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AB-660 Food and beverage products: labeling: quality dates, safety dates, and sell-by dates. (2023-2024)

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Date Published: 09/30/2024 09:00 PM

Assembly Bill No. 660

CHAPTER 911

An act to amend Sections 36004 and 82001 of the Food and Agricultural Code, and to amend Section 114057.1 of the Health and Safety Code, relating to food and beverage products.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 660, Irwin. Food and beverage products: labeling: quality dates, safety dates, and sell-by dates.

(1) Existing law, the Milk and Milk Products Act of 1947, regulates milk and milk products and establishes standards for the manufacturing, handling, processing, and marketing of milk and milk products. Existing law requires that there appear on the package or container of market milk, market cream, and other milk products made from market milk or any component or derivative of market milk the date established by the processor as the date on which, in order to ensure consumer quality, the product is normally removed from the shelf or similar location from which the milk product is offered for sale to the consumer.

This bill would instead require that there appear on the package or container of those milk products the date established by the processor as the date by which the milk product should normally be used to ensure consumer quality.

(2) Existing law requires the Department of Food and Agriculture, in consultation with the State Department of Public Health, to publish information to encourage food manufacturers, processors, and retailers responsible for the labeling of food products to voluntarily use specified uniform terms on food product labels to communicate quality dates, as defined, and safety dates, as defined. Existing law also requires the Department of Food and Agriculture to encourage food distributors and retailers to develop alternatives to consumer-facing "sell by" dates, defined to mean a date on a label affixed to the packaging or container of food that is intended to communicate primarily to a distributor or retailer for purposes of stock rotation and that is not a quality date or a safety date. The Food and Agricultural Code provides that, unless a different penalty is expressly provided, a violation of any provision of that code is a misdemeanor.

This bill would instead require, on and after July 1, 2026, a food manufacturer, processor, or retailer responsible for the labeling of food items for human consumption that chooses, or is otherwise required by law, to display a date label to communicate a quality or safety date on a food item manufactured on or after July 1, 2026, to use specified uniform terms on the date label, as provided. The bill would prohibit a person from selling or offering for sale in the state a food item for human consumption manufactured on or after July 1, 2026, that displays a quality or safety date label that is not labeled in accordance with that requirement or that is labeled with the phrase "sell by," as specified. The bill would specify that, unless otherwise required by law, these provisions do not require the use or display of a date label on a food item for human consumption unless the food item displays a date label, and would provide that these provisions do not prohibit a label that allows consumers to view online information about a food item for human consumption. The bill would authorize a grocery store, on and after July 1, 2026, to display a label with the phrase "packed on" on a prepared food item and to sell or offer for sale in the state the prepared food item with that label, if the prepared food item also displays a quality or safety date label in accordance with the above-described requirement. The bill would provide

that these provisions do not prohibit a person from displaying on wine, a distilled spirit, or a wine- or distilled spirit-based product bottled or packaged on and after July 1, 2026, a label with a statement that communicates the date on which the wine, distilled spirit, or wine- or distilled spirit-based product was produced, manufactured, bottled, or packaged, or from selling or offering for sale in the state the wine, distilled spirit, or wine- or distilled spirit-based product with that label. The bill's above-described provisions would not apply to infant formula, eggs, pasteurized in-shell eggs, or beer and other malt beverages.

By creating new requirements regarding the labeling of food items, the violation of which would be a crime, the bill would impose a state-mandated local program.

(3) Existing law, the California Retail Food Code establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce those provisions. The California Retail Food Code, requires a food facility that packages food using a reduced-oxygen packaging method and *Clostridium botulinum* to have an approved plan, as specified, that, among other things, limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

This bill would retain that requirement before July 1, 2026, and, on and after July 1, 2026, would limit the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original safety date, as specified, whichever occurs first.

A violation of the California Retail Food Code is generally a misdemeanor. By revising the standards that are enforced by local health agencies and by expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 36004 of the Food and Agricultural Code is amended to read:

36004. (a) At the time of sale to the consumer by a retail store of any product designated in this section, there shall appear on the package or container of the product the date established by the processor as the date by which the product should normally be used to ensure consumer quality.

(b) This section applies to the following products:

(1) Market milk.

(2) Market cream.

(3) Any milk product that is required by this code, or by any regulation adopted by the secretary pursuant to this code, to be made from market milk or any component or derivative of market milk.

(c) This section does not apply to any milk or milk products processed, packaged, and sold by distributors directly to consumers.

(d) This section does not apply to any bulk shipments of milk or milk products between distributors.

(e) The secretary shall, in compliance with applicable provisions of this code and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and after public hearing or hearings, adopt regulations pertaining to (1) responsibility for affixing to packages or other containers the quality assurance date provided for in this section, (2) the manner, style, form, and place of affixation of the date to packages and other containers in a conspicuous place in a form that is readily seen and easily understood by the buyer, and (3) the administration and enforcement of the requirements of this section.

SEC. 2. Section 82001 of the Food and Agricultural Code is amended to read:

82001. (a) On and after July 1, 2026, a food manufacturer, processor, or retailer responsible for the labeling of food items for human consumption that chooses, or is otherwise required by law, to display a date label to communicate a quality or safety date

on a food item manufactured on or after July 1, 2026, shall use one of the following uniform terms on the date label:

(1) "BEST if Used by" or "BEST if Used or Frozen by" to indicate the quality date of the food item.

