

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

SB 470 (Skinner) – As Amended May 17, 2019

**SENATE VOTE:** 38-0

**SUBJECT:** Electronic benefits transfer system

**SUMMARY:** Establishes processes and standards for the use of CalFresh benefits, via the electronic benefits transfer (EBT) system, for the online purchase of food and requires the California Department of Social Services (CDSS) to work with stakeholders to establish the qualifications and process for approving retailers to accept online cash benefits payments through the EBT system. Specifically, **this bill:**

- 1) Defines “commissary” as a store that sells food to the personnel or workers at a military post.
- 2) Defines “retailer” as a grocery establishment as defined in current law, a grocery store as defined in current law, a commissary, a community-supported agriculture program as defined in current law, or a restaurant that has entered into a memorandum of understanding (MOU) with a county human services agency to serve CalFresh recipients who are elderly, homeless, or have a disability through the Restaurant Meals Program (RMP).
- 3) Requires, to the maximum extent feasible and to the extent permitted by federal law and the rules of the program providing benefits, or pursuant to a waiver from the United States Department of Agriculture (USDA), the EBT system to limit the purchase of food through an online transaction to retailers who are authorized by the USDA to accept CalFresh benefits, and who comply with all of the following requirements:
  - a) Provide reasonable access to exchange the food within four hours of receiving the food;
  - b) Meet state and local food safety requirements and require that food purchased online is packed and delivered by employees of approved food retailers with appropriate food safety credentials; and,
  - c) Provide an in-person confirmation of delivery as an option for a customer to either pick up at the store or to receive in which the signature of the person delivering the food and of the person receiving the food is secured and stored by the retailer.
- 4) Requires CDSS, in consultation with the Office of Systems Integration (OSI) and other relevant stakeholders, as specified, to establish protocols to block retailers from accepting online food benefit payments through the EBT system if they do not meet the qualifications enumerated by the provisions of this bill regarding the use of existing processes for blocking EBT use at certain retailers.
- 5) Makes provisions of this bill related to online food EBT purchases inoperative upon certification by the director of CDSS that federal regulations for online food EBT purchases already include the consumer protections established by the provisions of this bill.

- 6) Specifies that a waiver to the staggered issuance of California Work Opportunity and Responsibility to Kids (CalWORKs) benefits over three days would require CalWORKs benefits be issued on the first of the month, as specified.
- 7) Requires, unless otherwise required by federal law, CalFresh benefits, with the exception of Disaster CalFresh benefits, be staggered over a period of 10 calendar days.
- 8) Requires CDSS, to the extent feasible and to the extent permitted by federal law and the rules of the program providing the benefits, or pursuant to a waiver from the USDA, in consultation with OSI and other relevant stakeholders, as specified, to establish qualifications and processes for approving retailers to accept, and standards for accepting, online cash benefits payments through the EBT system.
- 9) Requires the EBT system to limit the ability to make online payments using cash benefits, including, but not limited to, a fee for the delivery of food purchased using CalFresh benefits through the EBT system, to retailers approved by CDSS to accept online cash benefits payments through the EBT system.
- 10) Requires a retailer approved by CDSS to receive online cash benefits payments to comply with the standards created pursuant to stakeholder process created by the provisions of this bill, as specified.
- 11) Allows CDSS to implement and administer the provisions of this bill through all-county letters or similar instruction until regulations are adopted, and thereafter requires CDSS to adopt regulations to implement the provisions of this bill within two years following the federal approval of online EBT purchases for California EBT cardholders, as specified.
- 12) Instructs CDSS, no later than January 1, 2021, to issue an all-county letter or similar instructions from the director describing the qualifications, process, and standards developed pursuant to the stakeholder process created by the provisions of this bill, as specified.
- 13) Makes technical changes.

