HOUSE DOCKET, NO. 4457 FILED ON: 7/10/2012

HOUSE . . . . . No. 4237

Sections 52 to 54, inclusive, 173 to 176, inclusive, and 228 contained in the engrossed Bill making appropriations for the fiscal year 2013 (see House, No. 4200), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment D of House, No. 4240). July 8, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the electronic benefit transfer program.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for the electronic benefit transfer program, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Paragraph (B) of section 2 of chapter 18 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out clause (i) and inserting in place thereof the following 2 clauses:-

(i) charge a fee up to the maximum amount permissible under federal law for any identification card it issues as a replacement for an identification card that has been lost, mutilated, stolen or destroyed, except if such loss or destruction occurs during the mailing of an original identification card to a recipient, if the card ceases to work through no fault of the recipient or if the department issues replacement cards on its own initiative to classes of recipients; provided that the fee shall not be less than $5; and provided further that all fees for replacement cards shall be deducted directly from the recipient's cash assistance benefits.

(j) send a notice to any benefit recipient who requests more than 3 replacement electronic benefit transfer cards in a calendar year and monitor future requests for replacement cards; provided that the notice shall state that the department has noted an unusual number of requests for replacement electronic benefits cards and will be monitoring all future requests for replacement cards.

16 SECTION 2. Chapter 18 of the General laws, inserted by chapter 84 of the acts of 2011,
17 is hereby amended by striking out sections 5I and 5J and inserting in place thereof the following
18 2 sections:-

19 Section 5I. (a) As used in sections 5I and 5J the following terms shall, unless the context
20 clearly requires otherwise, have the following meanings:-

21 "Access device", a card, code or other means of access that can be used, alone or in
22 conjunction with another access device, to obtain payments, allotments, benefits, money, goods
23 or other things of value, or that can be used to initiate a transfer of funds under the federal Food
24 and Nutrition Act of 2008, 7 U.S.C. § 2011 et seq., or regulations issued pursuant to the federal
25 Food and Nutrition Act of 2008.

26 "Direct cash assistance", any manner of cash assistance provided by the department of
27 transitional assistance including, but not limited to, temporary aid to families with dependent
28 children, wherein the assistance is provided directly to the recipient, rather than a vendor.

29 "Electronic benefit transfer card", a card that provides benefits through an electronic
30 benefit transfer.

31 "Electronic benefit transfer transaction", the use of a credit or debit card service,
32 automated teller machine, point-of-sale terminal or access to an online system for the withdrawal
33 of funds or the processing of a payment for merchandise or a service

34 "Vacation services", furnishing interstate or foreign travel services solely for the purpose
35 of recreation including, but not limited to transportation, lodging and travel agent services;
36 provided, however, that vacation services shall not include travel related to: a personal or family
37 emergency, the death of a family member, employment, medical treatment, appearance before a
38 court of law, court-authorized parental visitation and such other categories of travel which may
39 be designated from time to time by the department as non-recreational travel.

40 (b) No person shall knowingly use or accept direct cash assistance funds held on
41 electronic benefit transfer cards or access devices for the purchase or sale of the following
42 services or products: alcoholic beverages as defined in section 1 of chapter 138; lottery tickets;
43 tobacco products as defined in section 1 of chapter 64C; visual material or performances
44 intended to create or simulate sexual conduct or sexual excitement as those terms are defined in
45 section 31 of chapter 272; firearms and ammunition as defined in section 121 of chapter 140;
46 vacation services; tattoos or body piercings; jewelry; for gambling as defined in section 2 of
47 chapter 23K or for the payment to the commonwealth of or any political subdivision thereof of
48 any fees, fines, bail or bail bonds ordered by a court.

49 (c) Any eligible recipient of direct cash assistance who knowingly makes a prohibited
50 purchase in violation of this section shall reimburse the department for such purchase and, for the

51 second offense, shall be disqualified from the direct cash assistance program for a period of 2
52 months and, for the third offense, shall be disqualified from the direct cash assistance program
53 permanently; provided, however, that the department shall only disqualify an eligible recipient
54 after notice and a hearing pursuant to section 30A.

55 Section 5J. (a) The department shall maintain policies and practices as necessary to
56 prevent cash assistance provided under this chapter from being used in any electronic benefit
57 transfer transaction at: liquor stores; casinos, gambling casinos or gaming establishments
58 licensed pursuant to chapter 23K; retail establishments which provide adult-oriented
59 entertainment in which performers disrobe or perform in an unclothed state for entertainment, as
60 defined in Section 408(a) of the Social Security Act, as amended; adult bookstores or adult
61 paraphernalia stores, as defined in section 9A of chapter 40A; firearms dealers licensed under
62 section 122 of chapter 140 and ammunitions dealers licensed pursuant to section 122B of chapter
63 140; tattoo parlors; manicure shops or aesthetic shops registered pursuant to chapter 112; rent-to-
64 own stores; jewelry stores; or on cruise ships. Such establishments shall not accept electronic
65 benefits transfer cards. A store owner who knowingly allows a prohibited electronic benefit
66 transfer transaction in violation of this section or subsection (b) of section 5I shall be punished
67 by a fine of not more than $500 for a first offense, by a fine of not less than $500 nor more than
68 $2,500 for a second offense and by a fine of not less than $2,500 for a third or subsequent
69 offense.

