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SENATE BILL 836*
Health Care Committee Substitute Adopted 4/4/07
Third Edition Engrossed 4/11/07
House Committee Substitute Favorable 6/6/07

Short Title: Rename Food Stamp Program.

(Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO RENAME THE FOOD STAMP PROGRAM TO REFLECT THE USE
OF ELECTRONIC BENEFIT TRANSFER CARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-110(a) reads as rewritten:

"(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

- (1) ~~Receives food stamps.~~ Receives electronic food and nutrition benefits.
- (2) Receives Work First Family Assistance.
- (3) Receives Supplemental Security Income (SSI).
- (4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
- (5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
- (6) Repealed by Session Laws 2002-126, s. 29A.6(d), effective October 1, 2002.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

1 **SECTION 2.** G.S. 105A-2(2)(c) reads as rewritten:

2 "c. A sum owed as a result of an intentional program violation or a
3 violation due to inadvertent household error under the ~~Food~~
4 ~~Stamp~~Food and Nutrition Services Program enabled by ~~Chapter~~
5 ~~108A, Article 2, Part 5.~~Part 5 of Article 2 of Chapter 108A of
6 the General Statutes."

7 **SECTION 3.** G.S. 108A-25 reads as rewritten:

8 "(a) The following programs of public assistance are established, and shall be
9 administered by the county department of social services or the Department of Health
10 and Human Services under federal regulations or under rules adopted by the Social
11 Services Commission and under the supervision of the Department of Human
12 Resources:

- 13 (1) Repealed by S.L. 1997-443, s. 12.3, effective August 28, 1997.
14 (2) State-county special assistance for ~~adults;~~adults.
15 (3) Food ~~stamp program;~~and Nutrition Services.
16 (4) Foster care and adoption assistance ~~payments;~~payments.
17 (5) Low income energy assistance program."

18 **SECTION 4.** G.S. 108A-25.2 reads as rewritten:

19 "Individuals convicted of Class H or I controlled substance felony offenses in this
20 State shall be eligible to participate in the Work First Program and ~~food-stamp~~
21 ~~program;~~and the food and nutrition services program:

- 22 (1) Six months after release from custody if no additional controlled
23 substance felony offense is committed during that period and
24 successful completion of or continuous active participation in a
25 required substance abuse treatment program determined appropriate by
26 the area mental health authority; or
27 (2) If not committed to custody, six months after the date of conviction if
28 no additional controlled substance felony offense is committed during
29 that period and successful completion of or continuous active
30 participation in a required substance abuse treatment program
31 determined appropriate by the area mental health authority.

32 A county department of social services shall require individuals who are eligible for
33 Work First Program assistance and ~~food-stamp~~electronic food and nutrition benefits
34 pursuant to this section to undergo substance abuse treatment as a condition for
35 receiving Work First Program or ~~food-stamp~~electronic food and nutrition benefits, if
36 funds and programs are available and to the extent allowed by federal law."

37 **SECTION 5.** G.S. 108A-27.3(a)(10a) reads as rewritten:

38 "(10a) Ensure that all Work First cases are reviewed no later than three
39 months prior to expiration of time limitations for receiving cash
40 assistance to:

- 41 a. Ensure that time limitations on assistance have been computed
42 ~~correctly;~~correctly.
43 b. Ensure that the family is informed in writing about public
44 assistance benefits, including child care, Medicaid, and ~~food~~

1 ~~stamps~~food and nutrition services, for which the family is
2 eligible even while cash assistance is no longer
3 ~~available~~;available.

4 c. Provide for an extension of cash assistance benefits if the
5 family qualifies for an ~~extension~~;and extension.

6 d. Review family status and assist the family in identifying
7 resources and support the family needs to maintain employment
8 and family stability."

9 **SECTION 6.** G.S. 108-27.4(e)(7) reads as rewritten:

10 "(7) The process by which the county will review all Work First caseloads
11 no later than three months prior to expiration of time limitations for
12 receiving cash assistance to:

13 a. Ensure that time limitations on assistance have been computed
14 ~~correctly~~;correctly.

