EMERGENCY BILL

3lr1127 CF SB 2

By: **Delegates R. Lewis and Watson** Introduced and read first time: January 30, 2023 Assigned to: Appropriations

Committee Report: Favorable with amendments House action: Adopted Read second time: March 10, 2023

CHAPTER _____

1 AN ACT concerning

Department of Human Services – Electronic Benefits Transfer Cards – Fraud <u>Theft of Benefits</u> (Prevent Electronic Benefits Theft Act of 2023)

 $\mathbf{5}$ FOR the purpose of requiring the Department of Human Services to reimburse a 6 beneficiary for any benefits lost due to the fraudulent use of the beneficiary's 7 Electronic Benefits Transfer card; theft; authorizing certain households to request a 8 certain hearing under certain circumstances; requiring the State to give preference 9 to certain vendors in the procurement process for electronic benefits distribution or 10 administration; requiring the Department to establish a certain point of contact for 11 investigating and identifying electronic benefits fraud; requiring the Department to notify certain beneficiaries about electronic benefits fraud in a certain manner and 12 provide certain assistance to certain beneficiaries; applying certain provisions of this 13Act retroactively: requiring the Department to restore benefits to certain households; 14 requiring the Department to issue benefits to eligible households on or before a 15certain date; requiring the Department to take certain actions to reduce the 16vulnerability of Electronic Benefits Transfer cards to theft; and generally relating to 17electronic benefits. 18

19 BY adding to

- 20 Article Human Services
- 21 Section 5–609 and 5–610
- 22 Annotated Code of Maryland
- 23 (2019 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



	2 HOUSE BILL 502
$\frac{1}{2}$	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
3	Article – Human Services
4	5-609.
5 6 7	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.
8 9	SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:
10	Article – Human Services
11	5-610.
12 13	(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.
$\begin{array}{c} 14 \\ 15 \end{array}$	(2) (1) "PERSONAL IDENTIFYING INFORMATION" HAS THE MEANING STATED IN § 8–301 OF THE CRIMINAL LAW ARTICLE.
16 17 18	(II) <u>"Personal identifying information" includes an</u> Electronic Benefits Transfer card number or personal identification <u>NUMBER.</u>
19	(3) <u>"Skimming practices" includes:</u>
20 21 22 23	(I) <u>USE OF A SKIMMING DEVICE, INCLUDING A SCANNER,</u> <u>SKIMMER, READER, OR OTHER ELECTRONIC DEVICE USED TO ACCESS, READ, SCAN,</u> <u>OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, PERSONAL</u> <u>IDENTIFYING INFORMATION; OR</u>
$\begin{array}{c} 24\\ 25\\ 26\end{array}$	(II) ADDING MALICIOUS CODE ILLEGALLY TO A WEBSITE TO CAPTURE ELECTRONIC BENEFITS TRANSFER CARD DATA OR PERSONAL IDENTIFYING INFORMATION.
27	(4) <u>"THEFT" INCLUDES:</u>
28 29	(I) <u>PHYSICAL THEFT OF AN ELECTRONIC BENEFITS TRANSFER</u> <u>CARD;</u>

1	(II) IDENTITY FRAUD, AS DEFINED IN § 8–301 OF THE CRIMINAL
2	LAW ARTICLE; AND
3	(III) THEFT THROUGH SKIMMING PRACTICES.
4	(5) "TWO-WAY FRAUD ALERT" MEANS THE CAPABILITY OF THE
5	DEPARTMENT TO COMMUNICATE WITH HOUSEHOLDS, AND OF HOUSEHOLDS TO
6	COMMUNICATE WITH THE DEPARTMENT, THROUGH TEXT MESSAGING REGARDING
7	POTENTIAL FRAUDULENT USE OR THEFT OF AN ELECTRONIC BENEFITS TRANSFER
8	<u>CARD.</u>
9	(B) (1) IF AN INVESTIGATION BY THE DEPARTMENT SHOWS A
10	HOUSEHOLD'S CORRECTLY ISSUED BENEFITS WERE LOST DUE TO THEFT, THE
11	DEPARTMENT AUTOMATICALLY SHALL RESTORE THE BENEFITS WITHOUT
12	REQUIRING FURTHER ACTION FROM THE HOUSEHOLD.
13	(2) AS SOON AS PRACTICABLE, BUT NOT LATER THAN 10 DAYS AFTER
14	A HOUSEHOLD INFORMS THE DEPARTMENT OF THE LOSS OF BENEFITS DUE TO
15	THEFT, THE DEPARTMENT SHALL:
16	(I) NOTIFY THE HOUSEHOLD IN WRITING OF THE
17	DEPARTMENT'S DECISION AS TO WHETHER TO RESTORE BENEFITS, THE AMOUNT OF
18	BENEFITS TO BE RESTORED, AND THE RIGHT TO AND METHOD OF REQUESTING A
$\frac{19}{20}$	HEARING ON THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SUBSECTION (C)
20	OF THIS SECTION;
21	(II) IF THE DEPARTMENT DETERMINES THAT THE HOUSEHOLD
22	RECEIVES BENEFITS, RESTORE BENEFITS TO THE HOUSEHOLD IN THE AMOUNT OF
23	BENEFITS THAT WAS LOST; AND
24	(III) PROVIDE THE HOUSEHOLD WITH A NEW ELECTRONIC
$\frac{24}{25}$	BENEFITS TRANSFER CARD.
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26	(3) THE DEPARTMENT MAY NOT:
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27 99	(I) <u>REQUIRE A HOUSEHOLD TO PROVIDE A POLICE REPORT AS</u>
28	A CONDITION OF RESTORATION OF BENEFITS; OR
29	(II) LIMIT THE NUMBER OF MONTHS IN WHICH A HOUSEHOLD
30	CAN RECEIVE RESTORATION OF BENEFITS LOST DUE TO THEFT.
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31	(C) (1) IF A HOUSEHOLD DISPUTES THE AMOUNT OF BENEFITS
32	RESTORED OR THE DEPARTMENT'S DETERMINATION THAT NO RESTORATION IS

