

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2322**

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**Introduced by Assembly Member Gatto**

February 24, 2012

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An act to amend ~~Section~~ *Sections 123285 and 123310* of, and to add ~~Section 123311~~ *Sections 123311, 123312, 123313, and 123316* to, the Health and Safety Code, relating to nutrition.

LEGISLATIVE COUNSEL'S DIGEST

AB 2322, as amended, Gatto. California Special Supplemental Food Program for Women, Infants, and Children.

Existing law, the California Special Supplemental Food Program for Women, Infants, and Children (*WIC Program*), authorizes establishment of a statewide program, administered by the State Department of Public Health, for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under 5 years of age, who have been determined to be at nutritional risk. The program, which implements a program authorized under existing federal law, provides for the redemption of nutrition coupons by recipients at any authorized retail food vendor. ~~Existing~~

*Existing* law also authorizes the establishment of a program, known as the Farmers Market Nutrition Program, to implement a specified federal law, to provide fresh, high-quality agricultural products to persons who are nutritionally at risk. *Existing law requires the department to authorize an appropriate number and distribution of WIC Program retail food vendors, and requires the department to establish certain criteria, including the prices the vendor charges for*

*foods in relation to other vendors in its peer group, as defined, to limit the number of vendors. Existing law requires the department to ensure that authorized vendors engage in certain practices.*

*This bill would require a ~~WIC-authorized~~ WIC Program-authorized food vendor to be either a farmer participating in the Farmers Market Nutrition Program, or a licensed retail outlet that meets certain food stocking requirements. This bill would require the department to give priority to new WIC Program retail food vendor location applications from retail food stores applying to be placed in peer groups that do not contribute to increased food costs to the WIC Program. This bill would require the department to adopt regulations to specify certain criteria to be used when initiating a moratorium on new WIC Program vendor location applications. This bill would prohibit an authorized vendor from, among other things, segregating WIC Program products into one section within the store. This bill would require the department to seek any federal approvals necessary to implement these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares as follows:*

2     *(a) The California Special Supplemental Food Program for*  
3 *Women, Infants, and Children (WIC Program) currently authorizes*  
4 *5,581 retail food stores, or WIC Program vendors, to accept WIC*  
5 *Program nutrition coupons from participants in exchange for*  
6 *authorized WIC Program food products.*

7     *(b) For purposes of determining reimbursement amounts to its*  
8 *WIC Program vendors, the WIC Program categorizes each vendor*  
9 *into peer groups that are based on the number of cash registers*  
10 *in the store.*

11     *(c) In the last several years, there has been significant increase*  
12 *in the total number of authorized WIC Program vendors in*  
13 *high-cost peer groups. From 2007 to 2011, the total number of*  
14 *authorized WIC Program vendors has grown from 3,527 vendors*  
15 *in 2007 to 5,135 vendors in 2011. During this same period, the*  
16 *total number of vendors in the highest cost peer groups, vendors*  
17 *with one to two cash registers, has more than tripled, growing*  
18 *from 339 vendors in 2007 to 1,144 vendors in 2011. In 2007, these*  
19 *high-cost vendor peer groups accounted for less than 3 percent of*

1 all WIC Program redemptions in California. They now account  
2 for 13 percent of all redemptions.

3 (d) From October 2009 to September 2011, the WIC Program  
4 experienced a 4.6-percent increase in preredbate food costs, while  
5 programs in all other western states showed decreases in food  
6 costs and had a combined average of a 7.7-percent decrease in  
7 food costs. It is estimated that this increase in food costs cost the  
8 state at least \$49 million in extra WIC Program food expenditures  
9 in 2011 alone.

10 (e) In April 2011, the WIC Program imposed a moratorium on  
11 accepting applications for new vendor authorizations. The  
12 moratorium was necessary to ensure the department's ability to  
13 effectively manage vendor caseload, as required by Section  
14 40735(a) of Title 22 of the California Code of Regulations and  
15 Section 246.12(g) of Title 7 of the Code of Federal Regulations.  
16 This moratorium was extended in February 2012, in order to  
17 provide the department with an opportunity to develop appropriate  
18 measures to contain rapidly increasing WIC Program food costs.  
19 Because higher food costs result in fewer women, infants, and  
20 children being served, effective food costs containment policies  
21 are necessary to ensure that excessive food costs do not result in  
22 limiting the number of women, infants, and children who are able  
23 to participate in the WIC Program.

24 SEC. 2. Section 123285 of the Health and Safety Code is  
25 amended to read:

26 123285. As used in this article, the following definitions shall  
27 apply:

28 (a) "Health professional" means a physician and surgeon,  
29 registered nurse, nutritionist, dietitian, or state or local medically  
30 trained health official, who is competent to professionally evaluate  
31 nutritional need and to authorize supplemental foods, as determined  
32 by the state department.

33 (b) "Low income" means an income of not more than 185  
34 percent of the poverty level as determined by the federal poverty  
35 income guidelines promulgated by the United States Department  
36 of Health and Human Services.

37 (c) "Recipient" means low-income pregnant women, low-income  
38 postpartum and lactating women, and low-income infants and  
39 children under five years of age, who are determined to be at

1 nutritional risk by a health professional, based on criteria  
2 established by the state department.

