

Assembly Bill No. 2322

CHAPTER 787

An act to amend Sections 123280 and 123285 of, and to add Sections 123312 and 123322 to, the Health and Safety Code, relating to nutrition, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2012. Filed with
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2322, 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 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 specify certain criteria the department would use and actions the department 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.

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

SECTION 1. The Legislature finds and declares that the California Special Supplemental Food Program for Women, Infants, and Children (WIC Program) currently authorizes 5,581 retail food stores, or WIC Program vendors, to accept WIC Program nutrition coupons from participants in exchange for authorized WIC Program food products.

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

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

(1) Comply with all the requirements of this article.

(2) Be conducted only if a special project is authorized by inclusion in the Budget Act or notification is provided to the Legislature pursuant to Section 28 of the Budget Act, and federal funds are appropriated therefor.

(3) Be known as the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).

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

(c) In order to be in conformity with federal law and to remain in compliance with federal funding, the department shall adopt all mandatory requirements and guidelines set forth in federal law and federal regulation for the federal Special Supplemental Nutrition Program for the WIC program, including, but not limited to, the Child Nutrition Act of 1966, and the amendments thereto (Chapter 13A (commencing with Section 1786) of Title 42 of the United States Code), Part 246 of Title 7 of the Code of Federal Regulations, and federal memoranda and guidance letters clarifying and interpreting those laws and regulations as the requirements for the WIC Program. In adopting the federal mandatory requirements and guidelines, the department shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department may adopt these requirements and guidelines by bulletin or similar instruction.

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

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

(a) "Health professional" means a physician and surgeon, registered nurse, nutritionist, dietitian, or state or local medically trained health official,

who is competent to professionally evaluate nutritional need and to authorize supplemental foods, as determined by the state department.

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

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

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

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

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

123312. (a) The department shall specify the criteria the department shall use and the actions the department shall take when initiating a moratorium on new WIC Program retail food vendor location applications. Notwithstanding any other provision of law, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of a vendor bulletin when initiating a moratorium on new WIC Program retail food vendor location applications.

(b) A vendor bulletin initiating a moratorium, at a minimum, shall include all of the following:

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

(2) An action plan with specific steps the department plans to take by the identified end date of the moratorium that addresses the reason or need for the moratorium. The department shall make this information, including any changes to the action plan, available to the public by posting this information on the department’s Internet Web site and through other forms of electronic communication.

(3) Exceptions for processing applications during the moratorium period, including the processing of a retail food vendor’s application to add a specific store location to a current master vendor agreement if the department received the vendor’s completed application for that store location prior to the effective date of the moratorium.

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

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

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

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

123322. (a) In order to effectively manage and administer the federal and state requirements for the vendors in the WIC Program, and remain in

compliance with the conditions of federal funding, the department shall establish requirements for all of the following:

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

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

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

(2) The department shall consider all comments submitted before the due date, though it may withdraw the proposed action at any time by notification on its Internet Web site or notification by electronic means. Unless the department withdraws the action, it shall publish the final action on its Internet Web site no later than 120 days after the consultation with stakeholders or the last day for comments, whichever is later. If the department fails to issue a final action within 120 days from the consultation with stakeholders or the last day for comments, whichever is later, the proposed action will be deemed withdrawn. The department may finalize a proposed action that has been withdrawn by renouncing the proposed action for comment pursuant to paragraphs (1) to (3), inclusive.

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

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

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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