

SENATE, No. 336

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Establishes standards for food date labeling; requires Commissioner of Health to establish public education program and promulgate guidelines related to food safety.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning food date labels, supplementing Title 24 of the
2 Revised Statutes, and amending P.L.1964, c.62.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) As used in sections 1 through 6 of
8 P.L. , c. (C.) (pending before the Legislature as this bill):
9 "Elevated-risk date" means the date, established by the
10 manufacturer, indicated on the packaging or container of food after
11 which there is a high level of risk associated with the consumption
12 of the food.

13 "Food" shall have the same meaning as provided in section 2 of
14 P.L.1982, c.178 (C.24:4A-2), but shall exclude alcoholic beverages.

15 "Quality date" means a date, established by the manufacturer,
16 indicated on the packaging or container of food after which the
17 quality of the food may begin to deteriorate, but is still acceptable
18 for consumption.

19 "Time/temperature control for safety food" means food that
20 requires time/temperature control for safety in accordance with the
21 United States Food and Drug Administration Food Code, as
22 published in 2013, to limit pathogenic microorganism growth or
23 toxin formation.

24

25 2. (New section) a. If a food manufacturer or retail food
26 facility chooses to include a quality date on food sold or offered for
27 sale in the State, the quality date shall be displayed in accordance
28 with this section.

29 b. The quality date shall:

30 (1) be displayed with the uniform phrase "BEST if Used By";
31 and

32 (2) be expressed by the first three letters of the month, followed
33 by the numerals designating the appropriate calendar day and year,
34 or by expressing the calendar month numerically followed by
35 numerals designating the calendar day and year.

36 c. This section shall not prohibit or be construed to discourage
37 the sale, donation, or use of food after the food's quality date has
38 passed.

39 d. A retail food facility shall not be liable for a manufacturer's
40 failure to properly label food in accordance with this section.

41

42 3. (New section) a. A food manufacturer may include an
43 elevated-risk date on a time/temperature control for safety food sold
44 or offered for sale in the State.

45 b. An elevated-risk date on food shall:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (1) be displayed with the uniform phrase "USE By"; and
2 (2) be expressed by the first three letters of the month, followed
3 by the numerals designating the appropriate calendar day and year,
4 or by expressing the calendar month numerically followed by
5 numerals designating the calendar day and year.
- 6 c. A retail food facility shall not be liable for a manufacturer's
7 failure to properly label food in accordance with this section.
- 8 d. A retail food facility shall not sell or donate food after the
9 food's elevated-risk date.
- 10 e. The Commissioner of Health may determine whether:
11 (1) additional foods shall be designated as time/temperature
12 control for safety foods;
13 (2) foods shall be exempt from designation as time/temperature
14 control for safety foods.
- 15 The Commissioner of Health shall post any determinations made
16 pursuant to this subsection on the Department of Health's Internet
17 website.
- 18
- 19 4. (New section) a. A retail food facility shall not sell or offer
20 for sale food that is labeled with a "sell-by" date, or any date that is
21 intended to communicate primarily to a distributor or retailer for
22 purposes of stock rotation and that is not a quality date or an
23 elevated-risk date.
- 24 b. This section shall not prohibit the use of sell-by dates that
25 are presented in a coded format that is not easily readable by
26 consumers.
- 27
- 28 5. (New section) The Commissioner of Health shall establish a
29 program to educate the public on food date labeling. The program
30 shall include a public information campaign disseminating
31 information about the meaning of date labels and educating
32 consumers on how to handle food properly and when it can safely
33 be consumed. This information shall distinguish between quality
34 date labels that measure quality and elevated-risk date labels that
35 indicate safety in order to reduce mistaken reliance on quality labels
36 for judgments of food safety risk.
- 37
- 38 6. (New section) The Commissioner of Health, pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
40 1 et seq.), shall adopt rules and regulations to effectuate the
41 purposes of this act.
- 42
- 43 7. Section 23 of P.L.1964, c.62 (C.24:10-57.23) is amended to
44 read as follows:
- 45 23. Containers of milk, certified milk, Vitamin D milk,
46 homogenized milk, low fat milk, protein fortified low fat milk, skim
47 milk, protein fortified skim milk, nonfat milk, protein fortified
48 nonfat milk, flavored milks and dairy drinks, buttermilk, cultured

1 buttermilk, yogurt, eggnog, creams, half-and-half and all other fluid
2 milk products designated by the department shall be marked with
3 the name and address of the processor or the pasteurizing plant
4 number as assigned by the department or the state of origin and the
5 name and address of the distributor. All containers of fluid milk
6 products, including those mentioned above, intended for sale to
7 consumers, (except for those products which are sterilized and
8 packaged in hermetically sealed containers), shall be **marked with**
9 a legend "NOT TO BE SOLD AFTER" , or "SELL BY" , or any
10 other clearly understandable legend approved by the department,
11 followed or accompanied by the first three letters of the month
12 where possible, but in no instance less than two letters, or numerical
13 designation approved by the department to designate the month and
14 the day of the month which shall be a date established by the
15 processor and which shall be based on consideration of
16 wholesomeness and consumer palatability of the product. If two
17 letters are used the letters MR shall mean MARCH and MY shall
18 mean MAY; JN shall mean JUNE and JL shall mean JULY. No
19 fluid milk product listed in this section shall be sold or offered for
20 sale after 11:59 p.m. of the date appearing on the containers so
21 marked.

