

**RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**1240-01-58
ELECTRONIC BENEFIT TRANSFER CARD – PROHIBITED USES**

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1240-01-58-.01 PURPOSE.

The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.

Authority: T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).
Administrative History: Original rule filed April 2, 2014; effective July 1, 2014. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.

1240-01-58-.02 DEFINITIONS. For purposes of this Chapter:

- (1) “Adult cabaret” is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. “Adult cabaret” includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.
- (2) “Assistance Unit (AU)” means the “aid group (AG)” or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) “Automated teller machine (ATM)” is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.
- (4) “Casino,” “gambling casino,” or “gaming establishment,” means an establishment with a primary purpose of accommodating the wagering or gambling of money. The term “casino,” “gambling casino,” or “gaming establishment” does not include either:
 - (a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
 - (b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.
- (5) “Department” means the Department of Human Services.

(Rule 1240-01-58-.02, continued)

- (6) “Electronic benefit transfer (EBT) card” is a debit card which allows the EBT card holder to access public assistance benefits through an ATM or point of sale device.
- (7) “EBT transaction” means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.
- (8) “Families First” refers to the temporary public assistance program administered by the Department and provided under the federal Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.
- (9) “Gambling” means risking anything of value for a profit whose return is to any degree contingent on games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.
- (10) “Intoxicating Liquor” means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.
- (11) “Knowingly” means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores). The term “knowingly” may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.
- (12) “Liquor store” is any retail establishment which sells exclusively or primarily intoxicating liquor. The term “liquor store” does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.
- (13) “Located in”. An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is “located in” a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store, when the ATM, POS device, or other online system is located on any part of the merchant’s business property, which is either owned or leased by the merchant.
- (14) “Point of sale (POS) device” is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.
- (15) “Protective payee” is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the AU. A protective payee has responsibility for administering the payment for the benefit of the AU.
- (16) “Public assistance benefits” means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.
- (17) “Tobacco store” means a licensed retail store that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102; 39-17-501; 39-17-1802(13); 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B). **Administrative History:** Original

(Rule 1240-01-58-.02, continued)

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1240-01-58-.03 PROHIBITED USES.

- (1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:
 - (a) Liquor store;
 - (b) Casino;
 - (c) Gambling casino;
 - (d) Gaming establishment; or
 - (e) Adult cabaret.
- (2) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments located in any of the following businesses:
 - (a) Tobacco store.
- (3) It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:
 - (a) Liquor store;
 - (b) Casino;
 - (c) Gambling casino;
 - (d) Gaming establishment;
 - (e) Adult cabaret; or
 - (f) Tobacco store.

Authority: T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101; 71-3-126, 42 U.S.C. § 608(a)(12)(B). **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.

1240-01-58-.04 MONITORING AND PENALTIES.

- (1) Any Families First/TANF recipient or caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores) to purchase any goods or services as described in this Chapter.

(Rule 1240-01-58-.04, continued)

- (2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.
 - (a) Any Families First/TANF recipient or caretaker who knowingly participates or knowingly allows another to use the recipient's EBT card in an EBT transaction at an ATM machine, POS device, or other online system used for processing of payments or withdrawal of funds in any prohibited business location shall be subject to the following penalties:
 1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.
 2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:
 - (i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.
 - (ii) The Department shall afford the Families First/TANF recipient or caretaker an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.
 - (iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the AU in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.
 3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.
 - (b) Any person or business entity, or any agent or employee of the person or business entity, which knowingly accepts EBT card purchases for any goods or services at any prohibited business location, shall be subject to the following penalties:
 1. First Violation. The first violation shall result in a civil penalty of one thousand dollars (\$1,000).
 2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars (\$2,500).
 3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars (\$5,000).
 4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.

(Rule 1240-01-58-.04, continued)

5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.
- (3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12). **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016.

1240-01-58-.05 APPEALS.

Any Families First/TANF recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-05 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-3-126. **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.