

102D CONGRESS
1ST SESSION

S. 1556

To protect the Supplemental Food Program for Women, Infants and Children,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, JULY 8), 1991

Mr. HEFLIN introduced the following bill; which was read twice and referred
to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To protect the Supplemental Food Program for Women,
Infants and Children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “WIC Protection Act
5 of 1991”.

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) FINDINGS.—Congress finds that—

8 (1) retail stores play a vital role in the distribu-
9 tion of WIC benefits to needy pregnant women, in-
10 fants and children;

(2) the direct distribution of WIC foods, such as milk, cheese, infant formula, orange juice, fortified cereals, and the like, by the Department of Agriculture to WIC participants would be very cost-efficient; and

(3) regulatory efforts by the Department of Agriculture to curtail the ability of women, infants and children to participate in the WIC Program are inconsistent with the intent of the Child Nutrition Act of 1966.

(b) PURPOSE.—It is the purpose of this Act to protect the WIC Program, preserve the current WIC food distribution system, and to assure the continued ready availability of WIC foods to participants.

SEC. 3. AUTHORIZATION OF FOOD VENDORS.

(a) AUTHORIZATION.—The Secretary shall issue regulations providing that only food vendors authorized by the State agency may redeem food instruments or otherwise provide supplemental foods to participants.

(b) EASE OF PARTICIPATION.—The Secretary shall issue regulations through notice and comment rulemaking setting forth State agency requirements regarding State agency authorization of an appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that State or

local officials can effectively manage review of authorized food vendors in their jurisdiction. Such rules shall provide that the State agency may establish reasonable and justifiable criteria to limit the number of authorized food vendors in its jurisdiction taking into account—

(1) the importance of vendors to the WIC program;

(2) the importance of the WIC Program to participating pregnant women, infants and children; and

(3) the potential adverse affects on each store of not allowing the store to be a WIC vendors.

(c) FOOD VENDOR PROTECTION.—The Secretary shall issue regulations setting forth State agency requirements for ensuring that all participating food vendors enter into written contracts or agreements with the State or local agency. The State or local agency shall provide vendors with not less than fifteen days advance written notice, by certified mail, of the expiration of a contract or agreement. Such regulations shall provide that State agencies may not terminate such contracts or agreements except as specified in this Act. Each food vendor contract or agreement shall contain the following specifications—

1 (1) In providing supplemental foods to the par-
2 ticipants, the food vendor shall provide the supple-
3 mental foods specified on the food instrument.

4 (2) The food vendor shall provide supplemental
5 foods at the current price or at less than the current
6 price charged to other customers.

7 (3) When food instruments are used, the food
8 vendor shall submit those food instruments for pay-
9 ment within the allowed time period and accept food
10 instruments from a participant only within the al-
11 lowed time period.

12 (4) The State agency has the right to demand
13 refunds for charges of more than the actual pur-
14 chase price for supplemental foods.

15 (5) The State agency may deny payment to the
16 food vendor for improper food instruments or may
17 demand refunds for payments already made on im-
18 proper food instruments.

19 (6) The food vendor shall not seek restitution
20 from participants for food instruments not paid by
21 the State or local agency.

22 (7) The food vendor shall undertake reasonable
23 efforts to inform and train cashiers or other vendor
24 staff on program requirements.

1 (8) The food vendor shall be accountable as
2 specified in this Act for actions of employees in the
3 utilization of food instruments or provision of sup-
4 plemental foods.

5 (9) The food vendor shall not discriminate
6 against program participants in any manner.

7 **SEC. 4. CRIMINAL PENALTIES FOR INTENTIONAL VIOLA-**
8 **TIONS.**

9 Any person convicted of willfully misapplying, steal-
10 ing or fraudulently obtaining program funds shall be sub-
11 ject to a fine of not more than \$20,000 or imprisonment
12 for not more than five years or both, if the value of the
13 funds is \$100 or more. If the value is less than \$100,
14 the penalties are a fine of not more than \$1,000 or impris-
15 onment for not more than one year or both. Any food ven-
16 dor manager or operator, who is not a food vendor employ-
17 ee as defined in section 18, convicted of willfully
18 misapplying, stealing or fraudulently obtaining program
19 funds shall be subject to a fine of not more than \$150,000
20 or imprisonment for not more than fifteen years, or both.