22 The processor, prior to determining the date beyond which any
23 such fluid milk product may not be sold or offered for sale, shall
24 notify the department of the intended "shelf-life expiration date"
25 selected by him for such fluid milk product intended for sale. All
26 data and material used by the processor or manufacturer in his
27 determination of this date shall be made available to the
28 commissioner upon request. If the data and material submitted does
29 not, in the opinion of the commissioner, justify the "shelf-life
30 expiration date", the commissioner shall prohibit the sale of the
31 product until such time as satisfactory data is supplied or until a
32 new "shelf-life expiration date" consistent with the data is applied
33 to the product. **labeled with a quality date, in accordance with**
34 P.L. , c. (C.) (pending before the Legislature as this bill).

35 The department shall periodically review the keeping quality of
36 milk and milk products by scientific **shelf-life** tests, recognizing
37 the different methods of pasteurization, processing and packaging,
38 to determine that **shelf-life expiration** quality dates stated on the
39 containers assure the consumer of acceptable quality milk and milk
40 products when kept under normal storage conditions. Samples for
41 **shelf-life** quality evaluation will be obtained at the processing
42 plant, from delivery trucks or from retail outlets. The temperature
43 of the sample at the time of collection shall be officially recorded
44 by the collector. Nothing herein contained shall be construed to
45 prohibit the department from taking special samples for analysis
46 and making special tests in order to assure all milk and milk
47 products comply with the minimum standards of freshness, quality

1 and palatability. In the event the department determines a
2 processor's or a manufacturer's **【shelf-life】** quality date for a given
3 product is improper, the department shall immediately take such
4 samples as are necessary for full and complete recheck of the
5 **【shelf-life】** quality date of the product. If the full and complete
6 recheck confirms that the **【shelf-life】** quality date of the product is
7 improper, the department shall serve written notice on the processor
8 or manufacturer and the processor or manufacturer immediately
9 upon receipt of **【such】** the notice shall alter the **【shelf-life**
10 **expiration】** quality date of the product to comply with the
11 department findings. Compliance shall be with the next processing
12 of the product after receipt of **【such】** the department notice. This
13 rule **【does】** shall not apply to containers of fluid milk products
14 which are not to be sold in the State of New Jersey.

15 As used in this section, “quality date” shall have the same
16 meaning as provided in section 1 of P.L. , c. (C.) (pending
17 before the Legislature as this bill).
18 (cf: P.L.1992, c.151, s.1)
19

20 8. This act shall take effect on July 1, 2019, except that the
21 Commissioner of Health may take any anticipatory administrative
22 action in advance of this date as may be necessary for the
23 implementation of this act. This act shall become inoperative if a
24 federal food labeling standard that preempts this act is adopted and
25 becomes effective.
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STATEMENT

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31 This bill would establish standards for food date labeling and
32 require the Department of Health to establish a public education
33 program and guidelines related to food safety.

34 Under the bill, a manufacturer may use food date labeling, but is
35 required, if food date labels are used, to follow the labeling
36 standards provided in the bill. A food date label may indicate
37 either: (1) a “quality date” to indicate the date after which the
38 quality of food may begin to deteriorate, but is still acceptable for
39 consumption; or (2) an “elevated-risk date” to indicate the date,
40 established by the manufacturer, after which there is a high level of
41 risk associated with the consumption of a “time/temperature control
42 for safety food.” The bill defines a “time/temperature control for
43 safety food” as a food that requires time/temperature control for
44 safety, in accordance with the 2013 United States Food and Drug
45 Administration Food Code, to limit pathogenic microorganism
46 growth or toxin formation. Quality dates would be displayed with
47 the uniform phrase “BEST if Used By” and elevated-risk dates
would be displayed with the uniform phrase “USE By.”

1 Under the bill, a retail food facility would not be liable for a
2 manufacturer's failure to properly label food in accordance with the
3 bill. Nothing in the bill would prohibit the sale, donation, or use of
4 food after the food's quality date has passed. However, a retail
5 food facility would be prohibited from selling or donating food after
6 its elevated-risk date. A retailer would also be prohibited from
7 selling food labeled with a "sell-by" date, or any date that is
8 intended to communicate primarily to a distributor or retailer for
9 purposes of stock rotation and that is not a quality date or an
10 elevated-risk date, unless the date is in a coded format not easily
11 readable by consumers.

12 The bill would also change the labeling requirements that must
13 be used for fluid milk products from "sell by" or "not to be sold
14 after" to a quality date label as described above. Alcoholic
15 beverages would be exempt from the bill's provisions.

16 The bill allows the Department of Health to designate additional
17 foods as time/temperature control for safety foods, or exempt foods
18 from the designation. The department would post this information
19 on its Internet website.

20 The bill would also require the establishment of a public
21 education program, which would include a public information
22 campaign about the meaning of date labels, and educating
23 consumers on how to handle food properly and when it can safely
24 be consumed.