

Chapter 171

(Senate Bill 2)

AN ACT concerning

**Department of Human Services – Electronic Benefits Transfer Cards – ~~Fraud~~
Theft of Benefits
(Prevent Electronic Benefits Theft Act of 2023)**

FOR the purpose of requiring the Department of Human Services to reimburse a beneficiary for any benefits lost due to ~~the fraudulent use of the beneficiary’s Electronic Benefits Transfer card;~~ theft; authorizing certain households to request a certain hearing under certain circumstances; requiring the State to give preference to certain vendors in the procurement process for electronic benefits distribution or administration; ~~requiring the Department to establish a certain point of contact for investigating and identifying electronic benefits fraud; requiring the Department to notify certain beneficiaries about electronic benefits fraud in a certain manner and provide certain assistance to certain beneficiaries; applying certain provisions of this Act retroactively;~~ establishing the Benefit Theft Restitution Fund; authorizing the Department to restore benefits to certain households; requiring the Department to issue benefits to eligible households on or before a certain date; requiring the Department to take certain actions to reduce the vulnerability of Electronic Benefits Transfer cards to theft; and generally relating to electronic benefits.

BY adding to

Article – Human Services
Section 5–609 and 5–610
Annotated Code of Maryland
(2019 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Human Services

5–609.

~~THE DEPARTMENT SHALL REIMBURSE A BENEFICIARY FOR ANY AMOUNT OF BENEFITS LOST DUE TO THE FRAUDULENT USE OF THE BENEFICIARY’S ELECTRONIC BENEFITS TRANSFER CARD.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article – Human Services~~

~~5-610.~~

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "PERSONAL IDENTIFYING INFORMATION" HAS THE MEANING STATED IN § 8-301 OF THE CRIMINAL LAW ARTICLE.

(II) "PERSONAL IDENTIFYING INFORMATION" INCLUDES AN ELECTRONIC BENEFITS TRANSFER CARD NUMBER OR PERSONAL IDENTIFICATION NUMBER.

(3) "SKIMMING PRACTICES" INCLUDES:

(I) 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

(II) ADDING MALICIOUS CODE ILLEGALLY TO A WEBSITE TO CAPTURE ELECTRONIC BENEFITS TRANSFER CARD DATA OR PERSONAL IDENTIFYING INFORMATION.

(4) "THEFT" INCLUDES:

(I) PHYSICAL THEFT OF AN ELECTRONIC BENEFITS TRANSFER CARD;

(II) IDENTITY FRAUD, AS DEFINED IN § 8-301 OF THE CRIMINAL LAW ARTICLE; AND

(III) THEFT THROUGH SKIMMING PRACTICES.

(5) "TWO-WAY FRAUD ALERT" MEANS THE CAPABILITY OF THE DEPARTMENT TO COMMUNICATE WITH HOUSEHOLDS, AND OF HOUSEHOLDS TO COMMUNICATE WITH THE DEPARTMENT, THROUGH TEXT MESSAGING REGARDING POTENTIAL FRAUDULENT USE OR THEFT OF AN ELECTRONIC BENEFITS TRANSFER CARD.

(B) (1) ~~A HOUSEHOLD IS ENTITLED TO RESTORATION OF ANY BENEFITS LOST DUE TO THEFT.~~

~~(2)~~ IF AN INVESTIGATION BY THE DEPARTMENT IS AWARE OF SHOWS A HOUSEHOLD'S ENTITLEMENT TO THE RESTORATION OF BENEFITS UNDER PARAGRAPH (1) OF THIS SUBSECTION CORRECTLY ISSUED BENEFITS WERE LOST DUE TO THEFT, THE DEPARTMENT AUTOMATICALLY SHALL RESTORE THE BENEFITS WITHOUT REQUIRING FURTHER ACTION FROM THE HOUSEHOLD.

