

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0105-04
Bill No.: Truly Agreed To and Finally Passed SS for SB 251
Subject: Social Services Department; Public Assistance
Type: Original
Date: June 6, 2013

Bill Summary: This proposal updates provisions relating to public assistance fraud and abuse.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown, greater than \$156,916)	(Unknown, less than \$100,000)	(Unknown, less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown, greater than \$156,916)	(Unknown, less than \$100,000)	(Unknown, less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services (DSS) - Family Support Division (FSD)** provide the following assumptions:

§ 208.024 - Fraud or Abuse of EBT Card:

Subsection 1:

Because this section is restricting where electronic benefits transfer (EBT) cards can be used and restricting specific purchases that can be made with EBT cards, the FSD will need to notify each Temporary Assistance (TA) household of this change.

In November 2012, there were 39,341 families receiving TA. Each of these households will require prior notification of the change. Mailing costs provided by the Office of Administration puts each notice at 38 cents each. Therefore, the FSD estimates the cost of the notice to be \$14,950 (39,341 x 38 cents = \$14,950 (rounded)).

Federal law passed in 2012 (42 U.S.C. 608(a)(12)) requires states to implement policies and practices to prevent TA benefits from being used in any liquor store, casino, gambling casino, gaming establishment, or adult-oriented entertainment establishment. However, the U.S. Department of Health and Human Services (DHHS) has not yet provided guidance to states on the implementation of the federal law. It is unclear if the FSD will have costs associated with implementing the federal law as the law does not establish whom costs would fall on in association with ensuring Temporary Assistance for Needy Families (TANF) benefits are not used at any of these establishments.

Preliminary discussions with the current EBT vendor leads the FSD to believe that there will be difficulty in restricting the use of automated teller machines (ATM) that are in and around these establishments.

Possible obstacles include:

- o Most ATMs are owned by banks or other financial institutions, and private entities, as opposed to being owned by a casino, gaming establishment, liquor stores, adult-oriented entertainment establishment, museums, zoos, fairs, or planetariums. Therefore, matching the ownership of the ATM with the business location will be nearly impossible.
- o Matching the ATM address with the Casino address will not always produce reliable results. The ATM could be located at an adjoining or nearby hotel, restaurant, or service station.

ASSUMPTION (continued)

o Any method to match up the names and addresses of ATMs and Casinos (or other restricted establishments) will require a good deal of manual effort. In addition, the ATMs do not always stay in the same places.

Currently, purchases made with the EBT card are not captured; only the date of transaction, amount of transaction, time of transaction, type (TANF or Food Stamps) of transaction, and address of transaction are captured.

Retailers are responsible for ensuring purchases made with Food Stamp benefits are qualifying purchases. In order to ensure specific products prohibited by this section are not purchased with TANF benefits, a complete overhaul of retailers processing systems would need to occur, and it is unknown if it is even possible. It is unclear if FSD would be responsible for paying for the retailers system overhaul.

FSD is unable to estimate costs relating to determining when recipients make a purchase in violation of this section for the purpose of requiring repayment of such purchases. Therefore, FSD estimates the cost of this subsection to be unknown, but greater than \$14,950.

Subsection 2:

At this time, technology is not in place for the current EBT vendor to update the Point of Service (POS) machines. Currently, engagement and support of retailers is essential to prohibiting purchases not approved for food stamps. The retailers receive a listing of approved items for Food Stamps. The terminals (registers) are coded with this information and allow items on this list to be purchased with Food Stamps. The technology to do the reverse, reject items on a list, isn't available to retailers. In order to comply with this legislation for TANF benefits, retailers would have to update their terminals (registers) with all of the items in their store, EXCEPT those specific products prohibited by this section. Consequently, the support of retailers would also be imperative in enforcing this legislation.

FSD has no way to monitor purchases if a retailer does not comply with this legislation. Specific items purchased cannot be determined by the FSD, only the address and the amount in benefits spent.

In previous fiscal note responses, FSD indicated there would be a cost for the current EBT contractor to re-contract with retail establishments. However, additional information from the EBT contractor indicates this cost would not be incurred. Therefore, the cost has been deleted from the fiscal note.

