

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 697  
Appropriations

(Delegate Alston, *et al.*)

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Department of Human Services – Electronic Benefits Transfer Cards – Theft and  
Restoration of Benefits

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This bill requires the Department of Human Services (DHS) to restore any lost benefits to a household due to theft from an Electronic Benefits Transfer (EBT) card, as specified, including benefits lost between January 1, 2020, and July 1, 2023 (even if the household is ineligible to receive benefits at the time of issuance). The bill also specifies requirements for (1) local departments of social services relating to the electronic benefits transfer system (EBTS), the EBT card, and EBT card activity and (2) retailers accepting EBT cards. By December 1, 2023, and by each December 1 thereafter, DHS must report specified information related to EBT theft for the immediately preceding year to the General Assembly. **The bill takes effect July 1, 2023.**

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Fiscal Summary

**State Effect:** General and federal fund expenditures for DHS increase *significantly* beginning in FY 2024, as discussed below, for annual benefit reimbursements and additional staff. In FY 2024 only, general/federal fund expenditures also increase by \$220,000 for one-time programming costs and by a significant additional amount for reimbursements for retroactive payments. Federal fund revenues increase accordingly.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Select Definitions*

“Skimming practices” includes use of a skimming device, including a scanner, skimmer, reader, or other electronic device used to access, read, scan, obtain, memorize, or store, temporarily or permanently, personal identifying information; or adding malicious code illegally to a website to capture EBT card data or personal identifying information.

“Theft” includes physical theft of an EBT card; identify theft; and theft through skimming practices.

#### *Local Departments of Social Services*

The bill requires local department of social services to:

- maintain a secure EBTS that protects personal identifying information and benefits from unauthorized access, use, and disclosure;
- monitor EBT card activity for suspicious or fraudulent activity on an ongoing basis;
- notify a household promptly of any suspicious EBT card activity or if any personal identifying information is stolen or compromised;
- include an embedded microchip in all EBT cards issued on or after October 1, 2023;
- on or before October 1, 2023, require all retailers accepting EBT cards in the State to upgrade their pay systems to technology that allows the use of EBT cards with embedded microchips; and
- implement settings on EBT cards that would send a household an immediate text alert after each EBT card transaction; prevent an EBT card from being used outside the State without prior authorization from the household; and allow a household to prohibit an EBT card from being used during certain hours.

#### *Restoration of Benefits*

A household is entitled to restoration of any benefits lost due to theft. If federal funds are unavailable for reimbursement purposes, State funds must be used. The bill requires a local department to automatically restore the benefits of a household without requiring further action from the household if the department is aware of a household’s entitlement to the restoration of benefits due to theft. Within two days after a household informs a local department of the loss or theft of benefits for which the household is entitled, the local department must:

- notify the household in writing of the decision to restore benefits, the amount of benefits to be restored, and the right to and method of requesting a hearing on the decision, as specified;
- restore benefits to the household in the amount of benefits that was lost; and
- provide the household with a new EBT card.

A local department may not (1) require a household to provide a police report as a condition of restoration of benefits or (2) limit the number of months in which a household can receive restoration of benefits lost due to theft.

### *Right to Administrative Hearing and Benefits*

If a household disputes the amount of benefits restored or a local department's determination that no restoration is due, the household may request a hearing with DHS within 90 days after the date of the local department's determination. If a household requests a hearing, the local department must automatically restore the benefits for which the household claims entitlement while the hearing is pending; if the hearing decision is unfavorable to the household, any benefits improperly restored may be recovered by the local department by reducing the household's benefit at a rate of up to the greater of \$10 or 10% of the household's monthly allotment of benefits.

### *Reporting Requirements*

By December 1, 2023, and each December 1 thereafter, DHS must report the following information for the immediately preceding year to the General Assembly:

- number of households reporting theft of benefits, by jurisdiction;
- number of households eligible for emergency Supplemental Nutrition Assistance Program (SNAP) benefits that reported theft of benefits;
- total dollar amount of benefits reported stolen, by jurisdiction;
- number of determinations of theft made by a local department, by jurisdiction;
- number of determinations made by a local department that theft did not occur, by jurisdiction;
- number of households reimbursed for theft and the total dollar amount of benefits restored, by jurisdiction;
- average and maximum length of time, in days, between the report of theft and the restoration of benefits, by jurisdiction;
- number of hearings requested and the number of households that received a restoration of benefits as an outcome of a hearing; and

- demographic data on households that experienced theft, including race, gender, number of households with children younger than age 18, and number of households with a member at least age 60.

### **Current Law:**

#### *Maryland Electronic Benefit Transfer System (EBTS)*

DHS operates an EBTS under agreement with the U.S. Department of Health and Human Services and pursuant to U.S. Department of Agriculture regulations. The Maryland EBT Card is called the Independence Card. It operates like a bank debit card and holds the benefits that are deposited into a recipient's account. DHS programs –SNAP, Temporary Cash Assistance (TCA), Temporary Disability Assistance Program (TDAP), Public Assistance to Adults (PAA) – use the EBT card to provide monthly benefits to eligible recipients.

