

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Corey A. Jackson, Chair
AB 843 (Juan Carrillo) – As Introduced February 14, 2023

SUBJECT: Electronic benefits transfer system

SUMMARY: Amends existing provisions on the requirements of the state Electronic Benefits Transfer (EBT) system to clarify reporting and loss procedures for benefits stolen from a recipient. Specifically, **this bill**:

- 1) Makes legislative findings and declarations regarding electronic benefits, the electronic theft of benefits, and the timely reimbursements as required by the California Court of Appeals.
- 2) States legislative intent to enact legislation that would codify the decision of *Ortega v. Johnson* (2020) 57 Cal.App.5th 552, which ensures that timely benefit reimbursement is provided to recipients who had them stolen electronically.
- 3) Deletes reference to “electronic” in provisions regarding the requirement that the EBT system ensure a recipient does not incur any loss of benefits that has occurred when an EBT card or personal identification number (PIN) has been stolen.
- 4) Replaces the term “cash” with “electronic” in provisions requiring the EBT system to ensure a recipient does not incur any loss of benefits that has occurred by unauthorized withdrawal.
- 5) Replaces the term “cash” with “electronic” in provisions requiring the EBT system to establish theft reporting and reimbursement protocols.

EXISTING LAW:

- 1) Establishes the federal "Supplemental Nutrition Assistance Program" (SNAP), pursuant to the Food Stamps Act of 1964, to provide benefits to families and individuals meeting specified criteria. (7 United States Code Section [USC] 2011)
- 2) Establishes the “CalFresh” program to administer federal SNAP benefits to eligible individuals. Provides program requirements and eligibility, as specified. (Welfare and Institutions Code Section [WIC] 18900 *et seq.*)
- 3) Establishes the federal “Temporary Assistance for Needy Families” (TANF) program that delivers aid and welfare-to-work (WTW) services to eligible families. (42 USC 601 *et seq.*)
- 4) Requires that in California, TANF funding for WTW services be administered through the California Work Opportunity and Responsibility to Kids (CalWORKs) program. (WIC 11200 *et seq.*)
- 5) Establishes the "EBT Act" and defines the EBT system as the program designed to provide benefits to those eligible to receive public assistance benefits such as CalWORKs and CalFresh. (WIC 10065 *et seq.*)

- 6) Establishes the California Food Assistance Program (CFAP), which provides state-funded nutrition assistance to certain legal immigrants who meet all other CalFresh benefit requirements, as specified. (WIC 18930 *et seq.*)
- 7) Makes legislative findings and declarations related to EBT, including that one of the primary goals of EBT is to reduce the cost of delivering benefits to recipients, to ensure that all systems within California are compatible, and to afford public social services recipients the opportunity to better and more securely manage their financial affairs. (WIC 10065(b))
- 8) Delineates the requirements for the EBT system, including that it be designed in a way that: allows recipients to access their benefits in any part of the state where the benefits are accepted, is compatible with EBT systems in other states, and provides reasonable access to benefits to recipients who demonstrate an inability to use an EBT card because of disability, language, lack of access, or other barriers, among others. Further, requires the EBT system have a 24-hour per day toll-free telephone hotline for the reporting of lost or stolen cards that will provide recipients, at no additional cost to the recipient, with information on how to have the card and personal identification number replaced. (WIC 10072 *et seq.*)
- 9) Prohibits a recipient from incurring any loss of cash benefits that are taken by an unauthorized withdrawal, removal, or use of benefits that do not occur by the use of a physical EBT card issued to the recipient or authorized third party to access the benefits directly. Further, requires that benefits are taken be promptly replaced in accordance with protocols developed by the California Department of Social Services (CDSS). (WIC 10072 (i)(1))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee..

