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SB-1089 Food and prescription access: grocery and pharmacy closures. (2023-2024)

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Senate Bill No. 1089

CHAPTER 625

An act to add Chapter 42 (commencing with Section 22949.92) to Division 8 of the Business and Professions Code, relating to food and prescription access.

[Approved by Governor September 26, 2024. Filed with Secretary of State September 26, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1089, Smallwood-Cuevas. 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 45 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 and their authorized representatives if the covered establishment employs more than 5 employees, and the Employment Development Department. The bill would require, notwithstanding that provision, a covered establishment that employs 5 or fewer employees to, no later than 30 days before a closure of the covered establishment takes effect, provide written notice of the closure to the employees of the covered establishment affected by the closure. The bill would exempt, notwithstanding the same provision, specified covered establishments, including a covered establishment that, among other things, is a pharmacy and is owned by a person or entity who owns 15 or fewer pharmacies nationwide, from providing written notice to specified persons and entities, including the Employment Development Department. The bill would exempt a covered establishment from these requirements if specified circumstances apply, including that the closure is necessitated by a physical calamity or an act of war, except as specified.

(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 closure 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, except as specified. The bill would require 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 attorney's 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, as specified. 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, except as specified.

(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 local workforce development board of the county in which the covered establishment is located 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 safety net programs and the availability of local workforce training services. The bill would require a covered establishment that receives information from a county or a local workforce development board as described above, 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.

This bill would require the department, after receiving a written notice described above from a grocery establishment, to transmit to the Food and Nutrition Service of the United States Department of Agriculture information stating that the grocery establishment will be closing and the closing date.

(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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) African American households disproportionately experience food insecurity.

(b) African American communities also disproportionately experience highly limited access to affordable and nutritious food, and are often inundated with unhealthy options like sugary drinks and processed or fast food.

(c) Redlining, bolstered by other government and government-enabled discrimination, is a central cause of this food injustice.

(d) One of the harms facing African American communities in California is the lack of access to grocery stores and supermarkets. White neighborhoods on average have four times as many supermarkets as predominantly African American communities, which

typically are smaller and have less of a selection than White neighborhoods.

(e) According to the California Association of Food Banks, 23 percent of California households overall and 28 percent of California households with children face food insecurity.

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

(g) Black and Latino neighborhoods in the 30 most populous American cities have fewer pharmacies than White or diverse neighborhoods. "Pharmacy deserts," which are similar to "food deserts," are an often overlooked contributor to persistent racial and ethnic health disparities.

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

SEC. 2. Chapter 42 (commencing with Section 22949.92) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 42. Grocery and Pharmacy Establishment Closures

22949.92. For purposes of this chapter, the following definitions apply:

(a) (1) "Covered establishment" includes a grocery establishment or a pharmacy establishment.

(A) "Grocery establishment" means a retail store operating in this state that meets both of the following requirements:

(i) The retail store sells primarily household foodstuffs for offsite consumption, including, but not limited to, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods.

(ii) The sale of any other household supplies or other products by the retail store is secondary to the primary purpose of food sales.

(B) "Pharmacy establishment" means a pharmacy as defined in Section 4037 that meets all of the following requirements:

(i) The pharmacy is a chain community pharmacy or an independent community pharmacy as defined in Section 4001.

(ii) The pharmacy is open to the public.

(iii) The pharmacy is not owned by a health facility as defined in Section 1250 of the Health and Safety Code.

(iv) The pharmacy is not a part of a fully integrated delivery system. For purposes of this clause, a "fully integrated delivery system" means a system that includes a physician organization, health facility or health system, and a nonprofit health care service plan that provides health care services to enrollees in a specific geographic region of the state through an affiliate hospital system and an exclusive contract between the nonprofit health care service plan and a single physician organization in each geographic region to provide those medical services.

(2) Nothing in clause (iii) or (iv) of subparagraph (B) of paragraph (1) shall be construed as exempting a chain community pharmacy as defined in Section 4001 from this chapter. However, a pharmacy location owned and operated by a physician organization, health facility or health system, and a nonprofit health care service plan that is part of a fully integrated delivery system is not a store as described in Section 4001.

(b) "Closure" means the cessation or substantial cessation of industrial or commercial operations by a covered establishment.

22949.92.1. (a) A covered establishment shall, no later than 45 days before a closure of the covered establishment takes effect, perform all of the following acts:

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

(i) (I) The employees of the covered establishment affected by the closure and their authorized representatives if the covered establishment employs more than five employees.

(II) Notwithstanding any other provision of this subdivision, a covered establishment that employs five or fewer employees shall, no later than 30 days before a closure of the covered establishment takes effect, provide written

notice of the closure to the employees of the covered establishment affected by the closure.

