

House Bill 124

By: Representatives Clark of the 98th, Golick of the 40th, Willard of the 51st, Thomas of the 39th, Barr of the 103rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 9 of Title 16 and Article 1 of Chapter 4 of Title 49 of the
2 Official Code of Georgia Annotated, relating to fraud and related offenses and general
3 provisions relative to public assistance, respectively, so as to redesignate Code Section
4 49-4-15, relating to fraud in obtaining public assistance, food stamps, or Medicaid, penalties,
5 and recovery of overpayments, as new Code Section 16-9-64; to revise terminology in said
6 Code Section 16-9-64; to provide for definitions; to reserve the Code Section 49-4-15
7 designation; to revise Article 7 of Chapter 8 of Title 34 and Chapter 7A of Title 48 of the
8 Official Code of Georgia Annotated, relating to benefits relative to employment security and
9 tax credits, respectively, so as to provide for conformity; to revise other provisions of the
10 Official Code of Georgia Annotated, so as to correct cross-references; to provide for related
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 4 of Chapter 9 of Title 16 and Article 1 of Chapter 4 of Title 49 of the Official Code
15 of Georgia Annotated, relating to fraud and related offenses and general provisions relative
16 to public assistance, respectively, are amended by redesignating Code Section 49-4-15,
17 relating to fraud in obtaining public assistance, food stamps, or Medicaid, penalties, and
18 recovery of overpayments, as new Code Section 16-9-64 and revising such new Code section
19 as follows:

20 ~~"49-4-15. 16-9-64.~~

21 (a) As used in this Code section, the term:

22 (1) 'Food instrument' means a voucher, check, electronic benefits transfer card, coupon,
23 or other document that is used to obtain public assistance.

24 (2) 'Public assistance' means payment in or by money, medical care, remedial care,
25 goods, or services to or for the benefit of needy persons under any categories that may
26 be established pursuant to Article 1 of Chapter 4 of Title 49.

(3) 'Recipient' means a person to whom, or on whose behalf, public assistance is granted.

~~(a)~~(b)(1) Except as otherwise provided in paragraph (2) of this subsection, any person shall be guilty of a misdemeanor if such person:

~~(A) By Any person who by~~ means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, ~~or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:~~

~~(1)~~(i) Any grant or payment of public assistance, food ~~stamps~~ instruments, or medical assistance (Medicaid) to which he or she is not entitled;

~~(2)~~(ii) A larger amount of public assistance, food ~~stamp~~ instrument allotment, or medical assistance (Medicaid) than that to which he or she is entitled; or

~~(3)~~(iii) Payment of any forfeited grant of public assistance;

~~or any person who, with~~

~~(B) Knowingly or intentionally aids or abets a person identified in subparagraph (A) of this paragraph in the obtaining or attempting to obtain:~~

~~(i) Any grant or payment of public assistance, food instruments, or medical assistance (Medicaid) to which he or she is not entitled;~~

~~(ii) A larger amount of public assistance, food instrument allotment, or medical assistance (Medicaid) than that to which he or she is entitled; or~~

~~(iii) Payment of any forfeited grant of public assistance; or~~

~~(C) With~~ intent to defraud the ~~department~~ Department of Human Services, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance,

~~shall be guilty of a misdemeanor unless~~

~~(2) When~~ the total amount of the value of public assistance, food ~~stamps~~ instruments, and medical assistance (Medicaid) ~~so~~ obtained in violation of paragraph (1) of this subsection exceeds \$1,500.00, ~~in which event~~ such person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

~~(3) For the purposes of this Code section, in~~ ~~In~~ determining the amount of value of public assistance, food ~~stamps~~ instruments, and medical assistance (Medicaid) obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

~~(b)~~(c) It shall be a fraudulent device within the meaning of subsection ~~(a)~~ (b) of this Code section, and punishable as therein provided, for any person:

(1) Knowingly to use, alter, or transfer food ~~stamp coupons~~ instruments or authorizations to purchase food ~~stamp coupons~~ instruments in any manner not authorized by law;

(2) Knowingly to possess food ~~stamp coupons~~ instruments or authorizations to purchase food ~~stamp coupons~~ instruments when he or she is not authorized by law to possess them;

(3) Knowingly to possess or redeem food ~~stamp coupons~~ instruments or benefits when he or she is not authorized by law to possess or redeem them; or

(4) Knowingly to use or redeem food ~~stamp coupons~~ instruments or benefits in any manner or for purposes not authorized by law.

