

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1260

INTRODUCER: Senator Bean

SUBJECT: Restrictions on Use of Public Assistance Benefits

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 1260 amends section 402.82, F.S., to add soft drinks and candy to the list of items that cannot be purchased with an electronic benefits transfer cards. Electronic benefits transfer cards are issued to participants in the Supplemental Nutrition Assistance Program and used to purchase eligible food.

The bill has an effective date of July 1, 2017, and has an indeterminate fiscal impact.

II. Present Situation:

The Supplemental Nutrition Assistance Program (SNAP) offers nutrition assistance to eligible, low-income individuals and families in the form of funds to purchase eligible food. The Food and Nutrition Service (FNS), under the U.S. Department of Agriculture (USDA), administers SNAP, and the Florida Department of Children and Families (DCF) distributes the benefits. In Florida, SNAP and other economic assistance benefits are placed on Electronic Benefits Transfer (EBT) cards.

Eligible foods for SNAP are any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods, and hot food products prepared for immediate consumption, with some exceptions. Eligible foods also include junk foods such as soft drinks and candy.

Junk food is food that is nutrient poor but rich in calories, salt, and fats. Excess consumption of junk foods may lead to nutritional deficiencies and health disorders including obesity, heart disease, high blood pressure, and diabetes. States and local governments have requested permission from the USDA for waivers to prohibit SNAP participants from purchasing junk foods with limited nutritional values with their benefits as a way to promote healthy choices. However, the USDA has denied every such request.

Background

Supplemental Nutrition Assistance Program (SNAP)

The Food and Nutrition Service (FNS), under the U.S. Department of Agriculture (USDA), administers the Supplemental Nutrition Assistance Program (SNAP).¹ SNAP offers nutrition assistance to millions² of eligible, low-income individuals and families, in the form of funds to purchase “eligible food,” and provides economic benefits to communities by reducing poverty and food insecurity.³ For low-income households, increased spending on food is consistently and positively associated with diet quality and is associated with higher use and intake of both fruits and vegetables.⁴

Various state agencies and entities work together through a series of contracts or memoranda of understanding to administer the SNAP Program in Florida. The Department of Children and Families (DCF) is the state agency that determines and monitors eligibility and disperses benefits to SNAP participants. The federal government funds 100% of the benefit amount.⁵ However, FNS and states share the administrative costs of the program.⁶ Federal laws, regulations, and waivers provide states with various policy options to better target benefits to those most in need,

¹ 1 The Food Stamp Program (FSP) originated in 1939 as a pilot program for certain individuals to buy stamps equal to their normal food expenditures: for every \$1 of orange stamps purchased, people received 50 cents worth of blue stamps, which could be used to buy surplus food. The FSP expanded nationwide in 1974. Under the federal welfare reform legislation of 1996, Congress enacted major changes to the FSP, including limiting eligibility for certain adults who did not meet work requirements. The Food and Nutrition Act of 2008 renamed the FSP the Supplemental Nutrition Assistance Program (SNAP) and implemented priorities to strengthen program integrity; simplify program administration; maintain states’ flexibility in how they administer their programs; and improve access to SNAP. See *A Short History of SNAP*, UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, available at http://www.fns.usda.gov/sites/default/files/History_of_SNAP.pdf (last visited March 30, 2017); and *State Options Report: Supplemental Nutrition Assistance Program*, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, (11th ed.), Sept. 2013, available at http://www.fns.usda.gov/sites/default/files/snap/11-State_Options.pdf (last visited March 30, 2017).

² In an average month in Federal Fiscal Year (FFY) 2015, nationally, SNAP provided benefits to 45.2 million people living in 22.3 million households. *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2015*, Report No. SNAP-16-CHAR, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, NUTRITION ASSISTANCE PROGRAM REPORT SERIES, OFFICE OF POLICY SUPPORT, available at, <https://www.fns.usda.gov/sites/default/files/ops/Characteristics2015.pdf> (last visited March 30, 2017).

³ For a detailed overview of SNAP, see Randy Alison Aussenberg, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, CONGRESSIONAL RESEARCH SERVICE, (Dec. 29, 2014), available at <https://www.fas.org/sgp/crs/misc/R42505.pdf> (last visited March 30, 2017).