~~(3)~~ (2) AS SOON AS PRACTICABLE, BUT NOT LATER THAN 10 DAYS AFTER A HOUSEHOLD INFORMS THE DEPARTMENT OF THE LOSS OF BENEFITS DUE TO THEFT, THE DEPARTMENT SHALL:

(I) NOTIFY THE HOUSEHOLD IN WRITING OF THE DEPARTMENT'S DECISION AS TO WHETHER TO RESTORE BENEFITS, THE AMOUNT OF BENEFITS TO BE RESTORED, AND THE RIGHT TO AND METHOD OF REQUESTING A HEARING ON THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION;

(II) IF THE DEPARTMENT DETERMINES THAT THE HOUSEHOLD IS ENTITLED TO RECEIVES BENEFITS, RESTORE BENEFITS TO THE HOUSEHOLD IN THE AMOUNT OF BENEFITS THAT WAS LOST; AND

(III) PROVIDE THE HOUSEHOLD WITH A NEW ELECTRONIC BENEFITS TRANSFER CARD.

~~(4)~~ (3) THE DEPARTMENT MAY NOT:

(I) REQUIRE A HOUSEHOLD TO PROVIDE A POLICE REPORT AS A CONDITION OF RESTORATION OF BENEFITS; OR

(II) LIMIT THE NUMBER OF MONTHS IN WHICH A HOUSEHOLD CAN RECEIVE RESTORATION OF BENEFITS LOST DUE TO THEFT.

(C) (1) IF A HOUSEHOLD DISPUTES THE AMOUNT OF BENEFITS RESTORED OR THE DEPARTMENT'S DETERMINATION THAT NO RESTORATION IS DUE, THE HOUSEHOLD MAY REQUEST A HEARING WITH THE DEPARTMENT WITHIN 90 DAYS AFTER THE DATE OF THE DEPARTMENT'S DETERMINATION.

(2) IF A HOUSEHOLD REQUESTS A HEARING UNDER THIS SUBSECTION, THE DEPARTMENT SHALL RESTORE THE BENEFITS FOR WHICH THE HOUSEHOLD CLAIMS ENTITLEMENT WHILE THE HEARING IS PENDING.

(3) IF THE HEARING DECISION IS UNFAVORABLE TO THE HOUSEHOLD, ANY BENEFITS IMPROPERLY RESTORED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY BE RECOVERED BY THE DEPARTMENT BY REDUCING THE

HOUSEHOLD'S BENEFIT AT A RATE THAT MAY NOT EXCEED THE LESSER OF \$10 OR 5% OF THE HOUSEHOLD'S MONTHLY ALLOTMENT OF BENEFITS.

~~(D) IF FEDERAL FUNDS ARE UNAVAILABLE FOR REIMBURSEMENT PURPOSES UNDER THIS SECTION, STATE FUNDS SHALL BE USED.~~

~~(A) (E)~~ IN THE PROCUREMENT PROCESS FOR ELECTRONIC BENEFITS DISTRIBUTION OR ADMINISTRATION, THE STATE OR STATE-AIDED OR STATE-CONTROLLED ENTITY SHALL GIVE PREFERENCE TO A VENDOR THAT:

(1) HOLDS A FORM OF INSURANCE THAT CAN BE USED TO REIMBURSE A BENEFICIARY FOR IDENTITY FRAUD OR ~~IDENTITY~~ THEFT; AND

(2) PROVIDES IDENTITY ACCESS PROTECTIONS TO PROTECT AN ELIGIBLE BENEFICIARY AGAINST IDENTITY FRAUD AND THEFT, WHICH MAY INCLUDE MULTIFACTOR AUTHENTICATION.

~~(B) (1) THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND STATE POLICE AND ANY OTHER VENDOR THAT THE DEPARTMENT CONSIDERS NECESSARY, SHALL ESTABLISH A SINGLE POINT OF CONTACT WITHIN EACH LOCAL DEPARTMENT:~~

~~(I) TO START AN INVESTIGATION AND FILE A POLICE REPORT WHEN BENEFITS ARE STOLEN;~~

~~(II) TO CONDUCT AN INITIAL SCREENING TO IDENTIFY UNUSUAL CHARGES; AND~~

~~(III) SCHEDULE AN APPOINTMENT FOR A BENEFICIARY TO REPLACE THE BENEFICIARY'S CARD AND BEGIN THE REIMBURSEMENT PROCESS WITHIN 1 WEEK AFTER THE IDENTIFICATION OF UNUSUAL CHARGES.~~

~~(2) THE DEPARTMENT SHALL ESTABLISH A HOTLINE TO ASSIST BENEFICIARIES IN REPORTING STOLEN BENEFITS AND ACCESSING THE PROCESS DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

