

114TH CONGRESS
2D SESSION

S. 2947

To establish requirements regarding quality dates and safety dates in food labeling, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2016

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish requirements regarding quality dates and safety dates in food labeling, 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 “Food Date Labeling
5 Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) As of the date of enactment of this Act,
9 date labeling practices on food packaging cause con-
10 fusion with “sell-by”, “best-by”, “use-by”, and “best

1 before” dates, leading up to 90 percent of individ-
2 uals in the United States to occasionally throw out
3 still-fresh food.

4 (2) Confusion over the meaning of date labels
5 is estimated to account for 20 percent of consumer
6 waste of safe, edible food, leading to approximately
7 \$29,000,000,000 of wasted consumer spending each
8 year.

9 (3) Consumer education and standardized date
10 labeling are the top 2 most cost-effective strategies
11 for reducing food waste, by economic value per ton
12 diverted.

13 (4) Wasted food costs consumers and industry
14 money, squanders important natural resources that
15 are used to grow, process, distribute, and store the
16 food supply of the United States, and represents a
17 missed opportunity to feed the millions of food inse-
18 cure households in the United States that are strug-
19 gling to access healthy, affordable food.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **ADMINISTERING SECRETARIES.**—The term
23 “administering Secretaries” means—

1 (A) with respect to products described in
2 paragraph (4)(A), the Secretary of Agriculture;
3 and

4 (B) with respect to products described in
5 paragraph (4)(B), the Secretary of Health and
6 Human Services.

7 (2) FOOD LABELER.—The term “food labeler”
8 means the producer, manufacturer, distributor, or
9 retailer that places a date label on food packaging
10 of a product.

11 (3) QUALITY DATE.—The term “quality date”
12 means a date voluntarily printed on food packaging
13 that is intended to communicate to consumers the
14 date after which the quality of the product may
15 begin to deteriorate, but may still be acceptable for
16 consumption.

17 (4) READY-TO-EAT PRODUCT.—The term
18 “ready-to-eat product” means—

19 (A) with respect to a product under the ju-
20 risdiction of the Secretary of Agriculture, a
21 product that—

22 (i) is in a form that is edible without
23 additional preparation to achieve food safe-
24 ty and may receive additional preparation

1 for palatability or aesthetic, epicurean,
2 gastronomic, or culinary purposes; and

3 (ii) is—

4 (I) a poultry product, as defined
5 in section 4 of the Poultry Products
6 Inspection Act (21 U.S.C. 453);

7 (II) a meat food product, as de-
8 fined in section 1 of the Federal Meat
9 Inspection Act (21 U.S.C. 601); or

10 (III) an egg product, as defined
11 in section 4 of the Egg Products In-
12 spection Act (21 U.S.C. 1033); and

13 (B) with respect to a food (as defined in
14 section 201 of the Federal Food, Drug, and
15 Cosmetic Act (21 U.S.C. 321)) under the juris-
16 diction of the Secretary of Health and Human
17 Services—

18 (i) a food that is normally eaten in its
19 raw state; or

20 (ii) any other food, including a proc-
21 essed food, for which it is reasonably fore-
22 seeable that the food will be eaten without
23 further processing that would significantly
24 minimize biological hazards.

1 (5) SAFETY DATE.—The term “safety date”
2 means a date printed on food packaging of a ready-
3 to-eat product, which signifies the end of the esti-
4 mated period of shelf life under any stated storage
5 conditions, after which the product may pose a
6 health safety risk.

7 **SEC. 4. QUALITY DATES AND SAFETY DATES.**

8 (a) QUALITY DATES.—

9 (1) IN GENERAL.—If a food labeler includes a
10 quality date on food packaging, the label shall use
11 the uniform quality date label phrase under para-
12 graph (2).

13 (2) UNIFORM PHRASE.—The uniform quality
14 date label phrase under this paragraph shall be
15 “best if used by”, unless and until the administering
16 Secretaries, acting jointly, specify through rule-
17 making another uniform phrase to be used for pur-
18 poses of complying with paragraph (1).

19 (3) OPTION OF THE LABELER.—The decision to
20 include a quality date on food packaging shall be at
21 the discretion of the food labeler.

22 (b) SAFETY DATES.—

23 (1) IN GENERAL.—The label of a ready-to-eat
24 product shall include a safety date that is imme-
25 diately preceded by the uniform safety date label

1 phrase under paragraph (2) if the ready-to-eat prod-
2 uct—

3 (A) meets the criteria described in para-
4 graph (3)(A) and is not exempt under para-
5 graph (3)(B)(ii); or

6 (B) is listed in accordance with paragraph
7 (3)(B)(i).

8 (2) UNIFORM PHRASE.—The uniform safety
9 date label phrase under this paragraph shall be ‘ex-
10 pires on’, unless and until the administering Secre-
11 taries jointly specify through rulemaking another
12 uniform phrase to be used for purposes of complying
13 with paragraph (1).

14 (3) HIGH-RISK READY-TO-EAT PRODUCTS.—

15 (A) IN GENERAL.—The administering Sec-
16 retaries, acting jointly, shall describe criteria
17 that determine what ready-to-eat products may
18 have a high level of risk associated with con-
19 sumption after a certain date, including those
20 that may be high or very high risk for *Listeria*
21 *monocytogenes* or other contaminants or patho-
22 gens causing foodborne illness.

