

AMENDED IN ASSEMBLY MAY 1, 2023

AMENDED IN ASSEMBLY APRIL 10, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 660**

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**Introduced by Assembly Member Irwin**

February 9, 2023

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An act to amend Sections 27644, 27644.5, 27687, and 82001 of the Food and Agricultural Code, and to amend Sections 114039 and 114057.1 of the Health and Safety Code, relating to food labeling.

### LEGISLATIVE COUNSEL'S DIGEST

AB 660, as amended, Irwin. Food labeling: quality dates, safety dates, and sell by dates.

(1) 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 the Department of Food and Agriculture to, in consultation with the State Department of Public Health, before January 1, 2025, publish information to assist food manufacturers, processors, and retailers responsible for the labeling of food products to use specified terms on food product labels to communicate quality dates and safety dates, as provided. The bill would, on and after January 1, 2025, prohibit a person from selling or offering for sale in the state a food item *for human consumption* that displays a food product date label that is not labeled in accordance with these terms. The bill would, on and after January 1, 2025, prohibit a person from selling or offering for sale in the state a food item *for human consumption* that is labeled with the phrase “sell by,” as specified. The bill would also require the State Department of Public Health to make certain updates to its regulations involving the California Retail Food Code, as provided. The bill would specify that, unless otherwise required by law, nothing in these provisions shall be construed to require the use *or display* of a date label on a food ~~item~~, *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~~, *item for human consumption*. *The bill would not apply the above-mentioned provisions to infant formula.*

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

(2) Under existing law, except as provided, it is unlawful for an egg handler to sell, offer for sale, or expose for sale certain eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled with certain information, including, among other information, the words “sell-by” immediately followed by the month and day in bold type, as specified.

This bill would retain that “sell-by” requirement before January 1, 2025. The bill would, on and after January 1, 2025, instead require each container to be labeled with, among other information, specified terms to communicate quality dates and safety dates, as provided.

Under existing law, if on reinspection certain eggs fail to meet the specification of the grades with which they are labeled, the seller must remark or repack the eggs to meet the specifications for their actual grades before calling for reinspection. Existing law requires repackaged eggs to be labeled with the original sell by date.

The bill would retain that labeling requirement before January 1, 2025, and, on and after January 1, 2025, would instead require specified terms to communicate quality dates and safety dates, as provided.

Existing law provides a misdemeanor penalty for an intentional violation or a 2nd or subsequent violation of these egg-related provisions. Existing law also requires agricultural commissioners of each county, their deputies, and qualified inspectors, under the supervision and control of the Secretary of Food and Agriculture, to enforce these egg-related provisions.

By revising the standards that are enforced and by expanding the scope of a crime, this bill would constitute 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.

Existing law, located within 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 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 January 1, 2025, and, on and after January 1, 2025, 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.

Existing law, located within the California Retail Food Code, requires raw shucked shellfish to be obtained in nonreturnable packages that bear a legible label that identifies the name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish, and a "sell by" date or a "best if used by" date for packages with a capacity of less than  $\frac{1}{2}$  gallon, or the date shucked for packages with a capacity of  $\frac{1}{2}$  gallon or more.

The bill would retain the "sell by" date or "best if used by" date requirements before January 1, 2025, and, on and after January 1, 2025, would require specified terms to communicate quality dates and safety dates, as provided.

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 existing crime, this bill would constitute 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.  
State-mandated local program: yes.

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

1 SECTION 1. Section 27644 of the Food and Agricultural Code  
2 is amended to read:

3 27644. (a) Except as provided in subdivision (c), it is unlawful  
4 for an egg handler, as defined in Section 27510, to sell, offer for  
5 sale, or expose for sale eggs that are packed or graded for human  
6 consumption unless at least one of the following conditions is met:

7 (1) The consumer container is plainly, legibly, and  
8 conspicuously labeled “KEEP REFRIGERATED” or with words  
9 of similar meaning. Consumer container labeling that complies  
10 with the safe-handling instructions required by Section 101.17 of  
11 Title 21 of the Code of Federal Regulations shall be deemed to  
12 comply with this paragraph.