COMMENTS:

Background: *CalFresh.* In California, SNAP is known as CalFresh, and its primary goal is to provide food access to low-income individuals who meet certain eligibility criteria. CalFresh benefits are federally funded, and administration at the federal level lies with the United States Department of Agriculture (USDA); as such, it is the responsibility of the USDA to set specific eligibility requirements for SNAP programs across the country, such as gross and net income tests, work requirements, and other documentation requirements. Currently, the maximum allowable gross income is 200% of the Federal Poverty Level, although households with elderly members or members with disabilities are not subject to gross income criteria. Effective October 1, 2022, through September 30, 2023, the maximum annual gross income for a household size of three is \$46,080.

CalFresh benefits are made available on a monthly basis using an EBT card, which is similar to an automated teller machine (ATM) card. Unlike an ATM card, CalFresh benefits may not be withdrawn in cash at point-of-sale (POS) terminals; instead, recipients may only use the card to purchase certain eligible foods from stores that accept EBT. Cash benefits provided through the CalWORKs program are also made available using EBT cards and cash benefits, unlike food benefits, may be withdrawn as cash at ATMs.

Electronic Benefits Transfer Theft. In recent years, EBT users in California, but also across the nation, have experienced an uptick in stolen benefits as a result of organized criminal enterprises specifically targeting social safety net funds. A January 2023 article from CalMatters states that

from July 2021 through September 2022, “Californians reported \$29.7 million in cash welfare stolen, and \$4.7 million in food aid [was] stolen...[CDSS] estimates that an average of \$6 million a month will be stolen this fiscal year, rising to \$8 million a month in the year that begins in July.”

A key security feature that EBT cards lack is the security chip that many non-EBT credit and debit cards have. Because this missing component requires EBT users to swipe their cards at POS devices, EBT card users are particularly vulnerable to “skimming,” which occurs when thieves attached illegal devices onto card readers that, when swiped, copy a person’s information from the EBT card’s magnetic strip. Thieves can then create counterfeit EBT cards to access funds almost immediately after they are deposited. A February 8, 2023, Los Angeles (L.A.) Times article states, “They strike early in the morning on the first few days of every month – hours, sometimes minutes after the state deposits funds onto the cards. They do the same with food stamps, which the state also deposits on EBT cards, then rack up mammoth bills at grocery stores. Some of the county’s poorest residents will wake up to discover a month of food or rent money they were relying on has vanished – even though their EBT card never left their wallet.”

Ortega v. Johnson. In 2020, the California Court of Appeal found that CalFresh recipients are entitled to replacement of their CalFresh benefits when they are electronically stolen from recipients. The lawsuit was filed by two CalFresh recipients, Ms. Ortega and Mr. Soza, who had their food benefits stolen in L.A. County by people who obtained their account numbers and PIN. The victims promptly reported the theft, as required by CDSS; however, reissuance of benefits was denied by the L.A. County Department of Public Social Services, and the denial was upheld by CDSS during a later administrative hearing. The victims later filed a petition in superior court against CDSS.

In the petition, Ms. Ortega and Mr. Soza argued that the CDSS Manual of Policy and Procedures contained regulations that clarified they were owed reissuance of benefits lost through the electronic theft. In response, CDSS argued that:

- 1) There is no California or federal statute authorizing the replacement of CalFresh benefits lost through electronic theft;
- 2) There is no federal or state funding for such replacement; and,
- 3) Requiring CDSS to replace those benefits would violate federal statutes, regulations, or guidance.

While the trial court ruled in favor of CDSS’ interpretation of the regulations, in November 2020, the California Court of Appeal heard the case and reversed the decision of the trial court, thereby ruling in favor of Ms. Ortega and Mr. Soza. As a result, the appellate court found that CalFresh recipients are entitled to replacement of their benefits when benefits are lost due to electronic theft, provided that the request is made within ten days of the loss.

ACL 21-133 issued by CDSS on October 29, 2021, states that “Unlike CalWORKs policy, which provides 90 calendar days to report the theft of CalWORKs cash benefits...CalFresh recipients must report the loss within 10 calendar days...Assuming the report was made timely and upon receipt of a complete EBT 2259, the [county welfare department] has 10 business days to issue a benefit replacement. This processing time period applies whether the theft is due to skimming or scamming.”