15 b. Ensure that the family is informed in writing about public
16 assistance benefits, including child care, Medicaid, and ~~food~~
17 ~~stamps~~food and nutrition services, for which the family is
18 eligible even while cash assistance is no longer
19 ~~available~~;available.

20 c. Provide for an extension of cash assistance benefits if the
21 family qualifies for an ~~extension~~;and extension.

22 d. Review family status and assist the family in identifying
23 resources and support the family needs to maintain employment
24 and family stability."

25 **SECTION 7.** G.S.108A-27.6(a)(10) reads as rewritten:

26 "(10) Ensure that all Work First cases are reviewed no later than three
27 months prior to expiration of time limitations for receiving cash
28 assistance to:

29 a. Ensure that time limitations on assistance have been computed
30 ~~correctly~~;correctly.

31 b. Ensure that the family is informed about public assistance
32 benefits, including child care, Medicaid, and ~~food-stamps~~food
33 and nutrition services, for which the family is eligible even
34 while cash assistance is no longer ~~available~~;available.

35 c. Provide for an extension of cash assistance benefits if the
36 family qualifies for an ~~extension~~;and extension.

37 d. Review family status and assist the family in identifying
38 resources and support the family needs to maintain employment
39 and family stability."

40 **SECTION 8.** G.S.108A-29(k) reads as rewritten:

41 "(k) The FEIC shall not be counted as income when eligibility is determined for
42 Work First Program assistance, Medicaid, ~~food-stamps~~food and nutrition services,
43 ~~subsidies~~, public housing, or Supplemental Security Income."

1 **SECTION 9.** The title of Part 5 of Article 2 of Chapter 108A of the General
2 Statutes and G.S. 108A-51 reads as rewritten:

3 "Part 5. ~~Food Stamp Program and~~ Nutrition Services.

4 **"§ 108A-51. Authorization for Food Stamp Program and Nutrition Services.**

5 The Department is authorized to establish a statewide ~~food stamp and nutrition~~
6 ~~services~~ program as authorized by the Congress of the United States. The Department of
7 Health and Human Services is designated as the State agency responsible for the
8 supervision of ~~such programs, the food and nutrition services program.~~ The boards of
9 county commissioners through the county departments of social services are held
10 responsible for the administration and operation of the ~~programs, food and nutrition~~
11 ~~services program.~~"

12 **SECTION 10.** G.S. 108A-52 reads as rewritten:

13 **"§ 108A-52. Determination of eligibility.**

14 Any person who believes that he or another person is eligible to receive ~~food~~
15 ~~stamp~~ electronic food and nutrition benefits may apply for such assistance to the county
16 department of social services in the county in which the applicant resides. The
17 application shall be made in such form and shall contain such information as the Social
18 Services Commission may require. Upon receipt of an application for ~~food~~
19 ~~stamp~~ electronic food and nutrition benefits, the county department of social services
20 shall make a prompt evaluation or investigation of the facts alleged in the application in
21 order to determine the applicant's eligibility for such assistance and to obtain such other
22 information as the Department may require. Upon the completion of such investigation,
23 the county department of social services shall, within a reasonable period of time,
24 determine eligibility."

25 **SECTION 11.** G.S. 108A-53 reads as rewritten:

26 **"§ 108A-53. Fraudulent misrepresentation.**

27 (a) Any person, whether provider or recipient or person representing himself as
28 such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain
29 by means of making a willfully false statement or representation or by impersonation or
30 by failing to disclose material facts or in any manner not authorized by this Part or the
31 regulations issued pursuant thereto, transfers with intent to defraud any ~~food~~
32 ~~stamp~~ electronic food and nutrition benefit or authorization cards to which that person
33 is not entitled in the amount of four hundred dollars (\$400.00) or less shall be guilty of a
34 Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or
35 abets any person to obtain by means of making a willfully false statement or
36 representation or by impersonation or by failing to disclose material facts or in any
37 manner not authorized by this Part or the regulations issued pursuant thereto, transfers
38 with intent to defraud any ~~food stamp~~ electronic and nutrition benefit or authorization
39 ~~cards~~ to which he is not entitled in an amount more than four hundred dollars (\$400.00)
40 shall be guilty of a Class I felony.

