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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 434 Session of  
2021

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INTRODUCED BY VOGEL, SCHWANK, J. WARD, ARGALL, BARTOLOTTA,  
GORDNER, LANGERHOLC, MENSCH, PHILLIPS-HILL, PITTMAN, STEFANO  
AND STREET, MARCH 16, 2021

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REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MARCH 16, 2021

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AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, in food protection, providing for milk sell by date  
3 and best by date labeling.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Chapter 57 of Title 3 of the Pennsylvania  
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER C

9 MILK SELL BY DATE AND BEST BY DATE LABELING

10 Sec.

11 5741. Scope of subchapter.

12 5742. Definitions.

13 5743. Label requirement.

14 5744. Sell by date or best by date of greater than 17 days from  
15 pasteurization.

16 5745. Prohibitions.

17 5746. Monitoring by milk plants and department.

18 5747. Regulations.

1 § 5741. Scope of subchapter.

2 This subchapter relates to milk sell by date and best by date  
3 labeling.

4 § 5742. Definitions.

5 The following words and phrases when used in this subchapter  
6 shall have the meanings given to them in this section unless the  
7 context clearly indicates otherwise:

8 "Milk." As defined in section 1 of the Milk Sanitation Law.

9 "Milk plant." As defined in section 1 of the Milk Sanitation  
10 Law and permitted under section 2 of the Milk Sanitation Law.

11 "Milk Sanitation Law." The act of July 2, 1935 (P.L.589,  
12 No.210), referred to as the Milk Sanitation Law.

13 "Pennsylvania-approved dairy laboratory." Any of the  
14 following:

15 (1) A commercial or regulatory laboratory approved and  
16 certified by the department within the preceding two years to  
17 do official analyses of milk.

18 (2) A milk industry laboratory approved and certified by  
19 the department within the preceding two years for the  
20 examination of producer samples of milk for pasteurization,  
21 commingled milk for pasteurization or of raw milk for human  
22 consumption for the detection of drug residues, bacterial  
23 limits and somatic cell count.

24 "Retail food facility." As defined in section 5702 (relating  
25 to definitions).

26 § 5743. Label requirement.

27 (a) General rule.--The cap or nonglass container of  
28 pasteurized milk held in retail food facilities for resale shall  
29 be conspicuously and legibly marked in a contrasting color with  
30 a sell by date or a best by date.

1 (b) Sell by date.--A sell by date shall consist of:

2 (1) a designation of the month and the day of the month  
3 after which the product may not be sold or offered for sale,  
4 whether expressed in standard fashion (such as "August 15"),  
5 numerically (such as "8-15") or with the use of an  
6 abbreviation (such as "Aug. 15" or "AU 15"); and

7 (2) either:

8 (i) the words "Sell by" or "Not to be sold after"  
9 preceding that designation and appearing legibly on the  
10 cap or nonglass container; or

11 (ii) the statement "Not to be sold after the date  
12 stamped above" following that designation and appearing  
13 legibly on the cap or nonglass container.

14 (c) Best by date.--A best by date shall consist of:

15 (1) a designation of the month and the day of the month  
16 in a format as provided in subsection (b) established by the  
17 milk plant as a product quality guideline; and

18 (2) the words "Best by," "Best if consumed by" or "Best  
19 if used by" preceding the designation and appearing legibly  
20 on the cap or nonglass container.

21 (d) Prominence of sell by date or best by date on label.--

22 The sell by date or best by date shall be separate and distinct  
23 from any other number, letter or intervening material on the cap  
24 or nonglass container.

25 (e) Limitation.--A sell by date or a best by date may not  
26 exceed 17 days beginning after midnight on the day on which the  
27 milk was pasteurized, unless the department approves a longer  
28 interval in accordance with the procedure described in section  
29 5744 (relating to sell by date or best by date of greater than  
30 17 days from pasteurization).

1 (f) Exempt pasteurized milk and required lot number or  
2 manufacturing date code information for pasteurized milk.--The  
3 following types of pasteurized milk are exempt from the  
4 requirements of this subchapter, provided that the cap or  
5 nonglass container contains a lot number or manufacturing date  
6 code that is acceptable to the department and can be used for  
7 product traceability in the marketplace:

8 (1) Ultrapasteurized milk.

9 (2) Cultured milk.

10 (3) Aseptically processed milk.

11 (4) Milk that has undergone higher heat shorter time  
12 pasteurization.

13 (5) Milk sold or offered for retail sale on the same  
14 premises at which it was processed.

15 § 5744. Sell by date or best by date of greater than 17 days  
16 from pasteurization.

17 (a) General rule.--A milk plant may apply to the department  
18 for approval to use a sell by date or a best by date that  
19 exceeds the 17-day period referenced in section 5743(e)  
20 (relating to label requirement). Approval shall be by type of  
21 milk and the type and volume of the milk container.

22 (b) Approval process.--Approval may be obtained by the  
23 following process:

24 (1) The applicant must apply to the department for  
25 approval to use a specific sell by or best by date that  
26 exceeds the 17-day period referenced in section 5743(e),  
27 using a form provided by the department.

