

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 Committee on Regulated Industries

BILL: SB 1048

INTRODUCER: Senator Gardiner

SUBJECT: Electronic Benefits Transfer Cards

DATE: March 29, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Kraemer | Imhof | RI | Pre-meeting |
| 2. | _____ | _____ | CF | _____ |
| 3. | _____ | _____ | AP | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 1048 amends s. 402.82, F.S., relating to Electronic Benefits Transfer Cards. The bill prohibits the use or acceptance of electronic benefits transfer cards (EBT cards) at certain locations licensed to sell distilled spirits, and at adult entertainment, pari-mutuel, Internet café, commercial bingo, and gaming establishments.

The bill bars holders of EBT cards who use EBT cards at prohibited locations from the use of the EBT program for six months, 12 months or permanently, based on the number of violations.

The bill provides an October 1, 2013 effective date.

The bill substantially amends section 402.82, Florida Statutes:

II. Present Situation:

The federal government provides to the state certain grant monies known as Temporary Assistance for Needy Families (TANF) benefits that are payable pursuant to the Social Security Act.¹ A portion of the Middle Class Tax Relief and Job Creation Act (federal act) enacted in February 2012 includes a requirement for the implementation of state spending policies and practices for TANF benefits. The federal act was amended to prohibit electronic benefit transfer (EBT) transactions relating to TANF benefits at certain locations.²

¹ See 42 U.S.C. s. 608(a)

² See the Welfare Integrity and Data Improvement Act, Title IV, P.L. 112-96, ss. 4001-4004, 126 Stat. 197.

The state is required to report to the Secretary of the Department of Health and Human Services concerning the implementation of the state's spending policies and practices preventing TANF assistance from being used in EBT transactions at the locations set forth in the federal act, in order to avoid a 5% reduction in the state's TANF grant monies.³

The term "electronic benefit transfer transaction" is defined as the "use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service."⁴

States to which TANF grants are made are directed to maintain policies and practices to prevent TANF assistance from being used in EBT transactions in certain locations described below. In order to avoid a 5% reduction in a state's TANF grant, each state is required to report by February 22, 2014 to the Secretary of the Department of Health and Human Services its implementation of those policies and practices preventing TANF assistance from being used in EBT transactions at prohibited locations.⁵

The Office of Family Assistance of the Administration for Children & Families in the United States Department of Health & Human Services, in responses to questions regarding the requirements related to EBT transactions, has stated:

P.L. 112-96 does not specifically require state or local legislation to implement the federal statutory requirements. Each state will need to make its own determination as to whether state legislation is needed in order to meet the federal requirements. States should review their policies and practices If a state determines that existing efforts are insufficient [to comply with the law], the state should then take additional actions . . . [that] may include enactment of state legislation, issuance of executive orders and/or amendments to agency policies.⁶

The federal act states that the spending of TANF benefits is not authorized in any:

- Liquor store (retail establishing selling intoxicating liquor (exclusively or primarily) but excluding grocery stores selling both liquor and groceries including defined staple foods);
- Casino, gambling casino, or gaming establishment (excluding grocery stores selling groceries including defined staple foods that offer casino, gambling or gaming activities (or are located in the same building or complex) or other establishment that offers such activities incidental to the establishment's principal purpose);
- Retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.⁷

In Florida "adult entertainment establishments" are governed by s. 847.001, F.S. An adult entertainment establishment is defined as:

³ 42.U.S.C. s. 609(a)(16).

⁴ See 42 U.S.C. s. 608(a)(12)(B)(iii).

⁵ 42.U.S.C. s. 609(a)(16).

⁶ See <http://www.acf.hhs.gov/programs/ofa/resource/q-a-ebt-transactions> (Last visited March 26, 2013).

⁷ 42 U.S.C. s. 608(12).

- An “adult bookstore” means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material;
- An “adult theater” means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults;
- A “special cabaret” means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults; or
- An “unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.043, F.S., which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041, F.S.

Pari-mutuel gambling is authorized at pari-mutuel facilities under ch. 550, F.S. Pari-mutuel facilities are defined as a “racetrack, fronton, or other facility used by a permit holder for the conduct of pari-mutuel wagering.”⁸

Slot machines are currently authorized at pari-mutuel facilities in Miami-Dade and Broward counties pursuant to ch. 551, F.S. Slot machines and banked table games are authorized at the Seminole Tribe of Florida’s facilities through the Gaming Compact between the Tribe and the State of Florida that is ratified by s. 285.710, F.S.

The terms “casino” and “gaming establishment” are not defined in Florida law, however, “slot machine facility” is defined in s. 551.102(9), F.S., as a facility at which slot machines are lawfully offered for play. In turn, “slot machine” means any mechanical or electrical contrivance, terminal (whether or not able of downloading games from a central server system), machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, whether skill or chance or both, may deliver or entitle the player to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically or manually. Slot machines may use spinning reels, video displays, or both, but is not a “coin-operated amusement machine” as defined in s. 212.02(24), F.S., or an amusement game or

⁸ Section 550.002(23), F.S. A person must be issued a permit to conduct pari-mutuel wagering in Florida. An initial permit must be approved or rejected by the electors in the county in a special election conducted pursuant to s. 550.0651, F.S.

machine as described in s. 849.161, F.S.⁹

Pursuant to s. 849.0931, F.S., the only entities or groups authorized to conduct bingo are charitable, nonprofit, or veterans' organizations directly involved in the conduct of a bingo game, or condominium associations, cooperative associations, homeowners' associations as defined in s. 720.301, F.S., mobile home owners' associations, groups of residents of mobile home parks as defined in ch. 723, F.S., or groups of residents of a mobile home park or recreational vehicle park as defined in ch. 513, F.S., where the net proceeds from such games are returned to players in the form of prizes after deduction of the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo.

