

HOUSE BILL REPORT

SSB 6386

As Reported by House Committee On:
Early Learning & Human Services
Ways & Means

Title: An act relating to fraud in state assistance programs.

Brief Description: Enacting measures to reduce public assistance fraud.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Carrell, Becker, Zarelli, Hargrove, Delvin, Schoesler, Honeyford and Keiser).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/20/12, 2/21/12 [DPA];
Ways & Means: 2/24/12, 2/25/12 [DPA(WAYS w/o ELHS)].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Prohibits the use of an electronic benefit transfer (EBT) card by a recipient's family member who is not the recipient's authorized representative, an alternative card holder, or protective payee.
- Prohibits the Department of Social and Health Services (DSHS) from routinely assigning a personal identification number for an EBT card that contains any sequence of numbers that appears on the face of the card, except in cases of in-state or national disaster.
- Authorizes the Office of Fraud and Accountability to have access to child care records maintained by child care providers by consent, court order, or valid search warrant.
- Removes the requirement that an applicant or recipient of child care subsidies seek child support services through the DSHS as a condition of receiving such subsidies.
- Requires the Office of Fraud and Accountability, the State Auditor's Office, and the Department of Early Learning to collaborate in an effort to identify and review overpayments, and to provide the Legislature with recommendations for monitoring and detection systems to prevent over payments; a report is due to the Legislature by October 1, 2013.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Removes the provisions making selling, attempting to sell, exchange, or donate an electronic benefit card or any benefits to any other person a civil infraction.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Overstreet.

Staff: Linda Merelle (786-7092).

Background:

Public assistance benefits may be provided in the form of an electronic benefit transfer (EBT) card. Only the recipient or the recipient's authorized representative may use an EBT card or EBT card benefits, and the use may only be for the respective benefit purposes. The recipient may not sell, or attempt to sell, exchange, or donate an EBT card or any benefits to any other person or entity. The first violation of the use of an EBT card is a class 4 civil infraction. The penalty for the second and subsequent violations constitute a class 3 civil infraction.

In 2011 the Office of Fraud and Accountability (OFA) was established in the Department of Social and Health Services (DSHS) to detect, investigate, and prosecute any act that constitutes fraud or abuse in the public assistance programs administered by the DSHS except for Medicaid and other medical programs. The OFA is directed to conduct independent investigations into allegations of fraud and abuse, recommend policies, procedures, and best practices designed to detect and prevent fraud and abuse, analyze cost effective, best practice alternatives to the current cash benefit delivery system, and use best practices to determine the appropriate use and deployment of investigative resources.

The OFA was directed to report to the Legislature on the development of the newly formed office, the identification of any barriers to meeting the stated goals of the OFA, and recommendations for improvement to the system and laws related to the prevention, detection, and prosecution of fraud and abuse in public assistance programs.

In January 2012 the OFA issued its report to the Legislature and it identified as one of its barriers the lack of investigators' access to records of child care providers when conducting a fraud investigation. Both the State Auditor, in its 2011 audit of subsidized child care programs, and the OFA recommended that fraud investigators be provided immediate access to child care provider records, especially attendance records.

Child Support Services.

State-subsidized child care is one form of public assistance that is available to eligible applicants. It is available both to parents who receive public assistance benefits, as well as parents who do not. As a condition of receiving subsidized child care, an applicant or recipient must seek child support enforcement services from the Division of Child Support within the DSHS. The DSHS, upon a finding of good cause, may waive this condition.

Summary of Amended Bill:

Use of Electronic Benefit Transfer Cards.

A recipient's family member may only use an EBT card provided to the recipient if the family member is an eligible member of the household, the recipient's authorized family member, an alternative cardholder, or has been assigned as a protective payee.

In assigning a personal identification number (PIN) to an EBT card, the DSHS must not routinely use a sequence of numbers that matches any sequence of numbers that appear on the front of the card, except in cases of in-state or national disasters. Under those circumstances, the DSHS may, in its discretion, use a sequence that duplicates a sequence on the face of the card.

It is a misdemeanor for a person to have in his or her possession or under his or her control EBT cards that are issued in the names of two or more persons, without authorization from the persons in whose name the cards were issued.