41 (b) Whoever presents, or causes to be presented, ~~food stamp~~ electronic food and
42 nutrition benefits or authorization cards for payment or redemption, knowing the same
43 to have been received, transferred, or used in any manner in violation of the provisions

1 of this Part or the regulations issued pursuant to this Part shall be guilty of a Class 1
2 misdemeanor.

3 (c) Whoever receives any ~~food stamp~~electronic food and nutrition benefits for
4 any consumable item knowing that such ~~food stamp~~benefits were procured
5 fraudulently under subsections (a) and/or (b) of this section shall be guilty of a Class 1
6 misdemeanor.

7 (d) Whoever receives any ~~food stamp~~electronic food and nutrition benefits for
8 any consumable item whose exchange is prohibited by the United States Department of
9 Agriculture shall be guilty of a Class 1 misdemeanor."

10 **SECTION 12.** G.S. 108A-53.1 reads as rewritten:

11 "**§ 108A-53.1. Illegal possession or use of ~~food stamps~~electronic food and nutrition**
12 **benefits.**

13 (a) Any person who knowingly buys, sells, distributes, or possesses with the
14 intent to sell, or distribute ~~food stamp coupons~~electronic food and nutrition benefits
15 ~~authorization cards~~, or access devices in any manner contrary to that authorized by this
16 Part or the regulations issued pursuant thereto shall be guilty of a Class H felony.

17 (b) Any person who knowingly uses, transfers, acquires, alters, or possesses ~~food~~
18 ~~stamp coupons~~electronic food and nutrition benefits authorization cards, or access
19 devices in any manner contrary to that authorized by this Part or the regulations issued
20 pursuant thereto, other than as set forth in subsection (a) of this section, shall be guilty
21 of a Class 1 misdemeanor if the value of such ~~food stamp coupons~~electronic food and
22 nutrition benefits authorization cards, or access devices is less than one hundred dollars
23 (\$100.00), or a Class A1 misdemeanor if the value of such ~~food stamp~~
24 ~~coupons~~electronic food and nutrition benefits authorization cards, or access devices is
25 equal to at least one hundred dollars (\$100.00) but less than five hundred dollars
26 (\$500.00), or a Class I felony if the value of such ~~food stamp coupons~~electronic food
27 and nutrition benefits authorization cards, or access devices is equal to at least five
28 hundred dollars (\$500.00) but less than one thousand dollars (\$1,000), or a Class H
29 felony if the value of such ~~food stamp coupons~~electronic food and nutrition benefits
30 ~~authorization cards~~, or access devices equals or exceeds one thousand dollars (\$1,000)."

31 **SECTION 13.** G.S. 108A-79 reads as rewritten:

32 "**§ 108A-79. Appeals.**

33 (a) A public assistance applicant or recipient shall have a right to appeal the
34 decision of the county board of social services, county department of social services, or
35 the board of county commissioners granting, denying, terminating, or modifying
36 assistance, or the failure of the county board of social services or county department of
37 social services to act within a reasonable time under the rules and regulations of the
38 Social Services Commission or the Department. Each applicant or recipient shall be
39 notified in writing of his right to appeal upon denial of his application for assistance and
40 at the time of any subsequent action on his case.

41 (b) In cases involving termination or modification of assistance, no action shall
42 become effective until 10 workdays after notice of this action and of the right to appeal
43 is mailed or delivered by hand to the recipient; provided, however, termination or

1 modification of assistance may be effective immediately upon the mailing or delivery of
2 notice in the following circumstances:

- 3 (1) When the modification is beneficial to the recipient; or
- 4 (2) When federal regulations permit immediate termination or
5 modification upon mailing or delivery of notice and the Social
6 Services Commission or the Department of Health and Human
7 Services promulgates regulations adopting said federal law or
8 regulations. When federal and State regulations permit immediate
9 termination or modification, the recipient shall have no right to
10 continued assistance at the present level pending a hearing, as would
11 otherwise be provided by subsection (d) of this section.

