

CHAPTER 330

SOCIAL SERVICES

SENATE BILL 94-041

BY SENATORS Ruddick, Bishop, Blickensderfer, Hopper, Johnson, Meiklejohn, Norton, R. Powers, Schroeder, Tebedo, Traylor, Wattenberg, and Wham;
also REPRESENTATIVES Agler, Chlouber, Epps, Fleming, Friednash, Greenwood, Hagedorn, Jerke, Kaufman, Kerns, Kreutz, Lawrence, Martin, Nichol, Pfiffner, Prinster, Rupert, Snyder, and Williams.

AN ACT**CONCERNING FRAUDULENT OBTAINMENT OF PUBLIC ASSISTANCE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-73-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-73-102. Weekly benefit amount for total unemployment. (6) (a) THERE SHALL BE DEDUCTED FROM THE WEEKLY BENEFIT AMOUNT ANY UNCOLLECTED OVERISSUANCE OF FOOD STAMP COUPONS CALCULATED UNDER PARAGRAPHS (b) TO (f) OF THIS SUBSECTION (6).

(b) THE DIVISION SHALL DEDUCT AND WITHHOLD FROM ANY UNEMPLOYMENT COMPENSATION PAYABLE TO AN INDIVIDUAL THAT OWES AN UNCOLLECTED OVERISSUANCE OF FOOD STAMP COUPONS:

(I) THE AMOUNT SPECIFIED BY THE INDIVIDUAL TO THE DIVISION TO BE DEDUCTED AND WITHHELD UNDER THIS SUBSECTION (6);

(II) THE AMOUNT, IF ANY, DETERMINED PURSUANT TO AN AGREEMENT SUBMITTED TO THE DIVISION UNDER SECTION 13(c)(3)(A) OF THE FEDERAL "FOOD STAMP ACT", AS AMENDED, BY THE STATE FOOD STAMP AGENCY; OR

(III) ANY AMOUNT OTHERWISE REQUIRED TO BE DEDUCTED AND WITHHELD FROM SUCH UNEMPLOYMENT COMPENSATION PURSUANT TO SECTION 13(c)(3)(B) OF THE FEDERAL "FOOD STAMP ACT", AS AMENDED.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) ANY AMOUNT DEDUCTED AND WITHHELD UNDER PARAGRAPH (b) OF THIS SUBSECTION (6) SHALL BE PAID BY THE DIVISION TO THE APPROPRIATE STATE FOOD STAMP AGENCY.

(d) ANY AMOUNT DEDUCTED AND WITHHELD UNDER PARAGRAPH (b) OF THIS SUBSECTION (6) SHALL FOR ALL PURPOSES BE TREATED AS IF IT WERE PAID TO THE INDIVIDUAL AS UNEMPLOYMENT COMPENSATION AND THEN PAID BY SUCH INDIVIDUAL TO THE STATE FOOD STAMP AGENCY TO WHICH THE UNCOLLECTED OVERISSUANCE OF FOOD STAMP COUPONS IS OWED AS REPAYMENT FOR THE OVERISSUANCE.

(e) THIS SUBSECTION (6) APPLIES ONLY IF APPROPRIATE ARRANGEMENTS HAVE BEEN MADE FOR REIMBURSEMENT BY THE STATE FOOD STAMP AGENCY FOR THE ADMINISTRATIVE COSTS INCURRED BY THE DIVISION UNDER THIS SECTION THAT ARE ATTRIBUTABLE TO REPAYMENT OF UNCOLLECTED OVERISSUANCES OF FOOD STAMP COUPONS OWED TO THE STATE FOOD STAMP AGENCY.

(f) FOR THE PURPOSES OF THIS SUBSECTION (6):

(I) "STATE FOOD STAMP AGENCY" MEANS ANY AGENCY DESCRIBED IN SECTION 3(n)(1) OF THE FEDERAL "FOOD STAMP ACT", AS AMENDED, THAT ADMINISTERS THE FOOD STAMP PROGRAM ESTABLISHED UNDER SUCH FEDERAL ACT WITHIN THIS STATE.

(II) "UNCOLLECTED OVERISSUANCE" HAS THE MEANING PROVIDED FOR THE TERM IN SECTION 13(c)(1) OF THE FEDERAL "FOOD STAMP ACT", AS AMENDED.

(III) "UNEMPLOYMENT COMPENSATION" HAS THE MEANING PROVIDED FOR THE TERM IN PARAGRAPH (f) OF SUBSECTION (5) OF THIS SECTION.

