

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1089

Introduced by Senator Smallwood-Cuevas

February 12, 2024

~~An act relating to food injustice.~~ *An act to add Chapter 41 (commencing with Section 22949.90) to Division 8 of the Business and Professions Code, relating to food and prescription access.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1089, as amended, Smallwood-Cuevas. ~~Food injustice.~~ *Food and prescription access: grocery and pharmacy closures.*

(1) Existing law regulates the employment of workers in grocery establishments, as defined, including requiring an incumbent grocery employer, as defined, where there is a change of control, as defined, to post a public notice of the change in control at the location of the affected grocery establishment within 5 business days following the execution of the transfer document, as specified. Existing law requires the notice to include, among other specified information, the name of the incumbent grocery employer, and to be posted in a conspicuous place at the grocery establishment in a manner where it can be readily viewed by specified persons, including eligible grocery workers.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacies by the California State Board of Pharmacy. Existing law authorizes a pharmacy to furnish prescription drugs only to certain entities, including specific health care entities, and individual patients or another pharmacy either pursuant to prescription or as otherwise authorized by law. Existing law defines a pharmacy as an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded.

This bill would require a covered establishment, defined to include a grocery establishment or a pharmacy establishment, to satisfy specified requirements no later than 90 days before its closure, as defined, takes effect, including providing written notice of the closure to specified entities, including the employees of the covered establishment affected by the closure. The bill would require the written notice to include specified information, including the planned closure date of the covered establishment. The bill would exempt a covered establishment from these requirements if the closure is necessitated by a physical calamity or an act of war.

(2) Existing law authorizes an aggrieved employee of a grocery establishment or their representative, as described, to bring an action, as specified, for violations of the above-described change of control provisions to recover, among other awards, reasonable attorney's fees and costs, if specified requirements are met, including that the employee provided written notice to the employer of the violations, as specified. Existing law also authorizes a civil penalty not to exceed \$100 against, among other specified entities, the grocery employer for each employee whose rights are violated under those provisions. Existing law also authorizes an additional amount of \$100 per employee payable as liquidated damages for each day of the violation until the violation is cured, as specified, and authorizes that amount to be recovered by the Labor Commissioner, as specified, and paid to the employee as compensatory damages.

This bill would authorize a civil penalty not to exceed \$10,000 for each violation to be assessed and collected in a civil action against a covered establishment that violates the above-described written notice provisions brought by specified persons or entities, including any person injured by the violation. The bill would authorize the court, in assessing the amount of the civil penalty, to consider relevant circumstances, including the nature and severity of the misconduct, and require the court to award a prevailing plaintiff reasonable attorneys' fees and costs. The bill would require, if the action is pursued by specified entities, including the Attorney General, that specified portions of the civil penalty collected be paid to, among other specified sources, the treasurer of the county in which the judgment was entered. The bill would entitle an employee that does not receive the written notice to recover in a civil action an additional sum of \$100 payable as liquidated damages per employee for each day of the violation until the violation is cured. The bill would specify that these provisions do not preempt

or alter any other rights or remedies, including any causes of action, available under any other federal or state law.

(3) Existing law, the California Workforce Innovation and Opportunity Act, establishes local workforce development boards to perform duties related to the planning, oversight, and evaluation of local workforce investment, including identifying workforce training programs.

This bill would require a county, after receiving a written notice described above from any covered establishment, to provide the covered establishment with information about safety net programs, including the CalWORKs program, and would require a local workforce development board to provide the covered establishment with information about the availability of local workforce training services. The bill would also require the covered establishment, no later than 30 days before its closure, to provide any of that information it receives to each of its employees. By increasing the duties of a county and a local workforce development board, the bill would impose a state-mandated local program.

(4) Existing law provides for various public social services programs in the state, which are administered by the State Department of Social Services, including the CalFresh program, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county, and the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing law requires that any benefits provided to recipients under the department's authority be distributed through an electronic benefits transfer system, as specified.

This bill would require the department, after receiving a written notice described above from a grocery establishment, to post on its internet website, as specified, information stating that the grocery establishment will be closing and the closing date. The bill would require a county to, among other specified duties, track the grocery establishment closures in its jurisdiction. By creating new duties for a county, the bill would impose a state-mandated local program.

