

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.

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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

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## 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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