

117TH CONGRESS
1ST SESSION

S. 3324

To establish requirements for quality and discard dates that are, at the option of food labelers, included in food packaging, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2021

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 for quality and discard dates that are, at the option of food labelers, included in food packaging, 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 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTERING SECRETARIES.—The term
9 “administering Secretaries” means—

1 (A) the Secretary of Agriculture, with re-
2 spect to any product that is—

3 (i) under the jurisdiction of the Sec-
4 retary of Agriculture; and

5 (ii)(I) a poultry product (as defined in
6 section 4 of the Poultry Products Inspec-
7 tion Act (21 U.S.C. 453));

8 (II) a meat food product (as defined
9 in section 1 of the Federal Meat Inspection
10 Act (21 U.S.C. 601)); or

11 (III) an egg product (as defined in
12 section 4 of the Egg Products Inspection
13 Act (21 U.S.C. 1033)); and

14 (B) the Secretary of Health and Human
15 Services, with respect to any product that is—

16 (i) under the jurisdiction of the Sec-
17 retary of Health and Human Services; and

18 (ii) a food (as defined in section 201
19 of the Federal Food, Drug, and Cosmetic
20 Act (21 U.S.C. 321)).

21 (2) DISCARD DATE.—The term “discard date”
22 means a date voluntarily printed on food packaging
23 that signifies the end of the estimated period of shelf
24 life under any stated storage conditions, after which

1 the food labeler advises the product not be con-
 2 sumed.

3 (3) FOOD LABELER.—The term “food labeler”
 4 means the producer, manufacturer, distributor, or
 5 retailer that places a date label on food packaging
 6 of a product.

7 (4) QUALITY DATE.—The term “quality date”
 8 means a date voluntarily printed on food packaging
 9 that is intended to communicate to consumers the
 10 date after which—

11 (A) the quality of the product may begin
 12 to deteriorate; but

13 (B) the product remains apparently whole-
 14 some food (as defined in subsection (b) of the
 15 Bill Emerson Good Samaritan Food Donation
 16 Act (42 U.S.C. 1791(b))).

17 **SEC. 3. QUALITY DATES AND DISCARD DATES.**

18 (a) QUALITY DATES.—

19 (1) IN GENERAL.—If a food labeler includes a
 20 quality date on food packaging, the label shall use
 21 the uniform quality date label phrase under para-
 22 graph (2).

23 (2) UNIFORM PHRASE.—The uniform quality
 24 date label phrase under this paragraph shall be
 25 “BEST If Used By” or, if permissible under sub-

1 section (c)(3), the standard abbreviation of “BB”,
 2 unless and until the administering Secretaries, act-
 3 ing jointly, specify through rulemaking another uni-
 4 form phrase to be used for purposes of complying
 5 with paragraph (1).

6 (3) OPTION OF THE LABELER.—The decisions
 7 on whether to include a quality date on food pack-
 8 aging and which foods should be so labeled shall be
 9 at the discretion of the food labeler.

10 (b) DISCARD DATES.—

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

15 (2) UNIFORM PHRASE.—The uniform discard
 16 date label phrase under this paragraph shall be
 17 “USE By” or, if permissible under subsection
 18 (c)(3), the standard abbreviation of “UB”, unless
 19 and until the administering Secretaries, acting joint-
 20 ly, specify through rulemaking another uniform
 21 phrase to be used for purposes of complying with
 22 paragraph (1).

23 (3) OPTION OF THE LABELER.—The decisions
 24 on whether to include a discard date on food pack-

1 aging and which foods should be so labeled shall be
2 at the discretion of the food labeler.

3 (c) QUALITY DATE AND DISCARD DATE LABEL-
4 ING.—

5 (1) IN GENERAL.—The quality date or discard
6 date, as applicable, and immediately adjacent uni-
7 form quality date label phrase or discard date label
8 phrase—

9 (A) shall be—

10 (i) in single easy-to-read type style;

11 and

12 (ii) located in a conspicuous place on
13 the package of the food; and

14 (B) may be on the label or, at the discre-
15 tion of the food labeler, elsewhere on the pack-
16 age.