13 (2) A conspicuous sign is posted at the point of sale for eggs on  
14 bulk display advising consumers that the eggs are to be refrigerated  
15 as soon as practical after purchase.

16 (b) Except as provided in subdivision (c), it is unlawful for an  
17 egg handler to sell, offer for sale, or expose for sale in the state  
18 eggs that are packed for human consumption unless each container  
19 intended for sale to the ultimate consumer is labeled on one outside  
20 top, side, or end with all of the following:

21 (1) (A) Before January 1, 2025, the words “Sell-by”  
22 immediately followed by the month and day in bold type, for

1 example “June 30” or “6-30.” Common abbreviations of months  
2 shall be permitted.

3 (B) The sell-by date shall not exceed 30 days from the date on  
4 which the eggs were packed, excluding the date of packing.

5 (C) If the eggs are repacked but not regraded, the original sell-by  
6 date shall apply.

7 (2) On and after January 1, 2025, a label consistent with  
8 subdivision (a) of Section 82001.

9 (3) A Julian pack date. As used in this paragraph, the Julian  
10 pack date is the consecutive day of the year on which the eggs  
11 were packed.

12 (4) The identification number of the plant of origin.

13 (c) This section does not apply to eggs that are packaged for  
14 export. Paragraphs (1) and (2) of subdivision (b) do not apply to  
15 eggs that are packaged for interstate commerce or eggs that are  
16 packaged for military sales. This section does not apply to  
17 pasteurized in-shell eggs.

18 (d) All eggs returned from grocery stores, store warehouses,  
19 and institutions shall not be reprocessed for retail shell egg sales.

20 (e) (1) For purposes of paragraph (4) of subdivision (b), the  
21 department, in consultation with the Shell Egg Advisory  
22 Committee, shall establish a plant identification numbering system  
23 and assign identification numbers to all egg handling facilities.

24 (2) For purposes of complying with paragraph (4) of subdivision  
25 (b), an egg handling facility that is inspected by the United States  
26 Department of Agriculture, and to which a federal plant  
27 identification number has been assigned, may use the federal  
28 identification number, the identification number assigned by the  
29 department, or both.

30 SEC. 2. Section 27644.5 of the Food and Agricultural Code is  
31 amended to read:

32 27644.5. (a) It is unlawful for an egg handler, as defined in  
33 Section 27510, to sell, offer for sale, or expose for sale pasteurized  
34 in-shell eggs that are packed for human consumption unless both  
35 of the following conditions are met:

36 (1) The consumer container is conspicuously labeled “KEEP  
37 REFRIGERATED” or with words of similar meaning. Consumer  
38 container labeling that complies with the safe handling instructions  
39 required by Section 101.17 of Title 21 of the Code of Federal  
40 Regulations shall be deemed to comply with this paragraph.

1 (2) A conspicuous sign is posted at the point of sale for  
2 pasteurized in-shell eggs on bulk display advising consumers that  
3 the pasteurized in-shell eggs are to be refrigerated as soon as  
4 practical after purchase.

5 (b) Except as provided in subdivision (c), it is unlawful for an  
6 egg handler to sell, offer for sale, or expose for sale in the state  
7 pasteurized in-shell eggs that are packed for human consumption  
8 unless each container intended for sale to the ultimate consumer  
9 is labeled on one outside top, side, or end with all of the following:

10 (1) Before January 1, 2025, the words “Sell by” immediately  
11 followed by the month and day in bold type. Common  
12 abbreviations for months may be used.

13 (A) The sell-by date shall not exceed 75 days from the date on  
14 which the pasteurized in-shell eggs were pasteurized, excluding  
15 the date of pasteurization. Processors of in-shell eggs that subject  
16 the eggs to the pasteurization process shall establish a sell-by date  
17 by completion of an appropriate shelf stability study that includes  
18 public health and safety criteria. The processor shall retain the  
19 study on file at the processing plant and make it available to the  
20 department or the State Department of Public Health upon request.

21 (B) If the pasteurized in-shell eggs are repacked, the original  
22 sell-by date shall apply.