	4 HOUSE BILL 502
1	DUE MUE HOUGEHOLD MAY DEOLIEGT A HEADING MUTH MUE DEDADMMENT MUTHIN
$\frac{1}{2}$	DUE, THE HOUSEHOLD MAY REQUEST A HEARING WITH THE DEPARTMENT WITHIN 90 DAYS AFTER THE DATE OF THE DEPARTMENT'S DETERMINATION.
2	<u>90 DAYS AFTER THE DATE OF THE DEPARTMENT S DETERMINATION.</u>
3	(2) IF A HOUSEHOLD REQUESTS A HEARING UNDER THIS
$\frac{3}{4}$	SUBSECTION, THE DEPARTMENT SHALL RESTORE THE BENEFITS FOR WHICH THE
5	HOUSEHOLD CLAIMS ENTITLEMENT WHILE THE HEARING IS PENDING.
0	HOUSEHOLD CLAMES ENTITLEMENT WHILE THE HEARING IS I ENDING.
6	(3) IF THE HEARING DECISION IS UNFAVORABLE TO THE
7	HOUSEHOLD, ANY BENEFITS IMPROPERLY RESTORED UNDER PARAGRAPH (2) OF
8	THIS SUBSECTION MAY BE RECOVERED BY THE DEPARTMENT BY REDUCING THE
9	HOUSEHOLD'S BENEFIT AT A RATE THAT MAY NOT EXCEED THE LESSER OF \$10 OR
10	5% OF THE HOUSEHOLD'S MONTHLY ALLOTMENT OF BENEFITS.
11	(A) (D) IN THE PROCUREMENT PROCESS FOR ELECTRONIC BENEFITS
12	DISTRIBUTION OR ADMINISTRATION, THE STATE OR STATE-AIDED OR
13	STATE-CONTROLLED ENTITY SHALL GIVE PREFERENCE TO A VENDOR THAT:
14	(1) HOLDS A FORM OF INSURANCE THAT CAN BE USED TO REIMBURSE
15	A BENEFICIARY FOR <u>IDENTITY</u> FRAUD OR IDENTITY THEFT; AND
16	(2) PROVIDES IDENTITY ACCESS PROTECTIONS TO PROTECT AN
17	ELIGIBLE BENEFICIARY AGAINST <u>IDENTITY</u> FRAUD <u>AND THEFT</u> , WHICH MAY
18	INCLUDE MULTIFACTOR AUTHENTICATION.
19	(B) (1) THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND
20	STATE POLICE AND ANY OTHER VENDOR THAT THE DEPARTMENT CONSIDERS
21	NECESSARY, SHALL ESTABLISH A SINGLE POINT OF CONTACT WITHIN EACH LOCAL
22	DEPARTMENT:
23	(I) TO START AN INVESTIGATION AND FILE A POLICE REPORT
24	WHEN BENEFITS ARE STOLEN;
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25	(II) TO CONDUCT AN INITIAL SCREENING TO IDENTIFY UNUSUAL
26	CHARGES; AND
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27	(III) SCHEDULE AN APPOINTMENT FOR A BENEFICIARY TO
28	REPLACE THE BENEFICIARY'S CARD AND BEGIN THE REIMBURSEMENT PROCESS
29	WITHIN 1 WEEK AFTER THE IDENTIFICATION OF UNUSUAL CHARGES.
30	(2) THE DEPARTMENT SHALL ESTABLISH A HOTLINE TO ASSIST
30 31	ENEFICIARIES IN REPORTING STOLEN BENEFITS AND ACCESSING THE PROCESS
31	DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION.
04	DEVELOTED UNDER TARAMAN II (1) OF THIS SUBSECTION.

