relating to jai alai frontons.
- 181 8. Chapter 552, relating to the manufacture, distribution,
182 and use of explosives.
- 183 9. Chapter 562, relating to beverage law enforcement.
- 184 10. Section 624.401, relating to transacting insurance
185 without a certificate of authority, s. 624.437(4)(c)1., relating
186 to operating an unauthorized multiple-employer welfare
187 arrangement, or s. 626.902(1)(b), relating to representing or
188 aiding an unauthorized insurer.
- 189 11. Chapter 687, relating to interest and usurious
190 practices.
- 191 12. Section 721.08, s. 721.09, or s. 721.13, relating to
192 real estate timeshare plans.
- 193 13. Chapter 782, relating to homicide.
- 194 14. Chapter 784, relating to assault and battery.
- 195 15. Chapter 787, relating to kidnapping or human
196 trafficking.
- 197 16. Chapter 790, relating to weapons and firearms.
- 198 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
199 relating to prostitution.
- 200 18. Chapter 806, relating to arson.
- 201 19. Section 810.02(2)(c), relating to specified burglary of
202 a dwelling or structure.
- 203 20. Chapter 812, relating to theft, robbery, and related
204 crimes.
- 205 21. Chapter 815, relating to computer-related crimes.
- 206 22. Chapter 817, relating to fraudulent practices, false

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207 pretenses, fraud generally, and credit card crimes.

208 23. Section 827.071, relating to commercial sexual
209 exploitation of children.

210 24. Chapter 831, relating to forgery and counterfeiting.

211 25. Chapter 832, relating to issuance of worthless checks
212 and drafts.

213 26. Section 836.05, relating to extortion.

214 27. Chapter 837, relating to perjury.

215 28. Chapter 838, relating to bribery and misuse of public
216 office.

217 29. Chapter 843, relating to obstruction of justice.

218 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
219 s. 847.07, relating to obscene literature and profanity.

220 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
221 849.25, relating to gambling.

222 32. Chapter 893, relating to drug abuse prevention and
223 control.

224 33. Section 914.22 or s. 914.23, relating to witnesses,
225 victims, or informants.

226 34. Section 918.12 or s. 918.13, relating to tampering with
227 jurors and evidence.

228 Section 5. For the purpose of incorporating the amendment
229 made by this act to section 414.39, Florida Statutes, in a
230 reference thereto, paragraph (a) of subsection (1) of section
231 895.02, Florida Statutes, is reenacted to read:

232 895.02 Definitions.—As used in ss. 895.01–895.08, the term:

233 (1) "Racketeering activity" means to commit, to attempt to
234 commit, to conspire to commit, or to solicit, coerce, or
235 intimidate another person to commit:

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- 236 (a) Any crime that is chargeable by petition, indictment,
237 or information under the following provisions of the Florida
238 Statutes:
- 239 1. Section 210.18, relating to evasion of payment of
240 cigarette taxes.
 - 241 2. Section 316.1935, relating to fleeing or attempting to
242 elude a law enforcement officer and aggravated fleeing or
243 eluding.
 - 244 3. Section 403.727(3)(b), relating to environmental
245 control.
 - 246 4. Section 409.920 or s. 409.9201, relating to Medicaid
247 fraud.
 - 248 5. Section 414.39, relating to public assistance fraud.
 - 249 6. Section 440.105 or s. 440.106, relating to workers'
250 compensation.
 - 251 7. Section 443.071(4), relating to creation of a fictitious
252 employer scheme to commit reemployment assistance fraud.
 - 253 8. Section 465.0161, relating to distribution of medicinal
254 drugs without a permit as an Internet pharmacy.
 - 255 9. Section 499.0051, relating to crimes involving
256 contraband and adulterated drugs.
 - 257 10. Part IV of chapter 501, relating to telemarketing.
 - 258 11. Chapter 517, relating to sale of securities and
259 investor protection.
 - 260 12. Section 550.235 or s. 550.3551, relating to dogracing
261 and horseracing.
 - 262 13. Chapter 550, relating to jai alai frontons.
 - 263 14. Section 551.109, relating to slot machine gaming.
 - 264 15. Chapter 552, relating to the manufacture, distribution,

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265 and use of explosives.

266 16. Chapter 560, relating to money transmitters, if the
267 violation is punishable as a felony.

268 17. Chapter 562, relating to beverage law enforcement.

