

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5280-01
Bill No.: HB 1698
Subject: Alcohol; Business and Commerce; Merchandising Practices
Type: Original
Date: February 17, 2014

Bill Summary: This proposal modifies the definition of liquor store as it relates to the use of TANF benefits.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Federal	\$0 or (Between \$1,808,333 and \$9,041,667)	\$0 or (Between \$2,170,000 and \$10,850,000)	\$0 or (Between \$2,170,000 and \$10,850,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Between \$1,808,333 and \$9,041,667)	\$0 or (Between \$2,170,000 and \$10,850,000)	\$0 or (Between \$2,170,000 and \$10,850,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
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 2015	FY 2016	FY 2017
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services (DSS) - Family Support Division (FSD)** state Senate Bill 251 (2013) required the agency to promulgate rules regarding restricted purchases and the locations of those purchases when using public assistance funds/EBT (electronic benefit transaction) cards.

The FSD has established blocking of EBT purchases at establishments with a Merchant Category Code (MCC) indicating liquor is the predominate good or service provided. The MCC is assigned by the financial institution that handles the merchant's credit and debit card payment system. Each merchant is classified by its financial institution according to the type of goods or services it provides. FSD has created a claims process and procedures are in place if eligible Temporary Assistance (TA) participants make an EBT purchase in violation of section 208.024.

At present, the use of the MCC satisfies the federal requirement that a merchant be classified as a liquor store if the store primarily (emphasis added) sells liquor. This proposed state law is problematic because it sets a much higher standard in that 85% of all merchandise sold at store must be intoxicating liquor before the store would be classified as a liquor store and, thereby, prohibited from accepting EBT cards.

FSD currently has no means of determining actual sales at any given store. Determining and imposing an 85% threshold could result in undetermined administrative costs. Moreover, the use of the 85% standard would result in Missouri allowing participation in the program by stores whose liquor sales are less than 85%, but their proportion of liquor sales would still exceed the standard established by federal regulation. Allowing merchants whose liquor sales constitute 60%, 70%, or even 84% to participate in the program would violate the federal standard that they be excluded because their sales are primarily liquor. This could result in possible sanctions to the state.

The current report of Missouri Primary Alcohol Licenses shows 14,575 active licenses. These businesses would have to be contacted to determine the type of business. If there is a possibility that they meet the definition of a liquor store and they accept EBT or have an ATM on the premises their sales records would need to be audited to determine if liquor sales meet the minimum 85% of sales. This would require continual monitoring as new businesses are added and sales patterns at existing businesses are subject to change.

ASSUMPTION (continued)

The federal law requires states to prevent the use of EBT cards at businesses that meet the definition of a liquor store [42 USC 608(a)(12)(A)]. Federal law is stricter than this proposed law in that it considers a business a liquor store if it sells primarily liquor [42 USC 608(a)(12)(B)]. If the U.S. Department of Health and Human Services finds that Missouri is not implementing the provisions of the federal law because it is not banning sales at all business that have a primary business of selling liquor, the state could be subject to a penalty of a minimum of 1% and not to exceed 5%, of State Family Assistance Grant of approximately \$217 million, which would be \$2,170,000 to \$10,850,000.

Therefore, this proposal has an unknown impact on the DSS-FSD, but the impact is expected to be more than \$2,170,000 annually.

Based on discussions with DSS staff, **Oversight** notes the definition of “primarily” a liquor store is not defined in federal law. Therefore, it is possible that the provisions of this proposal defining a liquor store as one in which liquor sales are 85% or more of total sales may still meet the federal law. However, since there remains the possibility that this new definition would not meet federal law, Oversight is presenting DSS-FSD’s potential loss as “\$0 or” the minimum and maximum amounts provided by DSS-FSD.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
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FEDERAL FUNDS

Loss - DSS-FSD

Reduction in State Family Assistance Grant (§208.024)	<u>\$0 or (Between</u> <u>\$1,808,333 and</u> <u>\$9,041,667)</u>	<u>\$0 or (Between</u> <u>\$2,170,000 and</u> <u>\$10,850,000)</u>	<u>\$0 or (Between</u> <u>\$2,170,000 and</u> <u>\$10,850,000)</u>
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**ESTIMATED NET EFFECT ON
FEDERAL FUNDS**

<u>\$0 or (Between</u> <u>\$1,808,333 and</u> <u>\$9,041,667)</u>	<u>\$0 or (Between</u> <u>\$2,170,000 and</u> <u>\$10,850,000)</u>	<u>\$0 or (Between</u> <u>\$2,170,000 and</u> <u>\$10,850,000)</u>
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FISCAL IMPACT - Local Government	FY 2015 (10 Mo.)	FY 2016	FY 2017
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

This proposal would have a positive fiscal impact on small business stores currently falling under the definition of a "liquor store". Under this proposal, only stores with liquor sales totaling 85% or more of sales would be prohibited from accepting public assistance benefits/EBT cards for the sale of non-restricted products.

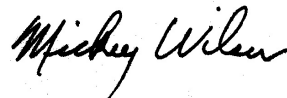
FISCAL DESCRIPTION

This proposal revises the definition of "liquor store" as it applies to the provisions regarding temporary assistance for needy families benefits as any retail establishment where at least 85% of the merchandise sold at the establishment is intoxicating liquor.

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

Department of Social Services -
Family Support Division



Mickey Wilson, CPA
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February 17, 2014

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February 17, 2014