

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1401 Public Assistance

SPONSOR(S): Health & Human Services Access Subcommittee; Plakon

TIED BILLS: **IDEN./SIM. BILLS:** SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	8 Y, 6 N, As CS	Batchelor	Schoolfield
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1401 amends ss. 402.82 and 414.095, F.S., relating to the Supplemental Nutrition Assistance Program and the Temporary Cash Assistance Program. Specifically the bill does the following:

- Prohibits a recipient from using his or her electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, to access automated teller machines (ATM) located in specific gambling and adult entertainment establishments, or to use the card for purchases in these establishments.
- Provides a list of establishments inside the state that a cash assistance recipient may not access cash benefits through an EBT card from an ATM.
- Requires the Department of Children and Family Services (DCF) to add a list of food items that may not be purchased with federal Supplemental Nutrition Assistance Program funds. The list is titled nonstaple foods including, sweetened beverages, soda, jello, candy, cakes, etc.).
- Prohibits the use of Supplemental Nutrition Assistance Program benefits at restaurants.
- Requires DCF to develop culturally sensitive campaigns to promote modifications made by the bill as well as the benefits of healthy and nutritious eating habits.
- Directs DCF to seek any federal approvals to carry out provisions of the bill.

The bill has an approximate fiscal impact of \$35,000 in order to restrict the use of cash assistance benefits outside the state.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

History of the Food Stamp Program

The food stamp program began in 1939, providing a discount for surplus food to people on relief. From 1939-1943, those who qualified were able to purchase stamps redeemable for the purchase of food, and were given additional stamps redeemable only towards purchasing surplus food.¹ In 1961 the Pilot Food Stamp Program was created by President Kennedy. The pilot program used the original food stamp program, but did not limit the use of additional stamps toward surplus food; those stamps could be used for perishables as well.²

The Food Stamp Act of 1964 made the program permanent and expanded the use of food stamps to “all items eligible for consumption, with the exception of alcohol and imported foods.”³ Since then a number of changes and reforms to the program have taken place including changing the name of the program to the Supplemental Nutrition Assistance Program (SNAP), changing eligibility determinations and the introduction of the use of an Electronic Benefits Transaction card (EBT).⁴

Supplemental Nutrition Assistance Program-SNAP (Federal Program)

SNAP is a federal program that is administered by the individual states. SNAP aims to “provide children and low income people access to food, a healthy diet, and nutrition education.”⁵

The Food and Nutrition Act of 2008 defines “eligible food” as “any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods and hot food products prepared for immediate consumption.”⁶ Eligible food also includes seeds and plants to grow foods for personal consumption, as well as some additional exceptions to allow for hot food products ready for consumption in certain circumstances.⁷

The following items may be purchased under the food assistance program:⁸

- breads and cereals;
- fruits and vegetables;
- meats, fish and poultry;
- dairy products.
- seeds and plants which produce food for the household to eat.

The following items may NOT be purchased under the food assistance program:⁹

- Beer, wine, cigarettes, liquor or tobacco;
- Items that are not intended for human consumption (paper products, pet foods, etc.);
- Foods that will be eaten in the store;
- Hot foods;

¹ A Short History of SNAP, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/snap/rules/Legislation/about.htm>. (last visited 1/27/12).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Nutrition Assistance Programs, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/fns/>. (last visited 1/27/12).

⁶ 7 C.F.R. s. 271.2.

⁷ P.L. 110-246, provides that certain individuals because of age, disability or living arrangement may purchase hot foods with their SNAP EBT card.

⁸ Supplemental Nutrition Assistance Program, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/snap/retailers/eligible.htm>. (last visited 1/27/12).

⁹ *Id.*

- Vitamins and medicines.

The federal government does not prohibit the purchase of soft drinks, candy, cookies, snack crackers, ice cream, birthday cakes, seafood or steak.¹⁰ As all of these items are eligible food products per federal definition.¹¹ The federal government issued a report in March of 2007 outlining some of the reasons why additional restrictions for eligible foods have not been mandated. The report provides the following key points:¹²

- No clear standards exist for defining foods as good or bad, or healthy or not healthy;
- Implementation of food restrictions would increase program complexity and cost;
- Restrictions may be ineffective in changing the purchases of food stamp recipients;
- No evidence exists that food stamp participation contributes to poor diet quality or obesity.

Federal Waiver Process for SNAP

Since the definition of “eligible foods” is part of a federal act, in order to change the definition it would require federal legislation. Under current law, the Administrator of the Food and Nutrition Service (administrator) may grant a waiver to a state to deviate from specific regulatory provisions of the act. Waivers may only be granted in the following situations:

- The specific regulatory provision cannot be implemented due to extraordinary temporary situations;
- The Food and Nutrition Service (FNS) determines that the waiver would result in a more effective and efficient administration of the program; or
- Unique geographic or climatic conditions within a state preclude effective implementation of the specific regulatory provision and require an alternate procedure.¹³

The administrator may not approve requests for waivers when the waiver would be inconsistent with the provisions of the act or the waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.¹⁴

