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FOOD STAMP FRAUD

House Bill 4985 with committee
amendment

First Analysis (9-15-93)

Sponsor: Rep. Deborah Whyman

Committee: Human Services & Children

THE APPARENT PROBLEM:

One area of welfare fraud that rarely receives media attention or arouses public concern involves the illegal traffic in food stamp coupons. Food stamp trafficking occurs when buyers, or "runners," pressure food stamp recipients into selling their coupons -- at a discount of up to 50 percent -- and then sell the coupons to retail stores. Stores that participate in these activities typically pay from 75 to 80 cents on the dollar for the coupons, which are then redeemed by the federal government at face value for cash. Food stamp coupons also have become an alternate form of currency, and are used in drug and gambling activities on the streets. The winners in food stamp trafficking are the street buyers and store owners; the losers are the food stamp recipients who are physically coerced into selling their coupons at a discount, and the taxpayers who subsidize this fraud. Public Act 387 of 1988 attempted to deal with the problem of food stamp trafficking by establishing criminal sanctions. Trafficking in coupons with a face value of \$1,000 or less is considered a misdemeanor, with a penalty of imprisonment for up to 90 days, a fine of up to \$700, or both. If the face value of the food stamps is more than \$1,000, the person is guilty of a felony, punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

The Michigan Food Stamp Fraud Task Force, composed of investigators from the Departments of Social Services, Attorney General, and State Police, in cooperation with the U. S. Department of Agriculture and the Secret Service, investigates those suspected of engaging in this type of activity. Once an investigation is completed by the task force, the state attorney general's office prosecutes offenders. (Food stamp recipients are rarely prosecuted, unless the recipient is also a "runner;" store owners usually claim that the employee involved in the transaction was the dishonest party, not the business owner, and avoid prosecution by firing the employee). Representatives of the

departments involved in apprehending and prosecuting this type of fraud report, however, that those who traffic in food stamps typically avoid felony charges by trafficking in amounts just under \$1,000 per transaction. Since food stamp trafficking is considered an economic, rather than a violent crime, the trafficker typically pays a fine and is put on probation. Moreover, although food stamp coupons may be confiscated when a suspected trafficker is arrested, cash found in the person's possession must be returned when that person is released. Investigators complain that the trafficker is then free to return to the streets and "business as usual." It is recommended that the threshold for such convictions be reduced to \$100, and that prosecutors be allowed to "aggregate" convictions so that defendants can be prosecuted under felony charges. In addition, agency officials believe that stiffer penalties should be established as an economic deterrent to those who would engage in food stamp trafficking.

THE CONTENT OF THE BILL:

Under the Michigan Penal Code (MCL 750.300a), it is a crime for a person to knowingly receive, purchase, possess, or transport food stamps or coupons other than as authorized under the federal Food Stamp or Child Nutrition Acts. If the cumulative face value of the stamps or coupons is \$1,000 or less, the crime is a misdemeanor punishable by up to 90 days in jail, a fine of up to \$700, or both. If the cumulative face value of the stamps or coupons is more than \$1,000, the crime is a felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both. House Bill 4985 would amend the act to establish the following criminal sanctions:

** If the face value of the stamps or coupons was \$100 or less, the person would be guilty of a misdemeanor, punishable by up to 90 days in jail, a

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fine of up to \$1,000, or both. A second or subsequent conviction would be punishable by three months to one year in jail, a fine of up to \$5,000, or both.

****** If the face value of the food stamps or coupons was more than \$100 but less than \$5,000, the person would be guilty of a felony, punishable by up to five years in prison, a fine of up to \$10,000, or both. A second or subsequent conviction would be punishable by six months to ten years in jail, a fine of up to \$25,000, or both.

****** If the face value of the food stamps or coupons was more than \$5,000, the person would be guilty of a felony, punishable by up to 20 years in prison, a fine of up to \$250,000, or both.

****** If food stamps or coupons of various values were obtained over a twelve-month period, the conduct could be considered one offense, and the values of the stamps or coupons combined to determine the level of the offense.

FISCAL IMPLICATIONS:

According to the Department of Social Services, the bill would have no impact on state funds. (9-7-93)

ARGUMENTS:

For:

Illegal food stamp trafficking thwarts the purpose of the federal food stamp program, which was created to improve the level of nutrition among low income households. The program currently provides benefits to approximately 800,000 people in Michigan. Statistics on the amount of stamps that fall into the hands of food stamp traffickers in the state are unknown at present. However, in 1992, Michigan's Department of Social Services issued about \$846 million in food stamps. If only one percent of the stamps are used illegally, the cost to the program would be \$8.46 million per year. (Agencies involved in investigating food stamp fraud, however, estimate that five to ten percent of the coupons are purchased illegally). The bill would make it easier for law enforcement agencies to take action and to prosecute food stamp trafficking activities. The bill would also serve as notice that the state will not tolerate the theft of resources made available to the needy by imposing stiffer penalties on those found guilty of this crime.

For:

Reportedly, the legislative intent of Public Act 387 of 1988, the food stamp anti-trafficking act, was to establish criminal sanctions for the illegal purchase of food stamps, and also to allow sanctions to be "aggregated" so that several misdemeanor violations committed during a certain period of time would constitute one felony conviction. By reducing the current \$1,000 threshold to \$100, and allowing prosecutors to combine several small offenses committed over a twelve-month period as one offense, House Bill 4985 would restore the legislative intent of the act.

The bill would also provide consistency between Michigan's food stamp trafficking statute and the federal food stamp anti-trafficking law (Title VII, USC 2024(b)1. Under federal law, it is a felony to deal in illegally obtained food stamps when the face value of the stamps equals \$100. Without this provision, the attorney general must at present refer cases involving habitual offenders to the U.S. Court of Appeals to assure that an offender receives a felony conviction.

Against:

The bill does not go far enough; it should be amended to allow law enforcement agencies to confiscate money found on a suspected trafficker at the time of arrest. The typical street "runner" who pressures food stamp recipients into illegally selling their stamps carries large amounts of cash for these purchases. If arrested, food stamp coupons found on the suspect may be confiscated. However, under current law, a suspect is usually released on probation after paying a fine, and the cash -- the tools of the trafficker's trade -- is returned to be used again. Instead, the bill should be amended to require that cash found on a suspect be confiscated, or returned at the conclusion of the defendant's trial should he or she be acquitted.

POSITIONS:

The Department of Social Services supports the bill. (9-1-93)

The Department of Attorney General supports the bill. (9-1-93)

The Department of State Police supports the bill. (9-1-93)