1	(a) THE DEDARTMENT IN CONCLUMATION WITH THE MADYLAND STATE
1	(C) THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND STATE
2	POLICE AND ANY OTHER VENDOR THAT THE DEPARTMENT CONSIDERS NECESSARY,
3	SHALL:
4	(1) ALERT ELECTRONIC BENEFITS TRANSFER CARD HOLDERS
5	ABOUT THE RISK OF FRAUD THROUGH MASS MESSAGING, INCLUDING E-MAILS, TEXT
6	MESSAGES, AND WRITTEN NOTICES THAT:
7	(I) ARE EASY TO UNDERSTAND;
8	(II) ARE AVAILABLE IN MULTIPLE LANGUAGES;
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9	(III) INCLUDE VISUAL DEPICTIONS OF A SKIMMING DEVICE;
9	(III) INCLUDE VISUAL DEFICITIONS OF A SKIMMING DEVICE,
10	
10	(IV) INCLUDE SIMPLE INSTRUCTIONS ON HOW TO CHANGE A
11	PERSONAL IDENTIFICATION NUMBER (PIN) ONLINE AND BY PHONE; AND
12	(V) INCLUDE INFORMATION ON THE AVAILABILITY OF
13	REPLACEMENT BENEFITS;
14	(2) PROACTIVELY IDENTIFY PATTERNS IN ELECTRONIC BENEFITS
15	TRANSFER CARD ACTIVITY THAT COULD BE EARLY INDICATORS OF FRAUD; AND
16	(3) PROMPTLY NOTIFY THE CARD HOLDER TO DETERMINE WHETHER
17	BENEFITS HAVE BEEN FRAUDULENTLY USED AND, IF SO, OFFER SUPPORT TO THE
18	CARD HOLDER.
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19	(E) THE DEPARTMENT SHALL COORDINATE WITH VENDORS TO TAKE
20	AVAILABLE PRECAUTIONS TO REDUCE THE VULNERABILITY OF ELECTRONIC
21	BENEFITS TRANSFER CARDS TO THEFT BY UTILIZING ENHANCED TECHNOLOGY.
22	(D) (F) ON OR BEFORE DECEMBER 1 EACH YEAR, THE DEPARTMENT, IN
23	CONSULTATION WITH THE MARYLAND STATE POLICE LOCAL LAW ENFORCEMENT
24	AGENCIES IN THE STATE, SHALL REPORT TO THE GENERAL ASSEMBLY, IN
25	ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, ON:
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26	(1) THE ACCESSIBILITY AND SECURITY OF ELECTRONIC BENEFITS
$\frac{20}{27}$	TRANSFER CARDS;
41	I RANSFER CARDS,
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28	(2) ACTIONS TAKEN TO REDUCE THE FRAUDULENT USE OF
29	ELECTRONIC BENEFITS TRANSFER CARDS; AND
30	(3) THE NUMBER OF ELECTRONIC BENEFITS TRANSFER CARDS
31	REISSUED DUE TO FRAUD IN THE IMMEDIATELY PRECEDING YEAR;

