

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2725**

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**Introduced by Assembly Member Chiu**

February 19, 2016

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An act to add Sections 114094.6, 114094.7, 114094.8, and 114094.9 to the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2725, as amended, Chiu. Food manufacturers: food facilities: labels.

Existing law, the California Retail Food Code, provides for regulation by the State Department of Public Health of food manufacturers and retail food facilities and the preparation and sale of foods. Under existing law, local health agencies are primarily responsible for enforcing the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would, among other things, require the department to identify a list of ready-to-eat foods that have a high level of risk associated with consumption after a specified date and to post that list on its Internet Web site. The bill would, beginning July 1, 2017, require a food manufacturer or retail food facility that chooses to include a quality date, as defined, on foods for sale that are not identified on the department's list to display that date using the phrase "best if used by" in 8-point type size or larger type, as specified. The bill would, beginning July 1, 2017, require a ~~retail food facility~~ *food manufacturer that offers for sale a food on the department's list* *elects to include an elevated risk date on products that require time/temperature control for safety (TCS)* to label the package or container of that food identifying

the elevated-risk date, as defined, using the phrase “expires on.” ~~The bill would require the department to adopt related regulations on or before July 1, 2017. on” or another term specified by the department.~~ The bill would specify that it does not create a legal liability for a retail food provider to ensure that the manufacturer has properly labeled the product. The bill would make related findings and declarations.

By creating new crimes and imposing additional enforcement duties on local health agencies, this bill would impose a state-mandated local program.

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. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Food is the single most prevalent item in California’s waste
- 4 stream, with over 5.5 million tons of food dumped in landfills
- 5 every year in the state.
- 6 (b) Four percent of the total energy budget, about 12 percent of
- 7 the land, and 23 percent of all freshwater consumed in the United
- 8 States is used to grow food that goes uneaten.
- 9 (c) Discarded food is a drain on our economy, costing consumers
- 10 and industry \$162 billion each year nationally.
- 11 (d) Reducing food losses by just 15 percent would be equivalent
- 12 to enough food to feed more than 25 million Americans every
- 13 year. According to estimates, more than 6 million Californians,
- 14 including one in four children, suffer from food insecurity.
- 15 (e) Dumping uneaten food and other organic waste into landfills
- 16 releases more than 8.3 million tons of greenhouse gases each year

1 in California, contributing 20 percent of the state’s methane  
2 emissions.

3 (f) Misinterpretation of the date labels on foods is a key factor  
4 leading to food waste in American households, and surveys show  
5 that 56 to 90 percent of consumers discard food prematurely as a  
6 result of misinterpreting food date labels.

7 (g) It is the public policy of this state that consumers benefit  
8 from uniform and accurate expiration date labeling.

9 SEC. 2. Section 114094.6 is added to the Health and Safety  
10 Code, to read:

11 114094.6. (a) If a food manufacturer or retail food facility  
12 chooses to include a quality date on foods not identified pursuant  
13 to subdivision (b) of Section 114094.7, the quality date shall be  
14 displayed in accordance with this section.

15 (b) (1) On or before July 1, 2017, food for sale or offered for  
16 sale in the state that includes a quality date shall meet all of the  
17 following requirements:

18 (A) The quality date shall be displayed with the uniform phrase  
19 “best if used by” unless and until the department specifies a  
20 different uniform term. The department shall have discretion to  
21 modify these guidelines, after consulting with stakeholders in an  
22 open public process.

23 ~~(B) The quality date and phrase shall be displayed in a single~~  
24 ~~easy-to-read type style using upper and lower case letters in the~~  
25 ~~standard form, in 8-point type size or larger, located in a~~  
26 ~~conspicuous place on the food package. The *quality* date shall be~~  
27 ~~expressed by the first three letters of the month followed by the~~  
28 ~~numeral designating the appropriate calendar day and year or by~~  
29 ~~expressing the calendar month numerically followed by a numeral~~  
30 ~~designating the calendar day and a numeral designating the year.~~

31 (2) The department may adopt regulations modifying these  
32 guidelines, after consulting with stakeholders in an open public  
33 process, in accordance with the Administrative Procedure Act  
34 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
35 Division 3 of the Government Code).

36 (c) For purposes of this article, “quality date” means the date  
37 indicated on the label affixed to the packaging or container of food,  
38 pursuant to subdivision (b), that communicates to consumers the  
39 date after which the food’s quality may begin to deteriorate.

1 (d) On and after July 1, 2017, a retail food facility shall not sell  
2 or offer for sale a food item that is not labeled in accordance with  
3 this section or Section 114094.7, as applicable.

4 (e) (1) A retail food facility may donate a food item that is not  
5 labeled in accordance with this section.

6 (2) This section does not prohibit, and shall not be construed to  
7 discourage, the sale, donation, or use of food after the food's  
8 quality date has passed.