In 2004, Minnesota submitted a request for a waiver of the definition of eligible foods in order to prohibit the purchase of candy and soft drinks with SNAP benefits. The request was denied because the act defines food in a certain manner and the proposed change to the definition of food would be in direct conflict with the statute.¹⁵ Additional concerns related to the waiver included:

- A uniform food stamp program allows FNS and states to implement interoperability;
- Allowing conflicting definitions of eligible food items would introduce obstacles to continuing interoperability and would undermine the significant benefits that interoperability provides to program recipients;
- Approval of such a waiver could include the reintroduction of a stigma to participants and would perpetuate the myth that participants do not make wise purchasing decisions; and
- Administrative difficulties ranging from what penalties would be brought against retailers for noncompliance and what entity – the state or the USDA – would be responsible for monitoring compliance.¹⁶

Florida Food Assistance Program (SNAP)

¹⁰ *Id.*

¹¹ *Id.*

¹² Food and Nutrition Serv., *supra* note 18. In 2007, the USDA issued a detailed report relating to the challenges of restricting the use of SNAP benefits. See U.S. Dep’t of Agriculture, *Implications of Restricting the Use of Food Stamp Benefits* (Mar. 1, 2007), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPFoodRestrictions.pdf> (last visited 1/27/12).

¹³ 7 C.F.R. s. 272.3(c).

¹⁴ *Id.*

¹⁵ Correspondence from Ollice C. Holden, Regional Admin., Food and Nutrition Servs., U.S. Dep’t of Agriculture, to Maria Gomez, Assistant Commissioner, Minnesota Dep’t of Human Servs. (May 4, 2004), available at:

<http://www.fns.usda.gov/snap/rules/Memo/2004/050404.htm>

¹⁶ *Id.*

The Florida Department of Children and Families (DCF) administers the state's food assistance program.¹⁷ The Food Assistance Program is a 100 % federally funded program. The USDA determines the amount of food assistance benefits an individual or family receives, based on the families' income and resources.¹⁸ Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.¹⁹ State law provides that DCF shall establish procedures in compliance with federal law for notifying the appropriate federal and state agencies of any violation of law regarding the food assistance program and the department must also notify the Department of Financial Services.²⁰

Currently, the state does not have any restrictions on the types of foods that can be purchased under the food assistance program²¹, as the USDA does not allow for such restrictions.²² DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.²³

Temporary Assistance for Needy Families (TANF)

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.²⁴ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. DCF administers the TANF program in conjunction with the Agency for Workforce Innovation.

Temporary Cash Assistance Program (Cash Assistance)

DCF administers the cash assistance program with TANF funds to help families become self-supporting while allowing children to remain in their own homes.²⁵ Current law provides that families are eligible for temporary cash assistance for a lifetime cumulative total of 48 months (4 years).²⁶ DCF reports that approximately 92,979 people are currently receiving temporary cash assistance.²⁷ The FY 2011-2012 appropriation of TANF funds to support temporary cash assistance was \$177,522,123.

Use of the Electronic Benefits Card

Both temporary cash assistance and food assistance monies are placed on an Electronic Benefits Transaction (EBT) card. Once an individual applies for cash assistance or food assistance with DCF, they will receive an EBT card in the mail²⁸, the card functions much like a credit card or debit card. Food assistance money can be used at any retail store that accepts the EBT SNAP card. Cash assistance money can be used to purchase a variety of items and may also be used at automatic teller machines (ATM's). Currently, there are no prohibitions on the use of the EBT card for out of state

¹⁷ s. 414.31, F.S.

¹⁸ *Id.*

¹⁹ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf .(last visited 1/27/12).

²⁰ s. 414.33, F.S.

²¹ DCF Bill Analysis, HB 1401(2012). (on file with committee staff

²² 7 C.F.R. s. 271.2.

²³ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 1/27/12).

²⁴ US Dept. of Health and Human Services, Administration on Children and Families

<http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 12/21/11).

²⁵ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf .(last visited 1/4/12).

²⁶ Section 414.105, F.S.

²⁷ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 12/22/11).

²⁸ Department of Children and Families Access Program. <http://www.dcf.state.fl.us/programs/access/foodassistance.shtml>. (last visited 1/27/12).

purchases. DCF estimates that on average approximately 200 cash assistance recipients use an EBT card out of state for more than 90 days, at approximately \$49,000 a month.²⁹ Current DCF rule³⁰ provides that cash assistance benefits can continue for one month after an individual has left the state, if the recipient requests the extension.³¹ Additionally, DCF permits households who are temporarily absent from the state to access cash assistance for two months if they plan to return to the state.³²

Effect of Proposed Changes

EBT Card Use Out of State

This bill provides that the EBT system shall prevent a recipient from using an EBT card to access cash benefits outside this state. DCF reports that this restriction can be accomplished through the card vendor JP Morgan, Inc³³. However, there would be no prohibition for recipients to access cash from the EBT card while in the state and then travel out of state. This limitation may also negatively impact families that live near the Alabama or Georgia border who frequent out of state vendors.

Restrictions on Use of EBT Card Cash Assistance

Currently, the EBT card has both cash assistance and food assistance money on the same card. Neither federal law nor state law prohibits items that can be purchased with cash assistance.

