

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 701 Electronic Benefit Transfer Program

SPONSOR(S): Health & Human Services Committee; Health Care Appropriations Subcommittee; Healthy Families Subcommittee; Smith

TIED BILLS: **IDEN./SIM. BILLS:** SB 1048

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	9 Y, 2 N, As CS	Entress	Schoolfield
2) Health Care Appropriations Subcommittee	12 Y, 1 N, As CS	Fontaine	Pridgeon
3) Health & Human Services Committee	12 Y, 6 N, As CS	Entress	Calamas

SUMMARY ANALYSIS

The bill makes changes to state law in s. 402.82, F.S., for the Electronic Benefits Transfer program. Electronic benefit transfer cards (EBT) cards are used to hold cash assistance and food assistance benefits. The bill prohibits the use of EBT cards in the following places or for the following activities:

- An establishment licensed under the Florida Beverage Law to sell distilled spirits and that is restricted in the types of products that may be sold under ss. 565.04 and 565.045, F.S. or 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. 550.02, F.S.;
- A slot machine facility as defines in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and
- A casino, gaming facility, or Internet café, including gaming activities authorized under part II of chapter 285.

The bill requires DCF to develop enforcement procures for the EBT program

The bill has no fiscal impact on state government.

The bill provides an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Use of the Electronic Benefits Card

Both temporary cash assistance and food assistance monies are placed on an Electronic Benefits Transaction (EBT) card. Under s. 402.82, F.S., the Department of Children and Families (DCF) administers the EBT program. Once an individual applies for cash assistance or food assistance with DCF, they will receive an EBT card in the mail;¹ 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 (Supplemental Nutrition Assistance Program) Card. Cash assistance money can be used to purchase a variety of items and may also be used at automatic teller machines (ATM's) and Point of Sale (POS) machines.²

EBT vendors cannot block the usage of an EBT card. Instead, any block must be done at the individual or terminal level.³ The ATM or Point of Service (POS) owners can program the machines to reject any card with the Florida EBT Bank Identification Number, or can prohibit QUEST transactions, as QUEST is the network used specifically for EBT.⁴

Supplemental Nutrition Assistance Program (SNAP)

SNAP, previously known as “food stamps”, 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 Florida Department of Children and Families (DCF) administers the state’s food assistance program.⁸ The food assistance program is a 100 percent federally-funded program. The United States Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives, based on the families’ income and resources.⁹ 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.¹⁰ 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 must also notify the

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

² How to use your EBT Card at a Point-of-Sale (POS) or ATM Machine, The Department of Children and Families, *available at*: <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/how-use-your-ebt-card-point-sale-pos-or-atm-machine>. (last visited 3/7/13).

³ Department of Children and Families analysis of HB 701, on file with committee staff.

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 s. 414.31, F.S.

⁹ *Id.*

¹⁰ DCF Food Assistance Program Fact Sheet, *accessible at*: www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf .(last visited 1/27/12).

Department of Financial Services.¹¹ As of February 5, 2013, 15,752 Florida retailers accept SNAP benefits.¹²

Temporary Cash Assistance Program (Cash Assistance)

DCF administers the cash assistance program with Temporary Assistance for Needy Families (TANF) funds to help families become self-supporting while allowing children to remain in their own homes.¹³ Cash assistance is available to two categories of families: work-eligible and child-only.¹⁴ Current law provides that families are eligible for temporary cash assistance for a lifetime cumulative total of 48 months (4 years).¹⁵

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 2005.¹⁶ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.¹⁷ DCF administers the TANF program in conjunction with the Agency for Workforce Innovation.¹⁸

Public Law 112-96 Section 4004, Spending Policies for Assistance Under State TANF Programs

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Act) was signed by the President. The act requires states receiving TANF to create policies and practices as necessary to prevent assistance provided under the program from being used in any EBT transaction in the following establishments:

- Any liquor store;
- Any casino, gambling casino, or gaming establishment; or
- Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.¹⁹

This public law does not require states to enact legislation in order to comply with the new EBT restrictions. States are required to update their state plans with an explanation of how the restrictions will be implemented. The state plans must also provide an explanation on how recipients will have adequate access to cash assistance with minimal or no fees or charges for withdrawal. States must report to the Secretary of Health and Human Services regarding their implementation of the policies and practices by February 22, 2014.²⁰ If states do not comply with these requirements by that date, the Secretary will reduce the state's family assistance grant by up to five percent. As of March 5, 2013, DCF has not yet issued any policies or practices to implement this requirement. However, DCF plans to adopt the required policies and practices following the 2013 legislative session, in order to implement

¹¹ s. 414.33, F.S.

¹² SNAP Retailer Locator, United States Department of Agriculture, *accessible at*: <http://snap-load-balancer-244858692.us-east-1.elb.amazonaws.com/index.html> . (last visited 2/28/12).

¹³ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf .(last visited 1/4/12).

¹⁴ S. 414.045(1).

¹⁵ Section 414.105, F.S.

¹⁶ US Dept. of Health and Human Services, Administration on Children and Families, *accessible at*: <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 12/21/11).

