

AMENDED IN SENATE AUGUST 22, 2012

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 ~~Section~~ *Sections 123280 and 123285* of, and to add ~~Section~~ *Sections 123312 and 123322* to, the Health and Safety Code, relating to nutrition, *and declaring the urgency thereof, to take effect immediately.*

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~~ *food 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 the department, in order to be in compliance with federal law and conditions of federal funding, to take certain actions including adopting mandatory federal requirements and guidelines for the federal Special Supplemental Nutrition Program for Women, Infants, and Children as requirements for the WIC Program, and establishing requirements for peer groups and a corresponding reimbursement system, criteria used for vendor authorization, and WIC Program authorized foods. This bill would require the department, in establishing requirements for peer groups and a corresponding reimbursement system, criteria used for vendor authorization, and WIC Program authorized foods, to, among other things, notify and consult with affected stakeholders and provide an opportunity for written comment.

This bill would require the department to ~~adopt regulations to~~ specify certain criteria the department ~~shall~~ would use and actions the department ~~shall~~ would take when initiating a moratorium on new WIC Program vendor location applications. *This bill would authorize the department, without taking regulatory action, to implement, interpret, or make specific these criteria or actions by means of a vendor bulletin, as specified.* This bill would require the department to seek any federal approvals necessary to implement these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 *that 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 ~~(a) The California Special Supplemental Food Program for~~
- 8 ~~Women, Infants, and Children (WIC Program) currently authorizes~~
- 9 ~~5,581 retail food stores, or WIC Program vendors, to accept WIC~~

1 ~~Program nutrition coupons from participants in exchange for~~
2 ~~authorized WIC Program food products.~~

3 ~~(b) From 2007 to 2011, the total number of authorized WIC~~
4 ~~Program vendors has grown from 3,527 vendors in 2007 to 5,135~~
5 ~~vendors in 2011.~~

6 ~~(c) In April 2011, the WIC Program imposed a moratorium on~~
7 ~~accepting applications for new vendor authorizations. The~~
8 ~~moratorium was necessary to ensure the department's ability to~~
9 ~~effectively manage vendor caseload, as required by Section~~
10 ~~40735(a) of Title 22 of the California Code of Regulations and~~
11 ~~Section 246.12(g) of Title 7 of the Code of Federal Regulations.~~
12 ~~This moratorium was extended in February 2012, in order to~~
13 ~~provide the department with an opportunity to develop appropriate~~
14 ~~measures to process the rapid increase in vendor applications in~~
15 ~~light of the limited federal funds that are available.~~

16 *SEC. 2. Section 123280 of the Health and Safety Code is*
17 *amended to read:*

18 123280. (a) The department may conduct a statewide program
19 for providing nutritional food supplements to low-income pregnant
20 women, low-income postpartum and lactating women, and
21 low-income infants and children under five years of age, who have
22 been determined to be at nutritional risk by a health professional,
23 based on criteria established by the department. Any program
24 established pursuant to this section shall do all of the following:

- 25 (1) Comply with all the requirements of this article.
26 (2) Be conducted only if a special project is authorized by
27 inclusion in the Budget Act or notification is provided to the
28 Legislature pursuant to Section 28 of the Budget Act, and federal
29 funds are appropriated therefor.
30 (3) Be known as the California Special Supplemental ~~Food~~
31 *Nutrition Program for Women, Infants, and Children (WIC*
32 *Program).*

33 (b) The department shall administer this article and shall adopt
34 minimum standards and regulations as necessary.

35 *(c) In order to be in conformity with federal law and to remain*
36 *in compliance with federal funding, the department shall adopt*
37 *all mandatory requirements and guidelines set forth in federal law*
38 *and federal regulation for the federal Special Supplemental*
39 *Nutrition Program for the WIC program, including, but not limited*
40 *to, the Child Nutrition Act of 1966, and the amendments thereto*

1 (Chapter 13A (commencing with Section 1786) of Title 42 of the
2 United States Code), Part 246 of Title 7 of the Code of Federal
3 Regulations, and federal memoranda and guidance letters
4 clarifying and interpreting those laws and regulations as the
5 requirements for the WIC Program. In adopting the federal
6 mandatory requirements and guidelines, the department shall not
7 be subject to Chapter 3.5 (commencing with Section 11340) of
8 Part 1 of Division 3 of Title 2 of the Government Code. The
9 department may adopt these requirements and guidelines by
10 bulletin or similar instruction.

11 ~~SEC. 2.~~

12 SEC. 3. Section 123285 of the Health and Safety Code is
13 amended to read:

14 123285. As used in this article, the following definitions shall
15 apply:

16 (a) "Health professional" means a physician and surgeon,
17 registered nurse, nutritionist, dietitian, or state or local medically
18 trained health official, who is competent to professionally evaluate
19 nutritional need and to authorize supplemental foods, as determined
20 by the state department.

21 (b) "Low income" means an income of not more than 185
22 percent of the poverty level as determined by the federal poverty
23 income guidelines promulgated by the United States Department
24 of Health and Human Services.

25 (c) "Recipient" means low-income pregnant women, low-income
26 post partum and lactating women, and low-income infants and
27 children under five years of age, who are determined to be at
28 nutritional risk by a health professional, based on criteria
29 established by the state department.

30 (d) "Nutrition coupon" means a check that is limited as to value,
31 food type, and food quantity and that has a limited period of
32 validity.

33 (e) "WIC Program" means the California Special Supplemental
34 ~~Food~~ Nutrition Program for Women, Infants, and Children.