⁴ *Food Expenditures and Diet Quality Among Low-Income Households and Individuals*, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, July 2010, available at https://www.fns.usda.gov/sites/default/files/FoodExpendDietQuality_Summary.pdf (last visited March 30, 2017).

⁵ For FFY 2016, the maximum benefit amount is \$649 for a family of four, with an average benefit amount of \$471. *Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP)*, CENTER FOR BUDGET AND POLICY PRIORITIES (Updated Mar. 24, 2016), available at <http://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf> (last visited March 30, 2017).

⁶ In FFY 2015, FNS issued \$5,688,711,691 of benefits to Florida participants; the state share of administrative costs for Florida was \$86,726,922 and the federal share of administrative costs for Florida was \$80,997,415. *Supplemental Nutrition Assistance Program, State Activity Report: Fiscal Year 2015*, FOOD AND NUTRITION SERVICE, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: PROGRAM ACCOUNTABILITY AND ADMINISTRATION DIVISION, August 2016, available at, <http://www.fns.usda.gov/sites/default/files/snap/2015-State-Activity-Report.pdf> (last visited March 30, 2017).

streamline program administration and field operations, and coordinate SNAP activities with those of other programs.⁷ As of November 30, 2016, 3,331,377 individuals, including 1,837,913 children and 853,843 elderly or disabled individuals, were enrolled in SNAP in Florida.⁸

Eligible Foods

The Food and Nutrition Act of 2008 defines eligible food under SNAP as any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods, and hot food products prepared for immediate consumption, with some exceptions.⁹ Nonfood items such as pet foods, soaps, paper products, medicines and vitamins, household supplies, grooming items, and cosmetics are ineligible for purchase with SNAP benefits.¹⁰ Eligible foods include junk foods such as soft drinks and candy.¹¹

When considering the eligibility of vitamins and supplements, power bars, energy drinks and other branded products, the primary determinant is the type of product label chosen by the manufacturer to conform to Food and Drug Administration (FDA) guidelines:

- Items that carry a nutrition facts label are eligible foods.
- Items that carry a supplement facts label are classified by the FDA as supplements and are therefore not eligible.¹²

Foods Purchased By SNAP Households

In 2011, SNAP participants redeemed over \$71 billion in SNAP benefits in more than 230,000 SNAP-authorized stores.¹³ Based on data from these purchases, the USDA published a study on the types of foods SNAP households typically purchase as compared to non-SNAP households.¹⁴

With respect to SNAP households, the data represents all food purchases made rather than only the foods purchased specifically with SNAP benefits.¹⁵ The data could not differentiate between items purchased with SNAP benefits and those purchased with other funds; most SNAP

⁷ State Options Report: Supplemental Nutrition Assistance Program, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, (11th ed.), Sept. 2013, available at http://www.fns.usda.gov/sites/default/files/snap/11-State_Options.pdf (last visited March 10, 2017).

⁸ Presentation to Children, Families, and Seniors Subcommittee on January 12, 2017 (PowerPoint on file with Children, Families, and Seniors Subcommittee staff).

⁹ 7 USC § 2012(k); see also 7 CFR § 271.2.

¹⁰ *Id.*

¹¹ For an explanation of the inclusion of “junk food” and luxury items as eligible foods, see UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, Supplemental Nutrition Assistance Program (SNAP) Eligible Food Items, <https://www.fns.usda.gov/snap/eligible-food-items> (last visited March 30, 2017).

¹² Determining Product Eligibility for Purchase with SNAP Benefits, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, Jan. 26, 2017, available at <https://www.fns.usda.gov/sites/default/files/eligibility.pdf> (last visited March 30, 2017).

¹³ Supplemental Nutrition Assistance Program 2011 Annual Report, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, 2011, available at <https://www.fns.usda.gov/sites/default/files/snap/2011-annual-report.pdf> (last visited March 30, 2017).

¹⁴ Foods Typically Purchased by Supplemental Nutrition Assistance Program (SNAP) Households, UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE, Nov. 2016, available at <https://www.fns.usda.gov/sites/default/files/ops/SNAPFoodsTypicallyPurchased.pdf> (last visited March 30, 2017).

¹⁵ *Id.*

households use a combination of SNAP benefits and their own funds when making their food purchases.

