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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Food Date Labeling Act of 2016”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As of the date of enactment of this Act, date labeling practices on food packaging cause confusion with “sell-by”, “best-by”, “use-by”, and “best
before” dates, leading up to 90 percent of individuals in the United States to occasionally throw out still-fresh food.

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

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

(4) Wasted food costs consumers and industry money, squanders important natural resources that are used to grow, process, distribute, and store the food supply of the United States, and represents a missed opportunity to feed the millions of food insecure households in the United States that are struggling to access healthy, affordable food.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTERING SECRETARIES.—The term “administering Secretaries” means—
(A) with respect to products described in paragraph (4)(A), the Secretary of Agriculture; and

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

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

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

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

(A) with respect to a product under the jurisdiction of the Secretary of Agriculture, a product that—

(i) is in a form that is edible without additional preparation to achieve food safety and may receive additional preparation
for palatability or aesthetic, epicurean, gastronomic, or culinary purposes; and

(ii) is—

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

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

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

(B) with respect to a food (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)) under the jurisdiction of the Secretary of Health and Human Services—

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

(ii) any other food, including a processed food, for which it is reasonably foreseeable that the food will be eaten without further processing that would significantly minimize biological hazards.
(5) **SAFETY DATE.**—The term “safety date” means a date printed on food packaging of a ready-to-eat product, which signifies the end of the estimated period of shelf life under any stated storage conditions, after which the product may pose a health safety risk.

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

(a) **QUALITY DATES.**—

(1) **IN GENERAL.**—If a food labeler includes a quality date on food packaging, the label shall use the uniform quality date label phrase under paragraph (2).

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

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

(b) **SAFETY DATES.**—

(1) **IN GENERAL.**—The label of a ready-to-eat product shall include a safety date that is immediately preceded by the uniform safety date label
phrase under paragraph (2) if the ready-to-eat prod-
uct—

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

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

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

(3) HIGH-RISK READY-TO-EAT PRODUCTS.—

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

(B) ADDITIONAL FOODS; EXEMPT
FOODS.—The administering Secretaries may,
with respect to the products under the jurisdic-
tion of the administering Secretaries, respectively—

(i) list additional ready-to-eat products that are high risk, but do not meet the criteria described in subparagraph (A); or

(ii) exempt specific ready-to-eat products that meet the criteria described in subparagraph (A), but do not actually pose a high level of risk associated with consumption after a certain date.

(C) REVIEW AND UPDATES.—Not less than once every 4 years, the administering Secretaries, acting jointly, shall review and, as the administering Secretaries determine appropriate, shall update—

(i) the criteria described in subparagraph (A); and

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

(c) QUALITY DATE AND SAFETY DATE LABELING.—

(1) IN GENERAL.—The quality date and safety date, as applicable, and immediately adjacent uniform quality date label phrase or safety date label phrase shall be—
(A) in single easy-to-read type style using upper and lower case letters in the standard form;

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

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

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

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

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

(f) EDUCATION.—Not later than 1 year after the date of enactment of this Act, the administering Secretaries, acting jointly, shall provide consumer education and outreach on the meaning of quality date and safety date food labels.

(g) RULE OF CONSTRUCTION; PREEMPTION.—

(1) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit any State or
political subdivision of a State from establishing or
continuing in effect any requirement that prohibits
the sale or donation of foods based on passage of the
safety date.

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

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

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

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

(4) SAVINGS.—Nothing in this Act, nor any
amendment made by this Act, nor any standard or
requirement imposed pursuant to this Act shall be
construed to preempt, displace, or supplant any
State or Federal common law rights or any State or
Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for criminal conduct.

(h) **Time Temperature Indicator Labels.**—Nothing in this section shall be construed to prohibit or restrict the use of time-temperature indicator labels or similar technology that is consistent with the requirements of this Act.

(i) **Delayed Applicability.**—This section shall apply only with respect to food products that are labeled on or after a date that is 2 years after the date of enactment of this Act.

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

(a) **FDA Violations.**—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

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

(b) **Poultry Products.**—Section 4(h) of the Poultry Products Inspection Act (21 U.S.C. 453(h)) is amended—

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

(3) by adding at the end the following:

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

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

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

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

(3) by adding at the end the following:

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

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

SEC. 6. REPORT TO CONGRESS.

Not later than 5 years after the date of enactment of this Act, the administering Secretaries, acting jointly, shall report to the appropriate committees of Congress on
the progress in the reduction of food waste that can be attributed to the standardization of food date labeling and consumer education required by this Act and the amendments made by this Act.