The provisions of this bill would codify the *Ortega* decision in state statute by changing existing references to “cash” benefits to “electronic” benefits, in order to encapsulate both CalWORKs and CalFresh benefits as being eligible for replacement when all other replacement requirements are met.

Governor’s veto message: This bill is substantially similar to SB 1140 (Umberg) of 2022, which was vetoed by Governor Newsom. In his veto message, the Governor stated:

“The bill would require [CDSS] to establish a process for recipients to report electronic theft of electronic benefits and requires the replacement of such benefits after the recipient reports their EBT card or PIN lost or stolen. This bill also authorizes the automatic replacement of benefits without the need for recipient reporting and verification.

“The electronic theft of benefits affects families and individuals who need help the most, which is why CDSS has an existing process to replace CalFresh benefits when stolen from an EBT card. I applaud the author for his efforts to expand this process to include the replacement of all benefits on an EBT card in a worthy effort to minimize the harm to recipients. However, this proposal would require millions of dollars in General Fund expenditures that were not accounted for in the budget.

“Protecting recipients and ensuring timely replacement of lost or stolen benefits is a priority for my Administration. The California Health and Human Services Agency and CDSS are working in partnership with counties and the advocate community on several initiatives to improve existing processes, including simplifying the process for reporting and requesting replacement benefits and removing overly burdensome requirements. We welcome the Legislatures’ continued partnership in efforts to reduce EBT theft and fraud.

“With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety, and safety-net programs.

“The Legislature sent measures with potential costs of well over \$20 billion in one-time spending commitments and more than \$10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process. For these reasons, I cannot sign this bill.”

In response to the Governor’s veto message, the author states, “Last year the Governor vetoed SB 1140 (Umberg) based on the potential impact of our state’s general fund. This year, I introduced [this bill] based on recent action taken by Congress and the Governor’s January budget. In December of 2022, Congress took action and passed an omnibus bill that included provisions that provided federal funding for states that restore SNAP benefits that have been electronically stolen. Prior to this action, California was restoring stolen benefits through general funds due to the court case *Ortega v Johnson*.

“In January, Governor Newsom proposed \$50 million to strengthen the software and protections of EBT cards. This investment by the state will significantly decrease electronic theft that public benefit recipients are facing today which will ultimately result in saving funds to the state’s

general fund. [This bill] is a critical piece to the collective effort that is moving forward today to protect public benefit recipients from electronic theft.”

Need for this bill: The provisions of this bill seek to ensure that CalFresh recipients who are victims of electronic theft are reimbursed for their loss by codifying the decision of the appellate court in *Ortega v. Johnson*. By codifying the *Ortega* decision, this bill seeks to ensure that victims of theft are timely reimbursed by requiring CDSS to establish a protocol for recipients to report electronic theft of electronic benefits, and by permitting CDSS to issue mass reimbursements for the loss of electronic benefits if certain criteria are met.

Author’s Statement: According to the Author, “CalFresh has provided life-saving support for millions of Californians experiencing food insecurity and just this past year, our state has seen a dramatic increase in benefits being stolen electronically through ‘skimming’ and phishing crimes. In 2019, the Attorney General prosecuted Jawuan Gipson for electronically stealing \$500,000 in EBT benefits. Like all payment cards, EBT cardholders are subject to the same kind of electronic theft that other payment cards are subject to; however, they do not have the same federal protections. The way that CalFresh recipients typically find out that their benefits have been stolen is while at the grocery store, assuming they have their expected balance on their card, only to find out that their benefits have been wiped out when they try to pay for their groceries. And for some people, EBT is the only way to survive.