21 **SEC. 5. DISQUALIFICATION OF VENDORS FOR INTENTION-**
22 **AL PROGRAM ABUSE.**

23 (a) **INTENTIONAL ABUSES.**—The Secretary shall
24 issue regulations through notice and comment rulemaking
25 setting forth the requirements that each State agency

1 must follow to disqualify a food vendor for reasons of in-
2 tentional program abuse if the vendor has intentionally
3 violated provisions of this Act or the regulations issued
4 pursuant to this Act. The vendor has the right to appeal
5 a State agency decision pertaining to denial of application
6 to participate, vendor disqualification or any other adverse
7 action which affects participation during the contract or
8 agreement performance period.

9 (b) CIVIL MONEY PENALTIES IN LIEU OF DISQUALI-
10 FICATION.—The Secretary shall issue regulations requir-
11 ing States to subject the vendor convicted under (a) to
12 a warning letter or civil money penalty up to \$15,000,
13 based on the severity of the offenses, if the proposed dis-
14 qualification would cause hardship to WIC participants or
15 if vendor managers or operators were not involved in the
16 wrongdoing. Such penalty or disqualification shall be sub-
17 ject to a due process appeal under rules prescribed by the
18 Secretary.

19 **SEC. 6. NO SALES TAXES ON WIC FOODS.**

20 The Secretary shall require that each State agency
21 issue regulations providing that the food vendor shall not
22 collect sales tax on WIC food purchases.

1 **SEC. 7. PERIODIC REVIEW OF FOOD VENDOR QUALIFICA-**
2 **TIONS.**

3 The Secretary shall issue regulations requiring that
4 each State agency shall conduct a periodic review of the
5 qualifications of all authorized food vendors under its ju-
6 risdiction, at least once every two years. The State agency
7 shall establish reasonable criteria to assess the adequacy
8 of all food vendor qualifications and it shall be a duty of
9 each State agency to monitor the operations of authorized
10 food vendors.

11 **SEC. 8. FOOD VENDOR TRAINING AND GUIDELINES.**

12 The Secretary shall issue regulations providing that
13 each State agency shall ensure that training is provided
14 by the State or local agency for participating food vendors.
15 The training shall be designed to prevent program errors
16 or abuse, and to improve Program service. The Secretary
17 shall provide such information and assistance to assist
18 State agencies in the training of participating food ven-
19 dors. Food vendors shall be provided with pertinent pro-
20 gram information and guidance concerning the authorized
21 supplemental foods, including a list of acceptable brand
22 name products.

23 **SEC. 9. MONITORING OF FOOD VENDORS.**

24 The State agency shall be responsible for the moni-
25 toring of food vendors within its jurisdiction. The State
26 agency shall design and implement a system to conduct

1 on-site monitoring visits to at least 10 percent of author-
2 ized food vendors per year unless the Secretary approves
3 other alternative methods which are more cost-efficient.
4 A summary of the results of the monitoring of food ven-
5 dors and of the review of food instruments shall be submit-
6 ted annually to the Secretary.

7 **SEC. 10. PARTICIPANT AND VENDOR SANCTIONS.**

8 (a) **REASONABLE SANCTIONS.**—The Secretary shall
9 establish rules which require the State agency to establish
10 policies which determine a reasonable type and level of
11 civil fine or disqualification to be applied against food ven-
12 dors, based upon the severity and nature of the violations
13 proven, whether food vendor managers or operators were
14 involved in the wrongdoing, and such other reasonable fac-
15 tors as the State agency determines appropriate, such as
16 whether the violation represented repeated offenses over
17 a period of time, whether the offenses represented vendor
18 policy or whether they represented the actions of an indi-
19 vidual employee who did not understand program rules,
20 and whether prior warning and an opportunity for correc-
21 tion was provided to the vendor. Vendor offenses which
22 are subject to sanctions shall include at least the following:
23 providing cash in exchange for vouchers, selling unauthor-
24 ized foods or other items to participants in lieu of author-
25 ized supplemental foods; charging the State or local agen-

1 cy for foods not received by the participant; and charging
2 the State or local agency more for supplemental foods
3 than other customers are charged for the same food item.

4 (b) **APPEALS.**—Under rules issued by the Secretary
5 each State agency shall provide adequate procedures for
6 vendors to appeal a disqualification from participation
7 under the Program.

8 (c) **INTENTIONAL FRAUD.**—Food vendors may be
9 subject to reasonable sanctions in addition to, or in lieu
10 of, disqualification, such as claims for improper or over-
11 charged food instruments and other penalties in cases of
12 deliberate and intentional fraud. The period of disqualifi-
13 cation from program participation shall be a reasonable
14 period of time, not to exceed three years. The maximum
15 period of disqualification shall be imposed only for very
16 serious or repeated program abuse and shall be imposed
17 only at the vendor's location, such as the individual retail
18 store, where the abuse took place. Notwithstanding the
19 prior sentence, the Secretary may issue regulations dis-
20 qualifying more than one food vendor location if one or
21 more managers or officers of a corporation, or other legal
22 entity, which owns or controls several food vendors, are
23 convicted of intentional program fraud, and if the Secre-
24 tary finds that such action will not harm the operations
25 of the program.