23 (2) On and after January 1, 2025, a label consistent with  
24 subdivision (a) of Section 82001.

25 (3) A Julian pack date. As used in this paragraph, the Julian  
26 pack date is the consecutive day of the year on which the  
27 pasteurized in-shell eggs were pasteurized.

28 (4) The identification number of the plant of origin.

29 (5) A conspicuous identification of the eggs as “pasteurized.”

30 (6) All state and federal labeling requirements.

31 (c) This section does not apply to pasteurized in-shell eggs that  
32 are packaged for export.

33 (d) Paragraphs (1) and (2) of subdivision (b) do not apply to  
34 pasteurized in-shell eggs that are packaged for interstate commerce  
35 or pasteurized in-shell eggs that are packaged for military sales if  
36 exported to a state or federal agency that requires a different format  
37 for the sell-by or best-if-used-by date on pasteurized in-shell eggs,  
38 and the processor is using that format.

1 (e) All pasteurized in-shell eggs returned from grocery stores,  
2 store warehouses, and institutions shall not be reprocessed for any  
3 retail in-shell egg sales.

4 (f) (1) The department, in consultation with the Shell Egg  
5 Advisory Committee, established pursuant Section 27571, shall  
6 establish a plant identification numbering system and assign  
7 identification numbers to all pasteurized in-shell egg handling  
8 facilities.

9 (2) For purposes of complying with paragraph (4) of subdivision  
10 (b), a pasteurized in-shell egg handling facility that is inspected  
11 by the United States Department of Agriculture or the federal Food  
12 and Drug Administration, and to which a federal plant identification  
13 number has been assigned, may use the federal identification  
14 number, the identification number assigned by the department, or  
15 both.

16 SEC. 3. Section 27687 of the Food and Agricultural Code is  
17 amended to read:

18 27687. (a) If the department determines that eggs are not in  
19 compliance with this chapter or that they have been shipped without  
20 the handler or producer first securing the required registration and  
21 being current on the payment of the appropriate fees, the  
22 department shall issue and enforce an order to stop the sale of the  
23 eggs.

24 (b) A person may not sell eggs on which a stop-sale order has  
25 been issued until the department determines that the eggs and the  
26 handler or producer are in compliance with this chapter. Eggs that  
27 are in compliance with this chapter, but for which the handler or  
28 producer have not secured the required registration and paid the  
29 appropriate fees, may only be sold or moved under the specific  
30 direction of the secretary.

31 (c) With respect to eggs that are not in compliance with this  
32 chapter and on which a stop-sale order has been issued, the seller  
33 may submit the eggs for reinspection to an authorized state or  
34 county enforcement officer. If on reinspection the eggs fail to meet  
35 the specification of the grades with which they are labeled, the  
36 seller shall remark or repack the eggs to meet the specifications  
37 for their actual grades before calling for reinspection. Repackaged  
38 eggs shall, before January 1, 2025, be labeled with the original  
39 sell by date, and, on and after January 1, 2025, shall be labeled  
40 consistent with subdivision (a) of Section 82001.

SEC. 4. Section 82001 of the Food and Agricultural Code is amended to read:

82001. (a) The Department of Food and Agriculture, in consultation with the State Department of Public Health, shall, before January 1, 2025, publish information to assist food manufacturers, processors, and retailers responsible for the labeling of food products to use the following uniform terms on food product labels to communicate quality dates and safety dates:

(1) “BEST if Used by” or “BEST if Used or Frozen by” to indicate the quality date of a product.

(2) “USE by” or “USE by or Freeze by” to indicate the safety date of a product.

(b) The department shall promote the consistent use of the terms specified pursuant to subdivision (a) in the course of its existing interactions with food manufacturers, processors, and retailers.

(c) In the process of implementing subdivision (a), the department shall encourage food distributors and retailers to develop alternatives to consumer-facing “sell by” dates.

(d) (1) On and after January 1, 2025, no person shall sell or offer for sale in the state a food item *for human consumption* that displays a food product date label that is not labeled in accordance with subdivision (a).