**EXISTING LAW:**

- 1) Establishes the Supplemental Nutrition Assistance Program (SNAP) under federal law pursuant to the Food Stamp Act of 1964 and establishes, in California statute, the CalFresh program to administer the provision of federal SNAP benefits to families and individuals meeting certain criteria, as specified. (7 United States Code [U.S.C.] Section 2011 *et seq.*, Welfare and Institutions Code [WIC] Section 18900 *et seq.*)
- 2) Establishes under federal law the Temporary Assistance for Needy Families (TANF) program to provide aid and welfare-to-work services to eligible families and, in California, provides that TANF funds for welfare-to-work services are administered through the CalWORKs program. (42 U.S.C. 601 *et seq.*, WIC 11200 *et seq.*)
- 3) 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. (42 U.S.C. 601 *et seq.*, WIC 10065 *et seq.*)

- 4) Requires CalWORKs benefits to be staggered over a period of three calendar days, unless a county requests a waiver from CDSS and the waiver is approved, or in cases of hardship determined on a case-by-case basis. (WIC 10072 (c))
- 5) Defines a “grocery establishment” as a retail store that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. (Labor Code 2502 (d))
- 6) Defines a “grocery store” as a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry and any area that is not separately owned with the store where food is prepared and served, including a bakery, deli, and meat and seafood counter. (Health and Safety Code 113948 (d)(3))
- 7) Defines a “community-supported agriculture program” as a program under which a registered California direct marketing producer or a group of registered California direct marketing producers, grow food for a group of California consumer shareholders or subscribers who pledge or contract to buy a portion of the future crop, animal production, or both, of a registered California direct marketing producer or a group of registered California direct marketing producers. (Food and Agriculture Code 47060 (a))
- 8) Establishes the RMP under SNAP to allow eligible recipients who are experiencing homelessness, have a disability, or are elderly to purchase hot, prepared food from participating restaurants. (7 U.S.C. Section 2020, WIC 18919 *et seq.*)

**FISCAL EFFECT:** According to the Senate Appropriations Committee on May 16, 2019, this bill may result in the following costs:

- 1) Ongoing costs of approximately \$400,000 per year to CDSS for additional personnel to establish the qualifications and the process for approving retailers to accept, and standards for accepting, online cash benefits payments (General Fund); and,
- 2) Likely minor costs to CDSS and OSI for any necessary updates to the EBT system.

**COMMENTS:**

**CalFresh:** SNAP provides food access to low-income individuals who meet certain eligibility criteria; in California, this program is known as CalFresh. CalFresh benefits are entirely federally funded, and administration at the federal level lies with the USDA. The USDA is tasked with setting specific eligibility requirements for SNAP programs across the country, as well as a gross and net income tests, work requirements, and other documentation requirements. Currently, the maximum allowable gross income is 200% of the Federal Poverty Level (FPL), although households with elderly members or members with disabilities are not subject to gross income criteria, but must have a net monthly income at or below 100% of the FPL. In California, CalFresh is administered at the local level by county human services agencies, with federal, state, and county governments sharing the costs of program administration. Nearly 4 million individuals in California receive CalFresh benefits; on average, an individual receives approximately \$135 per month in benefits.

**CalWORKs:** California's CalWORKs program provides monthly income assistance and employment-related services to eligible individuals in order to move children out of poverty and ensure families can meet basic needs. CalWORKs also includes a Welfare-To-Work (WTW) component which can include public or private sector subsidized or unsubsidized employment, on-the-job training, community service, secondary school, adult basic education and vocational education and training, as well as certain mental health, substance use, or domestic violence services, if they are determined to reduce barriers to employment for participants. Funding for the CalWORKs program comes from the federal TANF block grant, and a family's grant amount is based on specific eligibility criteria, including citizenship, age, income, resources, and assets, among others. In Fiscal Year (FY) 2018-19, the average monthly cash grant was \$568 per household, and the average monthly grant, per person, was \$238. In FY 2017-18, the average CalWORKs caseload was 423,121 households.

Both food and cash benefits provided through CalFresh and CalWORKs, respectively, are administered through the EBT system and delivered through an EBT card, which is similar to an automated teller machine (ATM) card. Unlike an ATM card, however, CalFresh benefits cannot be withdrawn in cash at point-of-sale (POS) terminals or ATMs; instead, individuals may use benefits to purchase food items to be prepared and consumed at home. CalWORKs benefits, however, can be withdrawn from an ATM or POS device as the benefits are provided in the form of cash, rather than food, benefits.