HWC:LR:OD

ASSUMPTION (continued)

Officials from the **DSS - Division of Legal Services (DLS)** provide the following assumptions for Section 208.024:

Subsection 1:

DLS anticipates that the proposed legislation will have an unknown fiscal impact on DLS. Individuals denied use of TANF funds in prohibited establishments might request a fair hearing before a DLS administrative hearing officer to challenge whether it was factually accurate that the individual used TANF benefits at prohibited establishments. This legislation targets any individual who spends any amount of TANF funds in the enumerated prohibited establishments. The subsection provides no limitation on the scope, duration, or amount of funds in question or the age of the individual who engages in the proposed illegal transactions. DLS cannot estimate the number of additional administrative hearings without this additional information. The DLS Administrative Hearings Unit believes that it will take approximately two hours to conduct each hearing required by this proposal. This will include hearing preparation, the actual hearing and a hearing officers' review and determination of the outcome. The hearings should not require complex evidence or facts. The DLS Hearings Unit assumes that their hearing officers can hold approximately 900 hearings per year. For every 900 potential hearings, the DLS Hearings Unit will need one additional hearing officer. For every two to three hearing officers, the DLS Hearings Unit needs one additional office support assistant for clerical support. Once the number of potential hearings can be estimated it will be possible to determine the fiscal impact.

DLS also anticipates this proposed legislation would increase the referrals for investigations to the DLS Investigation Section (IS). However, the number of such referrals cannot be accurately predicted because it is not known how many individuals will use TA benefits in prohibited establishments. It is also unknown how many of those individuals who are improperly using TA benefits will be referred to IS. The fiscal impact, therefore, cannot be predicted.

Subsection 2:

DLS anticipates this proposed legislation will have an unknown fiscal impact on the Investigation Section (IS). It is anticipated that IS will receive additional referrals for investigations of alleged violations of this proposed legislation. However, the number of such referrals cannot be accurately predicted because it is not known how many establishments currently accept EBT cards for the purchase of the prohibited products or how many liquor stores, casinos, gaming establishments, or places of amusement accept EBT cards for any use. It is also unknown how many individuals would be referred to IS. Therefore, the fiscal impact cannot be predicted.

HWC:LR:OD

ASSUMPTION (continued)

Oversight assumes the DSS-DLS can absorb the increase in potential hearings resulting from this proposal. If the number of recipients with violations result in a significant increase in hearings, the DLS can request additional staff and funding through the appropriations process.

Section 578.392 - Detecting Fraud:

The FSD assumes existing Central Office staff would be able to complete a report related to the benefits, limitations and estimated costs of this type of model, including experiences in other states using a model to detect fraud by December 1, 2013.

Officials from the **Office of Administration (OA) - Information Technology Services Division (ITSD)/DSS** state the Family Assistance Management Information System (FAMIS) would need to make changes for Temporary Assistance for Needy Families (TANF) eligibility determinations based on sanctions. Estimates include integration testing with the agency's Electronic Benefits Transfer (EBT) vendor, who will track recipient's card use.

OA-ITSD/DSS is making the following assumptions:

- ITSD Staff will make all the system changes;
- The current rate for ITSD staff averages \$63.04 per hour; and,
- TANF is charged at 100% General Revenue.

Activities	Estimated Hours
Analysis/Design/Create/Modify Specs	100 hours
Changes to technical determination. Modify screens. Add new codes. Changes to notices.	400 hours
Unit/System and Integration Testing	120 hours
Total	620 hours

Total FAMIS Costs: 620 hours X \$63.04/hr. = \$39,085 (rounded)

The Claims and Restitution System (CARS) will add a reason code to track reimbursements back to DSS.

It is further assumed:

- 68 programs would need to be modified and will require an estimated 24 hours per program, or 1,632 hours total;
- ITSD staff will make all the changes;
- The current rate for ITSD staff averages \$63.04 per hour; and,
- Costs will be charge 100% to General Revenue.

ASSUMPTION (continued)

Therefore, total CARS costs will be: 1,632 hours X \$63.04/hr. = \$ 102,881 (rounded)

Total costs:	FAMIS	\$ 39,085
	<u>CARS</u>	<u>102,881</u>
		<u>\$ 141,966</u>

Officials from the **Department of Corrections (DOC)** state the penalty provision component of this bill resulting in a potential fiscal impact for the DOC is for up to a class C felony. Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender costs either through incarceration (FY 12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY 12 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender). Therefore, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seventeen (17) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

For the purpose of this proposed legislation, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any indigent clients faced with the enhanced penalties for subsequent offenses regarding unlawfully receiving public assistance benefits or EFT cards - a new Class D or C felony.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Department of Elementary and Secondary Education (DESE)** state there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year unless the affected districts are hold-harmless, in which case the

ASSUMPTION (continued)

districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Oversight assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

Officials from the **Department of Public Safety - Missouri Gaming Commission (GAM)** state this proposal provides that Temporary Assistance for Needy Families (TANF) recipients cannot use their Electronic Benefit Transfer (EBT) cards to obtain cash from gambling establishment ATMs. Casinos in Missouri already block these types of transactions; therefore, there is no fiscal impact on the operations of the GAM, to the Gaming Fund (0286), or to the Gaming Proceeds for Education Fund (0285).

