

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-497
HOUSE BILL 431

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT PUBLIC ASSISTANCE PROGRAM PAYMENTS AND TO CREATE OFFENSES FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

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

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

(a) The following definitions apply in this section:

- (1) Disposable income. - The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.
- (2) Fraudulent payment. - Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.
- (3) Garnishee. - The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.
- (4) Public assistance program. - Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent payment after 10 days following the entry of a judgment for a sum certain for fraudulent payments pursuant to a petition filed in the action in accordance with subsection (c) of this section. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be

garnished to recoup payment in cases of fraudulent payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent payments. Garnishment shall not be a remedy under this section when the recipient or former recipient is required to pay restitution for fraudulent public assistance payments pursuant to a criminal court order.

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

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. Provided, the court may not enter an order of garnishment if the court finds that the order jeopardizes the recipient's or former recipient's ability to become or remain financially self-sufficient and will result in the likelihood of an increased or recurring dependency on public assistance or an inability to secure basic necessities including, but not limited to, housing, food, health care, and utility costs. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished may be increased by an additional one dollar (\$1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:27 p.m. this 11th day of September, 1997