

NOTICE OF INTENT

Department of Children and Family Services

Economic Stability

TANF Use of Benefits and Fines for Retailers

(LAC 67:III.405)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 1 General Administrative Procedures, Chapter 4 Electronics Benefits Issuance System, Section 405 Participation of Retailers.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, amendment of Section 405 is necessary to prohibit retailers from accepting the electronic benefits transfer card for prohibited goods and services, to prohibit certain retailers from participation in the cash assistance electronic benefits transfer system, to subject noncompliant retailers to civil fines, and to establish procedures regarding notice of violation and appeal process.

The department considers these amendments necessary to comply with Act 842 of the 2014 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 1. General Administrative Procedures

Chapter 4. Electronics Benefits Issuance System

§405. Participation of Retailers (Effective October 1, 1997)

[Formerly §403]

A. Retail establishments which are U.S. Department of Agriculture, Food and Nutrition Service (FNS), authorized ~~food stamp~~ Supplemental Nutrition Assistance Program benefit redemption points must be allowed the opportunity to participate

in the state EBT system. FNS approved retailer may choose to accept EBT cards for cash transactions (FITAP and KCSP). ~~All other retail establishments must be approved by the agency in order to participate in the cash access component of the system. Retailers approved by the agency to participate in cash access may be charged connection fees and/or monthly lease fees for electronic and telephone equipment lines necessary to establish connection to the EBT System.~~ All other retail establishments may participate in the cash access component of the system unless prohibited by R.S. 46:231.14.B by contacting their commercial debit/credit processor to request to participate in cash access. Retailers participating in cash access will be charged standard commercial connection, lease, and/or transaction fees to interface with the EBT system.

B. ~~Retail establishments found guilty of abuse, misuse or fraud of the system by using the EBT "Louisiana Purchase" card in a manner or intent contrary to the purpose of the card, in providing benefits to eligible recipients, shall be permanently disqualified from participating as a cash redemption point and shall have all equipment provided by the vendor disconnected and removed from the establishment after due process.~~ In accordance with R.S. 46:231.14, when a retailer or other business establishment is cited for violations of any provision of R.S. 46:231.14.A or R.S. 46:231.14.B regarding prohibited retailers, goods and services, the department shall take administrative actions as follows:

1. Fines. Any retailer or other business establishment that violates these regulations shall be subject to the following civil fines:

- a. \$500 for the first violation.
- b. \$1,000 for the second violation.

c. \$2,500 for the third violation and each violation thereafter.

2. Notice. When a fine is imposed under these regulations, the department shall notify the retailer or other business establishment by letter that a fine has been assessed due to violations cited at the establishment and the right to appeal. The notification may be sent by certified mail or hand delivered to the establishment. If the owner is not present at the establishment, delivery of the written reason(s) for such action may be made to any staff of the establishment. Notice to a staff shall constitute notice to the establishment of such action and the reasons therefore. The letter shall specify the dates and the violation cited for which the fine(s) shall be imposed. Fines are due within 30 calendar days from the date of receipt of the letter unless the retailer or other business establishment requests an appeal.

3. Appeal Procedure for Fines. An appeal process is established by the department in the event the retailer disagrees with the civil fines.

a. The retailer or business establishment shall have 15 calendar days from the receipt of the notice to appeal the decision to the DCFS Appeals Section. A request for appeal shall include a copy of the letter from the department that notes the reasons for assessment of the fine and the specific areas of the decision the appellant believes to be erroneous and/or the specific reasons the decision is believed to have been reached in error, and shall be mailed to Department of Children and Family Services, Appeals Section, P.O. Box 2944, Baton Rouge, LA 70821-9118.

b. The DCFS Appeals Section shall notify the Division of Administrative Law (DAL) of receipt of an appeal request. DAL shall conduct a hearing in accordance with the

Administrative Procedure Act within 30 days of the receipt thereof, and shall render a decision not later than 60 days from the date of the hearing. The appellant will be notified by letter from DAL of the decision, either affirming or reversing the department's decision.

c. If the retailer or business establishment filed a timely appeal and the department's assessment of fines is affirmed by an administrative law judge of the DAL, the fine shall be due within 30 calendar days after mailing notice of the final ruling of the administrative law judge or, if a rehearing is requested, within 30 calendar days after the rehearing decision is rendered. The retailer or business establishment shall have the right to seek judicial review of any final ruling of the administrative law judge as provided in the Administrative Procedure Act. If the appeal is dismissed or withdrawn, the fines shall be due and payable within seven calendar days of the dismissal or withdrawal. If a judicial review is denied or dismissed, either in district court or by a court of appeal, the fines shall be due and payable within seven calendar days after the retailer or business establishment's suspensive appeal rights have been exhausted.

d. If the retailer or business establishment does not appeal within 15 calendar days of receipt of the department's notice, the fine is due within 30 calendar days of receipt of the department's notice of the fine and shall be mailed to Department of Children and Family Services, Fraud and Recovery Unit, P.O. Box 91147, Baton Rouge, LA 70821-9147. If the retailer or business establishment files a timely appeal, the fines shall be due and payable on the date set forth in §405.B.3.c. If the retailer or business establishment withdraws the appeal, the fine is payable within seven calendar days of

the withdrawal or on the original date that the fine was due, whichever is later.