23 (B) ADDITIONAL FOODS; EXEMPT
24 FOODS.—The administering Secretaries may,
25 with respect to the products under the jurisdic-

1 tion of the administering Secretaries, respec-
2 tively—

3 (i) list additional ready-to-eat prod-
4 ucts that are high risk, but do not meet
5 the criteria described in subparagraph (A);
6 or

7 (ii) exempt specific ready-to-eat prod-
8 ucts that meet the criteria described in
9 subparagraph (A), but do not actually pose
10 a high level of risk associated with con-
11 sumption after a certain date.

12 (C) REVIEW AND UPDATES.—Not less than
13 once every 4 years, the administering Secre-
14 taries, acting jointly, shall review and, as the
15 administering Secretaries determine appro-
16 priate, shall update—

17 (i) the criteria described in subpara-
18 graph (A); and

19 (ii) the list and exemptions described
20 in subparagraph (B).

21 (c) QUALITY DATE AND SAFETY DATE LABELING.—

22 (1) IN GENERAL.—The quality date and safety
23 date, as applicable, and immediately adjacent uni-
24 form quality date label phrase or safety date label
25 phrase shall be—

1 (A) in single easy-to-read type style using
2 upper and lower case letters in the standard
3 form;

4 (B) in a type size no smaller than 8 point;
5 and

6 (C) located in a conspicuous place on the
7 package of the food.

8 (2) DATE FORMAT.—Each quality date and
9 safety date shall be stated in terms of day and
10 month and, as appropriate, year.

11 (d) GUIDANCE.—The Commissioner of Food and
12 Drugs and the Secretary of Agriculture shall establish
13 guidance for food labelers on how to determine quality
14 dates and safety dates for food products.

15 (e) SALE OR DONATION AFTER QUALITY DATE.—No
16 one shall prohibit the sale, donation, or use of any product
17 after the quality date for the product has passed.

18 (f) EDUCATION.—Not later than 1 year after the date
19 of enactment of this Act, the administering Secretaries,
20 acting jointly, shall provide consumer education and out-
21 reach on the meaning of quality date and safety date food
22 labels.

23 (g) RULE OF CONSTRUCTION; PREEMPTION.—

24 (1) RULE OF CONSTRUCTION.—Nothing in this
25 section shall be construed to prohibit any State or

1 political subdivision of a State from establishing or
2 continuing in effect any requirement that prohibits
3 the sale or donation of foods based on passage of the
4 safety date.

5 (2) PREEMPTION.—No State or political sub-
6 division of a State may establish or continue in ef-
7 fect any requirement that—

8 (A) relates to the inclusion in food labeling
9 of a quality date or a safety date that is dif-
10 ferent from or in addition to, or that is other-
11 wise not identical with, the requirements under
12 this section; or

13 (B) prohibits the sale or donation of foods
14 based on passage of the quality date.

15 (3) ENFORCEMENT.—The administering Secre-
16 taries, acting jointly and in coordination with the
17 Federal Trade Commission, shall ensure that the
18 uniform quality date label phrase and uniform safety
19 date label phrase are standardized across all food
20 products.

21 (4) SAVINGS.—Nothing in this Act, nor any
22 amendment made by this Act, nor any standard or
23 requirement imposed pursuant to this Act shall be
24 construed to preempt, displace, or supplant any
25 State or Federal common law rights or any State or

1 Federal statute creating a remedy for civil relief, in-
2 cluding those for civil damage, or a penalty for
3 criminal conduct.

4 (h) TIME TEMPERATURE INDICATOR LABELS.—
5 Nothing in this section shall be construed to prohibit or
6 restrict the use of time-temperature indicator labels or
7 similar technology that is consistent with the requirements
8 of this Act.

9 (i) DELAYED APPLICABILITY.—This section shall
10 apply only with respect to food products that are labeled
11 on or after a date that is 2 years after the date of enact-
12 ment of this Act.

13 **SEC. 5. MISBRANDING VIOLATION FOR QUALITY DATES**
14 **AND SAFETY DATES IN FOOD LABELING.**

15 (a) FDA VIOLATIONS.—Section 403 of the Federal
16 Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amend-
17 ed by adding at the end the following:

18 “(z) if its labeling is in violation of section 4 of the
19 Food Date Labeling Act of 2016 (relating to quality dates
20 and safety dates).”.

21 (b) POULTRY PRODUCTS.—Section 4(h) of the Poul-
22 try Products Inspection Act (21 U.S.C. 453(h)) is amend-
23 ed—

24 (1) in paragraph (11), by striking “or” at the
25 end;

1 (2) in paragraph (12), by striking the period at
2 the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(13) if it does not bear a label in accordance
5 with section 4 of the Food Date Labeling Act of
6 2016.”.

7 (c) MEAT PRODUCTS.—Section 1(n) of the Federal
8 Meat Inspection Act (21 U.S.C. 601(n)) is amended—

9 (1) in paragraph (11), by striking “or” at the
10 end;

11 (2) in paragraph (12), by striking the period at
12 the end and inserting “; or”; and

13 (3) by adding at the end the following:

14 “(13) if it does not bear a label in accordance
15 with section 4 of the Food Date Labeling Act of
16 2016.”.

17 (d) EGG PRODUCTS.—Section 7(b) of the Egg Prod-
18 ucts Inspection Act (21 U.S.C. 1036(b)) is amended in
19 the first sentence by adding before the period at the end
20 “or if it does not bear a label in accordance with section
21 4 of the Food Date Labeling Act of 2016”.

22 **SEC. 6. REPORT TO CONGRESS.**

23 Not later than 5 years after the date of enactment
24 of this Act, the administering Secretaries, acting jointly,
25 shall report to the appropriate committees of Congress on

1 the progress in the reduction of food waste that can be
2 attributed to the standardization of food date labeling and
3 consumer education required by this Act and the amend-
4 ments made by this Act.

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