

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 105	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Criminal Justice Subcommittee; Smith and others	86 Y's	31 N's
<b>COMPANION BILLS:</b>	CS/SB 218	<b>GOVERNOR'S ACTION:</b>	Approved

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### SUMMARY ANALYSIS

CS/HB 105 passed the House on February 3, 2016, as CS/SB 218 as amended. The Senate amended the House amendment to the Senate Bill on March 10, 2016. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 10, 2016.

Currently, s. 414.39(2), F.S., in relevant part, makes it a criminal offense for a person to knowingly use, transfer, acquire, *traffic*, alter, forge, or possess, in any manner not authorized by law, a food assistance identification card or an authorization, including an electronic authorization, for the expenditure of food assistance benefits. The subsection also specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts. Depending on the value of the public assistance wrongfully received, retained, misappropriated, sought, or used, these criminal offenses range from a first degree misdemeanor to a first degree felony.

Florida law does not currently describe acts that are included in the term "traffic" as used above. The bill adds language providing that the following acts are included in the term "traffic":

- Buying, selling, stealing, or otherwise effecting an exchange of certain food assistance benefits for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone
- Exchanging firearms, ammunition, explosives, or controlled substances for food assistance benefits;
- Purchasing a product with food assistance benefits and subsequently intentionally reselling the product in exchange for cash or consideration other than eligible food; and
- Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food.

Further, the bill makes it a first degree misdemeanor for an individual to possess two or more electronic benefits transfer cards for food assistance benefits which were issued to other persons and to sell or attempt to sell one or more of the cards. It also specifies that a second or subsequent violation constitutes a third degree felony. A person who commits this violation must be ordered by the court, in addition to any other penalty, to serve at least 20 hours of community service. If determined feasible by the court, such community service must be performed with a nonprofit entity that provides the community with food services for the needy.

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have a positive, insignificant prison bed impact, i.e., the bill will increase the number of prison beds needed by 10 or fewer beds. The bill may also have a positive jail bed impact for local governments because it creates a new first degree misdemeanor.

The bill was approved by the Governor on April 6, 2016, ch. 2016-185, L.O.F., and will become effective on October 1, 2016.

### I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0105z1.CRJS

**DATE:** April 7, 2016

## A. EFFECT OF CHANGES:

### Food Assistance Benefits

Food assistance benefits, formerly referred to as food stamps, are provided through the federal Supplemental Nutrition Assistance Program (SNAP).<sup>1</sup> These benefits are disbursed to recipients on a monthly basis primarily through an electronic benefits transfer (EBT) to a debit card that may be accessed using a personal identification number (PIN), although, in some cases, manual benefits vouchers may be used, e.g., when electronic systems are not working.<sup>2</sup> In Florida, the EBT debit card is referred to as the EBT Access card.<sup>3</sup> Benefits that are not used in one month carry over to the following month.<sup>4</sup>

Purchases with food assistance benefits must be made at retailers that have been approved by the United States (U.S.) Department of Agriculture.<sup>5</sup> Florida law specifically prohibits use or acceptance of food assistance benefits at adult entertainment establishments, casinos, and gambling and gaming facilities.<sup>6</sup> The benefits:

- May be used to buy breads cereals, fruits, vegetables, meats, fish, poultry, dairy products, and seeds and plants to grow and produce food for a household to eat.
- May not be used to buy beer, wine, liquor, cigarettes, tobacco, pet food, soaps, paper products, household supplies, vitamins, medicines, food that will be eaten in the store, or hot food.<sup>7</sup>

As of December 2015, 45,188,655 persons from 22,324,378 households were receiving food assistance benefits nationwide. Of those totals, 3,698,548 persons from 2,050,271 households were Florida residents (19.7 percent of this state's population).<sup>8</sup> For federal Fiscal Year 2014, the average monthly benefit per Florida resident was \$129.33 and per Florida household was \$237.45.<sup>9</sup> A total of \$5.47 billion in food assistance benefits were distributed in Florida during federal Fiscal Year 2014.<sup>10</sup>

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<sup>1</sup> 7 C.F.R. § 271.1 (2015).

<sup>2</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/mobile/benefits/how-to-use-ebt-card.html> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

<sup>3</sup> Florida Department of Children and Families, *Welcome to EBT*, <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt> (last visited on November 1, 2015).

<sup>4</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program Retail Merchants*, <http://www.fns.usda.gov/snap/mobile/benefits/what-can-i-buy.html> (last visited November 1, 2015).

<sup>5</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/retailers-0> (last visited November 1, 2015).

<sup>6</sup> s. 402.82, F.S.

<sup>7</sup> Florida Department of Children and Families, *Food Assistance Program Fact Sheet*, <https://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf> (last visited November 1, 2015).

<sup>8</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Persons Participating*, <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf> (last visited November 1, 2015); U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Households Participating*, <http://www.fns.usda.gov/sites/default/files/pd/30SNAPcurrHH.pdf> (last visited March 14, 2016); Food Research and Action Center, *Supplemental Nutrition Assistance Program: Share of Population Participating* <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/#dec> (last visited March 14, 2016).

<sup>9</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Person*, [http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg\\$PP.pdf](http://www.fns.usda.gov/sites/default/files/pd/18SNAPavg$PP.pdf) (last visited November 1, 2015); and U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Household*, [http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg\\$HH.pdf](http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg$HH.pdf) (last visited November 1, 2015).