“Federal Regulation E exempts EBT consumers from the protections provided to other payment card holders when a theft occurs. Federal SNAP law requires the state to timely reissue benefits when a persons’ CalFresh Card or PIN are stolen, but only for the amount of benefits stolen after a report of the stolen PIN or card was made to the state or county. If the benefits are stolen electronically before a report, federal law does not require reimbursement, but rather, permits states to make their own rules. In November 2020, the California Court of Appeal held that CalFresh recipients also have the right to have their benefits timely replaced when they are electronically stolen. As more frequent reports of stolen EBT benefits are brought to light, we must make changes to ensure our most vulnerable populations are not left without vital support if they fall victim to these crimes.

“[This bill] would enact modern-day security measures to protect people from electronic theft of EBT benefits by codifying regulations that make it more challenging to steal these funds. By doing so, we can ensure that thousands of beneficiaries of the CalFresh program can continue to benefit from this assistance and provide healthy nutritious food for their families.”

Equity Implications: The provisions of this bill seek to address equity by ensuring that the low-income households that rely on CalFresh benefits are not penalized for being victims of electronic theft. In order to qualify for CalFresh, the maximum allowable gross income is 200% of the FPL; under this rule, a family of three may not have a gross income higher than \$46,080 and still receive CalFresh benefits. A February 2023 brief by the Center on Budget and Policy Priorities states that, in California, more than 61% of SNAP participants are in families with children, more than 19% are in families with members who are older adults or are disabled, and more than 40% are in working families. Additionally, in California, 9.6% of all households were food insecure, 15.8% of children lived below the poverty line, and 11.1% of older adults lived below the poverty line. By codifying the *Ortega* decision and requiring CDSS to establish a process to reimburse CalFresh recipients whose benefits were stolen, this bill seeks to prevent

hunger and food insecurity among the low-income families that rely on CalFresh benefits to make ends meet.

RELATED AND PRIOR LEGISLATION:

SB 1140 (Umburg) of 2022, would have amended the EBT system provisions to clarify the reporting and loss procedures for stolen benefits. *SB 1140 was substantially similar to this bill and was vetoed by Governor Newsom.*

SB 33 (Skinner) of 2020, would have required CDSS to form a workgroup with stakeholders to review online purchases using the EBT system and make recommendations to CDSS to ensure that consumer protections are in place for individuals making online purchases using the EBT system. *SB 33 was held on the Assembly Appropriations Committee suspense file.*

AB 2313 (Stone), Chapter 712, Statutes of 2018, established protections for recipients of public benefits who are victims of electronic benefit theft by specifying that an unauthorized use of benefits includes, but is not limited to, use that results from an unauthorized solicitation, request, or representation and if the recipient knowingly provides their benefit card number and their PIN to an unauthorized third party that the recipient mistakenly believed to be an authorized party. AB 2313 also authorized the CDSS to issue mass reimbursements to recipients for the loss of cash benefits due to a data breach, as specified.

AB 1614 (Stone), Chapter 270, Statutes 2014, required users of EBT cards to be provided access to transaction history via a toll-free telephone hotline and internet website, among other methods. AB 1614 also required the EBT system to be designed so that users are informed when the system is down and funds are not accessible, as specified. Additionally, AB 1614 required users of the EBT card to be informed of where they can use their cards to withdraw funds without fees, and other information regarding fees.

AB 1280 (Perez), Chapter 557, Statutes 2013, authorized the direct deposit of public assistance payments by electronic transfer into a qualifying account and required those accounts to meet specified consumer protection regulations.

AB 2035 (Bradford), Chapter 319, Statutes 2012, provided that a recipient would not incur any loss of cash benefits that are taken by an unauthorized withdrawal, removal, or use of benefits that does not occur by the use of a physical EBT card issued to the recipient or authorized third party to directly access the benefits.

AB 1542 (Ducheny), Chapter 270, Statutes of 1997, establishes the authority for a statewide EBT system to issue food stamp benefits and, at county option, the issuance of cash benefits.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center on Law & Poverty (Sponsor)
Coalition of California Welfare Rights Organizations (Co-Sponsor)
California Immigrant Policy Center

Opposition

None on file

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