35 ~~SEC. 3.~~

36 SEC. 4. Section 123312 is added to the Health and Safety Code,
37 to read:

38 123312. (a) The department shall ~~adopt regulations to~~ specify
39 the criteria the department shall use and the actions the department
40 shall take when initiating a moratorium on new WIC Program

1 retail food vendor location applications. *Notwithstanding any other*
2 *provision of law, the department may, without taking regulatory*
3 *action pursuant to Chapter 3.5 (commencing with Section 11340)*
4 *of Part 1 of Division 3 of Title 2 of the Government Code,*
5 *implement, interpret, or make specific this section by means of a*
6 *vendor bulletin when initiating a moratorium on new WIC Program*
7 *retail food vendor location applications.*

8 (b) ~~The regulations,~~ *A vendor bulletin initiating a moratorium,*
9 *at a minimum, shall ~~do~~ include all of the following:*

10 (1) ~~Define what is an effective caseload management level.~~

11 (2) ~~Identify~~

12 (1) *The reason for,* and the maximum duration of, a moratorium.

13 (3) ~~Require a vendor alert or other official communication~~
14 ~~regarding initiation of a moratorium to be accompanied by an~~

15 (2) *An action plan with specific steps the department plans to*
16 *take to achieve effective caseload management by the identified*
17 *end date of the moratorium that addresses the reason or need for*
18 *the moratorium.* The department shall make this information,
19 including any changes to the action plan, available to the public
20 by posting this information on the department's Internet Web site
21 and through other forms of electronic communication.

22 (4) ~~Require the department to process~~

23 (3) *Exceptions for processing applications during the*
24 *moratorium period, including the processing of a retail food*
25 *vendor's application to add a specific store location to a current*
26 *master vendor agreement if the department was notified by the*
27 *retail food vendor of the vendor's intent to obtain authorization*
28 *for a specific store location received the vendor's completed*
29 *application for that store location prior to the effective date of the*
30 *moratorium.*

31 (5) ~~Require the department to~~

32 (c) *The department shall provide retail food vendors with a*
33 *minimum of 30 days' notice prior to the effective date of, or*
34 *extension of, a moratorium.*

35 (d) *The department shall seek any federal approvals necessary*
36 *to implement this section.*

37 (e) *Moratoriums required by federal directive shall not be*
38 *subject to the requirements of this section.*

39 ~~SEC. 4. The department shall seek any federal approvals~~
40 ~~necessary to implement this act.~~

1 SEC. 5. Section 123322 is added to the Health and Safety Code,
2 to read:

3 123322. (a) In order to effectively manage and administer the
4 federal and state requirements for the vendors in the WIC Program,
5 and remain in compliance with the conditions of federal funding,
6 the department shall establish requirements for all of the following:

- 7 (1) Peer groups and a corresponding reimbursement system.
- 8 (2) Criteria used for vendor authorization.
- 9 (3) The WIC Program authorized foods.

10 (b) Notwithstanding any other provisions of law, including the
11 requirement in Section 123315 for enacting regulations to
12 implement that section and Section 123310, the department may,
13 without taking regulatory action pursuant to Chapter 3.5
14 (commencing with Section 11340) of Part 1 of Division 3 of Title
15 2 of the Government Code, implement, interpret, or make specific
16 this section by means of an action by bulletin or similar instruction.
17 The department shall provide notice to, and consult with, affected
18 stakeholders, including vendors, manufacturers, local agencies,
19 participants, advocates, consumer groups, and their respective
20 associations, in the process of implementing, interpreting, or
21 making specific this statute, and meet all of the following
22 requirements:

23 (1) The notice shall be provided electronically to the
24 stakeholders identified in this subdivision and shall also be posted
25 on the program's Internet Web site. The notice shall state the
26 reason for the change, the authority for the change, and the nature
27 of the change. The notice shall provide opportunity for written
28 comment by indicating the address to which to send the comment.
29 The address may be an electronic site. The notice shall allow for
30 at least 20 calendar days for comments to be submitted. The notice
31 shall also provide the date of a consultation meeting with a
32 stakeholder workgroup consisting of, but not limited to,
33 representatives of stakeholder associations, stakeholder
34 representatives, and consumer groups, to ensure stakeholder
35 participation in the implementation of this section.

36 (2) The department shall consider all comments submitted before
37 the due date, though it may withdraw the proposed action at any
38 time by notification on its Internet Web site or notification by
39 electronic means. Unless the department withdraws the action, it
40 shall publish the final action on its Internet Web site no later than

1 120 days after the consultation with stakeholders or the last day
2 for comments, whichever is later. If the department fails to issue
3 a final action within 120 days from the consultation with
4 stakeholders or the last day for comments, whichever is later, the
5 proposed action will be deemed withdrawn. The department may
6 finalize a proposed action that has been withdrawn by renoticing
7 the proposed action for comment pursuant to paragraphs (1) to
8 (3), inclusive.

9 (3) The department shall provide at least 30 days' advance
10 notice of the final action. In the final action, the department shall
11 respond to the comments received.

12 (4) The department shall establish a process to collect
13 stakeholder feedback regarding the impact of the final action and
14 any policy adjustments that should be considered
15 postimplementation.

16 SEC. 6. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

20 In order to immediately implement federal goals and directives,
21 to maintain compliance with federal grant requirements, including
22 improved access to competitively priced foods, and to preserve and
23 benefit the public health of the state, it is necessary that this act
24 take effect immediately.