The study found that the expenditure patterns of SNAP and non-SNAP households were similar:

- Approximately 40 cents of every dollar of food expenditures were spent on basic items such as meat, fruits, vegetable, milk, eggs, and bread.
 - 41 cents of every dollar for SNAP households.
 - 44 cents of every dollar for non-SNAP households.
- Approximately 20 cents out of every dollar were spent on sweetened beverages, desserts, salty snacks, candy and sugar.
 - 23 Cents of every dollar for SNAP households
 - 20 cents of every dollar for non-SNAP households
 - Approximately 40 cents of every dollar were spent on a variety of items such as cereal, prepared foods, dairy products, rice, and beans.¹⁶

SNAP households spent almost ten percent of their food expenditures on sweetened beverages, which was almost double what those households spent on fruit.¹⁷ As a percentage of total expenditures on foods, SNAP households spent the same on sweetened beverages as non-SNAP households spent on vegetables.¹⁸

Effects of “Junk Foods” on Health

Junk food is food that is nutrient poor but rich in calories, salt, and fats.¹⁹ In recent decades, junk food consumption in the United States has increased dramatically, with 25% of people now consuming predominantly junk food diets.²⁰ Excess consumption of junk foods may lead in the rise of nutritional deficiencies and health disorders, including obesity, heart disease, high blood pressure, and diabetes.²¹

Junk food intake is associated with increased body mass index and weight gain.²² High fat content and added sugar in junk food is a major contributor to weight gain. Junk food in children's diets accounts for 187 extra calories per day, leading to six additional pounds of weight gain per year.²³ Also, one additional sweetened beverage a day can add on 15 pounds in a year, not only because the drinks themselves add calories, but also because those calories are not as satisfying as those from nutritious solid foods.²⁴

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Geeta Arya and Sunita Mishra, Effects of Junk Food & Beverages on Adolescent's Health – a Review Article, IOSR JOURNAL OF NURSING AND HEALTH SCIENCE, 2320–1940 Volume 1, Issue 6 (Jul – Aug 2013), pp. 26-32, available at https://www.researchgate.net/publication/257536304_Effects_ofjunk_food_and_beverages_on_adolescents_health_A_review_article (last visited March 30, 2017).

²⁰ SF GATE, Reasons Eating Junk Food Is Not Good, <http://healthyeating.sfgate.com/reasons-eating-junk-food-not-good-3364.html> (last visited March 31, 2017).

²¹ Id.

²² Id.

²³ Supra, note 27.

²⁴ Which foods don't belong in a healthy diet? HARVARD HEALTH PUBLICATIONS, Oct. 28, 2016, <http://www.health.harvard.edu/staying-healthy/which-foods-dont-belong-in-a-healthy-diet> (last visited March 30, 2017).

Additionally, the high fat and sugar contents of junk foods contribute to other health problems. The trans-fat in junk foods may predispose children to risk of future heart disease,²⁵ and the dense sugar content in junk food can cause as much damage to the kidneys as diabetes.²⁶ The high levels of sugar in junk food also put the metabolism under stress, requiring the pancreas to secrete high amounts of insulin to prevent a dangerous spike in blood sugar levels.²⁷

Junk food is also high in sodium, which increases blood pressure and forces the kidneys to work harder.²⁸ High blood pressure is a leading cause of stroke, heart attack, heart failure, kidney disease, and more.²⁹ Consuming excess salt contributed to 2.3 million deaths from heart attacks, strokes, and 24 other heart-related diseases worldwide in 2010.³⁰ In the United States, 429 deaths per million adults are attributed to consuming excess sodium, representing one in ten deaths due to these causes.³¹

Restricting SNAP Eligible Foods

States and local governments have proposed prohibiting SNAP participants from purchasing foods with limited nutritional values with their benefits as a mechanism to promote healthy choices; however, the USDA has identified four key problems with the rationale, feasibility, and potential effectiveness of these proposals:

No clear standards exist for defining foods as good or bad, or healthy or not healthy; Implementation of food restrictions would increase program complexity and costs; Restrictions may be ineffective in changing the purchases of food stamp participants; and No evidence exists that food stamp participation contributes to poor diet quality or obesity.

