

AMENDED IN ASSEMBLY MAY 1, 2012
AMENDED IN ASSEMBLY APRIL 11, 2012
AMENDED IN ASSEMBLY MARCH 26, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2322

Introduced by Assembly Member Gatto

February 24, 2012

An act to amend ~~Sections~~ *Section* 123285 and ~~123310~~ of, and to add ~~Sections 123311 and~~ *Section* 123312 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 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.~~ *vendor.* 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 to limit the number of vendors.

~~This bill would require a 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 adopt regulations to specify certain criteria the department shall use and actions the department shall take when initiating a moratorium on new WIC Program vendor location applications. 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) From 2007 to 2011, the total number of authorized WIC
8 Program vendors has grown from 3,527 vendors in 2007 to 5,135
9 vendors in 2011.

10 (c) 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 process the rapid increase in vendor applications in
19 light of the limited federal funds that are available.

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

22 123285. As used in this article, the following definitions shall
23 apply:

1 (a) “Health professional” means a physician and surgeon,
2 registered nurse, nutritionist, dietitian, or state or local medically
3 trained health official, who is competent to professionally evaluate
4 nutritional need and to authorize supplemental foods, as determined
5 by the state department.

6 (b) “Low income” means an income of not more than 185
7 percent of the poverty level as determined by the federal poverty
8 income guidelines promulgated by the United States Department
9 of Health and Human Services.

10 (c) “Recipient” means low-income pregnant women, low-income
11 post partum and lactating women, and low-income infants and
12 children under five years of age, who are determined to be at
13 nutritional risk by a health professional, based on criteria
14 established by the state department.

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

18 (e) “WIC Program” means the California Special Supplemental
19 Food Program for Women, Infants, and Children.

20 ~~SEC. 3. Section 123310 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~123310. The department, under any program established~~
23 ~~pursuant to this article, shall authorize retail food vendors, as~~
24 ~~described in Section 123311, by written agreement, to accept~~
25 ~~nutrition coupons and reimbursement according to the system~~
26 ~~developed by the department. The department shall authorize an~~
27 ~~appropriate number and distribution of food vendors in order to~~
28 ~~ensure adequate participant convenience and access and to ensure~~
29 ~~that state or local officials can effectively manage review of~~
30 ~~authorized food vendors in their jurisdictions. The department~~
31 ~~shall establish criteria to limit the number of retail food vendors~~
32 ~~with which the department enters into agreements. The criteria, at~~
33 ~~a minimum, shall include:~~

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

38 ~~(1) Geographic location of the store.~~

39 ~~(2) Store size.~~

40 ~~(3) Type of store.~~

1 ~~(4) Number of cash registers.~~
2 ~~(5) Sales volume relating to any program established pursuant~~
3 ~~to this article.~~
4 ~~(6) Gross sales volume.~~
5 ~~(7) Inventory.~~
6 ~~(8) Other vendor characteristics established by the department.~~
7 ~~(b) The ability of the department to ensure that authorized~~
8 ~~supplemental foods will be provided through in-store compliance~~
9 ~~purchases.~~
10 ~~(c) The adequacy of the shelf stock of the authorized~~
11 ~~supplemental foods.~~
12 ~~(d) Past performance of the vendor in compliance with this~~
13 ~~article and with CalFresh.~~
14 ~~SEC. 4. Section 123311 is added to the Health and Safety Code,~~
15 ~~to read:~~
16 ~~123311. (a) An authorized food vendor under this article shall~~
17 ~~be either of the following:~~
18 ~~(1) A licensed retail outlet that satisfies the minimum food~~
19 ~~stocking requirements established in departmental regulations.~~
20 ~~(2) A farmer participating in the Farmers Market Nutrition~~
21 ~~Program accepting WIC Program fruit and vegetable checks at an~~
22 ~~authorized farmers' market.~~
23 ~~(b) An authorized food vendor described in paragraph (1) of~~
24 ~~subdivision (a) shall be open at least five days per week. Daily~~
25 ~~operating hours shall be posted, and shall be consistent from week~~
26 ~~to week.~~
27 ~~SEC. 5.~~
28 ~~SEC. 3. Section 123312 is added to the Health and Safety Code,~~
29 ~~to read:~~
30 ~~123312. (a) The department shall adopt regulations to specify~~
31 ~~the criteria the department shall use and the actions the department~~
32 ~~shall take when initiating a moratorium on new WIC Program~~
33 ~~retail food vendor location applications.~~
34 ~~(b) The regulations, at a minimum, shall do all of the following:~~
35 ~~(1) Define what is an effective caseload management level.~~
36 ~~(2) Identify the maximum duration of a moratorium.~~
37 ~~(3) Require a vendor alert or other official communication~~
38 ~~regarding initiation of a moratorium to be accompanied by an~~
39 ~~action plan with specific steps the department plans to take to~~
40 ~~achieve effective caseload management by the identified end date~~

1 of the moratorium. The department shall make this information,
2 including any changes to the action plan, available to the public
3 by posting this information on the department's Internet Web site
4 and through other forms of electronic communication.

5 (4) Require the department to process applications during the
6 moratorium period if the department was notified by the retail food
7 vendor of the vendor's intent to obtain authorization for a specific
8 store location prior to the effective date of the moratorium.

9 (5) Require the department to provide retail food vendors with
10 a minimum of ~~60~~ 30 days' notice prior to the effective date of, or
11 extension of, a moratorium.

12 ~~SEC. 6.~~

13 *SEC. 4.* The department shall seek any federal approvals
14 necessary to implement this act.

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