

SUBJECT: Penalties for government benefit recipients who commit fraud

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Maxey

0 nays

3 absent — Hilderbran, McClendon, Uresti

WITNESSES: For — None

Against — None

On — George Duran, Texas Department of Human Services

DIGEST: CSHB 990 would require the Health and Human Services Commission (HHSC) to adopt procedures for determining whether an individual has engaged in fraud to obtain cash assistance, food stamps, or Medicaid benefits and would allow HHSC to impose administrative penalties against a person who committed fraud.

HHSC could not criminally prosecute a person alleged to have engaged in fraud and could apply only administrative sanctions against a person who had not engaged in fraud previously for cash assistance, food stamps, or Medicaid benefits and only if the monetary value of the benefits sought was less than \$5,000.

HHSC would have to notify in writing the person who committed the alleged fraud. The notice would have to include a description of the alleged fraud, a copy of the administrative procedures, and statements that an administrative penalty could be imposed, that a finding of fraudulent conduct would subject the person to criminal prosecution for subsequent fraudulent conduct, and that the person would be entitled to a hearing. A hearing would be conducted as a contested case hearing under the Texas Administrative Procedure and Practice Act.

If HHSC or an appropriate agency determined that the person had engaged in fraudulent conduct, the commission or the agency would have to issue a finding of fraudulent conduct, maintain a permanent record of the finding, seek recovery from the person, and impose a penalty, if authorized.

A person who committed fraud for benefits worth less than \$5,000 and who had committed fraud before or had failed to pay the amount sought for recovery also could be convicted of perjury, tampering with a governmental record, an offense against property under Penal Code, Title 7 (theft, fraud, computer crimes, money laundering), or, for food stamp violations, could be penalized with a Class A misdemeanor or third-degree felony.

This bill would take effect September 1, 1999, and would apply only to conduct committed on or after that date.

**SUPPORTERS  
SAY:**

This bill would help more appropriately tailor the punishment to fit the crime committed by recipients of government benefits. Currently, a person may be convicted of a felony if the person improperly receives more than \$200 in food stamp benefits or \$1,500 in financial assistance or Medicaid benefits, even though the person had no intention to commit fraud.

Sending a welfare mother to prison is not the right thing for her family if she incorrectly received an additional cash benefit check from the state or if she earned a small amount of income on the side and forgot to report it. The state should be able to take more moderate administrative actions that would punish relatively small infractions and should save prison sentences for people who intentionally set out to defraud the state of large sums of money.

The Department of Human Services has reconsidered the fiscal impact of the bill in light of the changes made by the committee substitute and the author's proposed floor amendment and says that it can implement the bill within current resources.

**OPPONENTS  
SAY:**

The state should keep the law as it is and maintain a firm stance against fraud of any type. The threat of imprisonment would help deter fraud in the first place, whereas more lenient administrative penalties would encourage people to try to take advantage of the system and would force the state to keep records tracking whether a person had committed fraud more than once.

CSHB 990 would increase state expenditures by about \$1.5 million for fiscal 2000-01 and by about \$1 million per year thereafter because of the increased staff and other costs associated with investigation and review of potentially fraudulent cases.

OTHER  
OPPONENTS  
SAY:

The bill should be amended specifically to allow HHSC to seek criminal conviction of a person who attempted to commit fraud for the first time for amounts worth more than \$5,000, and to prohibit HHSC from seeking criminal conviction of a person who had committed fraud for the first time for amounts under \$5,000. The bill as written could be interpreted to mean that HHSC could at no time seek criminal convictions for persons who committed fraud.

NOTES:

Rep. Dutton plans to offer a floor amendment that would remove the requirement that all hearings be conducted as contested case hearings under the Texas Administrative Procedure and Practice Act.

Major changes made by the committee substitute to the original bill include limiting the use of administrative procedures to sanction individuals who had not committed fraud previously and who fraudulently sought to receive benefits worth less than \$5,000.