

**HOUSE . . . . . No. 4237**

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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.

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The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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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:*

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

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

11 (j) send a notice to any benefit recipient who requests more than 3 replacement  
12 electronic benefit transfer cards in a calendar year and monitor future requests for replacement  
13 cards; provided that the notice shall state that the department has noted an unusual number of  
14 requests for replacement electronic benefits cards and will be monitoring all future requests for  
15 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.