**SNAP Online Purchasing Pilot:** In 2014, H.R. 2642 (Lucas), P.L. 113-79, the Farm Bill, mandated that a pilot be conducted to determine the feasibility and implications of allowing retail food stores to accept SNAP benefits through online transactions. The pilot requires online purchases be secure, private, easy to use, and provide supports similar to those available when SNAP transactions are made in-person at a retail store. The provisions of the pilot prohibit benefits from being used to pay for delivery, service, or convenience fees. In September 2016, the Food and Nutrition Service (FNS) released a request for retail volunteers to solicit applications for a two-year SNAP Online Purchasing Pilot; applications for the pilot were due November 2016.

On January 5, 2017, FNS announced that seven retailers had been selected for the initial launch of the SNAP Online Purchasing Pilot, including: Amazon, Safeway, and WalMart, among others with Alabama, Iowa, Maryland, Nebraska, New Jersey, New York, Oregon, and Washington anticipated to participate in the initial project. On April 18, 2019, the USDA announced the New York pilot project went live and that program participants are now able to purchase groceries online using their SNAP benefits. The pilot is expected to last two years and will eventually expand to other selected states, though California has not been selected to participate in future expansions of the pilot project.

It should be noted that, while the 2014 Farm Bill included provisions that required pilot projects test the feasibility of online purchases using SNAP benefits and report those findings and results to Congress, H.R. 2 (Conaway), P.L. 115-334, known as the Agriculture Improvement Act of 2018, or the 2018 Farm Bill, removed these reporting requirements. H.R. 2 also provided for the nationwide expansion of the pilot projects upon the authorization of the U.S. Secretary of Agriculture, Sonny Perdue, and through the federal rulemaking process. In short, it is possible that, upon authorization and prior to the completion of the pilot projects, states could have the ability to implement online food purchasing using SNAP benefits without first allowing

Congress to review the outcomes of the pilot projects, and whether there exist benefits or drawbacks to nationwide implementation of online food purchasing using SNAP benefits.

To date, Secretary Perdue has not authorized a nationwide expansion of the online acceptance of SNAP benefits, and it is unclear if and when this authorization will occur, however, the provisions of this bill related to the use of SNAP benefits for online purchases are contingent upon the permissions of federal law and program rules, or pursuant to a USDA waiver.

***Need for this bill:*** The provisions of this bill seek to codify consumer protections when CalFresh recipients use their benefits to purchase food online when permitted by federal law and in the event that the Secretary of Agriculture authorizes nationwide implementation of online food purchasing using SNAP benefits. Specifically, the bill requires retailers to meet certain standards in order to accept the purchase of food using SNAP benefits through an online transaction and requires CDSS to establish protocols that would prevent retailers who do not meet these standards from accepting online food purchases using SNAP benefits. The provisions of the bill also require, to the extent permitted by federal law, CalFresh benefits be staggered over a period of 10 calendar days, and, when a waiver is approved by CDSS, CalWORKs benefits to be issued on the first of the month. Finally, this bill would require CDSS to work with stakeholders to establish qualifications, and processes, for approving retailers to accept online cash benefits payments through the EBT system.

According to the author, “Online EBT access would be a game-changing resource for low-income families without means of transportation to a grocery store. [This bill] lays the groundwork for consumer protection laws when EBT online access is adopted in California.”

***Recommended committee amendments:*** In order to ensure clarity of the standards with which retailers must comply in order to accept online food purchases using CalFresh benefits ***committee staff recommends the following amendments:***

***1) Beginning on line 15 on page 3 of the bill, make the following amendments:***

- 15 (iii) Provide, when a customer either picks up an order at a store  
or receives an order as a delivery, an in-person confirmation of  
pick-up or delivery as an option  
16 ~~for a customer to either pick up at the store or to receive in~~  
on which  
17 the signature of the person providing the pick-up order or  
delivering the ~~food~~ order and the signature of the person  
18 receiving the ~~food~~ order is secured and stored by the retailer.

***2) Beginning on line 24 on page 3 of the bill, make the following amendments:***

- 23 workers, grocery industry representatives, and other relevant  
24 stakeholders, establish protocols to ~~block~~ prohibit retailers from accepting  
25 online food benefits payments through the electronic benefits  
26 transfer system if they do not meet the qualifications enumerated  
27 In subparagraph (A) regarding using existing processes for blocking  
28 EBT use at certain retailers.

