



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0560/P2
TJD:kjf

DOA:.....Bollhorst, BB0034 - WIC statutory change

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

1. *Special supplemental nutrition program for women, infants, and children*

This bill makes various changes to the Special Supplemental Nutrition Program for Women, Infants, and Children, known as the WIC program. The WIC program provides supplemental foods, nutrition education, and other services to low-income women, infants, and children that meet eligibility criteria under federal law. DHS administers portions of the WIC program including authorization of vendors and distribution centers to accept the method of payment that participants in the WIC program use to obtain foods approved under the program. Specifically, the bill does all of the following:

1. Allows DHS to identify an alternate participant, who is someone authorized by a WIC program participant to request benefits and otherwise participate in the WIC program, as the WIC program cardholder for purposes of electronic administration.

2. Adds to the criteria to be an authorized vendor or authorized distribution center that the vendor or distribution center has an electronic benefit transfer-capable cash register system or payment device that meets the criteria specified in the bill.

3. Specifies that, except for certain mobile stores specially authorized in accordance with federal law, each store is a separate vendor, must have a single, fixed location, and must be separately authorized under the WIC program.

4. Adds to the activities prohibited under the WIC program engaging in trafficking. Trafficking in WIC benefits is defined in the bill as engaging in any of the following: buying, selling, stealing, or otherwise exchanging, including exchanging firearms, ammunition, explosives, or controlled substances, a payment method of obtaining WIC-approved foods for cash or consideration other than WIC approved foods; intentionally purchasing and reselling for cash or consideration a product that is obtained using a method of obtaining WIC-approved foods; or intentionally purchasing with cash or consideration a product that was originally purchased with a method of obtaining WIC-approved foods. A person who performs any of the prohibited practices under the bill or under current law is subject to a felony with a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both for the first offense and for a second or subsequent offense a felony with a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

5. Incorporates infant formula suppliers into the types of entities for which DHS must promulgate rules regarding standards for authorization.

6. Adds civil monetary penalty, warning letter, and implementation of a corrective action plan to the list of consequences for violating a rule promulgated by DHS relating to the WIC program.

7. Specifies that information about an applicant for, participant in, or vendor in the WIC program is confidential and then specifies who may access that confidential information and for what purposes.

8. Makes some additional changes to the language of the WIC program statutes.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 253.06 (1) (a) of the statutes is renumbered 253.06 (1) (am) and amended to read:

253.06 (1) (am) “~~Authorized~~ Approved food” means food identified by the department as an authorized food in accordance with [7 CFR 246.10](#) as acceptable for use under the federal special supplemental food nutrition program for women, infants and children under [42 USC 1786](#).

SECTION 2. 253.06 (1) (ag) of the statutes is created to read:

253.06 (1) (ag) “Alternate participant” means a person who has been authorized by a participant to request benefits, participate in nutrition education, bring an infant or child to a Women, Infants, and Children program appointment, and have access to information in the participant’s file.

SECTION 3. 253.06 (1) (b) of the statutes is repealed.

SECTION 4. 253.06 (1) (br) of the statutes is created to read:

253.06 (1) (br) “Cardholder” means a participant; alternate participant; parent, legal guardian, or caretaker of a participant; or another person in possession of a Women, Infants, and Children program electronic benefit transfer card and the personal identification number for the card.

SECTION 5. 253.06 (1) (c) of the statutes is repealed.

SECTION 6. 253.06 (1) (cm) of the statutes is amended to read:

253.06 (1) (cm) “Food Direct distribution center” means an entity, other than a vendor, that is under contract with the department under sub. (3m) to distribute authorized approved food to participants.

SECTION 7. 253.06 (1) (cp), (cr), (ct) and (cv) of the statutes are created to read:

253.06 (1) (cp) “Electronic benefit transfer” means a method that permits electronic access to Women, Infants, and Children program benefits using a device, approved by the department, with payments made in accordance with ch. 410.

(cr) “Food instrument” means a voucher, check, electronic benefit transfer card, electronic benefit transfer card number and personal identification number, coupon, or other method used by a participant to obtain Women, Infants, and Children program approved foods.

(ct) “Infant formula supplier” means a wholesaler, distributor, retailer, or manufacturer of infant formula.

(cv) “Local agency” means an entity that has a contract with the department to provide services under the Women, Infants, and Children program such as eligibility determination, benefit issuance, and nutritional counseling for participants.

SECTION 8. 253.06 (1) (dm) of the statutes is repealed.

SECTION 9. 253.06 (1) (dr) and (dv) of the statutes are created to read:

253.06 (1) (dr) “Summary suspension” means an emergency action taken by the department to suspend an authorization under the Women, Infants, and Children program.

