

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on Health and Human Services Appropriations

BILL: SB 1658
 INTRODUCER: Senator Storms
 SUBJECT: Public Assistance
 DATE: February 2, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable
2.	Pigott	Hendon	BHA	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill 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, or to access automated teller machines located in gambling and adult entertainment establishments. The bill also provides a list of establishments inside the state that a cash assistance recipient may not access cash benefits through an EBT card from an automated teller machine (ATM).

Additionally, the bill requires the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal Supplemental Nutrition Assistance Program funds. The bill also prohibits the use of benefits at restaurants.

The bill will require programming changes to the EBT System to implement the prohibitions. The department analysis indicates costs are minimal and can be absorbed with existing resources. The bill would require the department to procure programming changes in FY 2011-12 prior to the implementation date of July 1, 2012.

The effective date of the bill is July 1, 2012.

This bill amends sections 402.82 and 414.095, Florida Statutes.

II. Present Situation:

History of the Supplemental Nutrition Assistance Program

The idea of the federal government providing food subsidies to low-income families began as early as 1933 when the Roosevelt administration established the Federal Surplus Relief Corporation (FSRC) to “expand markets for agricultural products, and to purchase, store, and process surplus agricultural products so as to relieve the hardship and suffering caused by unemployment.”¹ In 1939, the United States Department of Agriculture (USDA) initiated an experimental food stamp program as a way to help low-income families buy healthy food.²

The Food Stamp Act of 1964 authorized a food stamp program to provide eligible households an opportunity to obtain a nutritionally adequate diet through the issuance of coupons.³ The goal of the program is to “alleviate hunger and malnutrition . . . by increasing food purchasing power for all eligible households who apply for participation.”⁴ The Hunger Prevention Law of 1988 authorized pilot programs to test whether the use of benefit cards or other electronic benefit delivery systems could enhance the effectiveness of the food stamp program.⁵ In 1996, federal law mandated that states implement electronic benefit transfer (EBT) systems by 2002.⁶ The EBT system “allows a recipient to authorize transfer of their government benefits from a Federal account to a retailer account to pay for products received.”⁷ Food assistance benefits are deposited into a food assistance account each month and an EBT card, much like a bank card, is used to buy food.⁸

In 2008, the Food, Conservation, and Energy Act replaced the Food Stamp Act of 1977 and increased the commitment to Federal food assistance programs.⁹ As of November 2011, the program serves over 40 million low-income individuals each month.¹⁰ The bill also changed the name of the Federal food stamp program to the Supplemental Nutrition Assistance Program (SNAP), and changed the name of the Food Stamp Act to the Food and Nutrition Act of 2008.¹¹ According to the USDA, the new name reflects the department’s focus on nutrition, putting health food within reach for low income households, and improvement in accessibility.¹² While states are permitted to name the program on their own, the federal government has encouraged states to change the name to SNAP, or another alternative name, as an opportunity to fight stigma and promote messages about healthy eating to consumers.¹³ As of March 2011, 29 states

¹ Dennis Roth, Social Science Analyst, *Food Stamps: 1932-1937: From Provisional to Pilot Programs to Permanent Policy*, <http://www.nal.usda.gov/ric/ricpubs/foodstamps.htm> (last visited Jan. 23, 2012).

² *Id.*; see also Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program, A Short History of SNAP*, <http://www.fns.usda.gov/snap/rules/Legislation/about.htm> (last visited Jan. 23, 2012) [hereinafter *A Short History of SNAP*].

³ Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program, Legislative History*, http://www.fns.usda.gov/snap/rules/Legislation/history/PL_88-525.htm (last visited Jan. 23, 2012).

⁴ Food Research and Action Ctr., *SNAP/Food Stamps*, <http://frac.org/federal-foodnutrition-programs/snapfood-stamps/> (last visited Jan. 23, 2012) (as stated in the Food Stamp Act of 1977).

⁵ *A Short History of SNAP*, *supra* note 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Food and Nutrition Serv., United States Dep’t of Agriculture, *Supplemental Nutrition Assistance Program*, <http://www.fns.usda.gov/snap/snap.htm> (last visited Jan. 23, 2012).

