

**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.)

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Prepared By: The Professional Staff of the Committee on Committee Code Not Found

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BILL: SB 1084

INTRODUCER: Criminal Justice Committee

SUBJECT: Public Assistance Fraud

DATE: February 18, 2014

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Cannon		<b>CJ SPB 7044 as Introduced</b>

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## I. Summary:

SB 1084 amends s. 414.39(5), F.S., to set an upper limit on the value of public assistance fraud that is punishable as a third degree felony and by creating new felony crimes, a first degree and a second degree felony, based upon graduated increasing dollar values.

Subsection 414.39(11), F.S., is created to provide for a reward program that will pay persons for providing information that relates to criminal public assistance fraud and that leads to the recovery of a fine, penalty, or forfeiture of property.

The bill creates restrictions related to the Temporary Cash Assistance program administered by the Department of Children and Families (DCF). Specifically, the bill limits the use of temporary cash assistance out of state to thirty consecutive days. The bill also requires that a protective payee<sup>1</sup> be designated to receive temporary cash assistance on behalf of an eligible child where a parent or caretaker relative has become ineligible due to fraud.

The bill becomes effective on October 1, 2014.

## II. Present Situation:

### Public Assistance Fraud

“Public assistance” refers to benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.<sup>2</sup> Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS).<sup>3</sup>

Section 414.39(1), F.S., provides that a person commits a crime if they:

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<sup>1</sup> Section 414.065(2)(b), F.S.

<sup>2</sup> Section 414.0252(10), F.S.

<sup>3</sup> Section 414.411, F.S.

- Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or federally funded assistance program;
- Fail to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aid and abet another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if they:

- Use, transfer, acquire, traffic, alter, forge, or possess;
- Attempt to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aid and abet another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program commits a crime if they:

- Fraudulently misappropriate, attempt to misappropriate, or aid and abet in the misappropriation of, food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriate, attempt to misappropriate, or aid or abet in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

Section 414.39(4), F.S., provides that a person commits a crime if they:

- Knowingly file, attempt to file, or aid and abet in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or if they knowingly bill the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;
- Knowingly fail to credit the state or its agent for payments received from social security, insurance, or other sources; or

- In any way knowingly receive, attempt to receive, or aid and abet in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense. Currently, s. 414.39(5), F.S., provides:

- (a) If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;<sup>4</sup> or
- (b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.<sup>5</sup>

### Temporary Cash Assistance

“Temporary Cash Assistance” (TCA) is defined as cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.<sup>6</sup> The DCF administers Florida’s TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full time high school students, that meet specified technical, income, and asset requirements.<sup>7</sup>

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits,<sup>8</sup> sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. The statute also contains a multitude of prohibitions and restrictions. For example:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and
- The parent or other caretaker relative must report to the department by the end of the 5-day period that begins on the date it becomes clear to the parent or caretaker relative that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to the department shall be disqualified from

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 414.0252(12), F.S.

<sup>7</sup> <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on January 29, 2014).

<sup>8</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony<sup>10</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$20,000 or more, but less than \$100,000* in any 12 consecutive months.
- (d) Makes it a first degree felony<sup>11</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$100,000 or more* in any 12 consecutive months.

The bill requires the DCF or the director of DCF's Office of Public Benefits Integrity, 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, unless the person declines the reward. The information and report must:

- Be made to DCF, DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41, F.S.<sup>12</sup> The bill specifies that a person who receives a reward is not eligible to receive funds pursuant to the Florida False Claims Act for Medicaid fraud for which the reward was received.<sup>13</sup>

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions. The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the

<sup>9</sup> Section 414.095(14), F.S.

<sup>10</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

<sup>13</sup> Under Florida's False Claims Act (ss. 68.081-68.092, F.S.), people who blow the whistle on Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

TCA benefits if used out-of-state for more than 30 days. The bill directs DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.

The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.<sup>14</sup> The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and in a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The bill becomes effective October 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>14</sup> Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

C. Government Sector Impact:

***Prison Beds***

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates new first and second degree felony offenses relating to public assistance fraud.

***Department of Children and Families***<sup>15</sup>

DCF reports that:

- Additional revenues may be received due to the bill’s reward provisions, but that an anticipated amount is not available at this time.
- Reducing annual TCA expenditures by terminating the benefits received by recipients no longer residing in the state of Florida may result in an estimated annual savings of \$1.8 million (based on repeated out of state use and averages).
- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S., in the Federal Grants Trust Fund, which is a significant source of funding for DCF’s Public Benefit Integrity (PBI) program. Reduction of these funds may cause the need for additional funding sources for the PBI operation.
- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286% increase in calls relating to Medicaid Fraud when it initiated a reward program in the first year. DCF’s PBI currently receives an average of 26,400 online and telephonic fraud reports annually and projects an additional 7 staff are needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

Current call/ complaint volume	26,400
Additional anticipated volume (286% increase)	75,504
Minutes to log and process each complaint	8
Hours of additional workload	10,067
Contract staff to handle workload (10,067 / 2000 hrs per yr)	5.03
Current hourly cost for Financial Specialist (contractor)	\$16.10
Expected additional cost (\$16.10 * 2000 hrs * 5)	\$161,000

Additional DCF Staffing Need  
 1 FTE: Rewards Program Manager (OMC I – SES)  
 1 OPS ACCESS Integrity Investigator (ESS II)

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<sup>15</sup> The following fiscal information was provided by the Department of Children and Families on January 14, 2014, in the Department’s Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.

Salaries and Benefits	\$48,003
Other Personnel Services	\$35,601
Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract staff	\$9,473
Recurring Expenses (Rent, Supplies, telephone, postage)	\$9,761
Technology (Software Programming)	\$85,000
Contracted Services (6 Financial Specialists)	\$161,000
DMS-Human Resources Services Surcharge	\$344
<b>Total</b>	<b>\$349,182</b>

Estimates are based on what a similar increase to that of the AG reward program was when established and that the actual impact may deviate from this amount.

- Notification to TCA recipients regarding out of state use will annually cost an estimated \$3,500.

### *Department of Financial Services<sup>16</sup>*

DFS reports that:

- A possible fiscal impact through increased numbers of violations reported that generate a repayment to the state. The state retains between 20% and 35% of recoveries.
- Implementation of the cash reward process provided by this bill will generate a significant increase in the number of complaints received. Given current Division staffing and the lack of sufficient administrative support positions, additional personnel resources are needed along with dedicated telephone lines. The increased number of calls reporting possible fraud cannot be absorbed by existing resources without a significantly-negative impact on the performance of the division.
- Since 2008 the Division has been cut down to 63 staff members, over 50% reduction. Therefore, the Division has limited resources to absorb any additional workload.
- DFS estimates the need for additional funding of:
  - \$122,874 for five administrative support positions (five @ \$19,199/yr = \$95,995 + \$26,878/yr in benefit costs @ 28% of salary).
  - \$17.3K for office space is available in Miami, Pensacola, Tallahassee, at the Division Headquarters.
    - The fifth support position would require additional space (80sqft @ average of \$18sqft/month x 12 months/year = \$17,280).
  - A non-recurring \$9.0K for office furniture and computer equipment for 5 OPS employees (5 @ \$1.8K).

<sup>16</sup> The following fiscal information was provided by the Department of Financial Services on February 3, 2014, in the Department's Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 414.095 and 414.39.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.