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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/09

SPONSOR Gardner LAST UPDATED _____ HB 580

SHORT TITLE No Benefits Cards Alcohol Purchases SB _____

ANALYST Earnest

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	RLD operating funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 580 prohibits the purchase of alcohol or cigarettes with an electronic benefits transfer (EBT) card issued for public assistance. The Human Services Department would be responsible for taking action against recipients of public assistance who used an EBT card to purchase alcohol or cigarettes.

The Department of Public Safety and the Regulation and Licensing Department would be responsible for citations and fines of retailers who sell cigarettes or alcohol to a person using an EBT card.

The bill amends the Liquor Control Act to add a definition of “electronic benefits transfer card” and make the acceptance of payment with an electronic benefits transfer card for the purchase of alcohol an offense that subjects the licensee to suspension, revocation, or fines of up to \$10,000 or both.

FISCAL IMPLICATIONS

RLD states that the amount of revenue that could be due to the general fund cannot be determined. Revenue would arise from the imposition of administrative fines for violations of the Liquor Control Act after the issuance of a citation by the Department of Public Safety or, possibly, local law enforcement. It is impossible to estimate the number of citations that could be issued. Operating costs would include increased supplies and postage to notify licensees of a violation and to settle a citation and, if a hearing were required, travel and per diem costs may increase. The amount of the increase is unknown.

According to HSD, the department would incur about \$100 thousand in recurring costs if required to send notices, track abusers and reduce their benefits. However, the bill does include this requirement.

SIGNIFICANT ISSUES

The state provides cash assistance to Temporary Assistance for Needy Families (TANF) recipients and to clients in the General Assistance and Education Works programs via EBT cards. According to HSD, the federal Administration for Children and Families allows states “to prohibit the client from spending the EBT assistance payment on alcohol and/or tobacco.”

The bill requires HSD to take action once a person has used an EBT for purchase of alcohol or tobacco. The enforcement mechanisms by this bill would be held by Department of Public Safety and Regulation and Licensing Department. HSD notes that administrative action against recipients is subject to due process and includes a hearing for adverse actions. Changes to regulation and the TANF state plan would be required.

Nevertheless, HSD reports that it currently has no mechanism in place to electronically monitor cash purchases of this nature, and would have to rely on other methods to establish this type of transaction at each point of sale machine used for EBT cash transactions. To establish electronic monitoring would be difficult and costly. HSD’s EBT vendor states “there is no current method in the EBT industry to restrict the use of cash and there are no other states with programs to restrict usage.” HSD’s EBT vendor further states that the only possible alternative “is to implement a ‘WIC-like’ solution that would only allow certain UPC codes to be used. However, besides being extremely expensive, it would probably restrict the use of cash to only items bought in a store.”

DPS reports that some 15,000 NM EBT recipients have a cash option. Cash, in turn, can be used to purchase alcohol and cigarettes.

TECHNICAL ISSUES

DPS notes that bill defines “electronic benefits transfer card” within the Liquor Control Act (60-3A-3) and sets forth grounds for suspension, revocation or administrative fine (60-6C-1) but does not articulate a specific violation.