28 (2) The applicant must specify on the form, by milk type  
29 and type and volume of container, each product for which  
30 approval is sought, and the specific sell by date or best by

1 date proposed for that product as packaged.

2 (3) For each milk type and type and volume of container  
3 with respect to which approval is sought, the applicant must  
4 include scientific documentation as the department may  
5 require to confirm the following:

6 (i) unopened samples from at least three different  
7 production days were maintained at a temperature of  
8 between 34 and 45 degrees Fahrenheit for no less than the  
9 entire proposed sell by date or best by date period;

10 (ii) after the proposed sell by date or best by date  
11 period ended, each sample was opened and tested for  
12 bacterial count, and the bacterial count for each sample  
13 did not exceed the bacteriological standards for milk set  
14 forth in the department's milk sanitation regulations;  
15 and

16 (iii) the testing was completed within three months  
17 preceding the date the application was submitted to the  
18 department.

19 (c) Continuation of approval.--Approval issued by the  
20 department under this section shall remain in effect as long as  
21 the milk plant continues to complete the periodic sampling and  
22 testing required in section 5746 (relating to monitoring by milk  
23 plants and department) and the bacterial test results do not  
24 exceed the bacterial limits for pasteurized milk described in  
25 section 5746.

26 § 5745. Prohibitions.

27 (a) Sell by date.--Pasteurized milk may not be sold or  
28 offered for sale if the milk is sold or offered for sale after  
29 the sell by date designated on the cap or nonglass container.

30 (b) Best by date.--Pasteurized milk may not be sold or

1 offered for sale if the milk is sold or offered for sale after  
2 the best by date designated on the cap or nonglass container.  
3 § 5746. Monitoring by milk plants and department.

4 (a) Sampling and testing.--

5 (1) If a milk plant labels milk with a sell by date or a  
6 best by date that is no later than 17 days beginning after  
7 midnight on the day on which the milk was pasteurized, the  
8 milk plant shall, at intervals of no greater than 12 months  
9 and for the highest selling volume milk type and each type  
10 and volume of container of that highest selling volume milk  
11 type bearing that label information, sample and test in  
12 accordance with the methodology specified in subsection (b).

13 (2) If a milk plant labels milk with a sell by date or a  
14 best by date that is greater than 17 days beginning after  
15 midnight on the day on which the milk was pasteurized and  
16 that has been approved by the department in accordance with  
17 section 5744 (relating to sell by date or best by date of  
18 greater than 17 days from pasteurization), the milk plant  
19 shall, at intervals of no longer than six months and for the  
20 highest selling volume milk type and each type and volume of  
21 container of that highest selling volume milk type bearing  
22 that label information, sample and test in accordance with  
23 the methodology specified in subsection (b).

24 (3) The department shall periodically sample containers  
25 of pasteurized milk in the possession of the milk plant. The  
26 sampling may occur at any time before the pasteurized milk is  
27 delivered to a retail food facility or the customer.

28 (b) Methodology.--

29 (1) The samples described in subsection (a) (1) and (2)  
30 shall be analyzed by a Pennsylvania-approved dairy

1 laboratory.

2 (2) The samples described in subsection (a)(3) shall be  
3 analyzed by the department or a Pennsylvania-approved dairy  
4 laboratory.

5 (3) The analysis shall determine whether the bacterial  
6 test results exceed the bacterial limits for pasteurized milk  
7 described in the department's milk sanitation regulations  
8 prior to the expiration of the sell by date or best by date  
9 designated on the cap or nonglass container.

10 (c) Reporting.--A Pennsylvania-approved dairy laboratory  
11 that performs any of the testing required under this section  
12 shall report the test results to the milk plant and the  
13 department in a format and within a time prescribed by the  
14 department.

15 (d) Pasteurized milk that exceeds bacterial limits.--

16 (1) When two or more samples of milk demonstrate a milk  
17 plant cannot produce pasteurized milk that remains  
18 consistently within the bacterial limits referenced in  
19 subsection (b) during the sell by date or best by date  
20 period, the department shall calculate a reduced sell by date  
21 or best by date period for that pasteurized milk such that  
22 bacterial growth in the milk will not exceed the referenced  
23 bacterial limits within that revised sell by date or best by  
24 date period, if the milk is maintained in accordance with the  
25 temperature standards for pasteurized milk in the  
26 department's milk sanitation regulations.

27 (2) The milk plant shall use the revised sell by date or  
28 best by date until the milk plant obtains a different sell by  
29 date or best by date period using the procedure in section  
30 5744.

1 § 5747. Regulations.

2 The department shall make such reasonable rules and  
3 regulations as may be deemed necessary for carrying out the  
4 provisions of this subchapter.

5 Section 2. The provisions of 7 Pa. Code § 59a.15 are  
6 abrogated to the extent of any inconsistency with this act.

7 Section 3. This act shall take effect in 30 days.