The USDA notes that it is difficult to draw a bright line between foods that contribute to a healthy diet and those that do not; the Dietary Guidelines for Americans, MyPyramid, the American Dietetic Association, and most nutritionists take a total diet approach to communicate healthful eating advice, placing emphasis on the overall pattern of food eaten, rather than any one food or meal. The USDA also asserts that it is unclear whether “healthy” foods should be characterized by the absence of nutrients to be avoided, the presence of desirable nutrients, or a combination of both. It goes on to note that diet sodas, for example, may pass a test based only on the absence of undesirable nutrients – they have no fat or sugars, are low in calories, and

²⁵ Supra, note 26.

²⁶ Havovi Chichger, Mark E. Cleasby, Surjit K. Srail, Robert J. Unwin, Edward S. Debnam, and Joanne Marks. Experimental type II diabetes and related models of impaired glucose metabolism differentially regulate glucose transporters at the proximal tubule brush border membrane. EXPERIMENTAL PHYSIOLOGY, 2016.

²⁷ Supra, note 26.

²⁸ Daniel Pendick, Sodium still high in fast food and processed foods, HARVARD HEALTH PUBLICATIONS, May 6, 2013, <http://www.health.harvard.edu/blog/sodium-still-high-in-fast-food-and-processed-foods-201305166267> (last visited March 30, 2017).

²⁹ Id

³⁰ AMERICAN HEART ASSOCIATION, Eating too much salt led to nearly 2.3 million heart-related deaths worldwide in 2010, Mar. 21, 2013, <http://newsroom.heart.org/news/eating-too-much-salt-led-to-nearly-2-3-million-heart-related-deaths-worldwide-in-2010> (last visited March 30, 2017).

³¹ AMERICAN HEART ASSOCIATION, Eating too much salt led to nearly 2.3 million heart-related deaths worldwide in 2010, Mar. 21, 2013, <http://newsroom.heart.org/news/eating-too-much-salt-led-to-nearly-2-3-million-heart-related-deaths-worldwide-in-2010> (last visited March 30, 2017).

contain little sodium – and based on those criteria alone, they would appear preferable to orange juice.³²

The USDA argues that even if decisions could be made that distinguish allowable foods from restricted foods, there are still difficult implementation challenges, stemming from the enormous variety and scale of the American food sector; a typical supermarket carries about 40,000 products on its shelves and there are more than 300,000 food products available in the marketplace nationwide.³³ This creates three types of administrative and implementation problems:

- Identifying, evaluating, and tracking the nutritional profile of every food product or category available for purchase would be a significant expansion of government responsibility and associated bureaucracy, at a significant cost.
- New restrictions on the use of food stamps place the burden of enforcing compliance on the retailers and participants, who would need to be informed about what foods are no longer allowable.
- Expanding the pool of ineligible items increases opportunities for non-compliance, expands the need for oversight, and may increase the number of retailers or participants found in violation of program rules.³⁴

Additionally, the USDA argues that it is not clear that a limit on the acceptable uses of food stamp benefits would actually change the nutrition profile of food purchases because SNAP participants could continue to purchase any food they want using their own money. The USDA also states that the body of research on SNAP does not support the view that restricting food choices will result in more healthful food purchases and consumption or improved dietary outcomes.³⁵ Instead, it notes that research clearly indicates that participation in the program increases household spending on food.³⁶