SECTION 2. 13-54-104 (2) (a), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-54-104. Restrictions on garnishment and levy under execution or attachment. (2) (a) Except as provided in subsection (3) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment or levy under execution or attachment may not exceed:

(I) FOR DEBTS OTHER THAN DEBTS UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), twenty-five percent of ~~his~~ THE INDIVIDUAL'S disposable earnings for that week or the amount by which ~~his~~ THE INDIVIDUAL'S disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 of the United States Code in effect at the time the earnings are payable, whichever is less;

(II) FOR DEBTS FOR FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE OR FRAUDULENTLY OBTAINED OVERPAYMENTS COLLECTED PURSUANT TO SECTION 26-2-128 (1) (a), C.R.S., THIRTY-FIVE PERCENT OF THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK OR THE AMOUNT BY WHICH THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK EXCEED THIRTY TIMES THE FEDERAL MINIMUM HOURLY WAGE PRESCRIBED BY SECTION 206 (a)(1) OF TITLE 29 OF THE UNITED STATES CODE

IN EFFECT AT THE TIME THE EARNINGS ARE PAYABLE, WHICHEVER IS LESS.

SECTION 3. 13-54.5-104 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-54.5-104. Priority between multiple garnishments.

(1) (c) (I) Notwithstanding any other provision of this subsection (1), a continuing garnishment obtained pursuant to section 14-14-105, C.R.S., for the satisfaction of debts or judgments for child support shall have priority over any other continuing garnishment.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (1), A CONTINUING GARNISHMENT OBTAINED PURSUANT TO SECTION 26-2-128 (1) (a), C.R.S., FOR THE SATISFACTION OF A JUDGMENT FOR FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE OR FRAUDULENTLY OBTAINED OVERPAYMENTS HAS PRIORITY OVER ANY OTHER CONTINUING GARNISHMENT OTHER THAN A GARNISHMENT FOR COLLECTION OF CHILD SUPPORT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c).

SECTION 4. 26-1-127 (1), Colorado Revised Statutes, 1989 Repl. Vol., is amended, and the said 26-1-127 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-1-127. Fraudulent acts. (1) Any person who obtains or any person who willfully aids or abets another to obtain public assistance or vendor payments or medical assistance as defined in this title to which ~~he~~ THE PERSON is not entitled or in an amount greater than that to which ~~he~~ THE PERSON is justly entitled or payment of any forfeited installment grants or benefits to which ~~he~~ THE PERSON is not entitled or in a greater amount than that to which ~~he~~ THE PERSON is entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1-105, C.R.S., if the crime is classified as a felony, or section 18-1-106, C.R.S., if the crime is classified as a misdemeanor. TO THE EXTENT NOT OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW, ANY PERSON VIOLATING THE PROVISIONS OF THIS SUBSECTION (1) IS DISQUALIFIED FROM PARTICIPATION IN ANY PUBLIC ASSISTANCE PROGRAM UNDER ARTICLE 2 OF THIS TITLE FOR SIX MONTHS FOR A FIRST OFFENSE, ONE YEAR FOR A SECOND OFFENSE, AND PERMANENTLY FOR A THIRD OR SUBSEQUENT OFFENSE. SUCH DISQUALIFICATION IS MANDATORY AND IS IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW.

(1.5) TO THE EXTENT NOT OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW, ANY PERSON AGAINST WHOM A COUNTY DEPARTMENT OF SOCIAL SERVICES OR THE STATE DEPARTMENT OBTAINS A CIVIL JUDGMENT IN A STATE OR FEDERAL COURT OF RECORD IN THIS STATE BASED ON ALLEGATIONS THAT THE PERSON OBTAINED OR WILLFULLY AIDED AND ABETTED ANOTHER TO OBTAIN PUBLIC ASSISTANCE OR VENDOR PAYMENTS OR MEDICAL ASSISTANCE AS DEFINED IN THIS TITLE TO WHICH THE PERSON IS NOT ENTITLED OR IN AN AMOUNT GREATER THAN THAT TO WHICH THE PERSON IS JUSTLY ENTITLED OR PAYMENT OF ANY FORFEITED INSTALLMENT GRANTS OR BENEFITS TO WHICH THE PERSON IS NOT ENTITLED OR IN A GREATER AMOUNT THAN THAT TO WHICH THE PERSON IS ENTITLED, BY MEANS OF A WILLFULLY FALSE STATEMENT OR REPRESENTATION, OR BY IMPERSONATION, OR BY ANY OTHER FRAUDULENT DEVICE,

IS DISQUALIFIED FROM PARTICIPATION IN ANY PUBLIC ASSISTANCE PROGRAM UNDER ARTICLE 2 OF THIS TITLE FOR SIX MONTHS FOR A FIRST INCIDENT, ONE YEAR FOR A SECOND INCIDENT, AND PERMANENTLY FOR A THIRD OR SUBSEQUENT INCIDENT. SUCH DISQUALIFICATION IS MANDATORY AND IS IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO A JUDGMENT CREDITOR.