(5) This bill would make findings and declarations relating to these provisions.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law provides for various food-related services and benefits, including the CalFresh program, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county, and the CalFood Program, under which food and funding is provided to food banks whose primary function is to facilitate the distribution of food to low-income households.~~

~~This bill would state that it is the intent of the Legislature to enact legislation addressing food injustice.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

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

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) African American households disproportionately experience*
- 4 *food insecurity.*
- 5 *(b) African American communities also disproportionately*
- 6 *experience highly limited access to affordable and nutritious food,*
- 7 *and are often inundated with unhealthy options like sugary drinks*
- 8 *and processed or fast food.*
- 9 *(c) Redlining, bolstered by other government and*
- 10 *government-enabled discrimination, is a central cause of this food*
- 11 *injustice.*
- 12 *(d) One of the harms facing African American communities in*
- 13 *California is the lack of access to grocery stores and supermarkets.*
- 14 *White neighborhoods on average have four times as many*
- 15 *supermarkets as predominantly African American communities,*
- 16 *which typically are smaller and have less of a selection than White*
- 17 *neighborhoods.*
- 18 *(e) Advance notification of grocery store closures is needed*
- 19 *because many low-income Californians are suffering and losing*
- 20 *access to healthy and affordable food. Low-income Californians*

1 *need to be made aware of a closure ahead of time, and need to be*
2 *informed of comparable services in the local area.*

3 *(f) According to the California Association of Food Banks, 23*
4 *percent of California households overall and 28 percent of*
5 *California households with children face food insecurity.*

6 *(g) Food insecurity is described as the occasional or constant*
7 *lack of access to the food one needs for a healthy, active life.*
8 *Because of vast structural inequities, much higher levels of food*
9 *insecurity are experienced by Black and Latino California*
10 *households, with White California households experiencing food*
11 *insecurity at rates lower than the general population.*

12 *(h) Black and Latino neighborhoods in the 30 most populous*
13 *American cities have fewer pharmacies than White or diverse*
14 *neighborhoods. “Pharmacy deserts,” which are similar to “food*
15 *deserts,” are an often overlooked contributor to persistent racial*
16 *and ethnic health disparities.*

17 *(i) In order to remedy the harms from abrupt disruptions in*
18 *access to food, prescriptions, and other household goods, the*
19 *California Reparations Task Force recommends requiring advance*
20 *notifications to the affected community, employees, and other*
21 *stakeholders before the closure of a grocery store or pharmacy to*
22 *ensure that community members are able to locate healthy and*
23 *affordable food in the surrounding community and that employees*
24 *are equipped with the resources necessary to gain employment*
25 *elsewhere.*

26 *SEC. 2. Chapter 41 (commencing with Section 22949.90) is*
27 *added to Division 8 of the Business and Professions Code, to read:*

28

29 *CHAPTER 41. GROCERY AND PHARMACY ESTABLISHMENT*
30 *CLOSURES*

31

32 *22949.90. For purposes of this chapter, the following*
33 *definitions apply:*

34 *(a) “Covered establishment” includes a grocery establishment*
35 *or a pharmacy establishment.*

36 *(1) “Grocery establishment” means a retail store operating in*
37 *this state that meets both of the following requirements:*

38 *(A) The retail store sells primarily household foodstuffs for*
39 *offsite consumption, including, but not limited to, the sale of fresh*

1 *produce, meats, poultry, fish, deli products, dairy products, canned*
2 *foods, dry foods, beverages, baked foods, or prepared foods.*

3 *(B) The sale of any other household supplies or other products*
4 *by the retail store is secondary to the primary purpose of food*
5 *sales.*

6 *(2) “Pharmacy establishment” means a pharmacy as defined*
7 *in Section 4037 that meets both of the following requirements:*

8 *(A) The pharmacy is a chain or independent pharmacy as*
9 *defined in Section 4001.*

10 *(B) The pharmacy is open to the public.*

11 *(b) “Closure” means the cessation or substantial cessation of*
12 *industrial or commercial operations by a covered establishment.*

13 *22949.91. (a) A covered establishment shall, no later than 90*
14 *days before a closure of the covered establishment takes effect,*
15 *perform all of the following acts:*

16 *(1) Provide written notice of the closure to all of the following*
17 *persons or entities:*

18 *(A) The employees of the covered establishment affected by the*
19 *closure and their authorized representatives.*

20 *(B) The Employment Development Department.*

21 *(C) The State Department of Social Services.*

22 *(D) The local workforce development board of any city and*
23 *county government within which the covered establishment is*
24 *located.*

25 *(E) The chief elected official of each city and county government*
26 *within which the covered establishment is located.*

27 *(F) The local human services departments of each county*
28 *government within which the covered establishment is located.*

29 *(2) Post a written notice of the closure in a conspicuous location*
30 *at the entrance to the covered establishment’s premises that*
31 *includes a link to, or a quick response (QR) code that links to, a*
32 *page on the State Department of Social Services’ internet website*
33 *that outlines the requirements of this subdivision.*

34 *(3) Provide a written notice of the closure in any other form in*
35 *which the covered establishment regularly communicates or*
36 *advertises to its customers, including, but not limited to, text*
37 *message, email, or advertisements of general circulation.*