Records of Child Care Providers.

An investigator for the OFA may gain access to all child care records maintained by licensed and unlicensed child care providers if the provider consents, a court order has ordered such access, or the investigator has a valid search warrant.

Child Support Services.

An applicant or recipient is no longer required, as a condition of receiving subsidized child care, to seek child support enforcement services from the Division of Child Support.

Overpayments.

The OFA, in collaboration with the Department of Early Learning and the State Auditor, must identify, review, and report to the Legislature regarding integrated monitoring and detection systems to prevent overpayments of public assistance benefits. The report to the Legislature is due by October 1, 2013.

Amended Bill Compared to Substitute Bill:

The provision that made it a misdemeanor or gross misdemeanor offense to attempt to sell or exchange food stamps or food stamp benefits was removed. The provision that made it a

class C felony or a gross misdemeanor, depending upon the amount of the benefit involved, to knowingly initiate, organize, plan, finance, direct, manage, or supervise the theft of food stamps for sale to others has been removed.

The DSHS is not categorically prohibited from using a sequent of numbers that appear on an EBT card as the PIN for that card, but it is prohibited from doing so routinely, except in circumstances of a disaster, either in-state or national.

The offense of possessing or being in control of EBT cards in the name of two or more persons is clarified to state that it is a criminal offense if the person in possession of the cards does not have authorization from the persons in whose names the cards were issued.

Applicants and recipients of subsidized child care are no longer required to seek child support enforcement services as a condition of receiving subsidized child care.

The due date for the report to the Legislature regarding integrated monitoring and detection systems to prevent overpayments of public assistant benefits is due October 1, 2013, rather than January 1, 2013.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Part of this bill is directed at traffickers. There are people who pick up the cards and get the value and give the recipient back a portion of that value. The PIN should be assigned so that it is not easy for a person who finds the card to guess the number. This bill will go a long way towards giving appropriate tools that the DSHS has requested so that the state gives money to those who are truly needy. This helps restore the confidence of the public in what the state is doing. It is important that the public knows that the state is doing due diligence to make sure that money is being directed appropriately.

(In support with amendment) The provision which restricts the use of the EBT card would prohibit family members outside of the unit from using the card even if that family member used the card to purchase basic need items for the recipient family. For those who receive public assistance, the EBT cards are a lifeline. An amendment to allow outside family members to make purchases on behalf of the household would remedy the hardship imposed by the provisions of the bill that restrict who can use the card.

(Opposed) None.

Persons Testifying: (In support) Senator Carrell, prime sponsor.

(In support with amendment) Jennifer Estroff, Children's Alliance.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Early Learning & Human Services. Signed by 27 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

Staff: Melissa Palmer (786-7388).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Early Learning & Human Services:

The bill as amended by the Ways and Means Committee makes a technical change to make the internal references in the bill consistent and specifies an investigator of the Office of Fraud and Accountability (OFA) must have access to all original child care records maintained by licensed and unlicensed child care providers. The requirement that the OFA, the State Auditor's Office (Auditor), and the Department of Early Learning (DEL) to collaborate in an effort to identify, review, and provide the Legislature with recommendations for integrated monitoring and detection systems to prevent overpayments of public assistance is removed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2012.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a bill that deals with welfare fraud. Welfare fraud was a topic the Legislature dealt with last year. This bill responds to what was learned regarding fraud prevention since last session. Based on information from the OFA, the DEL, and the Auditor, it is clear there is a need for additional enhancements to address fraud. The bill is commended to you.

Primarily this bill reflects refining some of the provisions that were put into place last session to deal with fraud. There is a desire to make sure the state's resources are going to the most needy. Since the enactment of the child support enforcement requirement for child care subsidies, there have been endless concerns raised regarding the policy. The policy has

caused delays in accessing child care. Additionally, the projected savings have not materialized. Child support enforcement can continue to be offered, rather than required, for these families.

(Opposed) None.

Persons Testifying: Senator Carrell, prime sponsor; and Lonnie Johns-Brown, National Organization for Women.

Persons Signed In To Testify But Not Testifying: None.