The bill requires DCF to restrict the use of the EBT card, cash assistance portion, for the purchase of alcohol or tobacco products. DCF reports that the cash assistance portion of the card currently does not have the processing infrastructure to identify items being purchased which contain alcohol or tobacco products. DCF indicates they will need to implement contracts with various establishments that sell alcohol or tobacco products to prevent purchases from taking place.³⁴ The number of establishments that DCF would need to contract with is unknown and would include a range of establishments, including but not limited to, grocery stores and convenience stores. In addition, a recipient of cash assistance could still access an ATM and withdraw money from the card to purchase alcohol or tobacco products.

²⁹ DCF Bill Analysis, HB 1401(January 11, 2012). (on file with committee staff).

³⁰ 65A-4.220(6). F.A.C.

³¹ *Id.*

³² *Id.*

³³ Telephone interview with Ann Berner, Director, DCF ACCESS program, January 28, 2012

³⁴ *Id.*

Restricting Use of EBT Card for Certain Foods

The bill directs DCF to add to the list of ineligible foods under the Supplemental Nutrition Assistance (food assistance) program to include nonstaple foods as follows:

- Sweetened beverages;
- Sodas;
- Gelatin Dessert;
- Candy;
- Ice cream;
- Pudding;
- Popsicles;
- Muffins;
- Sweet rolls;
- Cakes;
- Cupcakes;
- Pies;
- Cobblers;
- Pastries;
- Doughnuts;
- Corn-based salty snacks;
- Pretzels;
- Party mix;
- Popcorn;
- Potato chips.

The bill directs DCF to seek all necessary federal approvals to implement these restrictions. DCF will need to apply for a waiver with FNS in order to prohibit these foods. Other states have attempted to apply for waivers for similar type restrictions and have been denied.³⁵

The bill prohibits the use of benefits at restaurants, including fast-food restaurants. This is already restricted as a point of purchase sale on the food assistance portion of the EBT cards.

The bill also requires DCF to use culturally sensitive campaigns to promote the modifications made pursuant to the bill, as well as the benefits of healthy and nutritious eating habits.

Restrictions on Use of ATMs or EBT Cards in Certain Establishments

The bill specifies that a recipient may not use an ATM in this state, if the ATM is located in certain establishments or facilities. In addition, the bill prohibits the use of an EBT card to purchase any service or good from certain establishments or facilities. The establishments or facilities include:

- An adult entertainment establishment;
- A pari-mutuel facility;
- A gaming facility under a tribal-state compact;
- A commercial bingo facility;
- A retail establishment licensed to sell malt, vinous, or spirituous liquors;
- A gambling establishment – including internet cafés, corner store casinos, internet gambling café, etc.; or
- A card room.

A retail establishment that is licensed to sell malt, vinous or spirituous liquors could include many various supermarkets and retail stores. These items can be sold in a store that carries more than just alcoholic beverages and a recipient would be prohibited from using an ATM at one of these stores.

DCF would need to work with Third Party Processors and Networks in order to prohibit the use of ATMs and terminals in gambling and adult entertainment establishments from processing EBT transactions.³⁶

³⁵ Correspondence from Ollice C. Holden, Regional Admin., Food and Nutrition Servs., U.S. Dep't of Agriculture, to Maria Gomez, Assistant Commissioner, Minnesota Dep't of Human Servs. (May 4, 2004), *available at*:

<http://www.fns.usda.gov/snap/rules/Memo/2004/050404.htm>

³⁶ DCF Bill Analysis, HB 1401 (January 11, 2012). (on file with committee staff).

General:

The bill clarifies in statute that cash assistance may be placed on an EBT card. DCF currently is placing cash assistance on EBT cards, in compliance with federal program changes.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.82, F.S., relating to Electronic Benefit Transfer Program;

Section 2: Amends s. 414.095, F.S., relating to Determining eligibility for temporary cash assistance;

Section 3: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF estimates that in order to restrict the use of cash assistance benefits outside the state will cost \$35,000 for the EBT vendor to reprogram their system to add this restriction. The current EBT vendor is JP Morgan.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the list of foods that may not be purchased using food assistance funds. Accordingly, individuals would be required to use private funds to purchase the items listed in the bill. The bill also restricts the use of cash assistance at certain ATMs.

D. FISCAL COMMENTS:

DCF estimates that it will cost approximately \$35,000 to restrict the use of cash assistance benefits outside of the state. The cost is generated from the EBT vendor as they will need to reprogram their system to include additional restrictions. The current EBT vendor is JP Morgan.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits a recipient of food assistance from purchasing sweetened beverages. The bill does not specify what these beverages are and could include beverages that are naturally sweetened.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Health and Human Services Access Subcommittee adopted an amendment to House Bill 1401. The amendment does the following:

- Removes the word “unhealthy” from the list of foods that may not be purchased with the Supplemental Nutrition Assistance Program.
- Removes the phrase “but not limited to” from the list of foods that may not be purchased with the Supplemental Nutrition Assistance Program.
- Replaces the word “Jello” with the phrase “gelatin dessert”.

The bill was reportedly favorably as a Committee Substitute. This analysis reflects the Committee Substitute.