SECTION 5. 26-2-128 (1), Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

26-2-128. Recovery from recipient - estate. (1) If, at any time during the continuance of public assistance, the recipient thereof becomes possessed of any property having a value in excess of that amount set pursuant to the provisions of section 26-2-109 and the rules and regulations of the state department or receives any increase in income, it shall be the duty of the recipient to notify the county department of the possession of such property or receipt of such income, and the county department may, after investigation, either terminate the public assistance or alter the amount of assistance payments in accordance with the circumstances and the rules and regulations of the state department. TO THE EXTENT NOT OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW, IF THE RECIPIENT IS FOUND TO HAVE COMMITTED AN INTENTIONAL PROGRAM VIOLATION, THE RECIPIENT IS DISQUALIFIED FROM PARTICIPATION IN ANY PUBLIC ASSISTANCE PROGRAM UNDER THIS ARTICLE FOR SIX MONTHS FOR THE FIRST INCIDENT, ONE YEAR FOR A SECOND INCIDENT, AND PERMANENTLY FOR A THIRD OR SUBSEQUENT INCIDENT. SUCH DISQUALIFICATION IS MANDATORY AND IS IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW. Except as provided in subsections (3) and (4) of this section, any previously paid excess public assistance to which the recipient was not entitled shall be recoverable by the county as a debt due to the state and the county in proportion to the amount of public assistance paid by each respectively; except that any fraudulently obtained public assistance or fraudulently obtained overpayments shall be recoverable and payable in proportionate shares as provided in section 26-1-112 (2) (b), and interest shall be charged and paid to the county department on any sum fraudulently obtained calculated at the legal rate and calculated from the date the recipient obtained such sum to the date such sum is recovered. THE FOLLOWING REMEDIES APPLY FOR THE ENFORCEMENT AND COLLECTION OF A DEBT FOR FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE OR FRAUDULENTLY OBTAINED OVERPAYMENTS:

(a) IF THE DEBT FOR FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE OR FRAUDULENTLY OBTAINED OVERPAYMENTS HAS BEEN REDUCED TO A JUDGMENT IN A COURT OF RECORD IN THIS STATE, THE COUNTY DEPARTMENT MAY SEEK A CONTINUING GARNISHMENT TO COLLECT THE DEBT UNDER ARTICLE 54.5 OF TITLE 13, C.R.S.

(b) IF THE PERSON HAS RECEIVED AN OVERISSUANCE OF FOOD STAMP COUPONS RESULTING FROM FRAUD OR WILLFUL MISREPRESENTATION THAT HAS NOT BEEN RECOVERED BY REPAYMENT UNDER SECTION 13(b)(1) OF THE FEDERAL "FOOD STAMP ACT", AS AMENDED, THE STATE SHALL RECOVER THE OVERISSUANCE BY WITHHOLDING UNEMPLOYMENT COMPENSATION TO WHICH THE PERSON IS ENTITLED PURSUANT TO SECTION 8-73-102 (6), C.R.S.

SECTION 6. Part 1 of article 2 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

26-2-134. Checks, drafts, or orders for payment of moneys for public assistance - identification of bearer. (1) TO PREVENT THE FRAUDULENT OBTAINMENT OF PUBLIC ASSISTANCE, A PERSON RECEIVING ANY CHECK, DRAFT, OR ORDER FOR THE PAYMENT OF MONEY ISSUED FOR ANY PAYMENT FOR A PUBLIC ASSISTANCE PROGRAM UNDER THIS ARTICLE MAY NOT CASH OR ACCEPT THE CHECK, DRAFT, OR ORDER UNLESS THE BEARER OF THE CHECK, DRAFT, OR ORDER PRESENTS PROOF OF IDENTIFICATION DEMONSTRATING THAT THE BEARER IS THE PROPER RECIPIENT OF THE PUBLIC ASSISTANCE PAYMENT. THE RECIPIENT OF THE CHECK, DRAFT, OR ORDER SHALL PROVIDE NOTATION ON THE CHECK, DRAFT, OR ORDER REGARDING THE IDENTIFICATION PROVIDED BY THE BEARER.

(2) PROOF OF IDENTIFICATION FOR A PUBLIC ASSISTANCE PAYMENT UNDER SUBSECTION (1) OF THIS SECTION MAY BE DEMONSTRATED ONLY BY THE PRESENTATION OF ONE OF THE FOLLOWING DOCUMENTS:

- (a) A VALID DRIVER'S LICENSE ISSUED BY ANY STATE;
- (b) A VALID IDENTIFICATION CARD ISSUED BY ANY STATE OR FEDERAL AGENCY;
- (c) A SOCIAL SECURITY CARD;
- (d) A MILITARY IDENTIFICATION CARD ISSUED BY THE ARMED FORCES OF THE UNITED STATES;
- (e) A VALID PASSPORT ISSUED BY THE UNITED STATES;
- (f) A VALID COUNTY SOCIAL SERVICES IDENTIFICATION CARD; OR
- (g) A VALID IDENTIFICATION CARD ISSUED BY AN EMPLOYER.

