

House Bill 847

By: Representatives Clark of the 98th, Willard of the 51st, Golick of the 40th, Thomas of the 39th, Cooper of the 43rd, 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 16-9-63; to revise terminology in said
6 Code Section 16-9-63; 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 style="text-align:center">**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 16-9-63 and revising such new Code section
19 as follows:

20 ~~"49-4-15: 16-9-63.~~

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.

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

28 ~~(a)(b)(1)~~ Except as otherwise provided in paragraph (2) of this subsection, any person
 29 who: ~~Any person who by~~

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

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

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

38 ~~(3)(iii)~~ Payment of any forfeited grant of public assistance; or any person who, with

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

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

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

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

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

49 shall be guilty of a misdemeanor ~~unless,~~

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

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

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

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

- 64 (2) Knowingly to possess food ~~stamp coupons~~ instruments or authorizations to purchase
 65 food ~~stamp coupons~~ instruments when he or she is not authorized by law to possess them;
- 66 (3) Knowingly to possess or redeem food ~~stamp coupons~~ instruments or benefits when
 67 he or she is not authorized by law to possess or redeem them; or
- 68 (4) Knowingly to use or redeem food ~~stamp coupons~~ instruments or benefits in any
 69 manner or for purposes not authorized by law.
- 70 ~~(e)~~(d)(1) Any person who obtains any payment of public assistance to which he or she
 71 is not entitled or in excess of that to which he or she is entitled shall be liable to the state
 72 for the amount of such overpayment.
- 73 (2) Any person who intentionally, with knowledge of the fraud, aids or abets any
 74 recipient of public assistance in obtaining or attempting to obtain any payment of public
 75 assistance to which the recipient is not entitled or a payment in excess of that to which
 76 he or she is entitled shall also be liable to the state for the amount of such payment.
- 77 (3) Any person who receives any payment of public assistance to which he or she is not
 78 entitled or in excess of that to which he or she is entitled shall be liable to the state for the
 79 amount of such overpayment.
- 80 (4) Subject to the limitations provided in this paragraph, the amount of such
 81 overpayment may be recovered by civil action and, if the person receiving such
 82 overpayment continues on assistance, by proportionate reduction of future public
 83 assistance grants, in accordance with lawful regulations of the ~~board which shall conform~~
 84 ~~to the federal Social Security Act and federal regulations promulgated pursuant thereto~~
 85 Board of Human Services, until the excess amount has been paid. In any case in which,
 86 under this subsection, a person is liable to repay any sum, such sum may be collected
 87 without interest by civil action brought in the name of the ~~department~~ Department of
 88 Human Services. Any repayment required by this subsection may be waived by the
 89 ~~department~~ Department of Human Services, and the method of repayment, if any,
 90 including recoupments from current assistance grants, shall be determined by the
 91 ~~department~~ Department of Human Services. Recoupment may be initiated without regard
 92 to whether the ~~department~~ Department of Human Services has obtained a judgment in a
 93 civil action but shall not be initiated prior to notice and an opportunity for a hearing in
 94 accordance with ~~this article~~ Article 1 of Chapter 4 of Title 49. The ~~department~~
 95 Department of Human Services shall make such waivers and determinations of
 96 repayment and the manner of repayment in accordance with lawful regulations of the
 97 ~~board which shall conform to the federal Social Security Act and the federal regulations~~
 98 ~~promulgated pursuant thereto~~ Board of Human Services.
- 99 ~~(d)~~(e) Any felony offense under this Code section may be prosecuted by accusation as
 100 provided in Code Section 17-7-70.1.

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

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

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

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

123 **SECTION 2.**

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

129 "(4) Amounts shall be deducted and withheld under this Code section only after amounts
 130 have been deducted and withheld for any overpayments of unemployment compensation,
 131 child support obligations, ~~food stamp~~ overissuances of a food instrument, as such term
 132 is defined in Code Section 16-9-63, or other purposes as required under this chapter."

133 **SECTION 3.**

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

136 "(b) An individual filing a new claim for unemployment compensation shall, at the time
 137 of filing such claim, disclose whether or not he or she owes an uncollected overissuance
 138 of food stamp ~~coupons~~ instruments, as such term is defined in Code Section 16-9-63. The
 139 Commissioner shall notify the Department of Human Services or the successor state food
 140 stamp agency enforcing such obligation of any individual who discloses that he or she
 141 owes such uncollected overissuance and who is determined to be eligible for
 142 unemployment compensation."

143 **SECTION 4.**

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

149 "(e) Any individual who receives a ~~food stamp allotment~~ an allotment of a food instrument,
 150 as such term is defined in Code Section 16-9-63, for all or any part of a taxable year shall
 151 not be entitled to claim a credit under this Code section for that taxable year."

152 **SECTION 5.**

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

156 **SECTION 6.**

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

159 "(a) The department shall require that all electronic benefits transfer cards which include
 160 ~~food stamp~~ benefits for food instruments, as such term is defined in Code Section 16-9-63,
 161 contain a photograph of one or more members of a household who are authorized to use
 162 such food ~~stamp instrument~~ benefits. The department ~~is~~ shall be authorized to promulgate
 163 regulations necessary to implement the provisions of this Code section."

164 **SECTION 7.**

165 The Official Code of Georgia Annotated is amended by replacing "Code Section 49-4-15"
 166 with "Code Section 16-9-63" wherever the former occurs in:
 167 (1) Code Section 16-10-51, relating to bail jumping; and

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

170

SECTION 8.

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