1 (d) FOOD STAMPS.—The State agency may disqualify
2 a vendor who has been disqualified or assessed a civil
3 money penalty in the Food Stamp Program in lieu of dis-
4 qualification only if the State agency:

5 (1) Documents that any such disqualification
6 will not create undue hardship for participants; and

7 (2) Includes notification that it can take such
8 disqualification action in its vendor agreement.

9 (e) HARDSHIP CASES.—Prior to disqualifying a food
10 vendor under paragraph (d), the State agency shall take
11 into account whether the disqualification would create
12 undue hardships for participants or for the vendor, and
13 whether the violation was intentional.

14 (f) SANCTIONS AGAINST PARTICIPANTS.—The Secre-
15 tary shall require each State agency to establish proce-
16 dures designed to control participant abuse of the pro-
17 gram. Such sanctions may, at the discretion of the State
18 agency, include disqualification from the program for a pe-
19 riod up to three months. Warnings may be given prior to
20 the imposition of sanctions. Before a participant is dis-
21 qualified from the program for alleged abuse, that partici-
22 pant shall be given full opportunity to appeal a disqualifi-
23 cation.

1 **SEC. 11. CONTROL OF FOOD INSTRUMENTS.**

2 The Secretary shall issue rules regarding State agen-
3 cy control and accountability for the receipt and issuance
4 of supplemental foods and food instruments. The State
5 agency shall ensure that there is secure transportation and
6 storage of unissued food instruments.

7 **SEC. 12. PAYMENT TO FOOD VENDORS.**

8 The State agency shall ensure that food vendors are
9 promptly paid for food costs. Payments for valid food in-
10 struments shall be made with sixty days after receipt of
11 the food instruments. Actual payment to food vendors may
12 be made by local agencies.

13 **SEC. 13. INSTRUCTIONS TO RECIPIENTS.**

14 The State agency shall ensure that participants and
15 their proxies receive instructions on the proper use of food
16 instruments, or on the procedures for receiving supple-
17 mental foods. Participants and their proxies shall also be
18 notified that they have the right to complain about im-
19 proper vendor practices with regard to Program responsi-
20 bilities.

21 **SEC. 14. CONFLICT OF INTEREST.**

22 The State agency shall ensure that no conflict of in-
23 terest exists between any local agency and the food vendor
24 or vendors within the local agency's jurisdiction.

1 SEC. 15. RETAIL PURCHASE SYSTEMS.

2 Retail purchase food delivery systems are systems in
3 which participants obtain supplemental foods by submit-
4 ting a food instrument to local retail outlets. The Secre-
5 tary shall issue regulations requiring that retail purchase
6 food delivery systems shall meet the following require-
7 ments:

8 (a) UNIFORM INSTRUMENTS.—The State agen-
9 cy shall use uniform food instruments within its ju-
10 risdiction. The State agency is responsible for the
11 design and printing of the uniform food instruments,
12 and their serialization.

13 (b) DATES OF USE.—Each food instrument
14 shall clearly bear on its face the first date on which
15 the food instrument may be used by the participant
16 to obtain supplemental foods, an expiration date,
17 and a serial number.

18 (c) PURCHASE PRICE.—The State agency shall
19 implement requirements to ensure that the actual
20 purchase price of the supplemental foods is recorded
21 at the time of purchase.

22 (d) REDEEMED FOOD INSTRUMENTS.—The
23 State agency shall implement procedures to ensure
24 that every redeemed food instrument can be identi-
25 fied to the food vendor which redeemed the food in-
26 strument. If the vendor utilizes outlets, all outlets

1 participating in the program shall be identified. For
2 example, the State agency may require that all au-
3 thorized food vendors stamp their names on all re-
4 deemed food instruments prior to submission.

5 (e) PROCEDURES.—The Secretary shall issue
6 regulations to require that the State agency shall es-
7 tablish procedures to ensure the propriety of re-
8 deemed food instruments. With justification and
9 documentation, State agencies may reimburse food
10 vendors for food instruments submitted after the ex-
11 piration date. These regulations shall address the
12 following points:

13 (i) The State agency shall design and im-
14 plement a system of review of food instruments
15 to detect suspected overcharges and to identify
16 food vendors with high levels of suspected over-
17 charges.

