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SB-1140 Public social services: electronic benefits transfer cards. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 1140

Introduced by Senator Umberg

February 16, 2022

An act to amend Section 10072 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, Umberg. Public social services: electronic benefits transfer cards.

Existing law provides for the establishment of a statewide electronic benefits transfer (EBT) system, administered by the State Department of Social Services, for the purpose of providing financial and food assistance benefits. Existing law provides that a recipient shall 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, as specified, and requires the prompt replacement of those cash benefits. Existing regulations also require food benefits that are stolen in this manner to be replaced.

This bill would instead prohibit a recipient from incurring any loss of electronic benefits stolen in that manner, thereby codifying the existing regulation described above. To the extent this bill would expand county duties relating to the administration of food benefits, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) CalFresh is a program that provides food benefits to Californians with low incomes with federal funding provided through the federal Supplemental Nutrition Assistance Program (SNAP).
- (2) Federal law requires these benefits to be issued via an electronic benefits transfer (EBT) system.
- (3) Federal SNAP law requires the state to timely reissue benefits when a person's EBT card or personal identification number (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.
- (4) Federal law does not require reimbursement when benefits are stolen electronically before a report, but permits states to make such reimbursements.
- (5) Federal laws requiring the replacement of stolen benefits predates the implementation of the EBT system in California and the advent of electronic skimming, a type of theft that does not require the theft of a person's EBT card.
- (6) Electronic theft of EBT benefits is devastating to the low-income families who depend on those benefits to prevent hunger, homelessness, and other basic needs.
- (7) In 2012, in response to litigation in the matter of *Carpio v. Lightbourne* (Case No. BS135127), Assembly Bill 2035 established the rights of an EBT consumer to be reimbursed for electronically stolen cash benefits.
- (8) In November of 2020, the California Court of Appeal in *Ortega v. Johnson* (2020) 57 Cal.App.5th 552 held that CalFresh recipients also have the right to have their benefits timely replaced when they are electronically stolen.

(b) It is the intent of the Legislature to enact legislation to codify the decision in *Ortega v. Johnson* (2020) 57 Cal.App.5th 552 to ensure timely reimbursement of CalFresh benefits that were stolen electronically.

SEC. 2. Section 10072 of the Welfare and Institutions Code is amended to read:

10072. The electronic benefits transfer system required by this chapter shall be designed to do, but not be limited to, all of the following:

- (a) To the extent permitted by federal law and the rules of the program providing the benefits, recipients who are required to receive their benefits using an electronic benefits transfer system shall be permitted to gain access to the benefits in any part of the state where electronic benefits transfers are accepted. All electronic benefits transfer systems in this state shall be designed to allow recipients to gain access to their benefits by using every other electronic benefits transfer system.
- (b) To the maximum extent feasible, electronic benefits transfer systems shall be designed to be compatible with the electronic benefits transfer systems in other states.
- (c) All reasonable measures shall be taken in order to ensure that recipients have access to electronically issued benefits through systems, including, but not limited to, automated teller machines, point-of-sale devices, or other devices that accept electronic benefits transfer transactions. Benefits provided under Chapter 2 (commencing with Section 11200) of Part 3 shall be staggered over a period of three calendar days, unless a county requests a waiver from the department and the waiver is approved, or in cases of hardship pursuant to subdivision (p).
- (d) The system shall provide for reasonable access to benefits to recipients who demonstrate an inability to use an electronic benefits transfer card or other aspect of the system because of disability, language, lack of access, or other barrier. These alternative methods shall conform to the requirements of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.), including reasonable accommodations for recipients who, because of physical or mental disabilities, are unable to operate or otherwise make effective use of the electronic benefits transfer system.
- (e) The system shall permit a recipient the option to choose a personal identification number, also known as a "PIN" number, to assist the recipient to remember the number in order to allow access to benefits. Whenever an institution, authorized representative, or other third party not part of the recipient household or assistance unit has been issued an electronic benefits transfer card, either in lieu of, or in addition to, the recipient, the third party shall have a separate card and personal identification number. At the option of the recipient, the recipient may designate whether restrictions apply to the third party's access to the recipient's benefits. At the option of the recipient head of household or assistance unit, the county shall provide one electronic benefits transfer card to each adult member to enable them to access benefits.

(f) The system shall 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, and that will allow an authorized representative or head of household to access, over the telephone, the transaction history detail for at least the last 10 transactions and to request that the transaction history detail for at least the past two months be sent by mail.

(g) The system shall have an internet website that will provide recipients, at no additional cost to the recipient, with information on how to have the card and personal identification number replaced, and that will allow an authorized representative or head of household to view the transaction history detail for at least the last 10 transactions and to request that the transaction history detail for at least the past two months be sent by mail.

(h) In addition to the ability to receive transaction history detail pursuant to subdivisions (f) and (g), a county human services agency shall make available to an authorized representative or head of household, at no additional cost to the authorized representative or head of household, all electronic benefit transaction history details that are available to the county human services agency within 10 business days after a request has been received by the agency.