<sup>10</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Benefits*, <http://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited November 1, 2015).

## Public Assistance Fraud Offenses

Offenses constituting public assistance<sup>11</sup> fraud are set forth in s. 414.39, F.S, which, in relevant part, specifies that a person commits a crime if he or she knowingly uses, transfers, acquires, *traffics*, alters, forges, or possesses in any manner not authorized by law:

- 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.<sup>12</sup>

Additionally, the statute specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts.<sup>13</sup>

Section 414.39(5), F.S., establishes the criminal penalties that apply to the above-described offenses and specifies that 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 misdemeanor of the first degree.<sup>14</sup>
- Of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a felony of the third degree.<sup>15</sup>
- Of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a felony of the second degree.<sup>16</sup>
- Of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a felony of the first degree.<sup>17, 18</sup>

Currently, the term “traffic” is not defined by Florida’s public assistance fraud statute. In February 2013, the U.S. Department of Agriculture adopted the following definition of trafficking for federal purposes of SNAP:

Trafficking means:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and

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<sup>11</sup> Section 414.0252(10), F.S., defines “public assistance” to mean “benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.”

<sup>12</sup> s. 414.39(2), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>15</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>16</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>17</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>18</sup> Section 414.39(5)(e), F.S., states, “As used in this subsection, the value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act committed in violation of this section.”

returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or [sic]

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.<sup>19</sup>

### **Investigations of Public Assistance Fraud**

The Division of Public Assistance Fraud within the Department of Financial Services (DFS) is authorized to investigate public assistance fraud in Florida.<sup>20</sup> These investigations have found a wide variety of methods used to commit such fraud:

- Applicants may make misrepresentations on their benefit applications, e.g., not reporting or under-reporting income.
- Recipients may fail to report a change in circumstances, e.g., failing to report a change in household composition or income.<sup>21</sup>
- Recipients or others in possession of the food assistance benefits may sell the benefits for cash or other consideration usually valued at some amount less than the value of the benefits, to retailers who then misrepresent that the benefits were used to purchase food at the store in order to obtain the full value of the benefit from the federal government or who use the benefits to purchase food to stock the store's shelves. According to a recent news report, store clerks in Jacksonville have used this method of fraud to receive tens of thousands of dollars in profit per month per store.<sup>22</sup>
- Recipients may purchase food with their benefits at a low-priced shopping club and resell the food to others for consumption or to retailers who resell the food at a higher price.<sup>23</sup>

### **Effect of Bill**

The bill amends s. 414.39(2), F.S., to specify acts that are included in the term "traffic" for purposes of the subsection's prohibitions against trafficking in food assistance benefits. This amendment is substantively the same as the definition of "trafficking" adopted in February 2013, by the U.S. Department of Agriculture, which is quoted above,<sup>24</sup> except that the amendment does not include the text relating to purchases of products which have a container requiring a return deposit because Florida no longer requires such deposits.

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<sup>19</sup> 7 C.F.R. § 271.2 (2015).

<sup>20</sup> Section 414.411, F.S.

<sup>21</sup> Requirements for the reporting of changes in circumstances are set forth in 7 C.F.R. 273.12(2015).

<sup>22</sup> Jennifer Waugh, *EBT Fraud Steals Millions in Taxpayer Dollars*, News 4 Jax (November 20, 2014), <http://www.news4jax.com/news/ebt-fraud-steals-millions-in-taxpayer-dollars/29640166>.

<sup>23</sup> U.S. Department of Agriculture, Food and Nutrition Service, *What is SNAP Fraud?*, <http://www.fns.usda.gov/fraud/what-snap-fraud> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

<sup>24</sup> 7 C.F.R. § 271.2 (2015).

Further, the bill makes it a first degree misdemeanor for an individual to possess two or more EBT cards for food assistance benefits which were issued to other persons and to sell or attempt to sell one or more of the cards. It also specifies that a second or subsequent violation constitutes a third degree felony. A person who commits this violation must be ordered by the court, in addition to any other penalty, to serve at least 20 hours of community service. If determined feasible by the court, such community service must be performed with a nonprofit entity that provides the community with food services for the needy.

The bill also amends s. 921.0022(3)(a), F.S., to remove the unnecessary inclusion of specified third degree felony violations of s. 414.39(2), F.S., on the Offense Severity Ranking Chart (OSRC) as Level 1 felonies. Under s. 921.0023, F.S., third degree felonies that are not on the OSRC automatically default to a Level 1.

Finally, the bill reenacts ss. 414.41(1)(b), 772.102(1)(a), 895.02(1)(a), and 1002.91(5), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have a positive, insignificant prison bed impact, i.e., the bill will increase the number of prison beds needed by 10 or fewer beds.

According to the CJIC, in Fiscal Year 2014-2015, five persons were convicted and 10 persons received an adjudication withheld for a first degree misdemeanor violation of s. 414.39, F.S. Additionally, in that same fiscal year, 379 offenders were sentenced under s. 414.39, F.S. Nine of these offenders were sentenced to prison (mean sentence length of 28.9 months). It is unknown how many of these offenders possessed multiple EBT cards and would be affected by the provisions of the bill.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local government revenues.

#### **2. Expenditures:**

The bill may have a positive jail bed impact for local governments because it creates a new first degree misdemeanor.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

D. FISCAL COMMENTS:

None.