

Model Bill

Formula Freedom for Families Act

AN ACT relating to improving access to infant formula through WIC by expanding competition, lowering costs, and increasing supply resiliency.

SECTION 1. SHORT TITLE.

This Act shall be known and may be cited as the “Formula Freedom for Families Act.”

(A). PURPOSE.

This Act restores a competitive infant formula market by allowing any willing infant formula manufacturer to provide FDA-approved infant formula to low-income women and infants through the state WIC program. Restoring competitive rebate pricing will drive down the cost of formula for all parents, improve supply-chain resilience, and expand consumer choice.

SECTION 2. DEFINITIONS.

For purposes of this Act:

(a) “State WIC Agency” means the state-level agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants, and Children.

(b) “Infant formula” means a food that is intended solely for infants, either as a complete or partial substitute for human milk, that has been approved for commercial sale by the U.S. Food and Drug Administration (FDA).

(c) “Infant formula manufacturer” means an entity that produces infant formula approved for commercial sale by the U.S. Food and Drug Administration.

(d) “Rebate agreement” means any negotiated discount or payment made by a formula manufacturer to the state WIC agency based on the purchase of infant formula by program participants, as required by 7 C.F.R. § 246.

(e) “Limited-form contract” means a rebate agreement between the state WIC agency and a qualified infant formula manufacturer that produces one or more, but not all, of the infant formula forms otherwise required by the agency’s standard rebate contracts.

SECTION 3. INFANT FORMULA REBATE CONTRACTS

(a) Notwithstanding any other provision of law or administrative precedent, the state WIC agency shall contract with any willing infant formula manufacturer for the infant formula rebate program, provided that:

- (1) The infant formula manufacturer meets all federal and state requirements applicable to the commercial sale of infant formula;

(2) The infant formula manufacturer agrees to provide rebate amounts to the state WIC agency that are competitive with other bids, including bids that are equal to or less than existing rebate agreements in the state;

(b) The state WIC agency shall ensure that all formulas offered by contracted manufacturers are made available to program participants without preferential restriction, including through equal treatment in agency communications, promotional materials, and guidance to WIC participants. The agency shall not advertise, promote, or otherwise give preference to one contracted manufacturer over another.

(c) The state WIC agency shall remove any requirement that infant formula manufacturers must produce and provide all available formula forms currently required by the state WIC agency (including but not limited to powder, liquid concentrate, and ready-to-feed formulas in both milk-based and soy-free forms) as a condition of rebate participation. The agency shall enter into a limited-form contract with any qualified manufacturer that produces one or more forms of formula currently required in the WIC program.

[Commentary: Allowing any willing manufacturer to participate in the rebate program means states can provide more options that drive down the cost of infant formula overall, improve supply-chain resilience, and expand consumer choice.]

[Commentary: Provision 3(c) allows smaller manufacturers to provide infant formula options in the rebate program. Smaller infant formula manufacturing companies often do not have the capacity to produce every type of formula required by a state WIC agency. Including this provision allows states to contract with a smaller manufacturer that may only produce FDA-approved milk-based powder formulas, for example. This provision is key to diversifying the current infant formula market.]

ALTERNATIVE SECTION 3. CASH VALUE BENEFIT

(a) The state WIC agency shall establish a cash value benefit voucher system that allows participants to purchase any FDA-approved infant formula products available at WIC-authorized retailers. The full value of the voucher shall be applied toward any infant formula product for which the state has an active rebate agreement.

(b) Should the recipient wish to use the WIC formula voucher on an FDA-approved formula that does not have an active rebate agreement, the voucher shall cover an amount equal to the state's rebate cost for that formula type, and the recipient shall be responsible for any remaining balance.

(1) The voucher may be used for any FDA-approved formula product, and is exempt from sales taxes.

(2) The rebate amounts and which formulas it covers shall be clearly displayed on the WIC formula voucher, whether it is issued in printed or electronic form, and shall reflect the most current rebate.

(c) The recipient shall use the WIC formula vouchers at existing WIC-authorized or EBT-authorized retailers.

(d) If a WIC-authorized retailer has a promotion, coupon, or other discount on an FDA-approved infant formula, the promotion, coupon, or discount shall be applied to the product's purchase price in conjunction with the cash value benefit.

(e) The state WIC agency shall ensure that all WIC-authorized and EBT-authorized retailers can process cash value formula benefits at the point of sale through existing WIC or EBT retailers.

(f) The state WIC agency shall ensure that the state's electronic benefits transfer (EBT) system supports the implementation of the provisions of this Act.

[Note: This section would be implemented in place of Section 3: Infant Formula Rebate Contracts. This is another option that would drive competition in the market. The benefit is that many states already implement cash-value vouchers for purchasing fruits and vegetables through WIC. Piloting a cash value benefit program in a specific geographic area is also an option. Additionally, most states exempt infant formula and other infant products from sales taxes. If the state does not exempt infant formula from sales tax, an additional section can be added to exempt it. This ensures that the cash value benefit does not need to include sales tax.]

SECTION 4. IMPLEMENTATION

(a) The state WIC agency shall implement the provisions of this Act as an alternative cost-containment system pursuant to 7 C.F.R. § 246.16a(d).

(b) The agency shall implement rebate agreements with new infant formula manufacturers by [DATE] and accept new infant formula manufacturers and rebate agreements annually.

SECTION 5. SEVERABILITY AND EFFECTIVE DATE

(a) Severability: It is the intention of the legislature that the provisions of this section shall be severable. If any provision of this section is held invalid, the remainder of the section or the application of the provision is not affected, including but not limited to the applicability of this section to the provisions of future agreements subject to this section.

(b) Effective date: This Act shall take effect upon passage and approval or as otherwise provided by law.