

CHAPTER 2016-185

Committee Substitute for Senate Bill No. 218

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

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

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

414.39 Fraud.—

(2)(a) Any person who knowingly:

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

2.(b) Attempts to use, transfer, acquire, traffic, alter, forge, or possess; or

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

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

(b) As used in this subsection, the term “traffic” includes:

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

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

3. Exchanging firearms, ammunition, explosives, or controlled substances, as defined in s. 893.02, for food assistance benefits;

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

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

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

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

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

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

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.

Florida Statute	Felony Degree	Description
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 sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, 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 reemployment assistance 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 any property not specified in subsection (2).

Florida Statute	Felony Degree	Description
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(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 or providing false 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.
838.15(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.

Florida Statute	Felony Degree	Description
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.

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

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

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment. Recovery may include Federal Income Tax Refund Offset Program collections activities in conjunction with the Food and Nutrition Service and the Internal Revenue Service to intercept income tax refunds due to clients who owe food assistance or temporary cash assistance debt to the state. The department will follow the guidelines in accordance with federal rules and regulations and consistent with the Food Assistance Program. The department may make appropriate settlements and shall establish a policy and cost-effective rules to be used in the computation and recovery of such overpayments.

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

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

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

(1) “Criminal activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

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

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 414.39, relating to public assistance fraud.
3. Section 440.105 or s. 440.106, relating to workers’ compensation.
4. Part IV of chapter 501, relating to telemarketing.
5. Chapter 517, relating to securities transactions.
6. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.
7. Chapter 550, relating to jai alai frontons.
8. Chapter 552, relating to the manufacture, distribution, and use of explosives.
9. Chapter 562, relating to beverage law enforcement.
10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
11. Chapter 687, relating to interest and usurious practices.
12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
13. Chapter 782, relating to homicide.
14. Chapter 784, relating to assault and battery.
15. Chapter 787, relating to kidnapping or human trafficking.
16. Chapter 790, relating to weapons and firearms.
17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
18. Chapter 806, relating to arson.
19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
20. Chapter 812, relating to theft, robbery, and related crimes.

21. Chapter 815, relating to computer-related crimes.
22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
23. Section 827.071, relating to commercial sexual exploitation of children.
24. Chapter 831, relating to forgery and counterfeiting.
25. Chapter 832, relating to issuance of worthless checks and drafts.
26. Section 836.05, relating to extortion.
27. Chapter 837, relating to perjury.
28. Chapter 838, relating to bribery and misuse of public office.
29. Chapter 843, relating to obstruction of justice.
30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
32. Chapter 893, relating to drug abuse prevention and control.
33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.
34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

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

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

(1) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.
3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
5. Section 414.39, relating to public assistance fraud.
6. Section 440.105 or s. 440.106, relating to workers' compensation.
7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.
8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.
10. Part IV of chapter 501, relating to telemarketing.
11. Chapter 517, relating to sale of securities and investor protection.
12. Section 550.235 or s. 550.3551, relating to dogracing and horse-racing.
13. Chapter 550, relating to jai alai frontons.
14. Section 551.109, relating to slot machine gaming.
15. Chapter 552, relating to the manufacture, distribution, and use of explosives.
16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
17. Chapter 562, relating to beverage law enforcement.
18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
20. Chapter 687, relating to interest and usurious practices.
21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.
25. Chapter 784, relating to assault and battery.
26. Chapter 787, relating to kidnapping or human trafficking.
27. Chapter 790, relating to weapons and firearms.
28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.
29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
30. Chapter 806, relating to arson and criminal mischief.
31. Chapter 810, relating to burglary and trespass.
32. Chapter 812, relating to theft, robbery, and related crimes.
33. Chapter 815, relating to computer-related crimes.
34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
36. Section 827.071, relating to commercial sexual exploitation of children.
37. Section 828.122, relating to fighting or baiting animals.
38. Chapter 831, relating to forgery and counterfeiting.
39. Chapter 832, relating to issuance of worthless checks and drafts.
40. Section 836.05, relating to extortion.
41. Chapter 837, relating to perjury.
42. Chapter 838, relating to bribery and misuse of public office.
43. Chapter 843, relating to obstruction of justice.
44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

- 46. Chapter 874, relating to criminal gangs.
- 47. Chapter 893, relating to drug abuse prevention and control.
- 48. Chapter 896, relating to offenses related to financial transactions.
- 49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.
- 50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

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

1002.91 Investigations of fraud or overpayment; penalties.—

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

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

Approved by the Governor April 6, 2016.

Filed in Office Secretary of State April 6, 2016.