3 (d) “Nutrition coupon” means a check that is limited as to value,  
4 food type, and food quantity and that has a limited period of  
5 validity.

6 (e) “WIC Program” means the California Special Supplement  
7 Food Program for Women, Infants, and Children.

8 SECTION 1.

9 SEC. 3. Section 123310 of the Health and Safety Code is  
10 amended to read:

11 123310. The department, under any program established  
12 pursuant to this article, shall authorize retail food vendors, as  
13 described in Section 123311, by written agreement, to accept  
14 nutrition coupons and reimbursement according to the system  
15 developed by the department. The department shall authorize an  
16 appropriate number and distribution of food vendors in order to  
17 ensure adequate participant convenience and access and to ensure  
18 that state or local officials can effectively manage review of  
19 authorized food vendors in their jurisdictions. The department  
20 shall establish criteria to limit the number of retail food vendors  
21 with which the department enters into agreements. The criteria, at  
22 a minimum, shall include:

23 (a) The prices the vendor charges for foods in relation to other  
24 vendors in its peer group. For purposes of this subdivision, “peer  
25 group” means a group of vendors with similar characteristics that  
26 may include, but shall not be limited to, any or all of the following:

- 27 (1) Geographic location of the store.
- 28 (2) Store size.
- 29 (3) Type of store.
- 30 (4) Number of cash registers.
- 31 (5) Sales volume relating to any program established pursuant  
32 to this article.
- 33 (6) Gross sales volume.
- 34 (7) Inventory.

35 (8) Other vendor characteristics established by the department.

36 (b) The ability of the department to ensure that authorized  
37 supplemental foods will be provided through in-store compliance  
38 purchases.

39 (c) The adequacy of the shelf stock of the authorized  
40 supplemental foods.

1 (d) Past performance of the vendor in compliance with this  
2 article and with CalFresh.

3 ~~SEC. 2.~~

4 *SEC. 4.* Section 123311 is added to the Health and Safety Code,  
5 to read:

6 123311. (a) An authorized food vendor under this article shall  
7 be either of the following:

8 (1) A licensed retail outlet that satisfies the minimum food  
9 stocking requirements established in departmental regulations.

10 (2) A farmer participating in the Farmers Market Nutrition  
11 Program ~~to accept~~ *accepting* WIC Program fruit and vegetable  
12 checks ~~(FVCs)~~ at an authorized farmers' market.

13 (b) An authorized food vendor described in paragraph (1) of  
14 subdivision (a) shall be open at least five days per week. Daily  
15 operating hours shall be posted, and shall be consistent from week  
16 to week.

17 *SEC. 5.* Section 123312 is added to the Health and Safety Code,  
18 to read:

19 123312. (a) *The department shall give priority to new WIC*  
20 *Program retail food vendor location applications from retail food*  
21 *stores applying to be placed in peer groups that do not contribute*  
22 *to increased food costs to the WIC Program. This section shall*  
23 *not apply to new authorized vendor locations that are necessary*  
24 *to ensure participant access, as determined by the department.*

25 (b) *The department shall adopt regulations to implement this*  
26 *section in accordance with the rulemaking provisions of the*  
27 *Administrative Procedure Act (Chapter 3.5 (commencing with*  
28 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
29 *Code). The adoption of any emergency regulations on or after*  
30 *January 1, 2013, shall be deemed to be an emergency and*  
31 *necessary for the immediate preservation of the public peace,*  
32 *health and safety, or general welfare. Emergency regulations*  
33 *adopted pursuant to this section shall remain in effect for no more*  
34 *than 180 days.*

35 *SEC. 6.* Section 123313 is added to the Health and Safety Code,  
36 to read:

37 123313. (a) *The department shall adopt regulations to specify*  
38 *criteria to be used when initiating a moratorium on new WIC*  
39 *Program retail food vendor location applications. The regulations,*  
40 *at a minimum, shall do all of the following:*

- 1     (1) Define what is an effective caseload management level.
- 2     (2) Identify the maximum duration of a moratorium.
- 3     (3) Require a vendor alert or other official communication
- 4 regarding initiation of a moratorium to be accompanied by an
- 5 outline of specific steps the department plans to take to achieve
- 6 effective caseload management by the identified end date of the
- 7 moratorium.
- 8     (4) Require the department to process applications during the
- 9 moratorium period if the department was notified by the retail
- 10 food vendor of the vendor’s intent to obtain authorization for a
- 11 specific store location prior to the effective date of the moratorium.
- 12     (5) Require the department to provide retail food vendors with
- 13 a minimum of 60 days notice prior to the effective date of, or
- 14 extension of, a moratorium.
- 15     SEC. 7. Section 123316 is added to the Health and Safety Code,
- 16 to read:
- 17     123316. (a) An authorized vendor shall not do any of the
- 18 following:
- 19     (1) Segregate authorized WIC Program products into one
- 20 section within the store.
- 21     (2) Prohibit WIC Program customers from purchasing products
- 22 at all operating check stands and registers within the store.
- 23     (3) Charge WIC Program customers a different price for an
- 24 item than the price that is offered to the general public.
- 25     (b) The department shall ensure that an authorized vendor does
- 26 not engage in any of the practices prohibited in subdivision (a).
- 27     SEC. 8. The department shall seek any federal approvals
- 28 necessary to implement this act.

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