(ii) The Employment Development Department.

(iii) The State Department of Social Services.

(iv) The local workforce development board of any city and county government within which the closure occurs.

(v) The chief elected official of each city and county government within which the closure occurs.

(vi) The California State Board of Pharmacy, if the covered establishment is a pharmacy establishment.

(B) Notwithstanding any other provision of this subdivision, a covered establishment that is a pharmacy as defined in Section 4037, is owned by a person or entity who owns 15 or fewer pharmacies nationwide, and is not a covered establishment as defined in subdivision (a) of Section 1400.5 of the Labor Code shall not be required to provide written notice pursuant to subparagraph (A) to any of the following persons or entities:

(i) The Employment Development Department.

(ii) The State Department of Social Services.

(iii) The local workforce development board of any city and county government within which the covered establishment is located.

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

(C) Notwithstanding any other provision of this subdivision, a covered establishment that is a grocery establishment as defined in subdivision (a) of Section 22949.92, is owned by a person or entity who owns 15 or fewer grocery establishments nationwide, and is not a covered establishment as defined in subdivision (a) of Section 1400.5 of the Labor Code shall not be required to provide written notice pursuant to subparagraph (A) to any of the following persons or entities:

(i) The Employment Development Department.

(ii) The local workforce development board of any city and county government within which the covered establishment is located.

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

(D) Notwithstanding any other provision of this subdivision, a covered establishment that is also a covered establishment as defined in subdivision (a) of Section 1400.5 of the Labor Code shall only be considered in compliance with the requirements of clauses (ii), (iv), and (v) of subparagraph (A) if the covered establishment provides a written notice as required and pursuant to the timeframe specified in Section 1401 of the Labor Code.

(2) (A) Post a written notice of the closure in a conspicuous location at the entrance to the covered establishment's premises that includes the planned closure date of the covered establishment.

(B) If the covered establishment is a pharmacy establishment regardless of the number of employees, the written notice described in subparagraph (A) shall also include both of the following:

(i) The name, address, and contact information of the pharmacy establishment where any prescriptions will be transferred.

(ii) The phone number, email address, or internet website where patients may obtain information regarding the process of transferring the prescription to a pharmacy establishment of the patient's choosing.

(3) Take reasonable steps to provide a written notice of the closure in at least one form other than the forms described in paragraphs (1) and (2) that is in a form in which the covered establishment regularly communicates or advertises to its consumers, if the covered establishment is a grocery establishment, or to its patients, if the covered establishment is a pharmacy establishment.

(b) Except as otherwise required under Section 1401 of the Labor Code or any other provision of the law, a covered establishment shall not be required to provide notice pursuant to this section if either of the following circumstances applies:

(1) A closure is necessitated by a physical calamity or act of war.

(2) The closure is caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required.

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

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

- (i) The nature and severity of the misconduct.
- (ii) The number of violations.
- (iii) The length of time over which the misconduct occurred, and the persistence of the misconduct.
- (iv) The willfulness of the misconduct.
- (v) The defendant's assets, liabilities, and net worth.
- (vi) The number of employees employed by the defendant.

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

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

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

(C) The court shall grant a prevailing plaintiff reasonable attorney's fees and costs.

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

(B) An employee shall only be entitled to either recover the liquidated damages provided for in this paragraph or to enforce a civil penalty as set forth in Section 1403 of the Labor Code, but not both, for the same violation.

(3) Notwithstanding any other provision of this subdivision, a person shall have no right to bring a private cause of action against a covered establishment for a violation of paragraph (3) of subdivision (a).

(d) Except as provided in subparagraph (B) of paragraph (2) of subdivision (c), this section does not preempt or alter any other rights or remedies, including any causes of action, available under any other federal or state law.

22949.92.2. (a) (1) After receiving a written notice described in Section 22949.92.1 from a covered establishment, the county in which that covered establishment is located shall provide the local workforce development board of the county in which the covered establishment is located with information about safety net programs, including, but not limited to, unemployment insurance, the CalWORKs program, the CalFresh program, and the Medi-Cal program. The local workforce development board of the county in which that covered establishment is located shall provide the covered establishment with information about safety net programs and the availability of local workforce training services.

(2) A covered establishment that receives information from a county or a local workforce development board pursuant to paragraph (1) shall, no later than 30 days before a closure of the covered establishment takes effect, provide any information that it receives from the county and local workforce development board to each employee of the covered establishment.

(b) After receiving a written notice described in Section 22949.92.1 from a grocery establishment, the State Department of Social Services shall transmit to the Food and Nutrition Service of the United States Department of Agriculture information stating that the grocery establishment is closing and the closure date.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.