4. Collection. If the retailer or business establishment does not pay the fine within the specified timeframe, the department shall pursue civil court action to collect the fines, together with all costs of bringing such action, including travel expenses and reasonable attorney fees. Interest shall begin to accrue at the current judicial rate on the day following the date on which the fines become due and payable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:106 (January 1998), amended LR 33:1878 (September 2007), repromulgated LR 33:2204 (October 2007), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This rule will have no effect on the family's stability.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? This rule will have no effect on the functioning of the family.
4. What effect will this have on family earnings and family budget? This rule will have no effect on family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Impact Statement

The proposed Rule will have no significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed rulemaking is not anticipated to have any impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through January 27, 2015, to Kim Glapion-Bertrand, Deputy Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

Public Hearing

A public hearing on the proposed Rule will be held on January 27, 2015 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Suzy Sonnier
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

| | | | |
|-----------------------------|---|-------------------------|---|
| Person Preparing Statement: | <u>James Vidacovich</u> | Department: | <u>Children and Family Services</u> |
| Phone: | <u>(225) 342-0495</u> | Office: | <u>Economic Stability</u> |
| Return Address: | <u>627 N. 4th St., P.O. Box 94065 Baton Rouge, LA 70804</u> | Rule Title: | <u>TANF Use of Benefits and Fines for Retailers</u> |
| | | Date Rule Takes Effect: | <u>April 1, 2015</u> |

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement of the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. Estimated Implementation Costs (Savings) to State or Local Governmental Units (Summary)

This rule proposes to amend Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 1 General Administrative Procedures, Chapter 4 Electronics Benefits Issuance System, and Section 405 Participation of Retailers. To comply with Act 842 of the 2014 Regular Session of the Louisiana Legislature, the proposed rule stipulates that the secretary of the Department of Children and Family Services (DCFS) has authority to amend Section 405—Participation of Retailers as follows: (1) to prohibit retailers from accepting the electronic benefits transfer card for prohibited goods and services; (2) to prohibit certain retailers from participation in the cash assistance electronic benefits transfer system; (3) to subject noncompliant retailers to civil fines; and (4) to establish procedures regarding notice of violation and appeal process.

The proposed rule will not affect the overall revenues or expenditures of the department. The only cost associated with this proposed rule is the cost of publishing rulemaking. It is anticipated that \$1,278 (Federal) will be expended in SFY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. Estimated Effect on Revenue Collections of State or Local Governmental Units (Summary)

Implementation of this proposed rule may result in increased revenue associated with civil fines imposed by DCFS on retailers or other business establishments that violate any provisions of this proposed rule. Civil fines are as follows: (1) \$500 for the first violation; (2) \$1,000 for the second violation; and (3) \$2,500 for the third violation and each violation thereafter. Monies generated from civil fines will be deposited into the Fraud Detection Fund and appropriated in future fiscal years for enhancement of fraud detection and recovery activities. DCFS cannot determine the number of retailers or business establishments that will be assessed civil fines.

III. Estimated Costs and/or Economic Benefits to Directly Affected Persons or Non-Governmental Groups (Summary)

There are no significant anticipated costs or benefits to recipients receiving cash assistance (Family Independence Temporary Assistance Program – FITAP and the Kinship Care Subsidy Program – KCSP) as a result of this rule. Retailers or other business establishments participating in the state electronic benefits transfer (EBT) system will be responsible for the costs of disabling their Automated Teller Machine (ATM) and Point of Sale (POS) terminals so that FITAP and KCSP recipients may not access cash assistance within restricted establishments. In addition, retailers or other business establishments will be responsible for the costs of preventing payment for prohibited goods and services at their POS terminals.

IV. Estimated Impact on Competition and Employment (Summary)

This proposed rule will not have an impact on competition and employment for low-income families.

Signature of Agency Head
or Designee

Date

LEGISLATIVE FISCAL OFFICER
OR DESIGNEE

Kim Glapion-Bertrand, Deputy Secretary of Programs
Typed Name and Title of Agency Head

DATE OF SIGNATURE

DCFS Undersecretary