17 (2) DATE FORMAT.—Each quality date and dis-
18 card date shall be stated in terms of day and month
19 and, as appropriate, year.

20 (3) ABBREVIATIONS.—A food labeler may use a
21 standard abbreviation of “BB” and “UB” for the
22 quality date and discard date, respectively, only if
23 the food packaging is too small to include the uni-
24 form phrase described in subsection (a)(2) or (b)(2),
25 as applicable.

1 (4) FREEZE BY.—A food labeler may add “or
2 Freeze By” following a quality date or discard date
3 uniform phrase.

4 (d) EDUCATION.—Not later than 1 year after the
5 date of enactment of this Act, the administering Secre-
6 taries, acting jointly, shall provide consumer education
7 and outreach on the meaning of quality date and discard
8 date food labels.

9 (e) EFFECT; PREEMPTION.—

10 (1) EFFECT ON SALE OR DONATION OF
11 FOODS.—Nothing in this Act or an amendment
12 made by this Act prohibits any State or political
13 subdivision of a State from establishing or con-
14 tinuing in effect any requirement that prohibits the
15 sale or donation of foods based on passage of the
16 discard date.

17 (2) EFFECT ON INFANT FORMULA.—Nothing in
18 this Act or an amendment made by this Act—

19 (A) applies with respect to infant formula
20 (as defined in section 201 of the Federal Food,
21 Drug, and Cosmetic Act (21 U.S.C. 321)); or

22 (B) affects the requirements relating to in-
23 fant formula under section 412 of the Federal
24 Food, Drug, and Cosmetic Act (21 U.S.C.
25 350a) or any other applicable provision of law.

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

4 (A) relates to the inclusion in food labeling
5 of a quality date or a discard date that is dif-
6 ferent from or in addition to, or that is other-
7 wise not identical with, the requirements of this
8 Act and the amendments made by this Act; or

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

11 (4) ENFORCEMENT.—The administering Secre-
12 taries, acting jointly and in coordination with the
13 Federal Trade Commission, shall ensure that the
14 uniform quality date label phrase and uniform dis-
15 card date label phrase are standardized across all
16 food products.

17 (5) SAVINGS.—Notwithstanding paragraph (3),
18 nothing in this Act, any amendment made by this
19 Act, or any standard or requirement imposed pursu-
20 ant to this Act preempts, displaces, or supplants any
21 State or Federal common law rights or any State or
22 Federal statute creating a remedy for civil relief, in-
23 cluding a remedy for civil damage, or a penalty for
24 criminal conduct.

1 (f) TIME TEMPERATURE INDICATOR LABELS.—
 2 Nothing in this Act or an amendment made by this Act
 3 prohibits or restricts the use of time-temperature indicator
 4 labels or similar technology that is in addition to or in
 5 lieu of any uniform quality date label phrase under sub-
 6 section (a)(2) or uniform discard date label phrase under
 7 subsection (b)(2).

8 **SEC. 4. MISBRANDING.**

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

12 “(z) If it is food and its labeling is in violation of
 13 section 3 of the Food Date Labeling Act of 2021.”.

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

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

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

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

22 “(13) if its labeling is in violation of section 3
 23 of the Food Date Labeling Act of 2021.”.

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

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

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

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

6 “(13) if its labeling is in violation of section 3
7 of the Food Date Labeling Act of 2021.”.

8 (d) EGG PRODUCTS.—Section 7(b) of the Egg Prod-
9 ucts Inspection Act (21 U.S.C. 1036(b)) is amended in
10 the first sentence by inserting “or if its labeling is in viola-
11 tion of section 3 of the Food Date Labeling Act of 2021”
12 before the period at the end.

13 **SEC. 5. REGULATIONS.**

14 Not later than 2 years after the date of enactment
15 of this Act, the administering Secretaries, acting jointly,
16 shall promulgate final regulations for carrying out this Act
17 and the amendments made by this Act.

18 **SEC. 6. DELAYED APPLICABILITY.**

19 This Act and the amendments made by this Act shall
20 apply only with respect to food products that are labeled
21 on or after the date that is 2 years after the date of pro-
22 mulgation of final regulations under section 5.

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