(3) IF ANY PERSON CASHES OR ACCEPTS A CHECK, DRAFT, OR ORDER FOR THE PAYMENT OF MONEY WITHOUT PROPER IDENTIFICATION IN VIOLATION OF THE PROVISIONS OF THIS SECTION, THE APPROPRIATE STATE AGENCY MAY DETERMINE NOT TO MAKE PAYMENT ON THE CHECK, DRAFT, OR ORDER IF THERE IS AN ALLEGATION OF FRAUD REGARDING THE CHECK, DRAFT, OR ORDER FOR THE PAYMENT OF MONEY, AND, IF THERE IS A DETERMINATION THAT PAYMENT SHOULD NOT BE MADE, THE STATE AND ANY STATE AGENCY ARE NOT LIABLE FOR PAYMENT OF THE CHECK, DRAFT, OR ORDER.

SECTION 7. 26-2-305 (1), Colorado Revised Statutes, 1989 Repl. Vol., is amended, and the said 26-2-305 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-2-305. Fraudulent acts - penalties. (1) Any person who obtains, or any person who aids or abets another to obtain, food stamp coupons or authorization to purchase cards OR AN ELECTRONIC BENEFITS TRANSFER CARD OR SIMILAR CREDIT CARD-TYPE DEVICE THROUGH WHICH FOOD STAMP BENEFITS MAY BE DELIVERED to which ~~he~~ THE PERSON is not entitled, or food stamp coupons or authorization to purchase cards OR AN ELECTRONIC BENEFITS TRANSFER CARD OR SIMILAR CREDIT CARD-TYPE DEVICE THROUGH WHICH FOOD STAMP BENEFITS MAY BE DELIVERED the value of which is greater than that to which ~~he~~ THE PERSON is justly entitled by means of a willfully false statement or representation, or by impersonation, or by any other

fraudulent device with intent to defeat the purposes of the food stamp program commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1-105, C.R.S., if the crime is classified as a felony, or section 18-1-106, C.R.S., if the crime is classified as a misdemeanor. ANY PERSON VIOLATING THE PROVISIONS OF THIS SUBSECTION (1) IS DISQUALIFIED FROM PARTICIPATION IN THE FOOD STAMP PROGRAM FOR SIX MONTHS FOR A FIRST OFFENSE, ONE YEAR FOR A SECOND OFFENSE, AND PERMANENTLY FOR A THIRD OR SUBSEQUENT OFFENSE. SUCH DISQUALIFICATION IS MANDATORY AND IS IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW.

(1.5) ANY PERSON AGAINST WHOM A COUNTY DEPARTMENT OF SOCIAL SERVICES OR THE STATE DEPARTMENT OBTAINS A CIVIL JUDGMENT IN A STATE OR FEDERAL COURT OF RECORD IN THIS STATE BASED ON ALLEGATIONS THAT THE PERSON OBTAINED OR WILLFULLY AIDED AND ABETTED ANOTHER TO OBTAIN FOOD STAMP COUPONS OR AUTHORIZATION TO PURCHASE CARDS OR AN ELECTRONIC BENEFITS TRANSFER CARD OR SIMILAR CREDIT CARD-TYPE DEVICE THROUGH WHICH FOOD STAMP BENEFITS MAY BE DELIVERED THE VALUE OF WHICH IS GREATER THAN THAT TO WHICH THE PERSON IS JUSTLY ENTITLED BY MEANS OF A WILLFULLY FALSE STATEMENT OR REPRESENTATION, OR BY IMPERSONATION, OR BY ANY OTHER FRAUDULENT DEVICE WITH INTENT TO DEFEAT THE PURPOSES OF THE FOOD STAMP PROGRAM, IS DISQUALIFIED FROM PARTICIPATION IN THE FOOD STAMP PROGRAM FOR SIX MONTHS FOR A FIRST INCIDENT, ONE YEAR FOR A SECOND INCIDENT, AND PERMANENTLY FOR A THIRD OR SUBSEQUENT INCIDENT. SUCH DISQUALIFICATION IS MANDATORY AND IS IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO A JUDGMENT CREDITOR.

SECTION 8. Appropriation in long bill to be adjusted. For the implementation of this act, appropriations made in the annual general appropriation act to the department of social services for the fiscal year beginning July 1, 1994, shall be adjusted as follows: The appropriation is reduced by four thousand five hundred ninety-five dollars (\$4,595), of which sum two thousand seven hundred ninety-five dollars (\$2,795) is from the general fund, five hundred fifty dollars (\$550) is from county cash funds, and one thousand two hundred fifty dollars (\$1,250) is from federal funds.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1994, and shall apply to offenses committed on or after said date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1994