~~(C) THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND STATE POLICE AND ANY OTHER VENDOR THAT THE DEPARTMENT CONSIDERS NECESSARY, SHALL:~~

~~(1) ALERT ELECTRONIC BENEFITS TRANSFER CARD HOLDERS ABOUT THE RISK OF FRAUD THROUGH MASS MESSAGING, INCLUDING E-MAILS, TEXT MESSAGES, AND WRITTEN NOTICES THAT:~~

- ~~(I) ARE EASY TO UNDERSTAND;~~
- ~~(II) ARE AVAILABLE IN MULTIPLE LANGUAGES;~~
- ~~(III) INCLUDE VISUAL DEPICTIONS OF A SKIMMING DEVICE;~~
- ~~(IV) INCLUDE SIMPLE INSTRUCTIONS ON HOW TO CHANGE A PERSONAL IDENTIFICATION NUMBER (PIN) ONLINE AND BY PHONE; AND~~
- ~~(V) INCLUDE INFORMATION ON THE AVAILABILITY OF REPLACEMENT BENEFITS;~~
- ~~(2) PROACTIVELY IDENTIFY PATTERNS IN ELECTRONIC BENEFITS TRANSFER CARD ACTIVITY THAT COULD BE EARLY INDICATORS OF FRAUD; AND~~
- ~~(3) PROMPTLY NOTIFY THE CARD HOLDER TO DETERMINE WHETHER BENEFITS HAVE BEEN FRAUDULENTLY USED AND, IF SO, OFFER SUPPORT TO THE CARD HOLDER.~~

~~(F)~~ (E) THE DEPARTMENT SHALL COORDINATE WITH VENDORS TO TAKE AVAILABLE PRECAUTIONS TO REDUCE THE VULNERABILITY OF ELECTRONIC BENEFITS TRANSFER CARDS TO THEFT BY UTILIZING ENHANCED TECHNOLOGY.

~~(D)~~ ~~(G)~~ (F) ON OR BEFORE DECEMBER 1 EACH YEAR, THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND STATE POLICE LOCAL LAW ENFORCEMENT AGENCIES IN THE STATE, SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON:

- (1) THE ACCESSIBILITY AND SECURITY OF ELECTRONIC BENEFITS TRANSFER CARDS;
- (2) ACTIONS TAKEN TO REDUCE THE FRAUDULENT USE OF ELECTRONIC BENEFITS TRANSFER CARDS; AND
- (3) THE NUMBER OF ELECTRONIC BENEFITS TRANSFER CARDS REISSUED DUE TO FRAUD IN THE IMMEDIATELY PRECEDING YEAR;
- (4) THE NUMBER OF HOUSEHOLDS REPORTING THEFT OF BENEFITS, BY JURISDICTION AND PROGRAM;
- (5) THE NUMBER OF HOUSEHOLDS ELIGIBLE FOR EXPEDITED SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS THAT REPORTED LOSS OF BENEFITS DUE TO THEFT, BY JURISDICTION AND PROGRAM;

(6) THE TOTAL DOLLAR AMOUNT OF BENEFITS REPORTED LOST DUE TO THEFT, BY JURISDICTION AND PROGRAM;

(7) THE NUMBER OF DETERMINATIONS OF THEFT MADE BY THE DEPARTMENT, BY JURISDICTION;

(8) THE NUMBER OF DETERMINATIONS MADE BY THE DEPARTMENT THAT THEFT DID NOT OCCUR, BY JURISDICTION;

(9) THE NUMBER OF HOUSEHOLDS REIMBURSED FOR BENEFITS LOST DUE TO THEFT AND THE TOTAL DOLLAR AMOUNT OF BENEFITS RESTORED, BY JURISDICTION AND PROGRAM;

(10) THE AVERAGE AND MAXIMUM LENGTH OF TIME, IN DAYS, BETWEEN THE REPORT OF THEFT AND THE RESTORATION OF BENEFITS, BY JURISDICTION;

(11) THE NUMBER OF HEARINGS REQUESTED AND THE NUMBER OF HOUSEHOLDS THAT RECEIVED A RESTORATION OF BENEFITS AS AN OUTCOME OF A HEARING, BY JURISDICTION; AND

(12) DEMOGRAPHIC DATA ON HOUSEHOLDS THAT EXPERIENCED THEFT, INCLUDING RACE, GENDER, NUMBER OF HOUSEHOLDS WITH CHILDREN UNDER THE AGE OF 18 YEARS, AND NUMBER OF HOUSEHOLDS WITH A MEMBER AT LEAST 60 YEARS OLD.