(i) (1) A recipient shall not incur any loss of benefits after reporting that the recipient's electronic benefits transfer card or personal identification number has been lost or stolen. The system shall provide for the prompt replacement of lost or stolen electronic benefits transfer cards and personal identification numbers. Electronic benefits for which the case was determined eligible and that were not withdrawn by transactions using an authorized personal identification number for the account shall also be promptly replaced.

(2) (A) Except as provided in subparagraph (B), a recipient shall not incur any loss of electronic benefits that are taken by an unauthorized contact, withdrawal, removal, or use of benefits, including, but not limited to, use that results from an unauthorized solicitation, request, or representation that does not occur by the use of a physical electronic benefits transfer card issued to the recipient or authorized third party to directly access the benefits. Benefits taken as described in this subparagraph shall be promptly replaced in accordance with the protocol established by the department pursuant to paragraph (3).

(B) If a recipient knowingly provides the recipient's electronic benefits transfer card number and personal identification number to an unauthorized third party that the recipient mistakenly believes to be the contracted electronic benefits transfer vendor, an approved retailer, or a governmental entity, any benefits taken as described in subparagraph (A) shall be promptly replaced in accordance with the protocol established by the department pursuant to paragraph (3), but not more than one time in a 36-month period.

(3) The State Department of Social Services shall establish a protocol for recipients to report electronic theft of electronic benefits that minimizes the burden on recipients, ensures prompt replacement of benefits in order to minimize the harm to recipients, and ensures program integrity. This protocol may include the automatic replacement of benefits without the need for recipient reporting and verification.

(4) (A) Notwithstanding paragraphs (2) and (3), the State Department of Social Services may issue mass reimbursements to recipients for the loss of electronic benefits if the department finds that the benefits of multiple recipients were taken by an unauthorized withdrawal, removal, or use of benefits in which the recipients' electronic benefits transfer card numbers or personal identification numbers were obtained by means of a data breach.

(B) A mass reimbursement made pursuant to subparagraph (A) requires the approval of the Department of Finance with notice given to the Joint Legislative Budget Committee.

(j) Electronic benefits transfer system consumers shall be informed on how to use electronic benefits transfer cards, how to protect their cards from misuse, and where consumers can use their cards to withdraw benefits without incurring a fee, charge, or surcharge.

(k) The electronic benefits transfer system shall be designed to inform recipients when the electronic benefits transfer system does not function or is expected not to function for more than a one-hour period between 6 a.m. and midnight during any 24-hour period. This information shall be made available in the recipient's preferred language if the electronic benefits transfer system vendor contract provides for services in that language.

(l) Procedures shall be developed for error resolution.

(m) A fee shall not be charged by the state, a county, or an electronic benefits processor certified by the state to retailers participating in the electronic benefits transfer system.

(n) Except for CalFresh transactions, a recipient may be charged a fee, not to exceed the amount allowed by applicable state and federal law and customarily charged to other customers, for cash withdrawal transactions that exceed four per month.

(o) The electronic benefits transfer system shall be designed to ensure that recipients of benefits under Chapter 2 (commencing with Section 11200) of Part 3 have access to using or withdrawing benefits with minimal fees or charges, including an opportunity to access benefits with no fee or charges.

(p) A county shall exempt an individual from the three-day staggering requirement under subdivision (c) on a case-by-case basis for hardship. Hardship includes, but is not limited to, the incurrence of late charges on an individual's housing payments.

(q) A county shall use information provided by the department to inform recipients of benefits under Chapter 2 (commencing with Section 11200) of Part 3 of all of the following:

(1) The methods of electronic delivery of benefits available, including distribution of benefits through the electronic benefits transfer system or direct deposit pursuant to Section 11006.2.

(2) Applicable fees and charges, including surcharges, consumer and privacy protections, and liability for theft associated with the electronic benefits transfer system.

(3) How to avoid fees and charges, including opting for delivery of benefits by direct deposit and using the electronic benefits transfer card solely at surcharge free locations.

(4) Where to withdraw benefits without a surcharge when using the electronic benefits transfer system.

(5) That a recipient may authorize any available method of electronic delivery of benefits and instructions regarding how the recipient may select or change the recipient's preferred method of electronic delivery of benefits and that the recipient shall be given the opportunity to select the method prior to the first payment.

(6) That a recipient may be entitled to an alternative method of delivery if the recipient demonstrates an inability to use an electronic benefits transfer card or other aspect of the system because of disability, language, lack of access, or other barrier pursuant to subdivision (d) and instructions regarding how to determine whether the recipient qualifies for an alternative method of delivery.

(7) That a recipient may be entitled to an exemption from the three-day staggering requirement under subdivision (c) on a case-by-case basis for hardship pursuant to subdivision (p) and instructions regarding how to determine whether the recipient qualifies for the exemption.

(r) A county is in compliance with subdivision (q) if it provides the recipient a copy of the information developed by the department. A county may provide a recipient information, in addition to the copy of the information developed by the department, pursuant to subdivision (q), either verbally or in writing, if the county determines the additional information will benefit the recipient's understanding of the information provided.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.