12 (c) The notice of action and the right to appeal shall comply with all applicable
13 federal and State law and regulations; provided, such notice shall, at a minimum contain
14 a clear statement of:

- 15 (1) The action which was or is to be taken;
- 16 (2) The reasons for which this action was or is to be taken;
- 17 (3) The regulations supporting this action;
- 18 (4) The applicant's or recipient's right to both a local and State level
19 hearing, or to a State level hearing in the case of the ~~food-stamp~~
20 ~~program~~food and nutrition services program, on the decision to take
21 this action and the method for obtaining these hearings;
- 22 (5) The right to be represented at the hearings by a personal
23 representative, including an attorney obtained at the applicant's or
24 recipient's expense;
- 25 (6) In cases involving termination or modification of assistance, the
26 recipient's right upon timely request to continue receiving assistance at
27 the present level pending an appeal hearing and decision on that
28 hearing.

29 An applicant or recipient may give notice of appeal by written or oral statement to the
30 county department of social services, which shall record such notice by completing a
31 form developed by the Department.

32 Such notice of appeal must be given within 60 days from the date of the action, or 90
33 days from the date of notification in the case of the ~~food-stamp program~~food and
34 nutrition services program. Failure to give timely notice of appeal constitutes a waiver
35 of the right to a hearing except that, for good cause shown, the county department of
36 social services may permit an appeal notwithstanding the waiver. The waiver shall not
37 affect the right to reapply for benefits.

38 (d) If there is such timely appeal in cases not involving disability, in the first
39 instance the hearing shall consist of a local appeal hearing before the county director or
40 a designated representative of the county director, provided whoever hears the local
41 appeal shall not have been involved directly in the initial decision giving rise to the
42 appeal. If there is such timely appeal in cases involving disability, the county director or
43 a designated representative of the county director shall within five days of the request
44 for an appeal forward the request to the Department of Health and Human Services, and

1 the Department shall designate a hearing officer who shall promptly hold a hearing in
2 the county according to the provisions of subsections (i) and (j) of this section. In cases
3 involving termination or modification of assistance (other than cases of immediate
4 termination or modification of assistance pursuant to subsection (b)(2) of this section),
5 the recipient shall continue to receive assistance at the present level pending the
6 decision at the initial hearing, whether that be the local appeal hearing decision or, in
7 cases involving questions of disability, the Department of Health and Human Services
8 hearing decision, provided that in order to continue receiving assistance pending the
9 initial hearing decision the recipient must request a hearing on or before the effective
10 date of the termination or modification of assistance.

11 (e) The local appeal hearing shall be held not more than five days after the
12 request for it is received. The recipient may, for good cause shown as defined by rule or
13 regulation of the Social Services Commission or the Department, petition the county
14 department of social services, in writing, for a delay, but in no event shall the local
15 appeal hearing be held more than 15 days after the receipt of the request for hearing. At
16 the local appeal hearing:

- 17 (1) The appellant and the county department may be represented by
18 personal representatives, including attorneys, obtained at their
19 expense.
- 20 (2) The appellant or his personal representative and the county department
21 shall present such sworn evidence and law or regulations as bear upon
22 the case. The hearing need not be recorded or transcribed, but the
23 director or his representative shall summarize in writing the substance
24 of the hearing.
- 25 (3) The appellant or his personal representative and the county department
26 may cross-examine witnesses and present closing arguments
27 summarizing their views of the case and the law.
- 28 (4) Prior to and during the hearing, the appellant or his personal
29 representative shall have adequate opportunity to examine the contents
30 of his case file for the matter pending together with those portions of
31 other public assistance or social services case files which pertain to the
32 appeal, and all documents and records which the county department of
33 social services intends to use at the hearing. Those portions of the
34 public assistance or social services case file which do not pertain to the
35 appeal or which are required by federal statutes or regulations or by
36 State statutes or regulations to be held confidential shall not be
37 released to the appellant or his personal representative. In cases where
38 the appellant has been denied access to the public assistance or social
39 services case file the hearing officer shall certify as part of the official
40 record that the hearing officer has examined the case files and that no
41 portion of those files pertain to the appeal. Such certification may be
42 subject to judicial review as provided in subsection (k) of this section.
43 Nothing in this section is intended to restrict an applicant or recipient

1 access to information if that access is allowed by rules and regulations
2 promulgated pursuant to G.S. 108A-80.

