

Assembly Bill No. 131

Passed the Assembly August 26, 1998

Chief Clerk of the Assembly

Passed the Senate August 17, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to add Section 1203.049 to the Penal Code, and to amend Section 10980 of the Welfare and Institutions Code, relating to fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 131, Ortiz. Food stamps: fraud: penalties.

Existing law provides for the federal Food Stamp Program, under which each county distributes food stamps provided by the federal government to eligible households. Existing law establishes criminal penalties for violation of certain provisions relating to the fraudulent appropriation of food stamps and the unauthorized use, transfer, sale, purchase, or possession of food stamps.

This bill would provide that if a violation of provisions relating to food stamps is committed by means of an electronic transfer of benefits, then, depending on the amount of the benefits involved, a court shall impose additional terms in state prison only if the defendant has not been punished by an additional term of imprisonment under another provision of law for a violation of these provisions. The bill would also prohibit probation from being granted to any person who violates certain provisions relating to food stamps when the violation has been committed by means of an electronic transfer of food stamp benefits and the amount of the benefits exceeds \$100,000. By changing the penalty for certain crimes, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 10980 of the Welfare and Institutions Code proposed by AB 2772, to be operative if AB 2772 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.049 is added to the Penal Code, to read:

1203.049. (a) Except in unusual cases where the interest of justice would best be served if the person is granted probation, probation shall not be granted to any person who violates subdivision (f) or (g) of Section 10980 of the Welfare and Institutions Code, when the violation has been committed by means of the electronic transfer of food stamp benefits, and the amount of the electronically transferred food stamp benefits exceeds one hundred thousand dollars (\$100,000).

(b) The fact that the violation was committed by means of an electronic transfer of food stamp benefits and the amount of the electronically transferred food stamp benefits exceeds one hundred thousand dollars (\$100,000) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) If probation is granted, the court shall specify on the record and shall enter on the minutes indicating that the interests of justice would best be served by that disposition of the care.

SEC. 2. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is



guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars (\$400) or less, by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars (\$400), by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not



authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or food stamps in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments made thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Whoever knowingly uses, transfers, sells, purchases, or possesses food stamps or authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments made thereto) is; (1) guilty of a misdemeanor if the face value of the food stamps or the authorizations to participate is four hundred dollars (\$400) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine, or (2) guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds four hundred dollars (\$400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one



thousand dollars (\$1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars (\$50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars (\$150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars (\$1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars (\$2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 2.5. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is



guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars (\$400) or less, by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars (\$400), by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not



authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments made thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Whoever knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments made thereto) is; (1) guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is four hundred dollars (\$400) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine, or (2) guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds four hundred dollars (\$400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine or by



imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars (\$50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars (\$150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars (\$1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars (\$2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 10980 of the Welfare and Institutions Code proposed by both this bill and AB 2772. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 10980 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2772, in which case Section 2 of this bill shall not become operative.



SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

