

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1232

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Baxley

SUBJECT: Public Assistance Fraud

DATE: February 27, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1232 requires that the state-retained share of recoveries made by the Department of Children and Families (DCF) from public assistance fraud must be deposited into the Federal Grants Trust Fund and must be used exclusively by the DCF in its efforts to combat public assistance fraud. The bill requires the DCF to develop a plan on how to use these funds, including the payment of awards to persons reporting fraud. The bill directs the DCF to report annually to the Legislature increases in the state's retained share of recoveries of public assistance overpayments.

To the extent the Legislature appropriates the state-retained share of recoveries for additional prevention or deterrence efforts, the bill may reduce public assistance fraud.

The bill is effective July 1, 2018.

II. Present Situation:

Public Assistance Programs

The Department of Children and Families (DCF) operates the Economic Self-Sufficiency program, also known as ACCESS. There are five services within the Economic Self-Sufficiency program, as described below.

- **Temporary Cash Assistance** provides cash assistance to families with children under the age of 18, or through age 18 if the 18-year-old is enrolled in high school full time. The program provides time-limited financial assistance and services intended to help families gain economic self-sufficiency. These families must meet the program's technical, income, and asset requirements.
- **Food Assistance Program** helps low income families meet their household nutritional needs by supplementing their purchasing power with a monthly benefit allotment based on the number of people in the household and how much money is left after countable expenses are subtracted. Families must meet the program's eligibility rules. Food assistance benefits may only be used to purchase groceries; they may not be used to purchase household items such as cleaning supplies, grooming items, tobacco, alcoholic beverages, or hot food.
- **Relative Caregiver Program** provides monthly cash assistance to relatives who have custody of a related child under age 18 who has been found to be dependent by a Florida court and placed in their home by a Community-Based Care Lead Agency. The monthly cash assistance amount is higher than a Temporary Cash Assistance payment for one child, but less than the amount paid for a child in the foster care program.
- **Optional State Supplementation** is a state-funded public assistance program that provides a monthly cash payments to indigent elderly or disabled individuals who live in special non-institutional, residential living facilities, including assisted living facilities, adult family care homes and mental health residential treatment facilities.
- **Medicaid** provides medical coverage to low-income individuals and families and the Economic Self-Sufficiency program determines eligibility for all Medicaid program participants, except for individuals who receive federal Supplemental Security Income (SSI) payments, as these individuals are automatically Medicaid eligible. The Medicaid program is administered by the Agency for Health Care Administration.

In addition, the state investigates fraud resulting from Disaster Assistance/Emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.¹

Public Assistance Fraud

Section 414.39, F.S., specifies that someone who fails to disclose information used to determine their eligibility for public assistance, fails to disclose a change in circumstances that would affect their eligibility, or aids another person in the commission of any such act, commits a misdemeanor or felony, depending on the amount of the fraud.

Department of Children and Families

Section 414.39, F.S., also requires the DCF to create an error-prone or fraud-prone case profile within its public assistance information system and shall screen each application for public assistance, including food assistance, Medicaid, and temporary cash assistance, against the profile to identify cases that have a potential for error or fraud. Each case so identified shall be subjected to pre-eligibility fraud screening. If funded to do so, the DCF shall pay a reward to a person who furnishes and reports original information relating to a violation of the state's public

¹ Department of Financial Services, Division of Public Assistance Fraud website.
<https://www.myfloridacfo.com/division/PAF/> (last visited 1/18/18).

assistance fraud laws. In 2011, the DCF created the Public Benefits Integrity office to prevent and detect fraud, waste, and abuse in the public assistance programs, as well as to recover benefits that were erroneously paid. In Fiscal Year 2015-16, the office collected over \$22 million through benefit recovery.²

When benefits are overpaid, a claim is established by the DCF detailing the dollar amount of benefits within each public assistance program in which the recipient household may have participated. The claim amounts to a federal debt that must be repaid by the household. Under existing public assistance program rules, a percentage of the federal claim may be retained by the state as an incentive to identify and recover overpaid benefits.³ The percentage of federal debt collected that the state may retain is known as the state-retained share of recoveries. The percentage retained varies based on the reason that benefits were overpaid in the first place.

Further, s. 414.39, F.S., allows the DCF, subject to availability of funds, to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws if:

- A report is made to DFS or the Department of Law Enforcement (FDLE),
- The information relates to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person, or
- It leads to the recovery of a fine, penalty, or forfeiture of property.

The reward may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward shall be paid from the state share of the recovery in the DCF Federal Grants Trust Fund.

Department of Financial Services

Section 414.411, F.S., assigns the responsibility to investigate all public assistance fraud to the Department of Financial Services (DFS). DFS examines records and interviews persons who may have knowledge of public assistance fraud. All public assistance recipients must allow state agencies access to their past or present employers and records. DFS may administer oaths and affirmations, and issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondences, memoranda, and other records. The Division of Public Assistance Fraud within DFS is considered a criminal justice agency. Such designation allows access to specialized training and to the state and federal criminal history databases.⁴ DFS public assistance fraud investigations can result in criminal prosecution based on a referral to a state attorney or administrative sanctions and recoveries in the commission of fraud. Currently, DFS investigates less than 10% of the referrals made by the DCF and the Office of Early Learning.⁵

² Office of Program Policy Analysis and Government Accountability, Government Program Summaries, available at <http://www.oppaga.state.fl.us/profiles/5047> (last visited 1/17/18).

³ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

⁴ Florida Crime Information Center/National Crime Information Center

⁵ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

III. Effect of Proposed Changes:

Section 1 amends s. 414.39, F.S., to clarify that the amount of the reward the DCF may pay for information regarding public assistance fraud may not exceed 10 percent of the amount recovered in full or \$500,000, whichever is less. Current law allows the DCF to pay awards up to 10 percent of the amount recovered or \$500,000, whichever is less.

Section 2 amends s. 414.41, F.S., relating to recovered funds from public assistance fraud. The bill requires that all state-retained recoveries be deposited in the Federal Grants Trust Fund and be retained each year for use by the DCF for its efforts to combat public assistance fraud. The bill allows such funds to be used to pay awards as well as pay for fraud prevention initiatives implemented by the DCF. The DCF will report to the legislature each October 1st what such initiatives accomplished in regards to the amount of awards paid and the outcome of fraud prevention activities. The bill requires such expenditures to be appropriated by the Legislature. Currently, the DCF can propose to use such funds for public assistance fraud prevention through its Legislative Budget Request.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill restricts the use of recovered funds from public assistance fraud in the DCF Federal Grants Trust Fund to activities contained in the DCF's plan for improving its efforts to combat public assistance fraud.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF collects between \$4 and \$7 million each year beyond the costs of its public assistance fraud recovery efforts.⁶ These funds are typically appropriated by the legislature for department priorities in the General Appropriations Act each year. The bill requires state-retained recoveries be appropriated to the DCF for activities in its plan for reducing public assistance fraud.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 414.39 and 414.41.

IX. Additional Information:

- A. Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 22, 2018:

The CS removes the designation of DCF's public assistance fraud office as a criminal justice agency.

- B. Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶ Department of Children and Families Bill Analysis of SB 1232. Dated 12/12/17. On file with the Senate Committee on Children, Families and Elder Affairs.