

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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Short Title: Public Assistance Fraud/AB.

(Public)

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Sponsors:

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Referred to:

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March 10, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP  
3 FRAUDULENT PUBLIC ASSISTANCE PROGRAM PAYMENTS AND TO  
4 CREATE OFFENSES FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is  
7 amended by adding a new section as follows:

8 "**§ 108A-25.1. Garnishment of wages to recoup fraudulent public assistance**  
9 **program payment.**

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

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

15 (2) Fraudulent payment. – Any public assistance program payment made  
16 because of a recipient's false statement or representation or failure to

1 disclose a material fact which occurs willfully and knowingly and with  
2 intent to deceive.

3 (3) Garnishee. – The person, firm, association, or corporation owing  
4 compensation for personal services, whether denominated as wages,  
5 salary, commission, bonus, or otherwise.

6 (4) Public assistance program. – Any means-tested benefit program  
7 administered or supervised by a county department of social services or  
8 the Department of Human Resources which is funded in whole or in  
9 part by federal, State, or county resources.

10 (b) In any case in which a recipient or former recipient of a public assistance  
11 program, who while a recipient, obtained or benefited from a fraudulent payment, a judge  
12 of the district court in the county where the recipient or former recipient resides or is  
13 found, or in the county where the payment was made, may enter an order of garnishment  
14 to recoup a fraudulent payment after 10 days following the entry of a judgment for a sum  
15 certain for fraudulent payments pursuant to a petition filed in the action in accordance  
16 with subsection (c) of this section. Not more than twenty percent (20%) of the recipient's  
17 or former recipient's monthly disposable income may be garnished to recoup payment in  
18 cases of fraudulent payment. The order of garnishment shall be subject to all federal and  
19 State laws or regulations that may apply to recoupment of fraudulent payments.  
20 Garnishment shall not be a remedy under this section when the recipient or former  
21 recipient is required to pay restitution for fraudulent public assistance payments pursuant  
22 to a criminal court order.

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

36 (d) Upon a hearing held pursuant to this section, the court may enter an order of  
37 garnishment. Provided, the court may not enter an order of garnishment if the court finds  
38 that the order jeopardizes the recipient's or former recipient's ability to become or remain  
39 financially self-sufficient and will result in the likelihood of an increased or recurring  
40 dependency on public assistance or an inability to secure basic necessities including, but  
41 not limited to, housing, food, health care, and utility costs. If an order of garnishment is  
42 entered, a copy of the same shall be served on both the recipient or the former recipient  
43 and the garnishee either personally or by certified or registered mail, return receipt

1 requested. The order shall set forth sufficient findings of facts to support the action by  
2 the court and the amount to be garnished for each pay period. The amount garnished may  
3 be increased by an additional one dollar (\$1.00) processing fee to be assessed and  
4 retained by the garnishee for each payment under the order. The order shall be subject to  
5 review for modification and dissolution upon the filing of a motion in the cause.

6 (e) Upon receipt of the order of garnishment, the garnishee shall transmit without  
7 delay to the clerk of superior court the amount ordered by the court to be garnished.  
8 These funds shall be disbursed to the county department of social services to recoup  
9 fraudulent payments subject to the order of garnishment entered pursuant to this section.

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

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

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

17 "**§ 108A-53.1. Illegal possession or use of food stamps.**

18 (a) Any person who knowingly buys, sells, deals in, distributes, possesses with the  
19 intent to sell, deal, or distribute food stamp coupons, authorization cards, or access  
20 devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C.  
21 § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class H  
22 felony.

23 (b) Any person who knowingly uses, transfers, acquires, alters, or possesses food  
24 stamp coupons, authorization cards, or access devices in any manner contrary to that  
25 authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations  
26 issued pursuant thereto, other than as set forth in subsection (a) of this section, shall be  
27 guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization  
28 cards, or access devices is less than one hundred dollars (\$100.00), or a Class A1  
29 misdemeanor if the value of such food stamp coupons, authorization cards, or access  
30 devices is equal to at least one hundred dollars (\$100.00) but less than five hundred  
31 dollars (\$500.00), or a Class I felony if the value of such food stamp coupons,  
32 authorization cards, or access devices is equal to at least five hundred dollars (\$500.00)  
33 but less than one thousand dollars (\$1,000), or a Class H felony if the value of such food  
34 stamp coupons, authorization cards, or access devices equals or exceeds one thousand  
35 dollars (\$1,000)."

36 Section 3. The Social Services Commission shall adopt temporary rules and  
37 initiate permanent rulemaking to implement Section 1 of this act within 90 days of the  
38 date this act is signed into law.

39 Section 4. Section 1 of this act becomes effective December 1, 1997, and  
40 applies to actions filed on or after that date to recover fraudulent payments of public  
41 assistance. Section 2 of this act becomes effective December 1, 1997, and applies to acts  
42 committed on or after that date. The remainder of this act becomes effective when this  
43 act becomes law.