(2) "USE by" or "USE by or Freeze by" to indicate the safety date of the food item.

(3) "BB" to indicate the quality date of the food item if the food item is too small to include the uniform term described in paragraph (1) or if the food item is a beverage as defined in Section 14504 of the Public Resources Code.

(4) "UB" to indicate the safety date of the food item if the food item is too small to include the uniform term described in paragraph (2).

(b) (1) A person shall not sell or offer for sale in the state a food item for human consumption manufactured on or after July 1, 2026, that displays a quality or safety date label that is not labeled in accordance with subdivision (a).

(2) A person shall not sell or offer for sale in the state a food item for human consumption manufactured on or after July 1, 2026, that is labeled with the phrase "sell by." This paragraph does not prohibit the use of "sell by" dates that are presented in a coded format that are not easily readable by consumers and that do not use the phrase "sell by."

(c) (1) The department may accept nonstate funds from public and private sources to, on its internet website, educate consumers about the meaning of the quality dates and safety dates specified in this section.

(2) Funds accepted by the department pursuant to paragraph (1) shall be deposited into the Consumer Education Account, which is hereby created in the Department of Food and Agriculture Fund.

(3) Notwithstanding Section 13340 of the Government Code, all funds in the Consumer Education Account are hereby continuously appropriated to the department without regard to fiscal years to carry out the purpose provided in paragraph (1).

(d) (1) This section does not prohibit, and shall not be construed to discourage, the sale, donation, or use of food after the food's quality date pursuant to paragraph (1) of subdivision (a) has passed. A retail food facility may donate a food item for human consumption that is not labeled in accordance with this section.

(2) Unless otherwise required by law, this section shall not be construed to require the use or display of a date label on a food item for human consumption unless the food item displays a date label.

(3) This section does not prohibit the use or display of a label that allows consumers to view online information about a food item for human consumption.

(4) Notwithstanding subdivisions (a) and (b), on and after July 1, 2026, a grocery store may display a label with the phrase "packed on" on a prepared food item and may sell or offer for sale in the state the prepared food item with that label if the prepared food item also displays a quality or safety date label in accordance with subdivision (a).

(5) This section does not prohibit a person from displaying on wine, a distilled spirit, or a wine- or distilled spirit-based product bottled or packaged on and after July 1, 2026, a label with a statement that communicates the date on which the wine, distilled spirit, or wine- or distilled spirit-based product was produced, manufactured, bottled, or packaged, or from selling or offering for sale in the state the wine, distilled spirit, or wine- or distilled spirit-based product with that label. The statement may use date formats, including, but not limited to, dates in a time, day, month, and year format and Julian dates.

(6) To the extent that any other law or a National Shellfish Sanitation Program provision governing the labeling of shellfish authorizes or requires the use of terms that conflict, or are inconsistent, with this section, this section does not apply.

(e) This section does not apply to any of the following:

(1) Infant formula.

(2) Eggs or pasteurized in-shell eggs.

(3) Beer and other malt beverages.

(f) For purposes of this section, the following definitions apply:

(1) "Grocery store" means a store engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry and any area that is not separately owned within the store where food is prepared and served, including a bakery, deli, and meat and seafood counter.

(2) "Prepared food item" means a food item for human consumption prepared or repackaged on a grocery store's premises, using any cooking or food preparation technique.

(g) If and to the extent that any provision of this section is preempted by federal law, the provision does not apply and shall not be enforced.

SEC. 3. Section 114057.1 of the Health and Safety Code is amended to read:

114057.1. (a) A food facility that packages food using a reduced-oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final prepackaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum*.

(b) A food facility that packages food using a reduced-oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final prepackaged form shall have an approved HACCP plan that does all of the following:

(1) Contains the information specified under Section 114419.1.

(2) Identifies the food to be prepackaged.

(3) Limits the food prepackaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(A) Has an aw of 0.91 or less.

(B) Has a pH of 4.6 or less.

(C) Is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture and is received in an intact package.

(D) Is a food with a high level of competing organisms, such as raw meat or raw poultry.

(4) Specifies methods for maintaining food at 41 degrees Fahrenheit or below.

(5) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to maintain the food at 41°F or below and discard the food if within 30 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption.

(6) (A) Before July 1, 2026, limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(B) On and after July 1, 2026, limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original safety date is consistent with paragraph (2) of subdivision (a) of Section 82001 of the Food and Agricultural Code, whichever occurs first.

(7) Includes operational procedures that prohibit contacting food with bare hands, identify a designated area and the method by which physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination and access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and delineate cleaning and sanitization procedures for food-contact surfaces.

(8) Describes the training program that ensures that individuals responsible for the reduced-oxygen packaging operation understand the concepts required for a safe operation, the equipment and facilities, and the procedures specified under paragraph (7) and Section 114419.1.

(c) Except for fish that is frozen before, during, and after packaging, a food facility shall not package fish using a reduced-oxygen packaging method.

(d) A food facility is not required to have an HACCP plan if the food facility uses a reduced-oxygen packaging method to package hazardous food that always complies with the following standards with respect to packaging the hazardous food:

(1) The food is labeled with the production time and date.

(2) The food is held at 41 degrees Fahrenheit or lower during refrigerated storage.

(3) The food is removed from its package in the food facility within 48 hours after packaging.

(e) A food facility that packages potentially hazardous foods using a cook-chill or sous vide process shall meet the requirements of Section 3-502.12 (D) of the Food Code published by the FDA.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.