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SB-360 Public social services: prosecution for overpayment or overissuance of benefits. (2017-2018)

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Senate Bill No. 360

CHAPTER 390

An act to amend Section 10980 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 30, 2017. Filed with Secretary of State September 30, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 360, Skinner. Public social services: prosecution for overpayment or overissuance of benefits.

Existing federal law provides for allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states. Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which, through a combination of state and county funds and federal funds received through the TANF program, each county provides cash assistance and other benefits to qualified low-income families. Existing federal law provides for the Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Existing federal law requires a state to establish an income and eligibility verification system for specified programs, including the CalWORKs and CalFresh programs, under which the information of a program applicant or recipient is matched with various databases.

Existing law establishes criminal penalties for violation of certain provisions relating to, among other offenses, willfully and knowingly, with the intent to deceive, by means of a false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtaining or retaining aid through designated public social services.

This bill would prohibit a person from being subject to criminal prosecution, as specified, for an overpayment or overissuance of benefits, obtained under the CalWORKs program or the CalFresh program, for any month in which the county human services agency was in receipt of any Income and Eligibility Verification System (IEVS) data match information indicating any potential for an overpayment or an overissuance and for which the county human services agency has not provided to the person a timely and adequate notice of action for the collection of the overpayment or the overissuance. The bill would provide that the county human services agency be deemed to be in receipt of the information following 45 days, or the combined total of 45 days and an authorized delay, as specified, from the date of the county human services agency's possession of that information. The bill would also make technical, nonsubstantive changes to the above provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is nine hundred fifty dollars (\$950) or less, by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than nine hundred fifty dollars (\$950), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Supplemental Nutrition Assistance Program or to receive CalFresh benefits or electronically transferred benefits in any manner not authorized by the former federal Food Stamp Act of 1964 (Public Law 88-525 and all amendments thereto) or the federal Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates CalFresh benefits, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Any person who knowingly uses, transfers, sells, purchases, or possesses CalFresh benefits, electronically transferred benefits, or authorizations to participate in the federal Supplemental Nutrition Assistance Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6, or by the former federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments thereto) or the federal Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011 et seq.) (1) is guilty of a misdemeanor if the face value of the benefits or the authorizations to participate is nine hundred fifty dollars (\$950) or less, and shall be punished by imprisonment in a county jail for a period of not more than six months, by a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine, or (2) is guilty of a felony if the face value of the CalFresh benefits or the authorizations to participate exceeds nine hundred fifty dollars (\$950), and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine, or by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars (\$50,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of one year.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars (\$150,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of two years.

(C) If the electronic transfer of benefits exceeds one million dollars (\$1,000,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of three years.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars (\$2,500,000), an additional term pursuant to subdivision (h) of Section 1170 of the Penal Code of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

(j) (1) A person shall not be subject to criminal prosecution, under this section or under any other law, for an overpayment or overissuance of benefits, obtained under the California Work Opportunity and Responsibility to Kids (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3) or the CalFresh program (Chapter 10 (commencing with Section 18900) of Part 6), for any month in which the county human services agency was in receipt of any Income and Eligibility Verification System (IEVS) data match information indicating any potential for an overpayment or an overissuance and for which the county human services agency has not provided to the person a timely and adequate notice of action for the collection of the overpayment or the overissuance.

(2) (A) For purposes of paragraph (1), the county human services agency shall be deemed to be in receipt of IEVS data match information indicating any potential for an overpayment or an overissuance following 45 days from the date of the county human services agency's possession of that information.

(B) Notwithstanding subparagraph (A), if the county human services agency does not complete the required actions for an IEVS data match for a CalFresh or CalWORKs applicant or recipient within 45 days of receipt of information pursuant to Section 272.8 of Title 7 of, or Section 205.56 of Title 45 of, the Code of Federal Regulations, or their successors, but is authorized to exceed the 45-day period due to exceptions provided under those regulations or under any other federal law, the county human services agency shall be deemed, for purposes of paragraph (1), to be in receipt of IEVS data match information indicating any potential for an overpayment or an overissuance following the combined total of 45 days and the authorized delay from the date of the county human services agency's possession of that information.