~~(c)~~(d)(1) Any person who obtains any payment of public assistance to which he or she is not entitled or in excess of that to which he or she is entitled shall be liable to the state for the amount of such overpayment.

(2) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he or she is entitled shall also be liable to the state for the amount of such payment.

(3) Any person who receives any payment of public assistance to which he or she is not entitled or in excess of that to which he or she is entitled shall be liable to the state for the amount of such overpayment.

(4) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, in accordance with lawful regulations of the ~~board which shall conform to the federal Social Security Act and federal regulations promulgated pursuant thereto~~ Board of Human Services, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the ~~department~~ Department of Human Services. Any repayment required by this subsection may be waived by the ~~department~~ Department of Human Services, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the ~~department~~ Department of Human Services. Recoupment may be initiated without regard to whether the ~~department~~ Department of Human Services has obtained a judgment in a civil action but shall not be initiated prior to notice and an opportunity for a hearing in accordance with ~~this article~~ Article 1 of Chapter 4 of Title 49. The ~~department~~ Department of Human Services shall make such waivers and determinations of repayment and the manner of repayment in accordance with lawful regulations of the ~~board which shall conform to the federal Social Security Act and the federal regulations promulgated pursuant thereto~~ Board of Human Services.

~~(d)~~(e) Any felony offense under this Code section may be prosecuted by accusation as provided in Code Section 17-7-70.1.

~~(e)~~(f)(1) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as ~~is or may hereafter be provided by law~~ agreed upon, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation of this Code section without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket 'CONSENT AGREEMENT NOT A CRIMINAL CHARGE.'

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution."

SECTION 2.

Article 7 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to benefits relative to employment security, is amended by revising paragraph (4) of subsection (f) of Code Section 34-8-195, relating to determination of eligibility for unemployment benefits generally, eligibility while in training, and deductions and withholdings from compensation, as follows:

"(4) Amounts shall be deducted and withheld under this Code section only after amounts have been deducted and withheld for any overpayments of unemployment compensation, child support obligations, ~~food stamp~~ overissuances of a food instrument, as such term is defined in Code Section 16-9-64, or other purposes as required under this chapter."

SECTION 3.

Said article is further amended by revising subsection (b) of Code Section 34-8-199, relating to definitions, disclosure, and withholding uncollected overissuance, as follows:

"(b) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance of food ~~stamp coupons~~ instruments, as such term is defined in Code Section 16-9-64. The Commissioner shall notify the Department of Human Services or the successor state food stamp agency enforcing such obligation of any individual who discloses that he or she owes such uncollected overissuance and who is determined to be eligible for unemployment compensation."

SECTION 4.

Chapter 7A of Title 48 of the Official Code of Georgia Annotated, relating to tax credits, is amended by revising subsection (e) of Code Section 48-7A-3, relating to persons entitled to claim tax credit, tax credits schedule, tax credit claimed against tax liability, period for filing claims for credit, applicability to food stamp recipients, and authority of commissioner, as follows:

"(e) Any individual who receives a ~~food stamp allotment~~ an allotment of a food instrument, as such term is defined in Code Section 16-9-64, for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year."

SECTION 5.

Article 1 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions relative to public assistance, is amended by reserving the former Code Section 49-4-15 designation.

SECTION 6.

Said article is further amended by revising subsection (a) of Code Section 49-4-21, relating to photo requirement on electronic benefits transfer cards for food stamps, as follows:

"(a) The department shall require that all electronic benefits transfer cards which include ~~food stamp~~ benefits for food instruments, as such term is defined in Code Section 16-9-64, contain a photograph of one or more members of a household who are authorized to use such food ~~stamp instrument~~ benefits. The department is shall be authorized to promulgate regulations necessary to implement the provisions of this Code section."

165 **SECTION 7.**

166 The Official Code of Georgia Annotated is amended by replacing "Code Section 49-4-15"
167 with "Code Section 16-9-64" wherever the former occurs in:

168 (1) Code Section 16-10-51, relating to bail jumping; and

169 (2) Code Section 48-7-161, relating to defined terms for setoff debt collection for income
170 taxes.

171 **SECTION 8.**

172 All laws and parts of laws in conflict with this Act are repealed.