In order to maintain current state flexibility when issuing CalFresh benefits, *committee staff recommends the following amendments:*

3) *Beginning on line 13 on page 4 of the bill, make the following amendments:*

12 calendar days, unless a county requests a waiver from the  
 13 department ~~to issue those benefits on the first of the month~~ and  
 14 the waiver is approved, or, in cases of hardship, pursuant to  
 15 subdivision (p).  
 16 ~~(3) Unless otherwise required by federal law, except for Disaster~~  
 17 ~~CalFresh benefits, CalFresh benefits shall be staggered over a~~  
 18 ~~period of 10 calendar days.~~

In order to clarify that it is the role of CDSS and relevant stakeholders to determine which online purchases using cash benefits are allowable, *committee staff recommends the following amendments:*

4) *Beginning on line 28 on page 8 of the bill, make the following amendments:*

26 public benefit recipient advocates, representatives of public benefit  
 27 caseworkers and food workers, grocery industry representatives,  
 28 and other relevant stakeholders, ~~establish the qualifications, and~~  
 29 ~~process, for approving retailers to accept, and standards for~~  
 30 ~~accepting, online cash benefits payments through the electronic~~  
 31 ~~benefits transfer system. do all of the following:~~  
 (1) Establish qualifications, standards, and processes required to certify,  
and periodically re-certify, retailers as eligible to accept payments  
online using cash benefits.  
 (2) Determine the allowable online purchases that may be made using  
cash benefits. This determination shall include, but not be limited to,  
a consideration of the allowable payment of fees for the delivery of food  
purchased using CalFresh benefits through the electronic benefits transfer  
system.

5) *Beginning on line 39 on page 8 of the bill, make the following changes:*

—39 ~~(b) The electronic benefits system shall limit the ability to make~~  
 40 ~~online payments using cash benefits, including, but not limited,~~  
 P9—1 ~~the payment of a fee for the delivery of food purchased using~~  
 2 ~~CalFresh benefits through the electronic benefits transfer system,~~  
 3 ~~to only retailers approved by the State Department of Social~~  
 4 ~~Services to accept online cash benefits payments through the~~  
 5 ~~electronic benefits transfer system.~~

**PRIOR LEGISLATION:**

*H.R. 2 (Conaway), P.L. 115-334, 2018*, known as the Agriculture Improvement Act of 2018, or Farm Bill, repealed various reporting requirements for pilot projects examining the online acceptance of SNAP benefits.

*AB 2313 (Stone), Chapter 718, Statutes of 2018*, established protections for recipients of public benefits issued via EBT cards whose benefits are stolen.

*SB 675 (Skinner) of 2017* was substantially similar to this bill and would have required the EBT system to only permit online purchases of food from retailers that comply with various specified requirements and the EBT system to prohibit payment of delivery fees for online food purchase using CalFresh benefits. SB 675 was held on the Assembly Inactive file.

*H.R. 2642 (Lucas), P.L. 113-79, 2014*, known as the Agriculture Reform and Risk Management Act of 2014, or Farm Bill, authorized nutrition and agriculture programs in the United States for the years 2014 through 2018.

*AB 1614 (Stone), Chapter 720, Statutes of 2014*, required users of EBT cards to be provided access to transaction history via toll-free telephone hotline and Internet website, among other methods, required the EBT system to be designed so that users are informed when the system is down and funds are not accessible, and required users of EBT cards be informed of where they can use their cards to withdraw funds without fees.

*AB 1280 (Perez), Chapter 557, Statutes of 2013*, authorized public assistance payments to be directly deposited by electronic fund transfer to a qualifying account and required those accounts to meet specified consumer protection regulations.

*AB 2035 (Bradford), Chapter 319, Statutes of 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 their benefits.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Western Center on Law & Poverty, Inc. (Sponsor)  
United Food and Commercial Workers, Western States Council

**Opposition**

None on file

**Analysis Prepared by:** Kelsy Castillo / HUM. S. / (916) 319-2089