1	(4) THE NUMBER OF HOUSEHOLDS REPORTING THEFT OF BENEFITS,
2	BY JURISDICTION AND PROGRAM;
3	(5) THE NUMBER OF HOUSEHOLDS ELIGIBLE FOR EXPEDITED
4	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS THAT REPORTED
5	LOSS OF BENEFITS DUE TO THEFT, BY JURISDICTION AND PROGRAM;
6	(6) THE TOTAL DOLLAR AMOUNT OF BENEFITS REPORTED LOST DUE
7	TO THEFT, BY JURISDICTION AND PROGRAM;
8	(7) THE NUMBER OF DETERMINATIONS OF THEFT MADE BY THE
9	DEPARTMENT, BY JURISDICTION;
10	(8) THE NUMBER OF DETERMINATIONS MADE BY THE DEPARTMENT
11	THAT THEFT DID NOT OCCUR, BY JURISDICTION;
12	(9) THE NUMBER OF HOUSEHOLDS REIMBURSED FOR BENEFITS LOST
13	DUE TO THEFT AND THE TOTAL DOLLAR AMOUNT OF BENEFITS RESTORED, BY
14	JURISDICTION AND PROGRAM;
15	(10) THE AVERAGE AND MAXIMUM LENGTH OF TIME, IN DAYS,
16	BETWEEN THE REPORT OF THEFT AND THE RESTORATION OF BENEFITS, BY
17	JURISDICTION;
18	(11) THE NUMBER OF HEARINGS REQUESTED AND THE NUMBER OF
19	HOUSEHOLDS THAT RECEIVED A RESTORATION OF BENEFITS AS AN OUTCOME OF A
20	HEARING, BY JURISDICTION; AND
21	(12) DEMOGRAPHIC DATA ON HOUSEHOLDS THAT EXPERIENCED
22	THEFT, INCLUDING RACE, GENDER, NUMBER OF HOUSEHOLDS WITH CHILDREN
23	UNDER THE AGE OF 18 YEARS, AND NUMBER OF HOUSEHOLDS WITH A MEMBER AT
24	LEAST 60 YEARS OLD.
25	<u>5–610.</u>
26	(A) THE DEPARTMENT MAY:
27	(1) RESTORE BENEFITS TO ANY HOUSEHOLD THAT LOST BENEFITS
28	DUE TO THEFT THAT OCCURRED BETWEEN JANUARY 1, 2021, AND DECEMBER 31,
29	2021, BOTH INCLUSIVE, PROVIDED THAT THE DEPARTMENT CONFIRMS THE
30	HOUSEHOLD LOST BENEFITS DUE TO THEFT DURING THAT TIME PERIOD;

1	(2) ISSUE BENEFITS TO ANY HOUSEHOLD THAT LOST BENEFITS DUE
2	TO THEFT THAT OCCURRED BETWEEN JANUARY 1, 2022, AND OCTOBER 1, 2022,
3	BOTH INCLUSIVE; AND
4	(3) SUPPORT INNOVATIVE PRACTICES REQUIRED TO SUPPORT
5	BENEFICIARIES DURING THE TIME PERIOD BETWEEN THE REPORTING OF THE LOSS
6	OF BENEFITS DUE TO THEFT AND THE RESTORATION OF BENEFITS.
7	(B) ON OR BEFORE SEPTEMBER 1, 2023, THE DEPARTMENT SHALL ISSUE
8	BENEFITS TO HOUSEHOLDS ELIGIBLE TO RECEIVE FUNDS UNDER SUBSECTION (A)
9	OF THIS SECTION.
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10	SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
11	construed to apply retroactively and shall be applied to and interpreted to affect all benefits
12	issued on or after January 1, 2022.
13	SECTION 4. AND BE IT FURTHER ENACTED, That:
14	(a) If Congress, the President by executive order, or a federal agency implements
15	a process or program to replace benefits lost due to the fraudulent use of a beneficiary's
16	Electronic Benefits Transfer card, with no further action required by the General Assembly,
17	Section 1 of this Act shall be abrogated and of no further force and effect.
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18	(b) The Comptroller shall notify the Department of Legislative Services within 5
19	days of receiving notice of the federal law, executive order, or agency determination described under this section.
20	described under tills section.
21	SECTION 5. 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22	October 1, 2023. in implementing the provisions of § 5–609(f) of the Human Services Article.
23	as enacted by Section 1 of this Act, the Department of Human Services shall coordinate
$\overline{24}$	with vendors to implement available precautions to reduce the vulnerability of Electronic
25	Benefits Transfer cards to theft, including:
26	(1) the inclusion of an embedded microchip in all Electronic Benefits
27	Transfer cards issued on or after October 1, 2023;
28	(2) <u>the use of two-way fraud alerts;</u>
29	(3) <u>connectivity for universal benefits cards;</u>
30	(4) providing, at initial benefit approval and each redetermination of
31	eligibility, written notice of fraud risk and instructions on how to reduce the risk of theft,
32	including updating Personal Identification Numbers regularly and avoiding the use of
33	<u>common Personal Identification Numbers;</u>

1 (5) <u>enabling Electronic Benefits Transfer cardholders to place certain</u> 2 <u>limits on the use of their cards, including limiting transactions during certain hours or</u> 3 <u>prohibiting out-of-state transactions; and</u>

4 <u>(6)</u> monitoring transactions for suspicious activity by leveraging user 5 behavior analytics of Electronic Benefits Transfer user data to detect when data is being 6 inappropriately accessed or is compromised.

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

11 <u>SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency</u> 12 measure, is necessary for the immediate preservation of the public health or safety, has 13 been passed by a yea and nay vote supported by three-fifths of all the members elected to 14 each of the two Houses of the General Assembly, and shall take effect from the date it is 15 enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

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