

GENERAL ASSEMBLY OF NORTH CAROLINA

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Short Title: Public Assistance Fraud/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP
3 FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM
4 PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO
5 COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT
6 OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL
7 POSSESSION OR USE OF FOOD STAMPS.

8 The General Assembly of North Carolina enacts:

9 Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is
10 amended by adding new sections as follows:

11 **"§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public**
12 **assistance program payment.**

13 (a) The following definitions apply in this section:

14 (1) Disposable income. – The part of the compensation paid or payable for
15 personal services, whether denominated as wages, salary, commission,
16 bonus, or otherwise which remains after the deduction of any amounts
17 required by law to be withheld.

- 1 (2) Erroneous payment. – Any public assistance program payment made
2 because of a recipient's, a recipient's representative's, or recipient
3 household member's misunderstanding or unintentional error, or any
4 action or inaction of the county department of social services or the
5 Department of Human Resources which results in an erroneous public
6 assistance program payment.
- 7 (3) Fraudulent payment. – Any public assistance program payment made
8 because of a recipient's false statement or representation or failure to
9 disclose a material fact which occurs willfully and knowingly and with
10 intent to deceive.
- 11 (4) Garnishee. – The person, firm, association, or corporation owing
12 compensation for personal services, whether denominated as wages,
13 salary, commission, bonus, or otherwise.
- 14 (5) Public assistance program. – Any means-tested benefit program
15 administered or supervised by a county department of social services or
16 the Department of Human Resources which is funded in whole or in
17 part by federal, State, or county resources.

18 (b) In any case in which a recipient or former recipient of a public assistance
19 program, who while a recipient, obtained or benefited from a fraudulent or erroneous
20 payment, a judge of the district court in the county where the recipient or former recipient
21 resides or is found, or in the county where the payment was made, may enter an order of
22 garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent
23 (20%) of the recipient's or former recipient's monthly disposable income may be
24 garnished to recoup payment in cases of fraudulent payment and not more than ten (10%)
25 of the recipient's or former recipient's monthly disposable income may be garnished to
26 recoup payment in cases of erroneous payment. The order of garnishment shall be
27 subject to all federal and State laws or regulations that may apply to recoupment of
28 fraudulent or erroneous payments.

29 (c) A county department of social services or the Department of Human Resources
30 may petition the court for an order of garnishment to recoup a fraudulent or erroneous
31 public assistance program payment. In cases of erroneous payment, garnishment shall be
32 a remedy to recoup payment only after all administrative remedies are exhausted
33 unsuccessfully. The petition shall be verified and provide the court with facts and
34 circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or
35 former recipient, the name and address of the garnishee, the recipient's or former
36 recipient's monthly disposable income (which may be based on information and belief),
37 and the amount sought to be garnished from the recipient's or former recipient's
38 disposable income. The petition shall be served on both the recipient or former recipient
39 and the garnishee in accordance with the provisions for service of process set forth in
40 G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process
41 issued pursuant to this section shall be in accordance with the time periods set forth in
42 G.S. 1A-1, Rule 12.

1 (d) Upon a hearing held pursuant to this section, the court may enter an order of
2 garnishment. If an order of garnishment is entered, a copy of the same shall be served on
3 both the recipient or the former recipient and the garnishee either personally or by
4 certified or registered mail, return receipt requested. The order shall set forth sufficient
5 findings of facts to support the action by the court and the amount to be garnished for
6 each pay period. The amount garnished may be increased by an additional one dollar
7 (\$1.00) processing fee to be assessed and retained by the garnishee for each payment
8 under the order. The order shall be subject to review for modification and dissolution
9 upon the filing of a motion in the cause.

10 (e) Upon receipt of the order of garnishment, the garnishee shall transmit without
11 delay to the clerk of superior court the amount ordered by the court to be garnished.
12 These funds shall be disbursed to the court department of social services to recoup
13 fraudulent or erroneous payments subject to the order of garnishment entered pursuant to
14 this section.

15 (f) A garnishee who violates the terms of an order of garnishment shall be subject
16 to punishment for contempt.

17 (g) The Social Services Commission shall adopt rules and regulations to
18 implement this section. The rules shall ensure that a petition for an order of garnishment
19 sought pursuant to this section is consistent with all federal and State laws and
20 regulations.

21 **§ 108A-25.2. Power to issue investigatory subpoenas.**

22 (a) When all other reasonable means of investigating facts and circumstances
23 pertaining to fraudulent or erroneous applications for or receipt of public assistance
24 benefits have been exhausted, the Director of the county department of social services or
25 the Secretary of Human Resources may issue a subpoena to a third party in the State for
26 the production of books, papers, correspondence, memoranda, agreements, or other
27 information, documents, or records relevant to establishing a fraudulent or erroneous
28 claim of public assistance. The subpoena shall specify the person to whom the records
29 and documents sought shall be produced, including time and place, and shall be served in
30 accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of
31 social services and the Department of Human Resources are authorized to administer
32 oaths for the purpose of the examinations. Information obtained as a result of a subpoena
33 issued pursuant to this section is confidential and may be used only by county department
34 of social services or Department program integrity personnel for the purposes of
35 investigating fraudulent or erroneous public assistance payments.

36 (b) A person subpoenaed pursuant to subsection (a) of this section may contest the
37 subpoena. Within 10 days after service of the subpoena, a person shall notify the county
38 department of social services or the Department of the intent to contest the subpoena.
39 The notice shall be given by registered or certified mail and include a statement which
40 sets forth the objections to complying with the subpoena. Upon receipt of the notice and
41 a determination that the objections are without merit, the county department of social
42 services or the Department may initiate proceedings to enforce the subpoena by petition
43 to the district court in the district where a person contesting the subpoena was served.

1 (c) The refusal of a third party to cooperate shall not affect the eligibility of an
2 initial application to receive public assistance.

3 (d) For the purpose of this section, the following definitions shall apply: 'Director'
4 means the Director of the county department of social services and 'Secretary' means the
5 Secretary of the Department of Human Resources.

6 (e) The Social Services Commission shall adopt rules and regulations to
7 implement this section."

8 Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is
9 amended by adding a new section as follows:

10 **"§ 108A-53.1. Illegal possession or use of food stamps.**

11 Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp
12 coupons, authorization cards, or access devices in any manner contrary to that authorized
13 by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant
14 thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons,
15 authorization cards, or access devices is less than one hundred dollars (\$100.00), or a
16 Class I felony if the value of such food stamp coupons, authorization cards, or access
17 devices is equal to one hundred dollars (\$100.00) but less than one thousand dollars
18 (\$1,000), or a Class H felony if the value of such food stamp coupons, authorization
19 cards, or access devices equals or exceeds one thousand dollars (\$1,000)."

20 Section 3. The Social Services Commission shall adopt rules and regulations
21 to implement Section 1 of this act within 90 days of the date this act is signed into law.

22 Section 4. This act becomes effective December 1, 1997.