

# Mass. law loopholes open door to food-stamp fraud

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As more people depend on food stamps to eat, food-stamp fraud by Massachusetts retailers is going largely unchecked because limited resources and the lack of state law make it hard for local authorities to investigate and prosecute unscrupulous merchants.

Although selling and trafficking food stamps is a federal offense, Massachusetts remains one of the few states without a specific law allowing local authorities to investigate and prosecute retailers who err. That loophole has made it difficult for local authorities to clamp down on retail traffickers, stores willing to pay recipients half the face value for every dollar they exchange.

"If unscrupulous vendors are taking advantage of low-income people, there needs to be a law to prosecute these store owners," said state Sen. Jamie Eldridge, D-Acton, adding that in order to craft such legislation, officials will need a better understanding of how widespread trafficking and fraud is among Bay State merchants.

That may be difficult to ascertain.

Since local authorities don't investigate or prosecute retail food-stamp trafficking or fraud crimes, state officials have no figures on how widespread the problem is.

And while federal officials digitally track food-stamp redemptions by stores, few trafficking cases are ever federally prosecuted in Massachusetts. Merchants found to have committed fraud are often suspended briefly from the Supplemental Nutrition Assistance Program, as food stamps are now known. Many are often back redeeming the benefits within a year.

In fact, of the 3,014 stores that take food-stamp cards in Massachusetts, only 215 merchants were disqualified from the program in the last five years. By 2009, 90 of those same retailers were back on the list of authorized food-stamp merchants and had collectively racked up more than \$7 million in food-stamp redemptions in that one year alone, according to records obtained from the U.S. Department of Agriculture, which oversees the \$50 billion program.

"The biggest problem we have here in Massachusetts is that we can't prosecute because there is no state statute," said one Bay State investigator who has assisted federal agents in retailer investigations. "We couldn't even bring a case against them."

## Fewer investigations

Compounding the problem is a 20 percent drop over the last five years in the number of retail fraud and trafficking investigations conducted by the USDA's Food and Nutrition Services, which administers the federal food-stamp program.

According to information supplied by that agency, 3,949 retail investigations were conducted during fiscal 2009, about 1,000 fewer than in 2005 and about 2,000 fewer investigations than conducted in 1995. In fact, the agency has so few investigators checking food-stamp redemptions, it is impossible to say exactly how much money is lost to retail fraud, critics said.

"It's ridiculous," Patrick Burns, with Taxpayers Against Fraud, a nonprofit public-interest group based in Washington, D.C., said of the few investigators assigned to probe food-stamp fraud and trafficking by retailers. "Our ability to ferret out fraud is directly related to the number of ferrets we have, which is why we don't ferret out much."

At a time when both food-stamp retailers and recipients are at their highest level since the program began in 1939, the total number of investigators employed by the Food and Nutrition Service to look into problem merchants stands at just over 40. All are assigned to the agency's Retail Investigations Branch, which monitors the 193,753 merchants nationwide who participate in the program. Only two, however, are assigned to New England. Neither of them is currently working on investigations in Massachusetts, officials familiar with the New England team said.

The limited number of store inspections so concerned the federal General Accounting Office, in fact, it cited that as one of the program's "vulnerabilities" in a 2010 Congressional subcommittee report.

"FNS authorizes some stores with limited food supplies so that low-income participants in areas with few supermarkets have access to food, but may not inspect these stores again for 5 years unless there is some indication of a problem," the General Accounting Office said in that report.

Still, despite its small size, the agency's investigative staff seems to produce some impressive results.

Of the 3,949 investigations conducted by retail investigators during fiscal 2009 evidence of food-stamp violations were documented in about one-third, or 1,432, of those cases. Yet, trafficking, the exchange of money for benefits generally at the rate of 50 cents on the dollar, was uncovered in only 224 of those investigations. Five years earlier in 2005, retail investigations topped 5,000 with trafficking documented in 274 out of the 832 cases where food stamp violations were detected.

## Digital tracking helps

Jean Daniels, spokeswoman for the Food and Nutrition Service, said new investigative tools, including ways to digitally track redemptions through debit cards used by food-stamp recipients, have made it easier to detect and prosecute fraud cases. Rather than rely on months of gumshoe work once done by undercover agents, electronic monitoring is making investigations more efficient, she said.

In fact, cases based on electronic benefit-transaction data now accounts for a majority of the investigations conducted into food-stamp irregularities, federal documents show.