¹¹ *A Short History of SNAP*, *supra* note 2

¹² Food and Nutrition Serv., *supra* note 10.

¹³ *Id.*

had changed the name of their program to SNAP and eight states had changed the name of the program to an alternate name.¹⁴ Seven states were still using the name Food Stamp Program.¹⁵

Food and Nutrition Act of 2008

The Food and Nutrition Act (act) defines “eligible food” as “any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption.”¹⁶ The term 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.¹⁷ For example, eligible food products include:

- Breads and cereals;
- Fruits and vegetables;
- Meats, fish, and poultry;
- Dairy products; and
- Seeds and plants to grow and product food for the household to eat.¹⁸

Households may not use food assistance benefits to buy:

- Beer, wine, liquor, cigarettes, or tobacco;
- Pet food, soaps, paper products; or household supplies;
- Vitamins and other medicines;
- Food that will be eaten in the store; and
- Hot foods.¹⁹

Soft drinks, candy, cookies, crackers, ice cream, bakery cakes, and certain energy drinks are eligible for purchase with SNAP benefits under the current definition of “eligible foods.”²⁰

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;

¹⁴ Supplemental Nutrition Assistance Program, United States Dep’t of Agriculture, *From Food Stamps to SNAP: State Name Change Tracking Chart*, <http://www.fns.usda.gov/snap/roll-out/state-chart.pdf> (last visited Jan. 23, 2012).

¹⁵ *Id.*

¹⁶ 7 C.F.R. s. 271.2.

¹⁷ *Id.*

¹⁸ Food and Nutrition Serv., U.S. Dep’t of Agriculture, *Supplemental Nutrition Assistance Program*, <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last visited Jan. 26, 2012).

¹⁹ *Id.*

²⁰ *Id.*

- 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.²¹

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.²²

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 (at the time, they were still called food stamp) 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.²³

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.²⁴

While there is evidence that SNAP benefits may increase the availability of some nutrients in the home food supply, there is little research that addresses the effect of SNAP participation on nutrition-related health outcomes such as height and weight.²⁵

According to the USDA, Congress has considered placing limits on the types of foods eligible for purchase with SNAP benefits in the past. However, Congress concluded that designating foods as “luxury or non-nutritious” would be administratively costly and burdensome.²⁶

²¹ 7 C.F.R. s. 272.3(c).

²² *Id.*

²³ 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) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁴ *Id.*

²⁵ Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Serv., U.S. Dep’t of Agriculture, *Making America Stronger: A Profile of the Food Stamp Program*, 21 (Sept. 2005), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Other/FSPPProfile.pdf> (last visited Jan. 23, 2012).

²⁶ 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/FSPPFoodRestrictions.pdf> (last visited Jan. 26, 2012).

III. Effect of Proposed Changes:

This bill provides that the electronic benefit transfer system shall prevent a recipient from using the electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automatic teller machines (ATMs) located in gambling and adult entertainment establishments. The bill does provide that it does not prohibit the use of an EBT card to access federal Supplemental Nutrition Assistance Program (SNAP) benefits in any manner authorized by federal law. Essentially, the intent of the bill is to prohibit the use of state dollars through the electronic benefit transfer system in certain circumstances, but that an individual may still be able to use federal SNAP funds under the same circumstances if allowed by federal law.

The bill requires the Department of Children and Family Services (DCF or department) to:

- Add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds.
- Prohibit the use of benefits at restaurants, including fast-food restaurants; and
- Use culturally sensitive campaigns to promote the modifications made pursuant to the bill, as well as the benefits of healthy and nutritious eating habits.

The bill specifies certain foods that are to be added to the list of items that may not be purchased with federal SNAP funds. These foods include:

- Foods containing trans fats;
- Sweetened beverages, including sodas;
- Jello;
- Candy;
- Ice cream;
- Pudding;
- Popsicles;
- Muffins;
- Sweet rolls;
- Cakes;
- Cupcakes;
- Pies;
- Cobblers;
- Pastries;
- Doughnuts;
- Corn-based salty snacks;
- Pretzels;
- Party mix;
- Popcorn; and
- Potato chips.

