

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 313*

Short Title: Public Assistance Fraud/AB.

(Public)

Sponsors: Senators Dannelly; Albertson, Ballance, Hoyle, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Odom, Rand, Warren, and Weinstein.

Referred to: Judiciary.

March 5, 1997

A BILL TO BE ENTITLED

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

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 (including periodic payments pursuant to a pension,
17 retirement, or other deferred compensation program) which remains
18 after the deduction of any amounts 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 local department of social services or
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 (including periodic payments
14 pursuant to a pension, retirement, or other deferred compensation
15 program.
- 16 (5) Public assistance program. – Any means-tested benefit program
17 administered or supervised by a local department of social services or
18 the Department of Human Resources which is funded in whole or in
19 part by federal, State or local resources.

20 (b) In any case in which a recipient or former recipient of a public assistance
21 program, who while a recipient, obtained or benefited from a fraudulent or erroneous a
22 judge of the district court in the county where the recipient or former recipient resides or
23 is found, or in the county where the payment was made, may enter an order of
24 garnishment whereby no more than twenty percent (20%) of that person's monthly
25 disposable income may be garnished to recoup the payment. An order of garnishment
26 shall be subject to all federal and State laws or regulations that may apply to recoupment
27 of fraudulent or erroneous payments.

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

40 (d) Following any hearing held pursuant to this section, the court may enter an
41 order of garnishment. If an order of garnishment is entered, a copy of the same shall be
42 served on both the recipient or the former recipient and the garnishee either personally or
43 by certified or registered mail, return receipt requested. The order shall set forth

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

6 (e) Upon receipt of an 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 local department of social services to recoup
9 fraudulent or erroneous payments subject to the order of garnishment entered pursuant to
10 this section.

11 (f) Any garnishee violating the terms of an order of garnishment shall be subject
12 to punishment for contempt.

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

17 **"§ 108A-25.2. Power to issue investigatory subpoenas.**

18 (a) When all other reasonable means of investigating facts and circumstances
19 pertaining to fraudulent or erroneous applications for or receipt of public assistance
20 benefits have been exhausted, the Director or the Director's designee in a local
21 department of social services or the Secretary of Human Resources or the Secretary's
22 designee may issue a subpoena to a third party in the State who has necessary and
23 relevant information and require that pertinent records and other documents be produced
24 for examination. Such subpoena shall specify the person to whom the records and
25 documents sought shall be produced, including time and place, and shall be served in
26 accordance with any manner as prescribed in G.S. 1A-1, Rule 4. The local department of
27 social services and the Department is authorized to administer oaths for the purpose of
28 such examinations.

29 (b) An action for contempt may be initiated when such third party fails to obey a
30 subpoena issued as provided for in subsection (a) of this section. The action shall be
31 initiated by petition to the district court in the district where the person to whom the
32 subpoena was directed was served. The action for contempt may be punishable by the
33 court in the same manner as if the subpoena had been issued by the court subject to G.S.
34 1A-1, Rule 45.

35 (c) The refusal of such third party to cooperate shall not affect eligibility to receive
36 public assistance.

37 (d) The Social Services Commission shall adopt rules and regulations to
38 implement this section."

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

41 **"§ 108A-53.1. Illegal possession or use of food stamps.**

42 Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp
43 coupons, authorization cards, or access devices in any manner contrary to that authorized

1 by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant
2 thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons,
3 authorization cards, or access devices is less than one hundred dollars (\$100.00), or a
4 Class I felony if the value of such food stamp coupons, authorization cards, or access
5 devices is equal to one hundred dollars (\$100.00) but less than one thousand dollars
6 (\$1,000), or a Class H felony if the value of such food stamp coupons, authorization
7 cards, or access devices equals or exceeds one thousand dollars (\$1,000)."

8 Section 3. This act becomes effective December 1, 1997.