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Senate Bills 841 and 842 (as introduced 3-4-14)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 3-10-14

CONTENT

Senate Bill 841 would amend the Michigan Penal Code to do the following:

- Increase some of the maximum prison sentences in the graduated criminal penalties for food assistance fraud violations, and adjust the aggregate value of unauthorized food assistance that may trigger more severe sanctions.
- Allow a court to order the forfeiture of certain nonfood items, money, and other things of value that were obtained in food assistance violations.
- Allow a court to order the forfeiture of real and personal property used to commit or facilitate food assistance violations.
- Require the proceeds from the sale of forfeited property, and any forfeited money, to be distributed to the Department of Human Services (DHS), the United States Department of Agriculture (USDA), and Federal or State law enforcement agencies.
- Refer to the unauthorized use of an access device for obtaining food assistance, rather than the unauthorized use of food stamps or coupons or access devices, in the food assistance fraud prohibitions.

Senate Bill 842 would amend the Code of Criminal Procedure to revise the sentencing guidelines for food stamp fraud felonies.

Senate Bill 842 is tie-barred to Senate Bill 841.

Senate Bill 841

Prohibited Acts

The Penal Code prohibits a person from knowingly using, transferring, acquiring, altering, purchasing, possessing, presenting for redemption, or transporting food stamps or coupons or access devices, other than as authorized by the Federal Food Stamp Act or any supplemental food program administered by the State under the Federal Child Nutrition Act. Under the bill, those prohibited actions would apply to an access device for obtaining food assistance benefits rather than to food stamps or coupons or access devices.

The Code defines "access device" as any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Federal food stamp program or any supplemental food program administered by the State under the Child Nutrition Act. The bill would include in the term an electronic benefit transfer card issued by the Department of Human

Services for the purpose of distributing government benefits under those food assistance programs. The bill would delete the Code's definition of "food stamps or coupons".

Criminal Penalties

The Code includes graduated penalties for a violation of the prohibition described above, based on the aggregate value of the food stamps or coupons or access devices, and the offender's prior convictions. Violations over a 12-month period may be charged as one offense and the value of the food assistance may be aggregated for determining the sentence.

Currently, violations are punishable as shown in Table 1.

Table 1

Aggregate Amount	Violation Level	Max Penalty
\$250 or less	Misdemeanor	93 days and/or \$1,000
More than \$250 but not exceeding \$1,000 ^{a)}	Felony	5 years and/or \$10,000
More than \$1,000 ^{b)}	Felony	10 years and/or \$250,000
^{a)} or \$250 or less with one prior conviction		
^{b)} or \$250 or less with two or more prior convictions; or more than \$250 but not exceeding \$1,000 with one prior conviction		

Under the bill, the violations would be based on the aggregate value of the food assistance benefits used, transferred, acquired, altered, purchased, possessed, presented for redemption, or transported, and the offender's prior convictions. Violations would be punishable as shown in Table 2.

Table 2

Aggregate Amount	Violation Level	Max Penalty
\$100 or less	Misdemeanor	1 year and/or \$1,000
More than \$100 but less than \$5,000 ^{a)}	Felony	5 years and/or 10,000
\$5,000 or more ^{b)}	Felony	20 years and/or \$250,000
^{a)} or \$100 or less with one prior conviction		
^{b)} or \$100 or less with two or more prior convictions; or more than \$100 but less than \$5,000 with one prior conviction		

Forfeiture of Property

The bill would allow a court to order the forfeiture and denial of property rights of any nonfood items, money, negotiable instruments, securities, or other things of value that were furnished by any person in exchange for benefits, or anything of value obtained in a food assistance violation. Any forfeiture and disposal of property forfeited under this provision would have to be conducted in accordance with procedures authorized under the Food Stamp Act.

All real and personal property used to commit or to facilitate the commission of a felony food assistance violation, and all proceeds traceable to that violation, also would be subject to forfeiture to the State.

In addition to any other sentence imposed, the court would have to order the person to forfeit to the State all of the property described above.

If the owner of an interest in property proved that an act or omission had been committed or omitted without his or her knowledge and consent, however, that property interest could not be forfeited as a result of the act or omission.

Proceeds from the sale of forfeited property, and any forfeited money, would have to be used to reimburse government entities in the following order of priority:

- The DHS, for the costs it incurred to initiate and complete the forfeiture proceeding.
- The USDA, for any costs incurred in the law enforcement effort resulting in the forfeiture.
- Any Federal or State law enforcement agency, for any costs incurred in the law enforcement effort resulting in the forfeiture.
- The USDA, for any loss incurred from a felony violation.

Senate Bill 842

The current sentencing guidelines for food stamp fraud felonies are reflected in Table 3.

Table 3

Violation	Class & Category	Max. Sentence
2 nd offense-food stamp fraud of \$250 or less	G-Property	5 years
3 rd or subsequent offense-food stamp fraud of \$250 or less	G-Property	10 years
Food stamp fraud of more than \$250 to \$1,000	E-Property	5 years
Subsequent offense-food stamp fraud of more than \$250 to \$1,000	E-Property	10 years
Food stamp fraud of more than \$1,000	E-Property	10 years

Under the bill, the sentencing guidelines for food stamp fraud felonies would be as shown in Table 4.

Table 4

Violation	Class & Category	Max. Sentence
2 nd offense-food stamp fraud of \$100 or less	G-Property	5 years
3 rd or subsequent offense-food stamp fraud of \$100 or less	B-Property	20 years
Food stamp fraud of more than \$100 to \$5,000	E-Property	5 years
Subsequent offense-food stamp fraud of more than \$100 to \$5,000	B-Property	20 years
Food stamp fraud of \$5,000 or more	B-Property	20 years

MCL 750.300a (S.B. 841)
777.16o (S.B. 842)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

With the increased penalties for the different levels of food assistance fraud, the bills present a potential fiscal cost to State government for those convicted of the felony-level fraud. Any added imprisonment time would have an average cost of \$35,000 per prisoner per year. For any additional imprisonment imposed for the misdemeanor offense, there would be an additional cost to local jails. In 2011, there were a total of 12 convictions for offenses within the different categories of food assistance fraud.

Senate Bill 841 also provides that any property obtained through food assistance fraud would be eligible for State forfeiture. The bill would require that any proceeds from this forfeiture be used to reimburse (in order of priority): the Michigan Department of Human Services for forfeiture proceedings, the U.S. Department of Agriculture for law enforcement costs, any State or Federal law enforcement agency for any costs associated with the forfeiture, and the USDA for losses.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.