(dv) “Trafficking” means doing any of the following:

1. Buying, selling, stealing, or otherwise exchanging for cash or consideration other than approved food Women, Infants, and Children program food instruments or benefits that are issued and accessed via a food instrument.

2. Exchanging firearms, ammunition, explosives, or controlled substances, as defined in [21 USC 802](#), for a food instrument.

3. Intentionally purchasing and reselling for cash or consideration other than approved food a product that is purchased with a food instrument.

4. Intentionally purchasing with cash or consideration other than approved food a product that was originally purchased with a food instrument.

SECTION 10. 253.06 (1) (e) of the statutes is amended to read:

253.06 (1) (e) “Vendor” means a ~~grocery store or pharmacy that sells authorized person that operates one or more stores or pharmacies authorized by the department under sub. (3) to provide approved foods under a retail food delivery system.~~

SECTION 11. 253.06 (1) (f) of the statutes is repealed.

SECTION 12. 253.06 (1) (g) of the statutes is created to read:

253.06 (1) (g) “Women, Infants, and Children program” means the federal special supplemental nutrition program for women, infants and children under [42 USC 1786](#) and this section.

SECTION 13. 253.06 (1m) of the statutes is created to read:

253.06 (1m) PROGRAM ADMINISTRATION. (a) The department may identify an alternate participant as the Women, Infants, and Children program cardholder for purposes of electronic administration of the Women, Infants, and Children program.

SECTION 14. 253.06 (3) (a) (intro.) of the statutes is amended to read:

253.06 (3) (a) (intro.) The department may authorize a vendor ~~to accept drafts~~ only if the vendor meets all of the following conditions:

SECTION 15. 253.06 (3) (a) 5. of the statutes is created to read:

253.06 (3) (a) 5. The vendor has an electronic benefit transfer-capable cash register system or payment device, approved by the department, that is able to accurately and securely obtain Women, Infants, and Children program food balances associated with the electronic benefit transfer card, maintain the necessary electronic files such as the approved food list, successfully complete Women, Infants, and Children program electronic benefit transfer purchases, and process Women, Infants, and Children program electronic benefit transfer payments.

SECTION 16. 253.06 (3) (bg) of the statutes is amended to read:

253.06 (3) (bg) The department may limit the number of vendors that it authorizes under this subsection if the department determines that the number of vendors already authorized under this subsection is sufficient to permit participants to obtain ~~authorized~~ approved food conveniently.

SECTION 17. 253.06 (3) (c) of the statutes is amended to read:

253.06 (3) (c) The department may not redeem drafts food instruments only when submitted by a person who is not an authorized vendor under this subsection except as provided in sub. (3m).

SECTION 18. 253.06 (3) (d) of the statutes is created to read:

253.06 (3) (d) Each store operated by a business entity is a separate vendor for purposes of this section and is required to have a single, fixed location, except when the authorization of mobile stores is necessary to meet special needs in accordance with 7 CFR 246.4 (1) (14) (xiv). The department shall require that each store be authorized as a vendor separately from other stores operated by the business entity.

SECTION 19. 253.06 (3m) (title) and (a) (intro.) of the statutes are amended to read:

253.06 (3m) (title) ~~FOOD~~ DIRECT DISTRIBUTION CENTERS. (a) (intro.) The department may contract for an alternative system of authorized approved food distribution with an entity other than a vendor only if the entity meets all of the following requirements:

SECTION 20. 253.06 (3m) (a) 4. of the statutes is created to read:

253.06 (3m) (a) 4. The entity has an electronic benefit transfer-capable cash register system or payment device, approved by the department, that is able to accurately and securely obtain Women, Infants, and Children program food balances associated with the electronic benefit transfer card, maintain the necessary files, successfully complete Women, Infants, and Children program electronic benefit transfer purchases, and process Women, Infants, and Children program electronic benefit transfer payments.

SECTION 21. 253.06 (3m) (b) of the statutes is amended to read:

253.06 (3m) (b) The department ~~shall redeem valid drafts~~ may process a payment if submitted by a food direct distribution center that is authorized by the department under this subsection.

SECTION 22. 253.06 (4) (a) 1. of the statutes is amended to read:

253.06 (4) (a) 1. ~~Accept drafts or submit drafts~~ a food instrument or submit a request to the department for redemption without authorization.

SECTION 23. 253.06 (4) (a) 2. of the statutes is repealed.

SECTION 24. 253.06 (4) (a) 2m. of the statutes is created to read:

253.06 (4) (a) 2m. Engage in trafficking.

