To establish requirements for quality and discard dates that are, at the option of food labelers, included in food packaging, and for other purposes.

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

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.

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 2021”.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTERING SECRETARIES.—The term “administering Secretaries” means—
(A) the Secretary of Agriculture, with respect to any product that is—

(i) under the jurisdiction of the Secretary of Agriculture; and

(ii)(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) the Secretary of Health and Human Services, with respect to any product that is—

(i) under the jurisdiction of the Secretary of Health and Human Services; and

(ii) a food (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)).

(2) DISCARD DATE.—The term “discard date” means a date voluntarily printed on food packaging that signifies the end of the estimated period of shelf life under any stated storage conditions, after which
the food labeler advises the product not be con-
sumed.

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

(4) **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—

(A) the quality of the product may begin
to deteriorate; but

(B) the product remains apparently whole-
some food (as defined in subsection (b) of the
Bill Emerson Good Samaritan Food Donation
Act (42 U.S.C. 1791(b))).

**SEC. 3. QUALITY DATES AND DISCARD 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 para-
graph (2).

(2) **UNIFORM PHRASE.**—The uniform quality
date label phrase under this paragraph shall be
“BEST If Used By” or, if permissible under sub-
section (c)(3), the standard abbreviation of “BB”,
unless and until the administering Secretaries, act-
ing jointly, specify through rulemaking another uni-
form phrase to be used for purposes of complying
with paragraph (1).

(3) **OPTION OF THE LABELER.**—The decisions
on whether to include a quality date on food pack-
aging and which foods should be so labeled shall be
at the discretion of the food labeler.

(b) **DISCARD DATES.**—

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

(2) **UNIFORM PHRASE.**—The uniform discard
date label phrase under this paragraph shall be
“USE By” or, if permissible under subsection
(c)(3), the standard abbreviation of “UB”, unless
and until the administering Secretaries, acting joint-
ly, specify through rulemaking another uniform
phrase to be used for purposes of complying with
paragraph (1).

(3) **OPTION OF THE LABELER.**—The decisions
on whether to include a discard date on food pack-
aging and which foods should be so labeled shall be
at the discretion of the food labeler.

(c) QUALITY DATE AND DISCARD DATE LABEL-
ING.—

(1) IN GENERAL.—The quality date or discard
date, as applicable, and immediately adjacent uni-
form quality date label phrase or discard date label
phrase—

(A) shall be—

(i) in single easy-to-read type style;

and

(ii) located in a conspicuous place on

the package of the food; and

(B) may be on the label or, at the discre-
tion of the food labeler, elsewhere on the pack-
age.

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

(3) ABBREVIATIONS.—A food labeler may use a
standard abbreviation of “BB” and “UB” for the
quality date and discard date, respectively, only if
the food packaging is too small to include the uni-
form phrase described in subsection (a)(2) or (b)(2),
as applicable.
(4) Freeze By.—A food labeler may add “or Freeze By” following a quality date or discard date uniform phrase.

(d) 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 discard date food labels.

(e) Effect; Preemption.—

(1) Effect on sale or donation of foods.—Nothing in this Act or an amendment made by this Act prohibits 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 discard date.

(2) Effect on infant formula.—Nothing in this Act or an amendment made by this Act—

(A) applies with respect to infant formula (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)); or

(B) affects the requirements relating to infant formula under section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) or any other applicable provision of law.
(3) **Preemption.**—No State or political subdivision of a State may establish or continue in effect any requirement that—

(A) relates to the inclusion in food labeling of a quality date or a discard date that is different from or in addition to, or that is otherwise not identical with, the requirements of this Act and the amendments made by this Act; or

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

(4) **Enforcement.**—The administering Secretaries, acting jointly and in coordination with the Federal Trade Commission, shall ensure that the uniform quality date label phrase and uniform discard date label phrase are standardized across all food products.

(5) **Savings.**—Notwithstanding paragraph (3), nothing in this Act, any amendment made by this Act, or any standard or requirement imposed pursuant to this Act preempts, displaces, or supplants any State or Federal common law rights or any State or Federal statute creating a remedy for civil relief, including a remedy for civil damage, or a penalty for criminal conduct.
(f) **Time Temperature Indicator Labels.**—Nothing in this Act or an amendment made by this Act prohibits or restricts the use of time-temperature indicator labels or similar technology that is in addition to or in lieu of any uniform quality date label phrase under subsection (a)(2) or uniform discard date label phrase under subsection (b)(2).

**SEC. 4. MISBRANDING.**

(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 it is food and its labeling is in violation of section 3 of the Food Date Labeling Act of 2021.”.

(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 its labeling is in violation of section 3 of the Food Date Labeling Act of 2021.”.

(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 its labeling is in violation of section 3 of the Food Date Labeling Act of 2021.”.

(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 inserting “or if its labeling is in violation of section 3 of the Food Date Labeling Act of 2021” before the period at the end.

SEC. 5. REGULATIONS.

Not later than 2 years after the date of enactment of this Act, the administering Secretaries, acting jointly, shall promulgate final regulations for carrying out this Act and the amendments made by this Act.

SEC. 6. DELAYED APPLICABILITY.

This Act and the amendments made by this Act shall apply only with respect to food products that are labeled on or after the date that is 2 years after the date of promulgation of final regulations under section 5.