The sale of liquor is regulated under the Beverage Law.¹⁰ The number of liquor licenses granted under s. 565.02, F.S., is limited by population under s. 561.20, F.S. These licenses are referred to as "quota" licenses. Retailers (vendors) who receive a license under s. 565.02, F.S., may sell any alcoholic beverages regardless of alcoholic content. Liquor is defined in s. 565.01, F.S., to include "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors," and to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Section 565.04, F.S., limits what can be sold by vendors licensed under s. 565.02(1)(a), F.S. and s. 565.045, F.S., provides regulations for consumption on the premises. Bottle clubs are defined in s. 561.01(15), F.S., to include commercial establishments that allow patrons to bring their own alcoholic beverages for consumption on the premises. The term does not include sporting facilities, licensed hotels, motels, or restaurants.

According to the Department of Children and Families (DCF), while the current EBT vendor does not have the capability to block use of EBT cards in prohibited locations, a subsequent EBT vendor will be required to provide that service effective October 1, 2013.¹¹ The machines in which EBT cards are attempted to be used will be programmed to reject the cards, based on the Merchant Category Code (MCC) for point-of-sale terminals¹² in prohibited locations.¹³ An accurate MCC must be present in the terminal and on the vendor's "no process" list in order for the transaction to be declined.¹⁴ As to automatic teller machines (ATMs) that dispense money when a coded card is used, the vendor will program a block based on the ATM's identification, which will require on-site visits to all ATMs in prohibited locations.¹⁵

The bill does not address the benefits, other than TANF benefits, that are set forth in s. 402.82, F.S. Other benefits that may be disseminated through the electronic benefits transfer program are

⁹ Section 551.102(8), F.S.

¹⁰ Section 561.01(6) defines the Beverage Law to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

¹¹ *2013 Legislative Analysis for SB 1048*, Office of Legislative Affairs, Department of Children and Families, dated March 20, 2013 and telephone interview with D. McLemore, Chief, Electronic Benefits Program, Department of Children and Families (March 26, 2013).

¹² Point-of-sale terminals are part of a customer-checkout system that uses automated devices linked to a computer that directly transmits sales data as part of a computerized system for accounting and inventory control. See <http://dictionary.reference.com/browse/point+of+sale+terminal?s=t>

¹³ See *supra* note 4.

¹⁴ *Id.*

¹⁵ See *supra* note 4.

food assistance benefits, refugee cash assistance payments, asylum applicant payments, and certain child support payments.

III. Effect of Proposed Changes:

The bill amends s. 402.82(1), F.S., to revise the term “electronic benefit transfer” to “electronic benefits transfer.” A portion of the Middle Class Tax Relief and Job Creation Act (federal act) enacted in February, 2012 includes a requirement for the implementation of state spending policies and practices for benefits designated as Temporary Assistance for Needy Families (TANF) benefits payable pursuant to the Social Security Act.¹⁶ The federal act was amended to prohibit certain electronic benefit transfer (EBT) transactions relating to TANF benefits.¹⁷

The bill provides that the use or acceptance of an EBT card is prohibited at:

- Any establishment licensed to sell distilled spirits containing 6 percent or more alcohol by volume as a vendor and restricted in the types of products that can be sold by package stores under s. 565.04, F.S., and by restaurants and bars under s. 565.045, F.S., or by a bottle club as defined in s. 561.01, F.S.;
- An adult entertainment establishment as defined in s. 847.001, F.S.;
- A pari-mutuel facility as defined in s. 550.002, F.S.;
- An Internet cafe where electronic machine users are entered into a game promotion as defined in s. 849.094, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and
- A casino, slot machine facility, or other gaming establishment.

The bill bars a holder of an EBT card who uses the EBT card at any prohibited location from the electronic benefits transfer program for the following periods:

- Six months for the first violation;
- 12 months for the second violation; and
- Permanently for the third violation.

The bill directs the department to develop enforcement procedures for the EBT program.

The bill revises the name of “Department of Children and Family Services” to “Department of Children and Families.”

The bill provides an October 1, 2013 effective date.

¹⁶ See 42 U.S.C. s. 608(a)

¹⁷ See *supra* note 2.

Other Potential Implications:

The bill includes no exemption for use of the EBT card for receipt and spending of benefits other than TANF benefits, as set forth in s. 402.82, F.S., such as food assistance benefits, refugee cash assistance payments, asylum applicant payments, and certain child support payments.

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:

According to the Department of Children and Families, owners of point-of-sale terminals and automated teller machines in prohibited locations will be required to program those machines so that any card issued with the Florida EBT Bank Identification Number will be rejected.¹⁸

C. Government Sector Impact:

None, according to the Department of Children and Families.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁸ See *supra* note 5.

¹⁹ *Id.*

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.