9 (3) *Nothing in this section shall be construed to create a legal*  
10 *liability for a retail food provider to ensure that the manufacturer*  
11 *has properly labeled the product.*

12 ~~SEC. 3. Section 114094.7 is added to the Health and Safety~~  
13 ~~Code, to read:~~

14 ~~114094.7. (a) On and after July 1, 2017, a retail food facility~~  
15 ~~that offers for sale any food identified by the department pursuant~~  
16 ~~to subdivision (b) shall, at the time of sale to the consumer, cause~~  
17 ~~the package or container of that food to be labeled in a manner~~  
18 ~~that identifies the elevated risk date, in accordance with the~~  
19 ~~regulations adopted by the department pursuant to subdivision (c).~~

20 ~~(b) The department shall establish a list of ready-to-eat foods~~  
21 ~~that have a high level of risk associated with consumption after a~~  
22 ~~specified date, such as those classified by the United States Food~~  
23 ~~and Drug Administration and the United States Department of~~  
24 ~~Agriculture as "very high risk" or "high risk" for Listeria~~  
25 ~~monocytogenes, and post that list on the department's Internet~~  
26 ~~Web site.~~

27 ~~(c) (1) On or before July 1, 2017, the department shall adopt~~  
28 ~~regulations, in accordance with the Administrative Procedure Act~~  
29 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
30 ~~Division 3 of the Government Code), requiring that a retail food~~  
31 ~~facility display the elevated risk date with the uniform phrase~~  
32 ~~"expires on" unless and until the department specifies a different~~  
33 ~~uniform term.~~

34 ~~(2) The department may adopt regulations modifying these~~  
35 ~~guidelines, after consulting with stakeholders in an open public~~  
36 ~~process, in accordance with the Administrative Procedure Act.~~

37 ~~(d) For purposes of this section, "elevated risk" means the date~~  
38 ~~indicated on the label affixed to the packaging or container of food,~~  
39 ~~pursuant to subdivision (a), after which there is a high level of risk~~  
40 ~~associated with the consumption of the food product.~~

1 ~~(e) On and after July 1, 2017, a retail food facility shall not sell~~  
2 ~~or offer for sale a food item that is not labeled in accordance with~~  
3 ~~this section or Section 114094.6, as applicable.~~

4 *SEC. 3. Section 114094.7 is added to the Health and Safety*  
5 *Code, to read:*

6 *114094.7. (a) A food manufacturer may include an elevated*  
7 *risk date on products that require time/temperature control for*  
8 *safety (TCS), as defined by the United States Food and Drug*  
9 *Administration (FDA) Food Code, as published in 2013.*

10 *(b) (1) On and after July 1, 2017, food for sale or offered for*  
11 *sale in the state that includes an elevated risk date on the product*  
12 *shall meet both of the following requirements:*

13 *(A) The elevated risk date shall be displayed with the uniform*  
14 *phrase “expires on,” unless and until the department specifies a*  
15 *different uniform phrase.*

16 *(B) The date shall be expressed by the first three letters of the*  
17 *month, followed by the numerals designating the appropriate*  
18 *calendar day and year or by expressing the calendar month*  
19 *numerically followed by numerals designating the calendar day*  
20 *and year.*

21 *(2) The department may adopt regulations adding or exempting*  
22 *foods from the provisions of this section, after consulting with*  
23 *stakeholders in an open public process, in accordance with the*  
24 *Administrative Procedures Act (Chapter 3.5 (commencing with*  
25 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
26 *Code).*

27 *(3) The department may modify the guidelines in this subdivision*  
28 *after consulting with stakeholders in an open public process.*

29 *(c) For purposes of this section, “elevated risk date” means the*  
30 *date indicated on the label affixed to the packaging or container*  
31 *after which there is a high level of risk associated with the*  
32 *consumption of the food product.*

33 *(d) Nothing in this section shall be construed to create a legal*  
34 *liability for the retail food provider to ensure that the manufacturer*  
35 *has properly labeled the food product.*

36 *SEC. 4. Section 114094.8 is added to the Health and Safety*  
37 *Code, to read:*

38 *114094.8. On or before December 1, 2017, the department*  
39 *shall provide consumer guidance on the meaning of the quality*  
40 *date and safety date food labels.*

1 SEC. 5. Section 114094.9 is added to the Health and Safety  
2 Code, to read:

3 114094.9. (a) A retail food facility shall not sell or offer for  
4 sale a food item that is labeled with a “sell-by” date, or any date  
5 in the labeling of food that is intended to communicate primarily  
6 to a distributor or retailer for purposes of stock rotation that is not  
7 a quality date or an elevated-risk date.

8 (b) This section does not prohibit the use of sell-by dates that  
9 are presented in a coded format that is not easily readable by  
10 consumers.

11 (c) *Nothing in this section shall be construed to create a legal*  
12 *liability for the retail food provider to ensure that the manufacturer*  
13 *has properly labeled the product.*

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

23 However, if the Commission on State Mandates determines that  
24 this act contains other costs mandated by the state, reimbursement  
25 to local agencies and school districts for those costs shall be made  
26 pursuant to Part 7 (commencing with Section 17500) of Division  
27 4 of Title 2 of the Government Code.