The legislation also provides that using EBT cards or “public assistance benefits” for such purposes is a Class D felony for more than \$500 and a misdemeanor for \$500 or less. If one assumes this definition includes using the EBT card or some other form of public assistance benefit to obtain cash, which is then in turn used to gamble at a casino, there could be some negative impact, although minimal, to casino revenues and ultimately to the state in the form of reduced taxes and fees for those who decide to comply with the law and not risk prosecution.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Officials from the **Office of Administration - Administrative Hearing Commission**, the **Office of State Courts Administrator** and the **Department of Revenue** each assume the proposal would not fiscally impact their respective agencies.

In response to previous versions of this proposal, officials from the **Office of Prosecution Services** and **Office of Secretary of State** each assumed the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Costs - DOC</u>			
Increase in incarceration and parole costs (§§ 578.377 - 578.381)	(Unknown, less than \$100,000)	(Unknown, less than \$100,000)	(Unknown, less than 100,000)
<u>Costs - OA-ITSD/DSS</u>			
Computer systems modification costs (§§ 208.024, 578.377 - 578.389)	(\$141,966)	\$0	\$0
<u>Costs - DSS-FSD</u>			
Recipient notice costs (§ 208.024.1)	<u>(Unknown, greater than \$14,950)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Unknown, greater than \$156,916)</u>	<u>(Unknown, less than \$100,000)</u>	<u>(Unknown, less than \$100,000)</u>
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct, negative fiscal impact on small retail businesses that will no longer be able to sell specifically listed products to individuals using TANF EBT cards.

FISCAL DESCRIPTION

ELECTRONIC BENEFITS TRANSFER CARDS (Section 208.024)

Under this proposal, eligible recipients of temporary assistance for needy families (TANF) benefits shall not use such funds in any electronic benefit transfer (EBT) transaction in any liquor store, casino, gambling casino or gaming establishment, any adult-oriented establishment or in

FISCAL DESCRIPTION (continued)

any place or for any item that is primarily marketed for or used by adults eighteen or older. Any TANF recipient who violates this provision shall reimburse the Department of Social Services for such purchase.

An individual, store owner or proprietor of an establishment shall not accept TANF cash assistance funds held on EBT cards for the purchase of such items or in such establishments listed above and if such person knowingly accepts EBT cards in violation of this proposal, the person shall be punished by a fine of not more than 500 dollars for the first offense, a fine of not less than 500 dollars nor more than 1,000 dollars for the second offense, and a fine of not less than 1,000 dollars for the third or subsequent offense.

PUBLIC ASSISTANCE FRAUD (Sections 578.375 to 578.392)

The criminal provisions relating to welfare fraud have been updated to reflect current federal language for the Food Stamp program and for the use of electronic benefit or ("EBT") cards.

The criminal offenses of (1) unlawfully receiving, (2) unlawful conversion, and (3) unlawful transfer of public assistance benefits or EBT cards have been updated and renamed. Any person found guilty of such offenses shall be guilty of a Class D felony unless the face value of the public assistance benefit or EBT card is less than \$500, in which case the person shall be guilty of a Class A misdemeanor. The proposal provides for enhanced penalties for subsequent offenses.

Any person who is found guilty of a felony for unlawfully receiving, unlawful conversion or unlawful transfer of public assistance benefits or EBT cards shall serve not less than 120 days in the Department of Corrections unless such person pays full restitution to the state of Missouri within 30 days of the date of execution of sentence. In addition to any criminal penalty, any person found guilty of unlawfully receiving, unlawful conversion, or unlawful transfer of public assistance benefits or EBT cards shall pay full restitution to the state of Missouri for the total amount of monies converted. No person placed on probation for the offense shall be released from probation until full restitution has been paid.

This proposal provides that the Department of Social Services, rather than the Attorney General's Office, shall establish and maintain a statewide toll-free telephone service to be operated eight hours a day during the work week to receive complaints of a suspected public assistance fraud. The department shall also study analytical modeling-based methods of detecting fraud and issue a report to the General Assembly and Governor by December 1, 2013, relating to the benefits and limitations of such a model.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration -
 Administrative Hearing Commission
 Information Technology Services Division/Department of Social Services
Office of State Courts Administrator
Department of Elementary and Secondary Education
Department of Corrections
Department of Revenue
Department of Social Services -
 Family Services Division
 Division of Legal Services
Department of Public Safety -
 Missouri Gaming Commission
Joint Committee on Administrative Rules
Office of Prosecution Services
Office of Secretary of State
Office of State Public Defender



Ross Strope
Acting Director
June 6, 2013