5-610.

(A) ~~THERE IS A BENEFIT THEFT RESTITUTION FUND.~~

~~(B) (1) THE BENEFIT THEFT RESTITUTION FUND SHALL BE USED TO~~
~~THE DEPARTMENT MAY:~~

~~(H) (1) RESTORE BENEFITS TO ANY HOUSEHOLD THAT LOST BENEFITS DUE TO THEFT THAT OCCURRED BETWEEN ~~MARCH 15, 2020~~ JANUARY 1, 2021, AND ~~DECEMBER 31, 2021~~ OCTOBER 1, 2022, BOTH INCLUSIVE, EVEN IF THE HOUSEHOLD IS INELIGIBLE TO RECEIVE BENEFITS AT THE TIME OF RESTORATION, PROVIDED THAT THE DEPARTMENT CONFIRMS THE HOUSEHOLD LOST BENEFITS DUE TO THEFT DURING THAT TIME PERIOD; AND~~

~~(H) (2) ISSUE BENEFITS TO ANY HOUSEHOLD THAT LOST BENEFITS DUE TO THEFT THAT OCCURRED BETWEEN JANUARY 1, 2022, AND~~

~~OCTOBER 1, 2022, BOTH INCLUSIVE, EVEN IF THE HOUSEHOLD IS INELIGIBLE TO RECEIVE BENEFITS AT THE TIME OF ISSUANCE.~~

~~(2) UP TO 10% OF THE AMOUNT APPROPRIATED TO THE FUND MAY BE USED TO SUPPORT INNOVATIVE PRACTICES REQUIRED TO SUPPORT BENEFICIARIES DURING THE TIME PERIOD BETWEEN THE REPORTING OF THE LOSS OF BENEFITS DUE TO THEFT AND THE RESTORATION OF BENEFITS.~~

~~(C) FOR FISCAL YEAR 2024, THE ANNUAL BUDGET BILL SHALL INCLUDE AN APPROPRIATION OF \$2,000,000 TO THE BENEFIT THEFT RESTITUTION FUND.~~

~~(D) (B) ON OR BEFORE SEPTEMBER 1, 2023, THE DEPARTMENT SHALL ISSUE BENEFITS TO HOUSEHOLDS ELIGIBLE TO RECEIVE FUNDS UNDER SUBSECTION (B) (A) OF THIS SECTION.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all benefits issued on or after January 1, 2022.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That:~~

~~(a) If Congress, the President by executive order, or a federal agency implements a process or program to replace benefits lost due to the fraudulent use of a beneficiary's Electronic Benefits Transfer card, with no further action required by the General Assembly, Section 1 of this Act shall be abrogated and of no further force and effect.~~

~~(b) The Comptroller shall notify the Department of Legislative Services within 5 days of receiving notice of the federal law, executive order, or agency determination described under this section.~~

~~SECTION 5. 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023, in implementing the provisions of § 5-609(f) of the Human Services Article, as enacted by Section 1 of this Act, the Department of Human Services shall coordinate with vendors to implement available precautions to reduce the vulnerability of Electronic Benefits Transfer cards to theft, including:~~

~~(1) the inclusion of an embedded microchip in all Electronic Benefits Transfer cards issued on or after October 1, 2023;~~

~~(2) the use of two-way fraud alerts;~~

~~(3) connectivity for universal benefits cards;~~

~~(4) providing, at initial benefit approval and each redetermination of eligibility, written notice of fraud risk and instructions on how to reduce the risk of theft.~~

including updating Personal Identification Numbers regularly and avoiding the use of common Personal Identification Numbers;

(5) enabling Electronic Benefits Transfer cardholders to place certain limits on the use of their cards, including limiting transactions during certain hours or prohibiting out-of-state transactions; and

(6) monitoring transactions for suspicious activity by leveraging user behavior analytics of Electronic Benefits Transfer user data to detect when data is being inappropriately accessed or is compromised.

SECTION 3. AND BE IT FURTHER ENACTED, That the Department of Human Services shall consider innovative financial and software services offered by both current and potential vendors to improve the administration and security of Electronic Benefits Transfer programs.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 24, 2023.