(2) On and after January 1, 2025, no person shall sell or offer for sale in the state a food item *for human consumption* 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.”

(e) (1) The department may accept nonstate funds from public and private sources to 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 in 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).

(f) The State Department of Public Health shall update its regulations involving the California Retail Food Code (Part 7

(commencing with Section 113700) of Division 104 of the Health and Safety Code) consistent with this section.

(g) (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, nothing in this section shall be construed to require the use *or display* of a date label on a food ~~item~~; *item for human consumption unless the food item displays a date label*.

(3) This section does not prohibit a label that allows consumers to view online information about a food ~~item~~; *item for human consumption*.

(h) *This section does not apply to infant formula.*

SEC. 5. Section 114039 of the Health and Safety Code is amended to read:

114039. (a) Raw shucked shellfish shall be obtained in nonreturnable packages that bear a legible label that identifies the name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish. Before January 1, 2025, the package shall contain a "sell by" date or a "best if used by" date for packages with a capacity of less than one-half gallon, or the date shucked for packages with a capacity of one-half gallon or more. On and after January 1, 2025, the package shall be labeled consistent with subdivision (a) of Section 82001 of the Food and Agricultural Code.

(b) A package of raw shucked shellfish that does not bear a label or that bears a label that does not contain all the information required by subdivision (a) shall be subject to impound pursuant to Section 114393.

SEC. 6. 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

1 microbiological hazard in the final prepackaged form shall have  
2 an approved HACCP plan that does all of the following:

- 3 (1) Contains the information specified under Section 114419.1.
- 4 (2) Identifies the food to be prepackaged.
- 5 (3) Limits the food prepackaged to a food that does not support  
6 the growth of *Clostridium botulinum* because it complies with one  
7 of the following:
  - 8 (A) Has an  $a_w$  of 0.91 or less.
  - 9 (B) Has a pH of 4.6 or less.
  - 10 (C) Is a meat or poultry product cured at a food processing plant  
11 regulated by the United States Department of Agriculture and is  
12 received in an intact package.
  - 13 (D) Is a food with a high level of competing organisms, such  
14 as raw meat or raw poultry.
- 15 (4) Specifies methods for maintaining food at 41 degrees  
16 Fahrenheit or below.
- 17 (5) Describes how the packages shall be prominently and  
18 conspicuously labeled on the principal display panel in bold type  
19 on a contrasting background, with instructions to maintain the food  
20 at 41°F or below and discard the food if within 30 calendar days  
21 of its packaging it is not served for on-premises consumption, or  
22 consumed if served or sold for off-premises consumption.
- 23 (6) (A) Before January 1, 2025, limits the refrigerated shelf life  
24 to no more than 30 calendar days from packaging to consumption,  
25 except the time product is maintained frozen, or the original  
26 manufacturer's "sell by" or "use by" date, whichever occurs first.  
27 (B) On and after January 1, 2025, limits the refrigerated shelf  
28 life to no more than 30 calendar days from packaging to  
29 consumption, except the time the product is maintained frozen, or  
30 the original safety date is consistent with paragraph (2) of  
31 subdivision (a) of Section 82001 of the Food and Agricultural  
32 Code, whichever occurs first.
- 33 (7) Includes operational procedures that prohibit contacting  
34 food with bare hands, identify a designated area and the method  
35 by which physical barriers or methods of separation of raw foods  
36 and ready-to-eat foods minimize cross-contamination and access  
37 to the processing equipment is restricted to responsible trained  
38 personnel familiar with the potential hazards of the operation, and  
39 delineate cleaning and sanitization procedures for food-contact  
40 surfaces.

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

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

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

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

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

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

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

21 SEC. 7. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution for certain  
23 costs that may be incurred by a local agency or school district  
24 because, in that regard, this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty for a crime  
26 or infraction, within the meaning of Section 17556 of the  
27 Government Code, or changes the definition of a crime within the  
28 meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 However, if the Commission on State Mandates determines that  
31 this act contains other costs mandated by the state, reimbursement  
32 to local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.