269 18. Section 624.401, relating to transacting insurance
270 without a certificate of authority, s. 624.437(4)(c)1., relating
271 to operating an unauthorized multiple-employer welfare
272 arrangement, or s. 626.902(1)(b), relating to representing or
273 aiding an unauthorized insurer.

274 19. Section 655.50, relating to reports of currency
275 transactions, when such violation is punishable as a felony.

276 20. Chapter 687, relating to interest and usurious
277 practices.

278 21. Section 721.08, s. 721.09, or s. 721.13, relating to
279 real estate timeshare plans.

280 22. Section 775.13(5)(b), relating to registration of
281 persons found to have committed any offense for the purpose of
282 benefiting, promoting, or furthering the interests of a criminal
283 gang.

284 23. Section 777.03, relating to commission of crimes by
285 accessories after the fact.

286 24. Chapter 782, relating to homicide.

287 25. Chapter 784, relating to assault and battery.

288 26. Chapter 787, relating to kidnapping or human
289 trafficking.

290 27. Chapter 790, relating to weapons and firearms.

291 28. Chapter 794, relating to sexual battery, but only if
292 such crime was committed with the intent to benefit, promote, or
293 further the interests of a criminal gang, or for the purpose of

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294 increasing a criminal gang member's own standing or position
295 within a criminal gang.

296 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
297 796.05, or s. 796.07, relating to prostitution.

298 30. Chapter 806, relating to arson and criminal mischief.

299 31. Chapter 810, relating to burglary and trespass.

300 32. Chapter 812, relating to theft, robbery, and related
301 crimes.

302 33. Chapter 815, relating to computer-related crimes.

303 34. Chapter 817, relating to fraudulent practices, false
304 pretenses, fraud generally, and credit card crimes.

305 35. Chapter 825, relating to abuse, neglect, or
306 exploitation of an elderly person or disabled adult.

307 36. Section 827.071, relating to commercial sexual
308 exploitation of children.

309 37. Section 828.122, relating to fighting or baiting
310 animals.

311 38. Chapter 831, relating to forgery and counterfeiting.

312 39. Chapter 832, relating to issuance of worthless checks
313 and drafts.

314 40. Section 836.05, relating to extortion.

315 41. Chapter 837, relating to perjury.

316 42. Chapter 838, relating to bribery and misuse of public
317 office.

318 43. Chapter 843, relating to obstruction of justice.

319 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
320 s. 847.07, relating to obscene literature and profanity.

321 45. Chapter 849, relating to gambling, lottery, gambling or
322 gaming devices, slot machines, or any of the provisions within

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323 that chapter.

324 46. Chapter 874, relating to criminal gangs.

325 47. Chapter 893, relating to drug abuse prevention and
326 control.

327 48. Chapter 896, relating to offenses related to financial
328 transactions.

329 49. Sections 914.22 and 914.23, relating to tampering with
330 or harassing a witness, victim, or informant, and retaliation
331 against a witness, victim, or informant.

332 50. Sections 918.12 and 918.13, relating to tampering with
333 jurors and evidence.

334 Section 6. For the purpose of incorporating the amendment
335 made by this act to section 414.39, Florida Statutes, in a
336 reference thereto, subsection (5) of section 1002.91, Florida
337 Statutes, is reenacted to read:

338 1002.91 Investigations of fraud or overpayment; penalties.—

339 (5) If a school readiness program provider or a Voluntary
340 Prekindergarten Education Program provider, or an owner,
341 officer, or director thereof, is convicted of, found guilty of,
342 or pleads guilty or nolo contendere to, regardless of
343 adjudication, public assistance fraud pursuant to s. 414.39, or
344 is acting as the beneficial owner for someone who has been
345 convicted of, found guilty of, or pleads guilty or nolo
346 contendere to, regardless of adjudication, public assistance
347 fraud pursuant to s. 414.39, the early learning coalition shall
348 refrain from contracting with, or using the services of, that
349 provider for a period of 5 years. In addition, the coalition
350 shall refrain from contracting with, or using the services of,
351 any provider that shares an officer or director with a provider

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352 that is convicted of, found guilty of, or pleads guilty or nolo
353 contendere to, regardless of adjudication, public assistance
354 fraud pursuant to s. 414.39 for a period of 5 years.

355 Section 7. This act shall take effect October 1, 2016.