18 (ii) The State agency shall design and im-
19 plement a system of review of food instruments
20 to detect errors, including, at least, purchase
21 price missing, participant signature missing,
22 vendor identification missing, redemption by
23 vendor outside of the valid date and, as appro-
24 priate, altered prices. The State agency shall

1 implement procedures to reduce the number of
2 errors, where possible.

3 (iii) When payment for a food instrument
4 is denied or delayed, or a claim for reimburse-
5 ment is assessed, the affected food vendor shall
6 have an opportunity to correct or justify the
7 overcharge or error.

8 **SEC. 16. ADMINISTRATIVE APPEAL OF FOOD AND NUTRI-**
9 **TION SERVICE DECISIONS.**

10 (a) **RIGHT TO APPEAL.**—When the Secretary asserts
11 a sanction against a State agency the State agency may
12 appeal and must be afforded a fair hearing or review by
13 the Secretary. The Secretary shall issue regulations set-
14 ting forth procedures under which each State agency shall
15 have the option of requesting a fair hearing to present its
16 position or a review of pertinent documents and records
17 including any additional written submission prepared by
18 the State agency.

19 (b) A State agency aggrieved by a sanction asserted
20 against it may file a written request with the Secretary
21 for a review or hearing.

22 (c) The Secretary shall issue rules setting forth ap-
23 peal deadlines and other requirements providing State
24 agencies with a full and fair opportunity to present their
25 case.

1 **SEC. 17. CLAIMS AND PENALTIES.**

2 (a) Claims against State agencies:

3 (1) If the Secretary determines through a re-
4 view of the State agency's reports, program or finan-
5 cial analysis, monitoring, audit, or otherwise, that
6 any Program funds provided to a State agency for
7 supplemental foods or administrative and program
8 services purposes were, through State or local agen-
9 cy negligence or fraud, misused or otherwise diverted
10 from Program purposes, a formal claim may be as-
11 sessed by the Secretary against the State agency
12 under rules promulgated by the Secretary.

13 (2) The State agency shall have full opportunity
14 to submit evidence, explanation or information con-
15 cerning alleged instances of noncompliance or diver-
16 sion before a final determination is made in such
17 cases.

18 (3) Claims against participants. If a State
19 agency determines that food benefits have been im-
20 properly issued under the Program as the result of
21 a participant, guardian, or caretaker intentionally
22 making a false or misleading statement or intention-
23 ally misrepresenting, concealing, or withholding
24 facts, the State agency shall recover, in cash, from
25 such participant, guardian, or caretaker an amount
26 that the State agency determines is equal to the

1 value of the overissued food benefits, unless the
2 State agency determines that the recovery of the
3 benefits would not be cost-effective.

4 (4) The Secretary shall issue regulations setting
5 forth guidelines regarding the amount of such civil
6 money penalty and such regulations shall consider
7 the seriousness of the violations, the amount of food
8 sales at such store or food concern, whether it was
9 intentional, and other such factors as the last date
10 by which the participant may use the food instru-
11 ment to obtain supplemental foods.

12 **SEC. 18. EFFECTIVE DATE.**

13 This Act shall be effective on enactment. The regula-
14 tions of the Secretary regarding program vendors as pub-
15 lished in volume 7 of the Code of Regulations, and dated
16 January 1, 1990, shall remain effective until regulations
17 implementing this Act are published in final form, after
18 prior public comment. The requirements of this Act shall
19 apply to all pending appeals or fair hearing cases (for
20 which no final decision has been entered) regarding food
21 vendor operations.

22 **SEC. 19. REGULATORY PROPOSAL.**

23 No regulations regarding the participation of vendors
24 in the program, including the proposed regulations issued
25 on December 28, 1990, shall be made final by the Secre-

1 tary until regulations issued under this Act have been pro-
2 posed for public comment.

3 **SEC. 20. DEFINITIONS.**

4 For purposes of this Act—

5 (a) "Program" or "WIC" shall mean the Sup-
6 plemental Food Program for Women, Infants and
7 Children administered by the Secretary of Agricul-
8 ture.

9 (b) "Secretary" shall mean the Secretary of Ag-
10 riculture of the United States.

11 (c) "Food vendor manager" and "food store op-
12 erator" mean the person or persons at each vendor
13 location store that is a program vendor that super-
14 vises the work of other employees and is authorized
15 to direct the activities and work assignments of em-
16 ployees at that location, and includes management
17 staff not located at the individual vendor location
18 that manage the managers or operators of that loca-
19 tion. Such definition shall not include persons who
20 are vendor employees.

21 (d) "Vendor employees" means employees work-
22 ing at food vendor locations who are not managers
23 or operators. The term shall include check-out
24 clerks, clerical workers, persons that stock shelves,
25 secretarial staff, and janitorial staff.