SECTION 25. 253.06 (4) (a) 3. to 4. of the statutes are amended to read:

253.06 (4) (a) 3. ~~Accept a draft~~ food instrument other than in exchange for authorized approved food that is provided by the ~~person selected by the electronic benefit transfer cardholder.~~

3m. Provide authorized approved food or other commodities to ~~a participant or proxy~~ an electronic benefit transfer cardholder in exchange for a ~~draft food instrument~~ accepted by a 3rd party.

4. ~~Enter on a draft~~ Submit a payment request for a dollar amount that is higher than the actual retail price of the item for which ~~the draft~~ a food instrument was used.

SECTION 26. 253.06 (4) (a) 5. of the statutes is repealed.

SECTION 27. 253.06 (4) (a) 5m. of the statutes is created to read:

253.06 (4) (a) 5m. Confiscate a food instrument or ask for or enter the electronic benefit transfer cardholder's personal identification number.

SECTION 28. 253.06 (4) (a) 6. and 8. of the statutes are repealed.

SECTION 29. 253.06 (4) (a) 9. of the statutes is amended to read:

253.06 (4) (a) 9. ~~Submit for redemption a draft~~ Provide to someone other than the department a food instrument; a Women, Infants, and Children program electronic benefit transfer card; or food purchased with a food instrument for something of value.

SECTION 30. 253.06 (4) (a) 10. of the statutes is repealed.

SECTION 31. 253.06 (5) (a) 1. and 2. of the statutes are amended to read:

253.06 (5) (a) 1. Minimum qualification standards for the authorization of vendors and infant formula suppliers and for the awarding of a contract to an entity under sub. (3m).

2. Standards of operation for authorized vendors and infant formula suppliers and ~~food~~ direct distribution centers, including prohibited practices.

SECTION 32. 253.06 (5) (b) 1. to 3. of the statutes are amended to read:

253.06 (5) (b) 1. Denial of the application to be a participant or authorized vendor or infant formula supplier.

2. ~~Suspension~~ Summary suspension or termination of authorization for an authorized vendor or infant formula supplier or, in the case of a ~~food~~ direct distribution center, termination of the contract.

3. Disqualification from the program under this section for a vendor, infant formula supplier, or participant.

SECTION 33. 253.06 (5) (b) 6. to 8. of the statutes are created to read:

253.06 (5) (b) 6. Civil monetary penalty.

7. Warning letter.

8. Implementation of a corrective action plan.

SECTION 34. 253.06 (5) (d) (intro.) and 6. of the statutes are amended to read:

253.06 (5) (d) (intro.) The department may directly assess a forfeiture provided for under par. (b) 4., recoupment provided for under par. (b) 5. and an enforcement assessment provided for under par. (c). If the department determines that a forfeiture, recoupment or enforcement assessment should be levied, or that authorization or eligibility should be summarily suspended or terminated, for a particular violation or for failure to correct it, the department shall send a notice of assessment, summary suspension or termination to the vendor, ~~food~~ infant formula supplier, direct distribution center or participant. The notice shall inform the vendor, ~~food~~ infant formula supplier, direct distribution center or participant of the right to a hearing under sub. (6) and shall specify all of the following:

6. If applicable, ~~that the suspension or termination of authorization of the vendor or eligibility of the participant is effective beginning on the 15th day after receipt~~ date of the notice of summary suspension or termination.

SECTION 35. 253.06 (5) (e) of the statutes is renumbered 253.06 (5) (e) 1. and amended to read:

253.06 (5) (e) 1. The ~~suspension or~~ termination of authorization of a vendor, infant formula supplier, or direct distribution center or eligibility of a participant shall be effective beginning on the 15th day after receipt of the notice of ~~suspension or~~ termination.

2. All forfeitures, recoupments, and enforcement assessments shall be paid to the department within 15 days after receipt of notice of assessment or, if the forfeiture, recoupment, or enforcement assessment is contested under sub. (6), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is adverse to the department or unless the final decision is appealed and the decision is stayed by court order under sub. (7). The

department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund. The department shall deposit all enforcement assessments in the appropriation under s. 20.435 (1) (gr).

SECTION 36. 253.06 (5) (e) 3. of the statutes is created to read:

253.06 (5) (e) 3. The summary suspension of authorization of a vendor, infant formula supplier, or direct distribution center shall be effective immediately upon receipt of the notice under par. (d).

