

LEGISLATIVE BILL 643

Approved by the Governor March 20, 1987

Introduced by Lynch, 13

AN ACT relating to maternal and child health; to define terms; to provide for the creation and administration of certain programs; to provide for acceptance of federal funds; to provide powers and duties; to provide penalties for violations; to provide for enforcement; and to provide a duty for the Revisor of Statutes.
Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of this act, unless the context otherwise requires, the definitions found in sections 2 to 17 of this act shall be used.

Sec. 2. Breast-feeding women shall mean women up to one year postpartum who are breast-feeding their infants.

Sec. 3. CSF program shall mean the Commodity Supplemental Food Program authorized by the Food and Agriculture Act of 1977, as amended and extended, the Agriculture and Consumer Protection Act of 1973, as amended and extended, and the Food Security Act of 1985, as amended and extended, and as may be established and administered by the department pursuant to this act.

Sec. 4. Child shall mean (a) as used in reference to any WIC program established pursuant to this act, a person who has had his or her first birthday but has not yet reached his or her fifth birthday and (b) as used in reference to any CSF program established pursuant to this act, a person who has had his or her first birthday but has not yet reached his or her sixth birthday.

Sec. 5. Department shall mean the Department of Health.

Sec. 6. Elderly person shall mean an individual sixty years of age or older.

Sec. 7. Food instrument shall mean a voucher, check, coupon, or other document which is used by a participant to obtain supplemental foods under any WIC program established by the department pursuant to this act.

Sec. 8. Health services shall mean routine pediatric and obstetric care which is ongoing, such as infant and child care and prenatal and postpartum

examinations, or referral for treatment.

Sec. 9. Infant shall mean a person under one year of age.

Sec. 10. Local agency shall mean a public or private nonprofit health or human service agency that:

(1) Provides health services either directly or through contract; and

(2) By written agreement with the department, provides WIC program services, CSF program services, or both, either directly or through subagreements entered into in accordance with this act and the rules and regulations adopted and promulgated by the department.

Sec. 11. Low income shall mean income meeting poverty income guidelines prescribed by the department by rule and regulation under this act.

Sec. 12. Nutritional risk shall mean (a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (b) other documented nutritionally related medical conditions, (c) dietary deficiencies that impair or endanger health, or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

Sec. 13. Participant or recipient shall mean (a) as used in reference to any WIC program established pursuant to this act, an individual who is receiving supplemental foods or food instruments and shall include, but not be limited to, pregnant women, breast-feeding women, postpartum women, infants, and children and (b) as used in reference to any CSF program established pursuant to this act, an individual who is receiving supplemental foods under such program and shall include, but not be limited to, pregnant women, breast-feeding women, postpartum women, infants, children, and elderly persons.

Sec. 14. Postpartum women shall mean (a) as used in reference to any WIC program established pursuant to this act, women up to six months after termination of pregnancy and (b) as used in reference to any CSF program established pursuant to this act, women up to twelve months after termination of pregnancy.

Sec. 15. Supplemental foods shall mean (a) as used in reference to any WIC program established pursuant to this act, those foods containing nutrients determined to be beneficial for infants, children, and pregnant, breast-feeding, or postpartum women as prescribed by the United States Department of Agriculture and (b) as used in reference to any CSF program established pursuant to this act, foods donated

by the United States Department of Agriculture for use by participants in such program.

Sec. 16. Vendor shall mean a retail food seller who has entered into an agreement with the department or with a local agency with the approval of the department under any WIC program established pursuant to this act to redeem food instruments and otherwise provide supplemental foods to participants in such WIC program.

Sec. 17. WIC program shall mean the Special Supplemental Food Program for Women, Infants, and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended and extended, and as may be established and administered by the department pursuant to this act.