3 (f) The director or his designated representative shall make the decision based
4 upon the evidence presented at the hearing and all applicable regulations, and shall
5 prepare a written statement of his decision citing the regulations and evidence to support
6 it. This written statement of the decision will be served by certified mail on the
7 appellant within five days of the local appeal hearing. If the decision terminating or
8 modifying the appellant's benefits is affirmed, the assistance shall be terminated or
9 modified, not earlier than the date the decision is mailed, and any assistance received
10 during the time of the appeal is subject to recovery.

11 (g) If the appellant is dissatisfied with the decision of the local appeal hearing, he
12 may within 15 days of the mailing notification of the decision take a further appeal to
13 the Department. However, assistance may not be received pending this further appeal.
14 Failure to give timely notice of further appeal constitutes a waiver of the right to a
15 hearing before an official of the Department except that, for good cause shown, the
16 Department may issue an order permitting a review of the local appeal hearing
17 notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits.

18 (h) Subsections (d)-(g) of this section shall not apply to the ~~food stamp~~
19 ~~program~~ food and nutrition services program. The first appeal for a ~~food stamp~~
20 electronic food and nutrition benefit recipient or his representative shall be to the
21 Department. Pending hearing, the recipient's assistance shall be continued at the present
22 level upon timely request.

23 (i) If there is an appeal from the local appeal hearing decision, or from a ~~food~~
24 ~~stamp~~ an electronic food and nutrition benefit recipient or his representative where there
25 is no local hearing, or if there is an appeal of a case involving questions of disability the
26 county director shall notify the Department according to its rules and regulations. The
27 Department shall designate a hearing officer who shall promptly hold a de novo
28 administrative hearing in the county after giving reasonable notice of the time and place
29 of such hearing to the appellant and the county department of social services. Such
30 hearing shall be conducted according to applicable federal law and regulations and
31 Article 3, Chapter 150B, of the General Statutes of North Carolina; provided the
32 Department shall adopt rules and regulations to ensure the following:

- 33 (1) Prior to and during the hearing, the appellant or his personal
34 representative shall have adequate opportunity to examine his case file
35 and all documents and records which the county department of social
36 services intends to use at the hearing together with those portions of
37 other public assistance or social services case files which pertain to the
38 appeal. Those portions of the public assistance or social services case
39 files which do not pertain to the appeal or which are required by
40 federal statutes or regulations or by State statutes or regulations to be
41 held confidential shall not be released to the appellant or his personal
42 representative. In cases where the appellant has been denied access to
43 portions of the public assistance or social services case file, the hearing
44 officer shall certify as part of the official record that the hearing officer

1 has examined the case files and that no portion of those files pertain to
2 the appeal. Such certification may be subject to judicial review as
3 provided in subsection (k) of this section. Nothing in this section is
4 intended to restrict an applicant or recipient access to information if
5 that access is allowed by rules or regulations promulgated pursuant to
6 G.S. 108A-80.

7 (2) At the appeal hearing, the appellant and personnel of the county
8 department of social services may present such sworn evidence, law
9 and regulations as bear upon the case.

10 (3) The appellant and county department shall have the right to be
11 represented by the person of his choice, including an attorney obtained
12 at his own expense.

13 (4) The appellant and county department shall have the right to
14 cross-examine the other party as well as make a closing argument
15 summarizing his view of the case and the law.

16 (5) The appeal hearing shall be recorded; however, no transcript will be
17 prepared unless a petition for judicial review is filed pursuant to
18 subsection (k) herein, in which case, the transcript will be made a part
19 of the official record. In the absence of the filing of a petition for a
20 judicial review, the recording of the appeal hearing may be erased or
21 otherwise destroyed 180 days after the final decision is mailed.