SECTION 37. 253.06 (6) (b) of the statutes is amended to read:

253.06 (6) (b) A person may contest an assessment of forfeiture, recoupment or enforcement assessment, a denial, ~~suspension~~ or termination of authorization, a civil monetary penalty assessed in lieu of disqualification, a summary suspension, or a ~~suspension or~~ termination of eligibility by sending a written request for hearing under s. 227.44 to the division of hearings and appeals in the department of administration within 10 days after the receipt of the notice issued under sub. (3) (bm) or (5) (d). The administrator of the division of hearings and appeals may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division of hearings and appeals shall be the final administrative decision. The division of hearings and appeals shall commence the hearing and issue a final decision within 60 days after receipt of the request for hearing unless all of the parties consent to a later date. Proceedings before the division of hearings and appeals are governed by ch. 227. In any petition for judicial review of a decision by the division of hearings and appeals, the department, if not the petitioner who was in the proceeding before the division of hearings and appeals, shall be the named respondent.

SECTION 38. 253.06 (8) of the statutes is amended to read:

253.06 (8) INSPECTION OF PREMISES. The department may visit and inspect each authorized vendor and infant formula supplier and each food direct distribution center, and for such purpose shall be given unrestricted access to the premises described in the authorization or contract.

SECTION 39. 253.06 (9) and (10) of the statutes are created to read:

253.06 (9) CONFIDENTIALITY OF APPLICANT AND PARTICIPANT INFORMATION. (a) Any information about an applicant or participant, whether it is obtained from the applicant or participant or another source or is generated as a result of application for the Women, Infants, and Children program, that identifies the applicant or participant or a family member of the applicant or participant is confidential.

(b) Except as explicitly permitted under this section, the department shall restrict the use and disclosure of confidential applicant and participant information to any person directly connected with the administration or enforcement of the Women, Infants, and Children program that the department determines has a need to know the information for Women, Infants, and Children program purposes. Persons who may be allowed to access confidential information under this paragraph include personnel from the local agencies, persons under contract with the department to perform research regarding the Women, Infants, and Children program, and persons that are investigating or prosecuting Women, Infants, and Children program violations of federal, state, or local law.

****NOTE: The phrase "local agencies" comes directly from the federal rule, but should it be defined in subs. (9) and (10) here to clarify who has access to confidential information.

(c) The department or any local agency may use or disclose to public organizations confidential applicant and participant information for the

administration of other programs that serve individuals eligible for the Women, Infants, and Children program in accordance with [7 CFR 246.26](#) (h).

(d) Staff of the department and local agencies who are required by state law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information without the consent of the participant or applicant to the extent necessary to comply with the law.

(e) Except in the case of subpoenas or search warrants, the department and local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The department or local agency shall allow applicants and participants to refuse to sign the release form and shall notify the applicant or participant that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the Women, Infants, and Children program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the Women, Infants, and Children program application or certification process. All other requests for applicants or participants to sign voluntary release forms may occur only after the application and certification process is complete.

(f) The department or local agency shall provide to an applicant or participant access to all information he or she has provided to the Women, Infants, and Children program. In the case of an applicant or participant who is an infant or child, the access may be provided to a parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. The department or

local agency is not required to provide the applicant or participant or parent or guardian of an infant or child applicant or participant access to any other information in the file or record, including documentation of income provided by a 3rd party and staff assessments of an applicant or participant's condition or behavior, unless required by law or unless the information supports a state or local agency decision being appealed under [7 CFR 246.9](#).

(10) CONFIDENTIALITY OF VENDOR INFORMATION. (a) Any information about a vendor, whether it is obtained from the vendor or another source, that individually identifies the vendor except for the vendor's name, address, telephone number, Internet or electronic mail address, store type, and Women, Infants, and Children program authorization status is confidential. The department shall restrict the use or disclosure of confidential vendor information to any of the following:

1. Persons directly connected with the administration or enforcement of the Women, Infants, and Children program or the food stamp program under s. 49.79 that the department determines has a need to know the information for purposes of these programs. These persons may include personnel from local agencies and persons investigating or prosecuting violations of Women, Infants, and Children program or food stamp program federal, state, or local laws.

2. Persons directly connected with the administration or enforcement of any federal or state law or local ordinance. Before releasing information to a state or local entity, the department shall enter into a written agreement with the requesting party specifying that the information may not be used or redisclosed except for purposes directly connected with the administration or enforcement of the federal or state law or local ordinance.

3. A vendor that is subject to an adverse action under sub. (5), including a claim, to the extent that the confidential information concerns the vendor that is subject to the adverse action and is related to the adverse action.

(b) The department may disclose to all authorized vendors and applicants to be a vendor sanctions that have been imposed on vendors if the disclosure identifies only the vendor's name, address, length of the disqualification or amount of the monetary penalty, and a summary of the reason for the sanction provided in the notice of adverse action under sub. (5). The information under this paragraph may be disclosed only after all administrative and judicial review is exhausted and the department has prevailed regarding the sanction imposed on the vendor or after the time period for requesting administrative and judicial review has expired.

(END)