Sec. 18. The department may conduct a statewide program for providing nutritional food supplements and nutrition education directly or through local agencies, vendors, or other agencies or a combination thereof, to low-income pregnant, breast-feeding, and postpartum women, infants, and children who have been determined to be at nutritional risk and otherwise eligible for participation in such program based upon criteria established by the department by rule and regulation. Any program established by the department pursuant to this section shall be known as the Nebraska Special Supplemental Food Program for Women, Infants, and Children and shall be conducted only if and to the extent that federal funds are appropriated therefor and granted to the department for such purpose. The department is hereby authorized to seek and receive federal funds to carry out the provisions of this section, and the State of Nebraska hereby accepts and assents to all applicable provisions of the Child Nutrition Act of 1966, as amended and extended, for the purpose of conducting a Special Supplemental Food Program for Women, Infants, and Children in Nebraska. The department may adopt and promulgate such rules and regulations and enter into such agreements as may be necessary to effectively operate and administer such a program in accordance with applicable federal statutes and Title 7, Part 246, of the Code of Federal Regulations and consistent with Nebraska law.

Sec. 19. The department may conduct a statewide program directly or through local agencies or a combination thereof, under which low-income pregnant, breast-feeding, and postpartum women, infants, children, and elderly who are vulnerable to malnutrition and

otherwise eligible for participation under criteria established by the department by rule and regulation shall be provided nutrition education and may obtain supplemental nutritious foods donated for such program by the United States Department of Agriculture under the Commodities Supplemental Food Program. Any program established by the department pursuant to this section shall be known as the Nebraska Commodities Supplemental Food Program and shall be conducted only if and to the extent that federal funds are appropriated therefor and granted to the department for such purpose. The department is hereby authorized to seek and receive federal funds to carry out the provisions of this section, and the State of Nebraska hereby accepts and assents to all applicable provisions of the Agriculture and Consumer Protection Act of 1973, as amended and extended, the Food and Agriculture Act of 1977, as amended and extended, and the Food Security Act of 1985, as amended and extended, for the purpose of conducting a Commodities Supplemental Food Program in Nebraska. The department may adopt and promulgate such rules and regulations and enter into such agreements as may be necessary to effectively operate and administer such a program in Nebraska in accordance with applicable federal statutes and Title 7, Part 247 and Part 250, Subchapter B, Code of Federal Regulations, and consistent with Nebraska law.

Sec. 20. Any person who by means of a willfully false statement or representation, by impersonation, or by other device obtains or attempts to obtain or aids or abets any person to obtain or to attempt to obtain (1) a food instrument to which he, she, or it is not entitled, (2) any supplemental foods to which such person is not entitled, or (3) any other benefit administered by the department under this act commits an offense and shall, upon conviction, be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Sec. 21. (1) A person commits an offense if he, she, or it knowingly and unlawfully uses, alters, or transfers food instruments or food supplements. An offense under this subsection shall be a Class III misdemeanor if the value of the food instrument or

benefit is less than five hundred dollars and shall be a Class IV felony if the value of food instruments or benefits is five hundred dollars or more.

(2) A person commits an offense if he, she, or it knowingly and unlawfully (a) possesses food instruments or food supplements or (b) redeems food instruments. An offense under this subsection shall be a Class III misdemeanor if the value of the food instrument or benefit is less than five hundred dollars and shall be a Class IV felony if the value of the food instruments or benefits is five hundred dollars or more.

(3) A person commits an offense if he, she, or it knowingly and unlawfully possesses blank authorizations to participate in the WIC program or CSF program. An offense under this subsection shall be a Class IV felony.

(4) When food instruments or supplemental foods are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

Sec. 22. The Attorney General may take such civil action as may be necessary to enforce the provisions of this act. The department may adopt and promulgate rules and regulations which provide for disqualification and suspension of vendors and participants of any programs established pursuant to this act, except that no vendor may be disqualified or suspended for more than three years, and no participant may be disqualified or suspended for more than three months.

Sec. 23. The Revisor of Statutes shall assign sections 1 to 22 of this act to Chapter 71, article 22.

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