¹⁷ Temporary Assistance for Needy Families, the Department of Children and Families, *accessible at*: <http://www.dcf.state.fl.us/programs/access/docs/TANF%20101%20final.pdf>.

¹⁸ *Id.*

¹⁹ P.L. 112-96. Section 4004.

²⁰ U.S. Department of Health and Human Services, Administration on Children and Families, Office of Family Assistance available at <http://www.acf.hhs.gov/programs/ofa/resource/q-a-ebt-transactions>. Last visited March 5, 2013.

any additional requirements in this bill.²¹ Florida's State Family Assistance Grant, also called the TANF Block Grant is \$562,340,120.²²

Effect of Proposed Changes

The bill prohibits EBT cards from being accepted at the following locations or for the following activities:

- An establishment licensed under the Florida Beverage Law to sell distilled spirits and that is restricted in the types of products that may be sold under ss. 565.04 and 565.045, F.S. or 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. 550.02, F.S.;
- A slot machine facility as defines in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and
- A casino, gaming facility, or Internet café, including gaming activities authorized under part II of chapter 285.

Many retail establishments sell restricted alcoholic and tobacco products alongside allowable food products. This bill attempts to identify the retailers that are visited primarily to purchase restricted alcoholic products. This distinction will allow cash beneficiaries to continue using EBT cards at ATMs in places where permissible food items are available for purchase (e.g., supermarkets).

The bill conforms state law to the federal requirements for use of TANF benefits and EBT transactions, as specified in the Middle Class Tax Relief and Job Creation Act of 2012 (Act). The Federal Office of Family Assistance, within the Office of Administration for Children and Families, clarified that state legislation is not required as long as the policies and practices required by the Act are in place.²³ If the policies and practices are not implemented, the state of Florida could receive a five percent reduction in TANF block grants for FY 2014, and receive additional five percent reductions for preceding fiscal years until the state provides the necessary policies and practices.

The bill requires DCF to develop enforcement procures for the EBT program. With the current EBT system vendor, any blocks for EBT use must be done at the individual or terminal level. This requires the specified business to be responsible for ensuring that EBT transactions are not allowed at the locations prohibited under the bill.²⁴ However, DCF has recently completed a procurement process for a new EBT vendor, which is a three year contract and will take effect on October 1, 2014. As part of the contract, the new EBT vendor is required to make any and all required changes to the WIC, EBT, and SNAP systems when policy, rules, or regulatory changes are made by Florida legislation. This must be completed without any additional fees from DCF.²⁵ There are two steps the vendor must take to restrict the use of EBT at the locations required by law:

- Step 1 Blocking at Point of Sale (POS) Machines. The vendor will block POS transactions from businesses that are identified by the Merchant Category Code (MCC) assigned when retailer agreements are established. The MCCs were developed by the "Card Association". They include Package Stores, Beer, Wine, Liquor, High Risk Adult Entertainment, and Betting including, Lottery/Casino/Wagers. The state will identify and share with the vendor which MCC codes the vendor should block. The accuracy of this restriction is dependent on programming of the MCC in the machine to indicate it is located in one of these retailers. MCC codes should be programmed at the time the POS is established.
- Step 2 Blocking at Automated Teller Machine (ATM). The vendor will block ATM transactions by programming a block based on the specific ATM terminal ID. Terminal IDs are not readily

²¹ E-mail correspondence with Gary Scott, Government Operations Consultant with the Department of Children and Families, Marcy 6, 2013.

²² E-mail correspondence with the Department of Children and Families, February 28, 2013.

²³ Q & A: TANF Requirements Related to EBT Transactions, Office of Family Assistance, *accessible at* <http://www.acf.hhs.gov/programs/ofa/resource/q-a-ebt-transactions>.

²⁴ Department of Children and Families analysis of HB 701, on file with committee staff.

²⁵ E-mail correspondence with the Jeri Flora, Director of Economic Self Sufficiency, Department of Children and Families, March 13, 2013

accessible, which requires an on-site visit to the ATM machine. Since the ID is not on the exterior of the machine, a special EBT card will be used to generate a transaction to the vendor. The vendor will then enter this terminal ID into their system to block any EBT Cash transactions. The block is associated with the terminal ID; if replaced or moved it will need to be re-blocked or unblocked.²⁶

B. SECTION DIRECTORY:

Section 1: Amends s. 402.82, F.S., relating to the electronic benefit transfer program.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

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:

²⁶ *Id.*

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Healthy Families Subcommittee adopted an amendment for House Bill 701, which removed the language prohibiting the use of EBT cards in establishments licensed to sell firearms or ammunition, whose firearm and ammunition sales exceed 35 percent of the establishment's annual sales.

On March 27, 2013, the Health Care Appropriations Subcommittee adopted one amendment and reported the committee substitute favorably as a committee substitute for a committee substitute. The amendment changes the effective date to October 1, 2013.

On April 4, 2013, the Health and Human Service Committee adopted a strike-all amendment which made the following changes:

- Conforms terminology regarding DCF and EBT;
- Provides direction to DCF to include enforcement procedures in the EBT program; and
- Provides additional clarity as to which establishments are prohibited from accepting EBT card transactions.