70 (b) A store owner who knowingly violates this section and who also possesses a license
71 to sell alcoholic beverages under section 12 of chapter 138 shall be referred to the appropriate
72 licensing authority for possible disciplinary action pursuant to section 64 of said chapter 138.

73 (c) A store owner who knowingly violates this section and who also possesses a license
74 to sell lottery tickets under sections 26 and 27 of chapter 10 shall be referred to the director of
75 the state lottery for possible disciplinary action.

76 SECTION 3. Said chapter 18 is hereby further amended by inserting after section 5K the
77 following 3 sections:-

78 Section 5L. (a) As used this section and section 5M, “food stamp benefits” shall mean
79 benefits issued pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. §§ 2011 to
80 2029, inclusive, as amended, including such benefits contained on an electronic benefit transfer
81 card.

82 (b) An individual commits the offense of food stamp benefits trafficking if the individual
83 knowingly:

84 (1) presents for payment or redemption or transfers food stamp benefits in any form,
85 including transfers to another, who does not, or does not intend to, use the food stamp benefits

86 for the benefit of the household for whom the benefits were intended, as defined in the
87 regulations of the department; or

88 (2) possesses, buys, sells, uses, alters, accepts or transfers food stamp benefits in any
89 manner not authorized by the Food and Nutrition Act of 2008, 7 U.S.C. § 2011, as amended.

90 (c) An individual who traffics food stamp benefits, as described in subsection (b), shall:

91 (1) if the food stamp benefits are of a value of less than $250 or if the item used,
92 transferred, acquired, altered or possessed has a value of less than $250, be punished by
93 imprisonment in a jail or house of correction for not more than 1 year or by a fine of not more
94 than $1,000, or both such fine and imprisonment; or

95 (2) if the food stamp benefits are of a value of $250 or more or the item used,
96 transferred, acquired, altered or possessed has a value of $250 or more, be punished by
97 imprisonment in a jail or house of correction for not more than 2 years or by imprisonment in a
98 state prison for not more than 5 years or by a fine of not more than $5,000, or both fine and
99 imprisonment.

100 (d) If a person is alleged to have committed the offense of trafficking in food stamp
101 benefits 2 or more times within a 6-month period, those offenses may be aggregated and charged
102 in a single count and the offenses so aggregated and charged shall constitute a single offense;
103 provided, however, that, if the aggregate value of the food stamp benefits alleged to be trafficked
104 is $250 or more, the person shall be subject to the penalties prescribed in clause (2) of subsection
105 (c).

106 (e) Crimes under this section may be prosecuted and punished in any county where a
107 defendant used, transferred, acquired or possessed food stamp benefits or in the county in which
108 the state agency responsible for administering food stamp benefits is headquartered.

109 Section 5M. (a) As used in this section, "organization" shall mean a corporation for
110 profit or not-for-profit, partnership, limited partnership, joint venture, unincorporated
111 association, estate, trust or other commercial or legal entity; provided, however, that
112 "organization" shall not include an entity organized as or by a governmental agency for the
113 execution of a governmental program.

114 (b) An organization commits the offense of organizational food stamp benefits
115 trafficking if the organization knowingly; (i) uses, sells, transfers, acquires, alters or possesses
116 food stamp benefits or electronic benefit transfer cards in any manner not authorized by the Food
117 and Nutrition Act of 2008, 7 U.S.C. § 2011, as amended, or the regulations of the department; or
118 (2) presents for payment or redemption food stamp benefits that have been received, transferred,
119 altered or used in violation of this section shall be guilty of organizational food stamp benefits
120 trafficking.

121 (c) If an organization is alleged to have committed the offense of organizational food
122 stamp benefits trafficking 2 or more times within a 6-month period, any of those offenses may be
123 aggregated and charged in a single count and the offenses so aggregated and charged shall
124 constitute a single offense.

125 (d) An organization that commits food stamp benefits trafficking as described in
126 subsection (c) shall:

127 (1) if it is the organization's first offense under this section, be punished by a fine of not
128 less than $5,000;

129 (2) if it is the organization's second offense under this section, be punished by a fine of
130 not less than $10,000; or

131 (3) if it is the organization's third or subsequent offense under this section, be punished
132 by a fine of not less than $50,000.

133 (e) A retail or wholesale organization owner who is convicted of organizational food
134 stamp benefits trafficking and who also possesses a license to sell alcoholic beverages under
135 section 12 of chapter 138 shall be referred to the appropriate licensing authority for possible
136 disciplinary action pursuant to section 64 of said chapter 138.

