

MAINE STATE LEGISLATURE

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REPORT OF THE FEASIBILITY WORKING GROUP

As required by

Public Law 484 of the 127th Maine Legislature

And submitted to

**The Joint Standing Committee on Health and Human
Services**

On

December 14, 2016

I. Organization and Mandate

Public Law (P.L.) 484, Section 2, established the Feasibility Working Group as follows:

Sec. 2. Blocking prohibited purchases through technological means. No later than October 1, 2016, notwithstanding Joint Rule 353, the Commissioner of Health and Human Services shall convene a working group, referred to in this section as "the feasibility working group," to determine feasible options for preventing Temporary Assistance for Needy Families program benefits, through electronic benefits transfer cards, from being used to purchase the prohibited products or services listed in the Maine Revised Statutes, Title 22, section 3763, subsection 11, referred to in this section as "prohibited products or services."

1. Members. The feasibility working group consists of the following members:

- A. The Commissioner of Health and Human Services or the commissioner's designee;*
- B. Two members of the House of Representatives, including a member from each of the 2 parties holding the largest number of seats in the Legislature, appointed by the Speaker of the House;*
- C. Two members of the Senate, including a member from each of the 2 parties holding the largest number of seats in the Legislature, appointed by the President of the Senate; and*
- D. Three members appointed by the Commissioner of Health and Human Services as follows:*
 - (1) A representative of retailers in the State;*
 - (2) A representative of the financial industry familiar with electronic commerce; and*
 - (3) A representative of individuals receiving cash assistance through the TANF program.*

2. Duties. The feasibility working group shall research, evaluate, determine and recommend the most effective means of ensuring that electronic benefits transfer cards block at the point of sale the use of TANF benefits to purchase prohibited products or services. The feasibility working group shall determine the cost of any system that it recommends and shall analyze the impact of its recommendation on business establishments of varying sizes doing business in the State.

3. Report. The feasibility working group shall submit a report of its findings and recommendations, together with any legislation necessary to implement the recommendations, to the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than December 15, 2016.

The members appointed to the Working Group were as follows:

- A. The Commissioner's Designee: **David Sorensen** (Senior Policy Advisor, Office of Maine Governor Paul R. LePage)
- B. Two members of the House of Representatives: **Rep. Drew Gattine** (D-Westbrook) and **Rep. Paul Stearns** (R-Guilford)
- C. Two members of the Senate: **Sen. Anne Haskell** (D-Cumberland) and **Sen. Earle McCormick** (R-Kennebec)
- D. Three members appointed by the Commissioner:
 - 1. Representative of retailers: **Joseph Douin**, Douin's Market
 - 2. Representative of the financial industry: **Shelley Doak**, Maine Grocers and Food Producers Association
 - 3. Representative of individuals receiving TANF: **Jill Rothrock**, Maine DHHS

II. Issues Raised by the Feasibility Working Group

The Feasibility Working Group met twice—on September 30, 2016, and again on October 21, 2016.

In addition to the members appointed to the group, representatives of retailers and public benefits recipients were in attendance, as well as members of the news media. Discussion included members of the public and the Working Group was able to draw from their knowledge and opinions.

PL 484 prohibits the purchase of certain items—including tobacco, alcohol, lottery tickets, and more—with Temporary Assistance for Needy Families (TANF) benefits. It was the intent of the law for the Feasibility Working Group to determine whether and how these transactions may be automatically blocked, so as to prevent violations of the new law from occurring.

Representatives of the Maine Department of Health and Human Services told the Working Group how the Department sent notices to all EBT retailers and TANF recipients explaining the new law to them and how they are able to comply with it. The Department had not received a significant number of questions or concerns. They also told the group that of the \$30 million in TANF benefits expended annually via EBT cards in Maine, approximately \$20 million is withdrawn at ATMs in the form of cash and \$10 million is spent directly with the card.

Mr. Douin drew on his experience as the proprietor of a store that accepts Electronic Benefits Transfer (EBT) transactions to explain to the group how his store is implementing the new law. Mr. Douin explained how he pays approximately \$300 annually to upgrade his point-of-sale (POS) equipment and that in a recent upgrade this past fall, he added a new payment category for cash welfare benefits and was able to specify items in the system that cannot be purchased with those benefits, including the items outlined in PL 484.

Ms. Doak explained that large retailers are similarly able to upgrade their POS equipment to reject impermissible transactions, but cautioned against a mandate or deadline of any kind. Retailer representatives in the group and in the audience were virtually unanimous in sharing several basic sentiments:

- Maine retailers are able to comply with the new law and reasonably prevent impermissible transactions from occurring.
- A mandate on retailers regarding technology or POS equipment would be highly burdensome and unnecessary.
- Retailers and their employees must not be expected to “police” welfare rules by going above and beyond what is required of them by law. That would hurt their relationships with customers and put them in a difficult situation.
- The Legislature should take no additional action in relation to this law that may unnecessarily burden retailers. The consensus is that as passed, retailers are able and willing to comply with the law.

Ms. Rothrock explained the shortcomings of a cash-based system and the inherent difficulty of controlling impermissible expenditures within it. She explained TANF orientation and the process by which new TANF recipients are taught the rules of the program.

Maine DHHS representatives were asked about the potential for retailers to be faced with legal action from the Department if they sold prohibited items to customers in violation of the law. They told the Working Group that generally, retailer fraud cases involve repeated, prolonged violations of public benefits law such that intent to commit fraud is apparent. Honest mistakes due to POS equipment not yet being upgraded would not rise to the level of criminal prosecution.

One challenging issue raised by members of the group in the first meeting was the fact that many EBT cardholders receive a small, \$10 per month State Supp cash benefit on their cards. Retailers have no way of knowing whether a cash balance on a card is a State Supp benefit or a TANF benefit and that confusion may lead to confrontation with customers, as State Supp benefits do not carry the same prohibitions on the purchase of certain items that TANF benefits do.

Mr. Sorensen announced in the second meeting that the Department had identified a rulemaking solution to this problem. The Department has the rulemaking authority to enact a limited restriction on the use of State Supp benefits expended via EBT cards, as opposed to a blanket restriction on the use of State Supp benefits of any kind. State Supp benefits may be received and expended not only via EBT cards, but by direct deposits and paper checks. The Department is now in the process of adopting rulemaking to ensure all cash benefits on EBT cards are governed by the restrictions placed on TANF cash by PL 484.

III. Recommendations of the Feasibility Working Group

As a result of its meetings and discussions, the Feasibility Working Group hereby recommends the following:

1. The Maine Department of Health and Human Services should work to ensure that benefit recipients and retailers with questions about the new law receive answers about their rights and responsibilities under PL 484.
2. Members of the Working Group may monitor the implementation of PL 484 and make any necessary recommendations or raise any reasonable concerns to the Department of Health and Human Services and/or the Legislature's Joint Standing Committee on Health and Human Services.