Daniels claims electronic monitoring has been so effective, in fact, that it has cut the annual rate of food-stamp trafficking to an estimated 1 percent, or about \$241 million, down from 3.8 percent just 10 years earlier. That 1 percent figure touted by the government has remained constant despite an explosion in the number of food-stamp recipients. From June 2008 to June 2009 alone, the number of people receiving food stamps jumped by 22 percent due to the lingering nationwide economic crisis. By June 2010, nearly 41.3 million people were receiving food-stamp benefits, an increase of almost 475,000 people from just one month earlier. Yet despite the phenomenal growth in the number of recipients, retail trafficking in food stamps remains at 1 percent, USDA officials said.

Burns, however, doubts that government claim. He said that it's difficult to even conceive of a 1 percent trafficking rate in so vast a program as the \$50 billion food stamp industry, where an estimated one out of every eight people is receiving food stamp benefits and more than 193,000 vendors are authorized to redeem them.

"The first job of a government agency is to pass the laugh test and I'm not so sure a 1 percent leakage in the food-stamp program does that," Burns said. "I don't believe they have a clue to what their fraud rate is. They're just guessing."

Chris Edwards, a tax and budget analyst for the Cato Institute, a public-policy think tank based in Washington, DC, concurs.

"Over the years, fraud in general subsidy programs has been around 10 percent," Edward said. "Ten percent is generally the norm so if they are saying 1 percent, it sounds pretty low."

Still, at a time when welfare fraud is estimated to be 4 percent nationally, the USDA maintains it has managed to hold the rate of vendor trafficking at 1 percent since 2006, when the agency's last trafficking study was conducted. Agency officials said the use of high-tech digital techniques has helped curtail merchant fraud, making it easier to track and prosecute.

Federal probes lacking

Yet while digital tracking may have made it easier to do investigations, fewer are being done by the federal entities that are supposed to help investigators sniff out retail fraud in the food stamp system.

According to testimony before a House of Representatives subcommittee in July 2010, the Government Accounting Office found that both the Inspector General and the Secret Service, which also investigates the problem, currently focus only on "high impact investigations," rather than the smaller merchants who account for most of the trafficking cases.

"As a result, retailers who traffic are less likely to face criminal penalties or prosecution," the Government Accountability Office found.

Daniels said the agency continues to expand its investigative reach by pairing up with other federal, state and local authorities. But in Massachusetts, officials claim their involvement with the federal food-stamp program has been quietly declining.

In fact, only one Massachusetts retailer has been charged with trafficking in food stamps since 2006. In that case, a small neighborhood market in New Bedford that normally racked up \$2,000 in monthly food-stamp redemptions was caught processing between \$10,000 and \$15,000 a month over a five-year period. The government alleged trafficking, and under a settlement agreement resolving the claims, the store owner paid a \$200,000 fine. It was the highest civil recovery in New England at the time. The merchant was not criminally prosecuted and his market currently remains open for business. He was, however, permanently barred from the food stamp program and is no longer allowed to take food stamp cards as payment.

Even though federal law mandates fines of up to \$250,000 and possible jail time and suspension from the program for felony convictions, few retailers actually face such stiff penalties. Sanctioning businesses, rather than prosecuting store owners, is a common form of discipline. That usually entails disqualifying stores from taking the electronic benefit cards used by recipients for a set time period, usually for six months to a year, depending on the infraction.

Merchants convicted of trafficking are permanently disqualified from the program but substantial fines are imposed only in cases where it can be proven that a store owner was aware food stamps were exchanged illegally in his or her establishment. That's because regulations authorizing substantial penalties are not yet in place. Those regulations, which were suggested by the GAO in 2006, are expected to be implemented within the next two years.

Left unprosecuted

Nationally, only a handful of retailers ever answer to fraud charges at all. Only 739 retailers of the more than 193,000 merchants approved to redeem food stamps were indicted and 592 were convicted between fiscal 2006 and fiscal 2011, a study by the

USDA's Office of the Inspector General found. An additional 542 other retailers received "administrative sanctions" during that same time period. And while the OIG recovered more than \$125 million from retailers in those five years, neither that agency nor the USDA has exact figures on the total amount of money recouped from merchants by other law enforcement agencies.

"We don't track those numbers," Paul Feeney, deputy counsel with the USDA OIG, said of the money paid out in fines by retailers accused in food-stamp fraud and trafficking cases. "The funds that are actually received from the vendors involved are not necessarily paid to USDA -- they may be due to the U.S. Treasury or other governmental entities," he noted.

For Burns, that all adds up to government unaccountability.

"Our ability to chase liars, thieves and cheats is pretty underwhelming," he said. After all "you can't claim to be doing a credible job when you have incredibly weak resources devoted to it."

The New England Center for Investigative Reporting is a nonprofit newsroom based at Boston University.