

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 2
 Finance

(Senator Hester)

Appropriations

Department of Human Services - Electronic Benefits Transfer Cards - Theft of Benefits (Prevent Electronic Benefits Theft Act of 2023)

This emergency bill generally requires the Department of Human Services (DHS) to restore any lost benefits to a household due to theft, as specified, including theft related to the use of an Electronic Benefits Transfer (EBT) card. Among other provisions, the bill also (1) specifies requirements relating to the procurement process for electronic benefits distribution or administration and (2) requires DHS, in consultation with local law enforcement agencies in the State, to report specified information related to EBT theft to the General Assembly each year by December 1.

Fiscal Summary

State Effect: State expenditures (general/federal funds) increase by *up to* \$1.9 million in FY 2023, \$6.2 million in FY 2024, and \$4.2 million annually thereafter for benefit reimbursements, as discussed below. Federal fund revenues increase accordingly. The FY 2024 budget as passed by the General Assembly includes a total of \$11.4 million in general/federal funds in FY 2023 and 2024 for the reimbursement of benefits for victims of EBT fraud.

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
FF Revenue	\$1.13	\$4.40	\$0.82	\$0	\$0
GF Expenditure	\$0.76	\$1.78	\$3.38	\$4.20	\$4.20
FF Expenditure	\$1.13	\$4.40	\$0.82	\$0	\$0
Net Effect	(\$0.76)	(\$1.78)	(\$3.38)	(\$4.20)	(\$4.20)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local law enforcement agencies can assist with the bill’s reporting requirements using existing budgeted resources. The bill is not otherwise anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Select Definitions

“Skimming practices” includes (1) 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 (2) 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 fraud, and theft through skimming practices.

Restoration of Benefits

The bill requires DHS to automatically restore the benefits of a household without requiring further action from the household if a DHS investigation shows a household’s correctly issued benefits were lost due to theft. As soon as is practicable, but within 10 days after a household informs DHS of the loss of benefits, DHS must:

- notify the household in writing of the 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 decision, as specified;
- restore benefits to the household in the amount of benefits lost (if DHS determines that the household receives benefits); and
- provide the household with a new EBT card.

DHS 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.

DHS may:

- restore benefits to any household that lost benefits due to theft that occurred between January 1, 2021, and October 1, 2022, if DHS confirms the household lost benefits due to theft during that time period; and
- support innovative practices required to support beneficiaries during the time period between reporting theft of benefits and the restoration of benefits.

However, DHS *must* issue benefits to households eligible to receive funds under the provisions specified above (for losses between January 1, 2021, and October 1, 2022) by September 1, 2023.

Right to Administrative Hearing and Benefits

If a household disputes the amount of benefits restored or a DHS determination that no restoration is due, the household may request a hearing with DHS within 90 days after the date of the determination. If a household requests a hearing, DHS 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 DHS by reducing the household's benefit at a rate of up to the lesser of \$10 or 5% of the household's monthly allotment of benefits.

Procurement Process for Electronic Benefits Distribution or Administration

The bill requires that, in the procurement process for electronic benefits distribution or administration, the State or State-aided or State-controlled entity must give preference to a vendor that (1) holds a form of insurance that can be used to reimburse a beneficiary for identity fraud or theft and (2) provides identity access protections to protect an eligible beneficiary against identity fraud and theft, which may include multifactor authentication.

Reporting Requirements

By December 1 each year, DHS, in consultation with local law enforcement agencies in the State, must report specified information to the General Assembly, including:

- accessibility and security of EBT cards;
- actions taken to reduce the fraudulent use of EBT cards;
- number of EBT cards reissued due to fraud in the immediately preceding year;
- number of households reporting theft of benefits, by jurisdiction and program;
- total dollar amount of benefits reported lost due to theft, by jurisdiction and program;
- number of determinations made by DHS that theft did not occur, by jurisdiction;
- number of households reimbursed for theft and the total dollar amount of benefits restored, by jurisdiction and program;
- number of hearings requested and the number of households that received a restoration of benefits as an outcome of a hearing, by jurisdiction; 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.

Requirements to Reduce Electronic Benefits Transfer Card Theft

DHS must coordinate with vendors to implement available precautions to reduce the vulnerability of EBT cards to theft, including:

- inclusion of an embedded microchip in all EBT cards issued on or after October 1, 2023;
- use of two-way fraud alerts, as specified;
- connectivity for universal benefits cards;
- 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, as specified;
- enabling EBT cardholders to place limits on the use of their cards, including limiting transactions, as specified; and
- monitoring transactions for suspicious activity, as specified.

DHS must consider innovative financial and software services offered by both current and potential vendors to improve the administration and security of EBT programs.

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 – Supplemental Nutrition Assistance Program (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 and Reimbursement

DHS has a page on its website dedicated to EBT fraud and reimbursement, including information explaining how a customer can file a claim for reimbursement if EBT card theft has occurred on or after October 1, 2022, and tips on how to protect the EBT card from fraud, including skimming practices. A customer may call a 1-800 number, available 24 hours/7 days a week, to report that an EBT card is stolen or lost, 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, which

must report the incident to the DHS Office of Inspector General (OIG) by email. Under State regulations, the 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 were required to submit plans, as specified, to FNS detailing procedures about how to validate stolen SNAP benefit claims and replace benefits. 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. On February 27, 2023, DHS received federal approval of its comprehensive plan to reimburse SNAP benefits to victims of EBT card fraud. As stated above, DHS established a specific website with a form and instructions for filing an EBT fraud claim for benefits stolen on or after October 1, 2022.