#### *Department of Human Services – Guidance and Procedures on Electronic Benefits Transfer Card Fraud*

DHS has a page on its website dedicated to EBT fraud, including a video and a flyer explaining what steps a customer can take if an EBT card is stolen or suspicious activity has occurred on the card, and tips on how to protect the EBT card from fraud. A customer may call a 1-800 number, available 24 hours/7 days a week, to report that an EBT card is stolen, lost, or compromised, and request that the EBT card be frozen (and that a new EBT replacement card be issued, which can be picked up at a local department of social services). The customer is encouraged to report the crime to the local police and submit a copy of the police report to the local department, who must report the incident to the DHS Office of Inspector General (OIG) by email. Under State regulations, OIG within DHS must identify, investigate, and resolve suspicions of fraud, waste, and abuse. The Program Fraud Division investigates suspected fraud within DHS programs.

#### *Federal Law – Temporary Replacement Benefits for Electronic Benefits Transfer Card Fraud*

The federal Consolidated Appropriations Act of 2023, enacted in December 2022, requires the U.S. Department of Agriculture Food and Nutrition Service (FNS) to issue ongoing guidance on the security measures states must take to detect and prevent EBT card fraud through card skimming, card cloning, or other similar fraudulent methods, and to issue regulations on requiring state agencies to implement procedures for replacement benefits to SNAP households victimized by EBT card fraud.

The Act also requires states to issue replacement SNAP benefits stolen from households between October 1, 2022, and September 30, 2024, due to card skimming, card cloning, or other similar fraudulent methods (and authorizes the use of federal funds to do so). States must replace the lesser of the full amount stolen or two months of stolen benefits. Each state agency is limited to providing replacement benefits twice per federal fiscal year for each household. By February 28, 2023, state SNAP agencies must submit plans, as specified, to FNS detailing procedures about how to validate stolen SNAP benefit claims and replace benefits. When FNS approves a state plan, that state will be able to replace certain benefits stolen October 1, 2022, through September 30, 2024, using federal funds. However, the Act does not apply to stolen benefits from EBT cards used in other DHS cash assistance programs, such as TCA, TDAP, or PAA, and is limited in scope to the aforementioned time period.

**State Fiscal Effect:** General/federal fund expenditures increase *significantly* beginning in fiscal 2024 for costs associated with (1) reimbursement of lost benefits; (2) additional staffing needs; and (3) one-time computer programming. Federal fund revenues increase accordingly.

DHS advises that the bill increases State (general/federal fund) expenditures by approximately \$4.0 million in fiscal 2024 and by a minimum of \$5.2 million annually thereafter. The estimate assumes that reimbursements totaling \$3.8 million are required annually, in addition to ongoing staffing costs. The estimate includes one-time programming costs of \$220,000 (assumed to be incurred in fiscal 2024); however, it does not take into account the requirement in the bill that payments be provided retroactively to specified households.

Based on information from DHS, in calendar 2020 through 2022, there were 2,549 total incidents of EBT theft, with the value of associated benefits estimated at approximately \$1.8 million; the vast majority of incidents occurred during calendar 2022. Despite the bill's effective date of July 1, 2023, these benefits are eligible for reimbursement (along with benefits lost between January 1, 2023, and June 30, 2023). The Department of Legislative Services (DLS) notes that the estimate provided by DHS in response to a request for information on the bill assumes a significantly higher number of incidents of fraudulent EBT use than that reported to have occurred during calendar 2022. However, DLS also notes that incidents of theft appear to be increasing dramatically (422 incidents totaling almost \$260,000 in lost benefits occurred in January 2023). *For illustrative purposes only and using the calendar 2022 data*, reimbursements as required by the bill would total \$4.3 million in fiscal 2024, which accounts for benefit reimbursements between January 1, 2020, (due to the retroactive provisions in the bill) and June 30, 2024, (the end of fiscal 2024) and continue by over \$1.6 million annually thereafter. To the extent, however, that future activity is more reflective of that experienced in January 2023, expenditures could be significantly higher (both in fiscal 2024 and annually thereafter).

Although the DHS estimate assumed that general funds are used for all reimbursements, DLS notes that (1) federal funds may be used for a portion of the reimbursement claims (those related to SNAP) paid by DHS during a certain period of time and (2) even in the absence of the bill, a portion of these costs will be incurred due to the new federal requirements regarding the reimbursement for the fraudulent use of SNAP benefits during the limited time period.

DHS also estimates that 20 full-time employees are necessary to implement the bill. Specifically, it advises that 15 full-time employees are needed to process the reimbursement claims within the local departments, conduct research, and obtain information for the annual report and 5 full-time employees are needed to monitor EBT suspicious activity and perform related administrative tasks, including preventive outreach, with associated general/federal fund expenditures of \$1,073,143 for fiscal 2024 (assuming a start-date of October 1, 2023, for employees), and increasing to \$1,420,776 by fiscal 2028. While DLS acknowledges that the bill imposes additional requirements on local departments (funded by the State) that necessitates additional staff, particularly in larger jurisdictions, it is unable to independently verify the staffing estimate submitted by DHS. For illustrative purposes only, for each additional caseworker that is required, State expenditures increase by approximately \$56,000 in fiscal 2024, and by approximately \$65,000 annually thereafter.

This estimate does not reflect any *potential* costs associated with the requirement for all EBT cards issued on or after October 1, 2023, to include an embedded microchip and/or to further enhance settings on EBT cards, as required by the bill.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 401 (Senator Kramer) - Finance.

**Information Source(s):** Montgomery County; Department of Human Services; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Joanne Tetlow

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510