22 (6) Notwithstanding G.S. 150B-28 or any other provision of State law,
23 discovery shall be no more extensive or formal than that required by
24 federal law and regulations applicable to such hearings.

25 (j) After the administrative hearing, the hearing officer shall prepare a proposal
26 for decision, citing pertinent law, regulations, and evidence, which shall be served upon
27 the appellant and the county department of social services or their personal
28 representatives. The appellant and the county department of social services shall have
29 the opportunity to present oral and written arguments in opposition to or in support of
30 the proposal for decision to the designated official of the Department who is to make the
31 final decision. The final decision shall be based on, conform to, and set forth in detail
32 the relevant evidence, pertinent State and federal law and regulations, and matters
33 officially noticed. The decision shall be rendered not more than 90 days, or 45 days in
34 the case of the ~~food stamp program~~ food and nutrition services program, from the date of
35 request for the hearing, unless the hearing was delayed at the request of the appellant. If
36 the hearing was delayed at the appellant's request, the decision may only be delayed for
37 the length of time the appellant requested a delay. The final decision shall be served
38 upon the appellant and upon the county department of social services by certified mail,
39 with a copy furnished to either party's attorney of record. In the absence of a petition for
40 judicial review filed pursuant to subsection (k) herein, the final decision shall be binding
41 upon the appellant, the county department of social services, the county board of social
42 services, and the board of county commissioners.

43 (k) Any applicant or recipient who is dissatisfied with the final decision of the
44 Department may file, within 30 days of the receipt of notice of such decision, a petition

1 for judicial review in superior court of the county from which the case arose. Failure to
2 file a petition within the time stated shall operate as a waiver of the right of such party
3 to review, except that, for good cause shown, a judge of the superior court resident in
4 the district or holding court in the county from which the case arose may issue an order
5 permitting a review of the agency decision under this Chapter notwithstanding such
6 waiver. The hearing shall be conducted according to the provisions of Article 4, Chapter
7 150B, of the North Carolina General Statutes. The court shall, on request, examine the
8 evidence excluded at the hearing under G.S. 108A-79(e)(4) or G.S. 108A-79(i)(1) and if
9 the evidence was improperly excluded, the court shall consider it. Notwithstanding the
10 foregoing provisions, the court may take testimony and examine into the facts of the
11 case, including excluded evidence, to determine whether the final decision is in error
12 under federal and State law, and under the rules and regulations of the Social Services
13 Commission or the Department of Health and Human Services. Furthermore, the court
14 shall set the matter for hearing within 15 days from the filing of the record under
15 G.S. 150B-47 and after reasonable written notice to the Department of Health and
16 Human Services and the applicant or recipient. Nothing in this subsection shall be
17 construed to abrogate any rights that the county may have under Article 4 of Chapter
18 150B.

19 (l) In the event of conflict between federal law or regulations and State law or
20 regulations, the federal law or regulations shall control."

21 **SECTION 14.** G.S. 113-351(d) reads as rewritten:

22 "(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License
23 Waiver. – A county department of social services shall issue a Resident Subsistence
24 Unified Inland/Coastal Recreational Fishing License Waiver to an individual who
25 receives benefits from Medicaid, ~~Food Stamps~~Food and Nutrition Services, or Work
26 First Family Assistance through the county department of social services and who
27 requests a waiver. This waiver shall be issued at no charge. This waiver is valid for a
28 period of one year from the date of issuance. This waiver shall be issued only to an
29 individual who is a resident of the State. This waiver authorizes the waiver holder to
30 fish with hook and line for all fish in all inland fishing waters and joint fishing waters,
31 except for public mountain trout waters, and to engage in recreational fishing in coastal
32 fishing waters. County departments of social services shall supply the Wildlife
33 Resources Commission with the name, mailing address, and telephone number of each
34 individual who receives a waiver."

35 **SECTION 15.** This act is effective when it becomes law.