137 (f) A retail or wholesale organization owner who is convicted of organizational food
138 stamp benefits trafficking and who also possesses a license to sell lottery tickets under sections
139 26 and 27 of chapter 10 shall be referred to the director of the state lottery for possible
140 disciplinary action.

141 (g) Crimes under this section may be prosecuted and punished in any county where
142 defendant used, transferred, acquired or possessed food stamp benefits, or the county in which
143 the state agency responsible for administering food stamp benefits is headquartered.

144 Section 5N. The department shall develop and make available on its website for
145 download a sign specifying the department's fraud hotline. Business associations may also
146 maintain a downloadable form of the sign on the business associations' websites. Such sign shall
147 be posted in a conspicuous area in any business accepting electronic benefits transfer cards as a
148 form of payment. Any business accepting electronic benefit transfer cards as a form of payment
149 shall maintain a list of categories of prohibited products under section 5I at each cash register.

150 SECTION 4. Notwithstanding any general or special law to the contrary, the department
151 of transitional assistance shall provide benefits in the form of vendor payments with respect to
152 rent and utilities whenever a determination is made that the grant has not been used in the best
153 interests of the child or the assistance unit or other chronic misuse of benefits is occurring;
154 provided, however, that vendor payments shall not be instituted when doing so may increase the
155 risk of homelessness, decrease the ability to escape domestic abuse or impair the assistance

156 unit's ability to withhold payment as a reasonable exercise of consumer or tenant rights when
157 there is a legitimate dispute as to whether the payment is owed. The department of transitional
158 assistance may presume mismanagement of benefits whenever shelter costs, including, but not
159 limited to, rent, heat, fuel and utilities, have regularly not been met without reasonable cause. At
160 eligibility determinations and redeterminations, the department shall screen households to
161 determine if they have chronically failed to pay rent and utilities to determine if it is appropriate
162 to institute or terminate vendor payments and shall refer those households to the housing
163 consumer education centers and community-based resources for assistance in meeting their
164 expenses.

165 SECTION 5. Notwithstanding any general or special law to the contrary, there shall be
166 an independent commission to study and report on the development of a cashless payment
167 system in using electronic benefit transfer, or EBT, cards. The commission shall consist of : the
168 commissioner of transitional assistance, or a designee, who shall serve as chair; the inspector
169 general, or a designee; the state auditor, or a designee; 2 members of the house of
170 representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1
171 of whom shall be appointed by the minority leader; and 2 persons representing eligible recipients
172 to be appointed by the governor. The commission shall research, assess and develop
173 recommendations to implement a cashless payment system and investigate and report on the
174 feasibility of expanding the direct vendor payment system: (i) under [direct vendor payments
175 section]; and (ii) for rent and utility payments for all eligible recipients. The commission shall
176 hire an independent consultant to conduct the research and assist with the preparation of any
177 recommendations. The report shall include, but not be limited to, the following: (1) the costs
178 associated with and any technological improvements necessary to implement and the time frame
179 required for the expansion; (2) the implementation of a vendor payment system for the non-cash
180 payment of rent and utility bills for all eligible recipients of direct cash assistance; and (3) the
181 feasibility of placing fluctuating limitations on the percentage allocated to direct cash assistance
182 and point of sale use. The commission shall submit a final report of its findings and
183 recommendations, together with drafts of legislation necessary to implement those
184 recommendations, by filing the same with the clerks of the senate and house on or before
185 December 31, 2012.

186 SECTION 6. Notwithstanding any general or special law to the contrary, the inspector
187 general shall conduct a data match survey involving the case records for households receiving
188 cash assistance benefits under chapter 18 of the General Laws for the purposes of uncovering
189 information that is inconsistent with or contradictory to information provided by the cash
190 assistance benefit recipients. The inspector general shall submit a report that shall include the
191 results of a further investigation on a statistically valid sample of the cases for which inconsistent
192 or contradictory information has been found to determine if the household is receiving benefits
193 for which it is not eligible, and if so, whether the error is due to administrative error,
194 unintentional program violation or intentional program violation with the house and senate

195 committees on ways and means on or before December 31, 2012; provided, however, that 60
196 days before filing the report the inspector general shall provide a draft of the report to the
197 department of transitional assistance for review and comment and the inspector general shall
198 include the department's comments with the report when it is made public and filed.

199 SECTION 7. Notwithstanding any general or special law to the contrary, the department
200 of transitional assistance shall coordinate with the Massachusetts Bay Transportation Authority
201 and each of the regional transit authorities to ensure that by June 30, 2013, cash assistance funds
202 held on electronic benefit transfer cards are accepted for payment of public transportation fares at
203 electronic fare vending machines.

204 SECTION 8. Section 173 shall take effect 6 months after the commission established in
205 section 174 issues its report.