38 *(b) (1) A written notice by a covered establishment described*
39 *in subdivision (a) shall include, but not be limited to, the following*
40 *information:*

- 1 (A) *The planned closure date of the covered establishment.*
- 2 (B) *The reasons for the closure of the covered establishment.*
- 3 (C) *The names, addresses, and contact information of the three*
- 4 *nearest covered establishments that provide comparable services*
- 5 *to the covered establishment.*

6 (2) *A written notice by a pharmacy establishment shall also*
7 *include the name, address, and contact information of the*
8 *pharmacy where any prescriptions will be transferred and*
9 *information regarding the process of transferring the prescription*
10 *to a pharmacy of the consumer's choosing.*

11 (c) *Notwithstanding the requirements of this section, a covered*
12 *establishment shall not be required to provide written notice if a*
13 *closure is necessitated by a physical calamity or an act of war.*

14 (d) (1) *A covered establishment that violates this section shall*
15 *be subject to a civil penalty not to exceed ten thousand dollars*
16 *(\$10,000) for each violation, to be assessed and collected in a civil*
17 *action brought by any person injured by the violation or in a civil*
18 *action brought in the name of the people of the State of California*
19 *by the Attorney General, a district attorney, or a city attorney*
20 *where the covered establishment was located.*

21 (A) *In assessing the amount of the civil penalty, the court may*
22 *consider relevant circumstances presented by the parties to the*
23 *case, including, but not limited to, the following circumstances:*

- 24 (i) *The nature and severity of the misconduct.*
- 25 (ii) *The number of violations.*
- 26 (iii) *The length of time over which the misconduct occurred,*
- 27 *and the persistence of the misconduct.*
- 28 (iv) *The willfulness of the misconduct.*
- 29 (v) *The defendant's assets, liabilities, and net worth.*

30 (B) (i) *If the Attorney General brings the action, one-half of*
31 *the civil penalty collected shall be paid to the treasurer of the*
32 *county in which the judgment was entered, and one-half shall be*
33 *paid to the General Fund.*

34 (ii) *If a district attorney brings the action, the civil penalty*
35 *collected shall be paid to the treasurer of the county in which the*
36 *judgment was entered.*

37 (iii) *If a city attorney brings the action, one-half of the civil*
38 *penalty collected shall be paid to the treasurer of the city in which*
39 *the judgment was entered, and one-half shall be paid to the*
40 *treasurer of the county in which the judgment was entered.*

1 (C) The court shall grant a prevailing plaintiff reasonable
2 attorneys' fees and costs.

3 (2) An employee that does not receive written notice by a
4 covered establishment in violation of this section is entitled to
5 recover in a civil action an additional sum payable as liquidated
6 damages in the amount of one hundred dollars (\$100) per employee
7 for each day the rights of an employee under this section are
8 violated and continuing until the violation is cured.

9 (e) This section does not preempt or alter any other rights or
10 remedies, including any causes of action, available under any
11 other federal or state law.

12 22949.92. (a) (1) After receiving a written notice described
13 in Section 22949.91 from a covered establishment, the county in
14 which that covered establishment is located shall provide the
15 covered establishment with information about safety net programs,
16 including, but not limited to, unemployment insurance, the
17 CalWORKs program, the CalFresh program, and the Medi-Cal
18 program. The local workforce development board of the county
19 in which that covered establishment is located shall provide the
20 covered establishment with information about the availability of
21 local workforce training services.

22 (2) The covered establishment shall, no later than 30 days before
23 a closure of the covered establishment takes effect, provide any
24 information that it receives from the county and local workforce
25 development board to each employee of the covered establishment.

26 (b) After receiving a written notice described in Section
27 22949.91 from a grocery establishment, the State Department of
28 Social Services shall post on its internet website for the electronic
29 benefits transfer system, established pursuant to Section 10071 of
30 the Welfare and Institutions Code, that lists the stores that accept
31 the CalFresh program's benefits information stating that the
32 grocery establishment is closing and the closure date.

33 (c) Each county that receives a written notice described in
34 Section 22949.91 shall track and monitor all of the following:

- 35 (1) Any grocery establishment closures in its jurisdiction.
36 (2) Identify any trends in grocery establishment closures.
37 (3) Address reasons for the closures if findings suggest the
38 possible need for intervention by the county.

39 SEC. 3. If the Commission on State Mandates determines that
40 this act contains costs mandated by the state, reimbursement to

1 *local agencies and school districts for those costs shall be made*
2 *pursuant to Part 7 (commencing with Section 17500) of Division*
3 *4 of Title 2 of the Government Code.*

4 ~~SECTION 1. It is the intent of the Legislature to enact~~
5 ~~legislation addressing food injustice.~~

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