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ In 2004, and several times since, Minnesota sought a waiver to prevent the purchase of junk food with SNAP benefits. The USDA denied the waiver, which focused on candy and soda, among other foods, stating that it was based on questionable merits. In 2010, New York City sought a federal waiver to prohibit the purchase of soda and other sweetened beverages with SNAP benefits for two years. Anemona Hartocollis, *New York Asks to Bar Use of Food Stamps to Buy Sodas*, THE NEW YORK TIMES, Oct. 6, 2010, available at <http://www.nytimes.com/2010/10/07/nyregion/07stamps.html> (last visited March 31, 2017). Since 2013, the USDA has denied Maine's repeated requests to ban the purchase of junk foods with SNAP benefits. In 2016, Maine's Governor threatened to implement reform unilaterally or cease the state's administration of the program if the USDA did not allow it to restrict purchases. PORTLAND PRESS HERALD, *Gov. LePage's threat risks suspension of food stamp assistance*, <http://www.pressherald.com/2016/06/22/federal-agency-says-it-cant-run-maines-food-stamp-program-if-state-refuses-to-do-so/> (last visited March 31, 2017). In light of administration changes at the federal level, Maine's Department of Health and Human Services Commissioner has stated that she will once again ask for a waiver to ban soda and junk food purchases with SNAP benefits. PORTLAND PRESS HERALD, *Maine to ask Trump to allow ban on junk food purchases with food stamps*, <http://wabi.tv/2017/01/24/maine-to-ask-trump-for-power-to-ban-food-stamps-for-soda/> (last visited March 30, 2017). This year Tennessee and Arkansas introduced legislation seeing to prohibit junk food purchases with SNAP benefits; however, the Arkansas bill has already died. See, *Arkansas House Bill 1035 (2017)*, available at (last visited March 30, 2017); Bobby Ampezzan, *Junk Food Ban For Food Stamps Dies Senate Committee Death*, KASU, Feb. 9, 2017 ; <http://kasu.org/post/junk-food-ban-foot-stamps-dies-senate-committee-death> (last visited March 30, 2017); and *Tennessee House Bill 0043 (2017)*, available at <http://www.capitol.tn.gov/Bills/110/Bill/HB0043.pdf> (last visited March 30, 2017) (the bill in Tennessee would also

Finally, the USDA asserts that achieving dietary improvement among SNAP participants is a complex challenge that is not likely to be met by prohibiting use of benefits for a group of foods perceived as having limited nutritional value.³⁷

USDA has denied every request from states and local governments to implement waivers that would allow them to adopt their own standards for allowable foods under SNAP.³⁸ In rejecting them, the USDA has noted that state options are problematic because there is no scientific basis for allowing nutrition standards to vary from place to place and that variation in state requirements would complicate industry compliance and increase the cost of doing business.³⁹

Electronic Benefits Transfer (EBT) Card Program

Electronic Benefits Transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits, including from the SNAP and Temporary Cash Assistance (TCA).⁴⁰ programs, to a retailer account to pay for products received. The EBT card program is administered on the federal level by the USDA and at the state level by DCF. In Florida, benefits are deposited into a TCA or SNAP account each month; these benefits are accessed using the Florida EBT Automated Community Connection to Economic Self Sufficiency (ACCESS) card.

III. Effect of Proposed Changes:

Section 1 amends s. 402.82, F.S., to prohibit participants from using SNAP benefits to purchase soft drinks and candy.

Section 2 creates s. 414.457, F.S., to direct DCF to seek a waiver of federal requirements under the SNAP to prohibit persons from using SNAP benefits to purchase soft drinks and candy.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

impose a fine on SNAP participants and retailers that violate the law of \$1,000 for a first offense, \$2,500 for a second offense and up to \$5,000 for a third or more offense in a five-year period).

³⁷ Supra, note 39.

³⁸ The TCA Program is part of the Temporary Assistance to Needy Families (TANF) program and provides cash assistance to families with children that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes.

UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICES, EBT: General Electronic Benefit Transfer (EBT) Information, <http://www.fns.usda.gov/ebt/general-electronic-benefit-transfer-ebt-information> (last visited March 30, 2017).

³⁹ UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICES, EBT: General Electronic Benefit Transfer (EBT) Information, <http://www.fns.usda.gov/ebt/general-electronic-benefit-transfer-ebt-information> (last visited March 30, 2017).

⁴⁰ Department of Children and Families, Agency Analysis of 2017 House Bill 593 (February 9, 2017)(on file with Children, Families, and Seniors Subcommittee staff).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Retailers that accept EBT cards will incur indeterminate costs to modify their point of sale systems or software to prohibit EBT card users from purchasing soft drinks and candy with SNAP or TCA benefits.

C. Government Sector Impact:

If the state receives a waiver from the federal government prohibiting the purchase of candy or soft drinks by EBT card users, a change in DCF's computer system may be required. The cost of any systems change has not been determined by DCF as of this date.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Bill should be effective upon getting federal approval otherwise state law will conflict with federal law.

VIII. Statutes Affected:

This bill substantially amends s. 402.82, of the Florida Statutes.
This bill creates s. 414.457 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
