

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 660 Department or Agency Human Resources

Rule No. 660-2-2-.41

Rule Title: Unauthorized Electronic Benefits Transfer (EBT) Transactions and Unauthorized FA Expenditures

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety: yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? no

Are all facets of the rule making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed rule have an economic impact? yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of § 41-22-23, ALA.CODE 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, ALA.CODE 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service:

Signature of certifying officer: *Amy J. Buchner*
Date: 7/16/2014

DATE FILED
(STAMP)

Department of Human Resources
Family Assistance Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 660-2-2-.41 Unauthorized Electronic Benefits Transfer (EBT) Transactions and Unauthorized FA Expenditures

INTENDED ACTION: Amended permanent rule to replace emergency rule

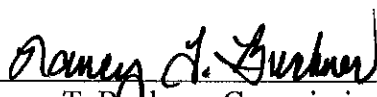
SUBSTANCE OF PROPOSED ACTION: Amended permanent rule to impose benefit access and spending restrictions as required by State Law.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, views, or arguments respecting the proposed amendment by mail, by telephone or in person through the close of business on September 4, 2014. Persons wishing to submit data, views, or arguments orally should contact the Department's Administrative Procedure Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays, at (334) 242-9330, or set up an appointment for such oral/in person presentations.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 4, 2014.

CONTACT PERSON AT AGENCY:

Ms. Gail Grobe, AP Secretary
State Department of Human Resources
Gordon Persons Building
50 Ripley Street, Room 2122
Montgomery, Alabama 36130-4000



Nancy T. Buckner, Commissioner
Department of Human Resources

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 660 Department or Agency Human Resources

Rule No: 660-2-2-.41

Rule Title: Unauthorized Electronic Benefits Transfer (EBT) Transactions and
Unauthorized FA Expenditures

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

Compliance with State Law, specifically Act # 2014-419. Additionally, potential inappropriate client accessing and spending of benefits may be minimized.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

For those clients in violation of the rule, penalties for violations result in loss of benefits from one month to permanently and payback of misspent monies as well as loss of direct access to the assistance in certain instances. The use of a financial penalty as enforcement of a rule provides greater assurance of the likelihood of client compliance.

3. EFFECT OF THIS RULE ON COMPETITION:

None

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

None

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

None

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Temporary Assistance for Needy Families Block Grant

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The short term impact on clients will be a loss of benefits and repayment of misspent funds for violations of the rule. The long term benefit is that clients will adhere to the rule rather than risk loss or continued loss of benefits.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

None

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

None.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

None.

****Additional pages may be used if needed.**

RULES
of the
DEPARTMENT OF HUMAN RESOURCES
FAMILY ASSISTANCE DIVISION

Chapter 660-2-2
FAMILY ASSISTANCE PROGRAM

**660-2-2-.41 Unauthorized Electronic Benefits Transfer (EBT)
Transactions and Unauthorized FA Expenditures**

(1) Legal Basis

Federal law requires states to prevent assistance provided under the FA Program from being used in any EBT transaction in liquor stores, gambling establishments, and strip clubs. State law prohibits the withdrawal or use of benefits in an EBT transaction in a retail establishment the primary purpose of which is the sale of alcoholic beverages, a casino, a tattoo or body piercing facility, a facility providing psychic services, or an establishment that provides adult oriented entertainment in which performers disrobe or perform in an unclothed state (strip clubs). Use of the EBT card in these any of the locations listed to access benefits and/or to purchase merchandise/goods or services is referred to as unauthorized EBT transactions.

Use of any portion of the FA benefits whether in cash or an EBT transaction to purchase alcoholic beverages, tobacco products or lottery tickets is also prohibited. Purchase of any of these items is referred to as unauthorized FA expenditures. Actions taken to prevent unauthorized EBT transactions and to prevent unauthorized FA expenditures include client education about the spending restrictions and a financial penaltyes for noncompliance. without good cause

(2) Penaltyes for Noncompliance

(a) For the first instance of noncompliance, the assistance unit will be disqualified from receiving benefits for a one month period.

(b) For the second instance of noncompliance, the assistance unit will be disqualified from receiving benefits for a three month period.

(c) For the third instance of noncompliance, the assistance unit may continue to receive benefits if otherwise eligible but the grantee relative is permanently disqualified from receiving benefits as a grantee relative and if included in the assistance unit is permanently disqualified to be a member of the assistance unit. Payment to the assistance unit will be made to another relative living in the home or other protective payee pursuant to Department operating guidelines. The disqualified grantee relative may continue to receive benefits for other eligible assistance unit members for a temporary period while appointment of another grantee relative/protective payee is being processed.

(d) In addition to penalties in (a)-(c) above the recipient must reimburse the Department as follows: For unauthorized EBT transactions, the amount withdrawn and/or used; for unauthorized FA expenditures, the amount of the purchase. Reimbursement in the full amount must be made before the assistance unit can again receive benefits following a period of disqualification as described in (a) and (b) above or before another relative living in the home or a protective payee can be approved to receive as described in (c) above.

(e) Disqualifications defined herein may not run concurrently with any other program sanctions or disqualifications.

~~For each month of noncompliance, the grant amount will be reduced by 50% of the payment standard for the assistance unit size.~~

~~(3) **Good Cause for Unauthorized EBT Transactions**~~

~~(a) Lack of transportation or lack of free transportation to non-prohibited locations.~~

~~(b) Emergencies~~

~~(c) Lack of or limited access to non-prohibited locations in the community/area of residence.~~

~~(d) Other circumstance pursuant to Department program operating guidelines.~~

~~(4)~~ (3) Definitions

(a) **Unauthorized EBT Transaction**- Use of an EBT card to withdraw FA benefits or process a payment for the purchase of merchandise/goods or a services from an ATM or POS device physically located in a liquor, wine or beer store, gambling establishment, or strip club, tattoo or body piercing facility or a facility providing psychic services.

(b) **Liquor, wine or beer store** - Any retail establishment selling exclusively or primarily ~~intoxicating liquor~~ alcoholic beverages. ~~Such entities are often referred to as package stores.~~

(c) **Gambling establishment**- A retail establishment offering casino, gambling or gaming activities as the primary purpose of the establishment.

(d) **Strip Club** - Any retail establishment providing adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(e) **Tattoo or body piercing facility** - Any retail establishment selling exclusively or primarily tattoo or body piercing services.

(f) **Psychic services facility** - Any retail establishment selling exclusively or primarily psychic services.

(g) **Unauthorized FA expenditures**- Use of any portion of the benefits whether in cash or an EBT transaction for the purchase of alcoholic beverages, tobacco products or lottery tickets.

(h) **Alcoholic beverages** - Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented, or otherwise alcoholic, and all drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more alcohol by volume, and shall include liquor, wine and beer.

(i) **Tobacco products** - Any product that contains tobacco such as cigars, cigarettes, pipe and chewing tobacco and associated paraphernalia.

(j) Lottery ticket - Any ticket purchased for a game of chance such as instant lotteries, general lotteries and lotto operated by a state government.

Author: Melody Armstrong

Statutory Authority: Social Security Act, Title IV-A; 45 C. F. R. 262 and 265; State Plan for Title IV-A; P.L. 112-96; Code of Alabama 1975, Title 38.

History: New Rule: Filed November 5, 2013; effective December 10, 2013. Succeedent emergency amendment effective July 2, 2014. Succeedent permanent amendment effective October 10, 2014.