State Fiscal Effect: State expenditures increase by *up to* \$1.9 million in fiscal 2023 (which reflects the emergency status of the bill), \$6.2 million in fiscal 2024, and \$4.2 million annually thereafter for restoration of benefits due to theft. As discussed in additional detail below, this estimate generally (1) accounts for actual lost benefits (cash assistance and SNAP) – as reported to DHS – that occurred between January 1, 2021, and April 1, 2023, and (2) otherwise assumes that *monthly* benefits lost to theft do not exceed \$350,000 (based on the maximum monthly amount of lost benefits reported in calendar 2022). Because federal funds may be used to reimburse SNAP benefits lost between October 1, 2022, and September 30, 2024, federal funds are used for the majority of the expenditures in fiscal 2023 and 2024 (\$1.1 million and \$4.4 million, respectively) and a small portion of the expenditures in fiscal 2025 (\$817,200). Beginning in fiscal 2026, the first full fiscal year in which federal funding is no longer available for SNAP reimbursements, general fund expenditures increase by up to \$4.2 million annually. The Department of

Legislative Services (DLS) notes that, even in the absence of the bill, a portion of the expenditures in the first several years of implementation would be incurred due to the new federal requirements regarding the reimbursement for the fraudulent use of SNAP benefits during the limited time period.

The fiscal 2024 budget as passed by the General Assembly includes \$11.4 million in general/federal funds for reimbursement of lost benefits due to EBT card fraud for fiscal 2023 and 2024. Specifically, the budget includes approximately \$757,000 in general funds and \$2.6 million in federal funds for fiscal 2023 and \$1.8 million in general funds and \$6.3 million in federal funds for fiscal 2024. Based on the data and assumptions discussed below, this funding is presumed to be more than sufficient to meet the bill's requirements.

Restoration of Benefits – Benefits Lost Between January 1, 2021, and October 1, 2022

Based on updated information from DHS, between January 1, 2021, and October 1, 2022, there were 1,099 total incidents of fraudulent EBT card use, with the value of associated benefits (cash assistance and SNAP) estimated at approximately \$808,300. Most of these lost benefits are likely eligible for reimbursement from DHS, which is required to restore benefits lost during this time period, as specified, by September 1, 2023. Accordingly, this estimate accounts for general fund expenditures increasing by \$808,300 over fiscal 2023 and 2024 to provide restoration of lost benefits due to theft for these households. This analysis assumes that the affected households have their benefits restored, even if the household is no longer eligible to receive benefits at the time of restoration.

Restoration of Benefits – Benefits Lost After October 1, 2022

Reported Benefits Lost: According to DHS, between October 1, 2022, and April 1, 2023, there were 2,715 total incidents of fraudulent EBT card use, with the value of associated benefits exceeding \$1.8 million (approximately \$410,500 of cash assistance and \$1,448,200 of SNAP lost benefits reported). DLS notes that, although the bill establishes specific provisions (discussed above) for benefits lost between January 1, 2021, and October 1, 2022, the bill does not include a retroactive provision or otherwise specifically address the restoration of benefits lost after October 1, 2022, but before the bill's effective date. (As an emergency bill, the bill is effective upon enactment; the Governor signed the bill April 24, 2023.) However, for purposes of this fiscal and policy note, it is assumed such benefits are eligible for restoration under the bill, with associated general/federal fund expenditures occurring in fiscal 2023 and 2024. Furthermore, as noted above, DHS is already processing claims for certain benefits stolen after October 1, 2022. As previously stated, federal funds may be used for the reimbursement of SNAP benefits lost during this time period.

Future Benefits Lost: Although this fiscal and policy note incorporates data from actual benefits lost (as reported by DHS) through the first quarter of calendar 2023, ongoing State expenditures to replace lost benefits may fluctuate significantly on a monthly basis. However, for purposes of this estimate, it is assumed that *monthly* expenditures associated with the restoration of benefits that occur after April 1, 2023, do not exceed \$350,000, which reflects the maximum monthly amount of reimbursements incurred during calendar 2022 (\$77,545 for cash assistance-related reimbursements and \$272,394 for SNAP reimbursements). *Based on this assumption*, reimbursements as required by the bill are as much as \$4.2 million on an annual basis beginning in fiscal 2024 (with approximately \$1.0 million in additional expenditures assumed to occur over fiscal 2023 and 2024 to account for benefits lost between April and June 2023). As noted above, federal funds may be used for the restoration of SNAP benefits lost between October 1, 2022, and September 30, 2024.

Additional Provisions Related to the Department of Human Services

The bill also authorizes DHS to support innovative practices to support beneficiaries during the time period between the reporting of the loss of benefits due to theft and the restoration of benefits. This fiscal and policy note does not specifically account for any costs that may be incurred to support such practices.

DHS further advises that the bill's requirements can be handled with existing staff.

Department of General Services and Impact on Procurement

The Department of General Services (DGS) advises that it needs to establish templates and guidelines for DHS so that DHS may include the appropriate language in solicitations related to EBT distribution/administration. Furthermore, training will need to be developed and provided by DGS. DLS advises that these are procedural requirements that can be accommodated using existing resources.

To the extent that the bill's provision regarding a procurement preference results in a contract being awarded based on criteria other than lowest price, State expenditures may increase. However, a reliable estimate of any such effect is not feasible until the procurement is finalized. Furthermore, if any vendor holds insurance that can be used to reimburse beneficiaries for identity fraud or theft (and is subsequently awarded a contract related to EBT services), expenditures for State-provided reimbursements, as discussed above, may be reduced. Nevertheless, it is assumed that the potential for such insurance reimbursements would be factored into the vendor contract, thus likely increasing contract costs.

Additional Information

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

Designated Cross File: HB 502 (Delegates R. Lewis and Watson) - Appropriations.

Information Source(s): Anne Arundel, Carroll, Montgomery, and Prince George's counties; Department of General Services; Department of Human Services; Department of State Police; Governor's Office; Department of Legislative Services

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