

SENATE BILL REPORT

SB 6386

As Reported by Senate Committee On:
Human Services & Corrections, February 2, 2012

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

Brief Description: Enacting measures to reduce public assistance fraud.

Sponsors: Senators Carrell, Becker, Zarelli, Hargrove, Delvin, Schoesler, Honeyford and Keiser.

Brief History:

Committee Activity: Human Services & Corrections: 1/26/12, 2/02/12 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6386 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Harper, McAuliffe and Padden.

Staff: Jennifer Strus (786-7316)

Background: For purposes of receiving public assistance benefits, only the recipient or the recipient's authorized representative may use an electronic benefits transfer (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 on the use of an EBT card is a class 4 civil infraction under RCW 7.80.120. 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 DSHS except for Medicaid and other medical programs. OFA is 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. No later than December 31, 2011, OFA is to report to the Legislature on the development of the office, identification of any barriers to

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meeting the stated goals of 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.

On January 3, 2012, OFA issued its report on the development of its office. One of the barriers to meeting the stated OFA goals, as identified in the report, was investigator's access to child care records when conducting a fraud investigation. Both the State Auditor, in its audit of the subsidized child care program last year, and OFA recommended that fraud investigators be provided immediate access to child care records, especially attendance records.

Summary of Bill (Recommended Substitute): Unless a recipient's 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, none of the recipient's family members can use the EBT card.

In assigning a personal identification number (PIN) to an EBT card, the sequence of numbers cannot match any sequence of numbers that appear on the front of the card.

An investigator for OFA has access to all child care records maintained by licensed and unlicensed child care providers if the investigator has the provider's consent, a court order, or a search warrant.

A person who sells, attempts to sell, or exchanges food stamps is guilty of a misdemeanor or gross misdemeanor depending upon the benefit value. A person who knowingly initiates, organizes, plans, finances, directs, manages or supervises the theft of food stamps for sale to others is guilty of a felony or gross misdemeanor depending upon the value of the benefit.

OFA, in collaboration with the Department of Early Learning and the state auditor, is to identify, review, and report to the Legislature on integrated monitoring and detection systems to prevent overpayments of public assistance from occurring.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Clarifies that unless a recipient's family member is an eligible member of the household, the recipient's authorized representative, an alternative cardholder, or has been assigned as a protective payee, no family member may use the benefit card. Removes language making the second violation of use of a EBT card a misdemeanor and returns it to original language of a civil infraction. Provides that in assigning a PIN number for EBT cards, the sequence of numbers cannot match any sequence of numbers on the front of the card. Clarifies that the OFA investigator can have access to the child care records of a family child care provider if the investigator has the provider's consent, a court order or a search warrant. Sections relating to criminal penalties for selling or trafficking in EBT cards are clarified and moved to the criminal statutes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: CON: Section 5, subsection 2 should be removed from the bill. It adds another burden on the parents to overcome before they can become eligible for WCCC and that is not fair. Concerned that the bill criminalizes certain uses of public assistance that are currently not illegal for others to use. Accountability is important but this bill goes beyond accountability. There seems to be a double standard for how the law applies to poor people. What if a recipient is sick and cannot get to the store. This bill would make it a crime for another to use the EBT card to get the sick person food. It is bad policy to criminalize families for trying to get by. Vast majority of WCCC errors are administrative errors. This is the issue the legislation should address. Providers are actually more likely to be underpaid than overpaid. There is a 60 percent administrative error rate by DEL. The automatic access to a provider's home is unconstitutional. The Legislature made so many changes in TANF last year that rather than going ahead with this bill the Legislature should take a step back and see how those changes are going before making others.

Persons Testifying: CON: Lonnie Johns-Brown, Head Start/EACAP; Kate Baber, Statewide Poverty Action Network; Lani Todd, SEIU 925; Robin Zukoski, Columbia Legal Services.