The department is authorized to collaborate with any public or nongovernmental organization that promotes the health and well-being of all residents of the state. The department is required to seek all necessary federal approvals to implement this bill.

Finally, the bill provides that a cash assistance recipient may not access cash benefits through an EBT card from an ATM in this state located in:

- An adult entertainment establishment;²⁷
- A pari-mutuel facility;²⁸
- A gaming facility authorized under a tribal-state gaming compact;
- A commercial bingo facility that is not an authorized bingo establishment;²⁹
- A store or establishment in which the principal business is the sale of firearms; and
- A retail establishment licensed to sell malt, vinous, or spirituous liquors under the Beverage law.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill increases the list of foods that may not be purchased using federal Supplemental Nutrition Assistance Program (SNAP) funds. Accordingly, individuals would be required to use private funds to purchase the items listed in the bill.

²⁷ An “adult entertainment establishment” means an adult bookstore, adult theater, special cabaret, and unlicensed massage establishment. Section 847.001, F.S.

²⁸ A “pari-mutuel facility” is defined as a racetrack, fronton, or other facility used by a permitholder for the conduct of pari-mutuel wagering. Section 550.002(23), F.S.

²⁹ Section 849.0931, F.S., provides that charitable, nonprofit, or veteran’s associations may conduct bingo games or instant bingo under certain conditions.

C. Government Sector Impact:

According to the Department of Children and Family Services (DCF or department), the bill may have an impact on temporary cash assistance recipients regarding successful administration of the Relocation Assistance Program. Pursuant to rule, DCF currently authorizes temporary cash assistance benefits to continue for one month following the month of departure from the state if the recipient requests the extension.³⁰ This bill restricts the use of out-of-state access to cash benefits, which would require DCF to amend its rule.³¹

The bill will require programming changes to the EBT System to implement the prohibitions. The department analysis indicates costs are estimated at \$35,000 and can be absorbed with existing resources.

VI. Technical Deficiencies:

The bill directs the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds. Although the bill provides a list of some items that are prohibited, the bill does not define “nonstaple, unhealthy foods,” nor does it provide any guidelines for determining what is unhealthy. It is unclear how the department will determine what is or is not unhealthy for purposes of using SNAP funds.

According to DCF, the cash transaction set does not provide identification codes for business types other than financial institutions. Accordingly, there is currently no standardized or accurate way to gather merchant identification data based on the transaction set data that currently exists in the industry. Any data gathering is reliant on Third Party Processors and terminal operators to provide. The department recommends that effective exclusion of certain terminals would be best managed by the Third Party Processors.³²

On line 34, the bill provides that the electronic benefit transfer system designed and implemented pursuant to this *chapter* shall prevent a recipient from using the electronic benefit transfer (EBT) card in certain locations. The electronic benefit transfer system is created in s. 402.82, F.S., so the bill may need to be amended to use the term “section” rather than “chapter.”

VII. Related Issues:

In 2010, California – through executive order – restricted cash access with the EBT card at certain establishments. These establishments included:

- Bail bonds.

³⁰ Rule 65A-4.220(6), F.A.C.

³¹ Dep’t of Children and Families, *Staff Analysis and Economic Impact, SB 1658* (Jan. 11, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³² *Id.*

- Bingo halls.
- Cannabis shops.
- Cruise ships.
- Gun and ammunition stores.
- Liquor stores.
- Night clubs, saloons, and taverns.
- Psychic readers.
- Race tracks.
- Smoking shops.
- Spa and massage salons.
- Tattoo and piercing shops.³³

Throughout the process, the state learned:

- ATM blocking is an inexact process.
- Some locations that should be blocked will be missed.
- Some locations that have been blocked should be active.
- Blocking ATMs solely by category is impossible because all ATMs use the same Financial Institution Category Code.
- Intense effort for contractor and state to determine exact locations to be blocked.
- Monitoring is extremely difficult.
- Reactivations due to new processor occur frequently.
- Changes in location name.³⁴

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³³ *Id.*

³⁴ *Id.*