

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 1699 - HB 1538

February 21, 2014

SUMMARY OF BILL: Prohibits electronic cash dispensing devices in certain businesses and establishments from accepting the electronic benefit transfer (EBT) cards by temporary assistance for needy families (TANF) recipients.

ESTIMATED FISCAL IMPACT:

On February 4, 2014, a fiscal note was issued estimating a fiscal impact as follows:

Other Fiscal Impact – If the state is determined to be noncompliant with federal regulations, the state could be assessed a penalty by the federal Department of Health and Human Services. It is assumed that any penalty assessed will be at least five percent of the TANF Block Grant. In FY12-13, a five percent penalty would equal \$9,576,200.

Due to an oversight of the additional responsibilities the bill places on the Department of Human Services and the penalty revenue that may be requested, this impact was in error. Based upon further analysis, the estimated fiscal impact is:

(CORRECTED)

Increase State Revenue – Exceeds \$400,000

**Increase State Expenditures - \$528,300/Recurring
\$7,000/One-Time**

Other Fiscal Impact – If the state is determined to be noncompliant with federal regulations, the state could be assessed a penalty by the federal Department of Health and Human Services. It is assumed that any penalty assessed will be at least five percent of the TANF Block Grant. In FY12-13, a five percent penalty would equal \$9,576,200.

Assumptions:

- The provisions of the bill require the owners and operators of electronic cash dispensing devices to disable the ability to accept EBT cards in the following businesses: adult-oriented businesses, professional bondsman businesses, liquor manufacturers or

SB 1699 - HB 1538 (CORRECTED)

distillers, liquor wholesalers, liquor retailers, wineries, direct shippers of alcoholic beverages, alcoholic beverage collectors, facilities licensed for on premises winemaking, farm wine permit facilities, businesses permitted for on premises consumption of wine and liquor, beer permit establishments, tattoo studios, body piercing establishments, and any establishment where persons under 18 years of age are prohibited.

- Any impact to state and local departments and agencies that regulate the above businesses and electronic cash dispensing devices will not be significant.
- According to the Department of Human Services (DHS), there are approximately 20,000 business establishments where beer is usually sold including grocery, restaurant, convenience and gas station businesses that could be licensed businesses in the state with both a beer permit and an electronic cash dispensing machine.
- Due to recent legislation, DHS has implemented new procedures in conducting investigations regarding business that may have violated Public Law 112-96 (Middle Class Tax Relief Act) and also quarterly procedures as required by state law. While quarterly procedures will not go into effect until July 1, 2014, the department is currently completing pre-emptive measures which include monitoring all businesses currently included in the state law and all EBT card transactions within those establishments. The department is also currently notifying businesses and cardholders of the penalties that will be assessed July 1, 2014.
- DHS will need four additional special investigator positions to monitor and complete investigations of the 20,000 additional businesses resulting in an increase in recurring expenditures of \$284,400 [(\$61,000 salaries and benefits + \$3,000 travel + \$400 telephones + \$300 supplies + \$1,400 LAN/WAN + \$5,000 office space) x 4 positions].
- DHS will also need an information systems analyst position to assist with the creation and maintenance of a tracking system to catalog blocked merchants/terminals and monitor civil penalties resulting in an increase in recurring expenditures of \$86,100 (\$84,000 salaries and benefits + \$400 telephone + \$300 supplies + \$1,400 LAN/WAN).
- DHS estimates an appeal rate of 10 percent resulting in 2,000 (20,000 businesses x .10) additional appeals annually. The department estimates additional recurring postage expenses of \$20,700 for notices of hearings, initial orders, and other final documents.
- Currently, each officer averages 94 cases per month; therefore, the department will need two additional hearing officers to handle the additional cases [(2,000 appeals / 12 months / 94 cases per officer) = 1.77 hearing officers].
- The two additional hearing officers will result in an increase in recurring expenditures of \$137,100 [(\$58,700 salaries and benefits + \$2,000 travel + \$200 utilities + \$400 telephone + \$300 supplies + \$1,400 LAN/WAN + \$5,000 office space + \$550 networking access) x 2 positions].
- The total increase in recurring expenditures will be \$528,300 (\$284,400 + \$86,100 + \$20,700 + \$137,100).
- The seven additional positions will incur one-time computer equipment costs of \$7,000.
- According to the department, there is no comparable offense or appeal information to determine a reasonable penalty collection rate. Penalties can be assessed in the amount of \$1,000 for a first violation, \$2,500 for a second violation within five years, and \$5,000 for a third or subsequent violation within five years.

- It is estimated that 20 percent of the 2,000 businesses that appeal their violation will be assessed at least a \$1,000 penalty resulting in an increase in revenue exceeding \$400,000 (2,000 x .20 x \$1,000).
- The bill will require grocery stores permitted to sell beer to disable electronic cash dispensers from accepting EBT card transactions.
- According to DHS, 42 USCA 608(a)(12) requires states to maintain policies and practices as necessary to prevent assistance provided under the state program funded under the Middle Class Tax Relief from being used in any electronic benefit transfer transaction in any liquor store, 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.
- According to DHS, for the state to remain an eligible state for Title IV-A Block Grants, the state must implement policies and procedures as necessary to prevent access to assistance provided under the state program through any electronic fund transaction in an automated teller machine or point-of-sale device including a plan to ensure that recipients of the assistance have adequate access to their cash assistance. (42 USCA 602(a)(1)(A)(vii)).
- 45 CFR 234.11 restricts what states can do in directing the use of the TANF funds by stating that federal financial participation is available in money payments to eligible families and individuals. Money payments are payments in cash, checks, or warrants immediately redeemable, made to the grantee or legal representative with no restrictions imposed by the agency on the use of funds by the individual.
- If the provisions of the bill are determined to be noncompliant with federal regulations, the Department could incur a penalty. The FY12-13 TANF Block Grant was \$191,524,000. It is assumed that any penalty imposed will be at least 5 percent of grant funds resulting in a penalty of at least \$9,576,200 (\$191,524,000 x .05).
- Any revenue realized from civil penalties resulting from violations by the proposed additional establishments will not be significant.

IMPACT TO COMMERCE:

(CORRECTED)

Increase Business Expenditures – Exceeds \$400,000

Other Commerce Impact – If the federal government imposes a penalty on the state, the result will be less funding to TANF recipients which in turn will result in less money introduced into the state’s economy.

Assumptions:

- If individuals who purchase goods with EBT cash transactions choose to shop in different establishments due to the provisions of the bill, there could be a negative impact to the revenues of the establishments that will no longer receive the business.

- The establishments that have electronic cash dispensing devices that do not have to disable access to EBT transactions may gain business and therefore incur a positive impact in revenue.
- If the federal government does impose a penalty of at least \$9,500,000, there could be a negative impact to commerce due to less funding being introduced into the state's economy.
- The impact to owners of electronic cash dispensing devices who would be required to disable the ability to accept EBT cards is not quantifiable. According to DHS there are approximately 20,000 businesses that could be impacted. It is assumed that such changes will increase operating expenses of such businesses; the exact amount of increase is unknown.
- It is estimated that DHS will assess civil penalties of at least \$400,000 on businesses; therefore, there will be a corresponding increase in business expenditures which exceeds \$400,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/kml