

HOUSE BILL No. 5156

September 13, 2005, Introduced by Reps. Anderson, Lipsey, Alma Smith, Kehrl, Brandenburg, Clack, Condino, Kolb, Murphy, Farrah, Gillard, Brown, Adamini, Plakas, Gleason, Leland, Meisner, Hood, Donigan and Bieda and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled "Food law of 2000," by amending section 8107 (MCL 289.8107) and by adding section 8108.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8107. (1) As used in this section **AND SECTION 8108:**

2 ~~— (a) "Date" means the recommended last day of sale.~~

3 **(A) "BEST-IF-USED-BY DATE" MEANS THE RECOMMENDED DATE PRIOR TO**
4 **DETERIORATION OF SEMI-PERISHABLE FOOD OR LONG SHELF-LIFE FOOD.**

5 **(B) "LONG SHELF-LIFE FOOD" MEANS ANY FOOD FOR WHICH A**
6 **SIGNIFICANT RISK OF SPOILAGE, LOSS OF VALUE, OR LOSS OF**
7 **PALATABILITY DOES NOT OCCUR SOONER THAN 6 MONTHS AFTER THE DATE OF**
8 **PACKAGING, INCLUDING FOODS PRESERVED BY FREEZING, DEHYDRATING, OR**
9 **BEING PLACED IN A HERMITICALLY SEALED CONTAINER.**

10 **(C) ~~—(b)~~ "Perishable food" means any food in package form**

1 ~~which~~ **THAT** the manufacturer, packer, or retailer, in conjunction
2 with the department, determines as having a significant risk of
3 spoilage, loss of value, or loss of palatability within ~~90~~ 60
4 days of the date of packaging.

5 (D) ~~(e)~~ "Prepackaged" means packaged prior to being
6 displayed or offered for **RETAIL** sale.

7 (E) "**SELL-BY DATE**" MEANS THE RECOMMENDED LAST DAY OF SALE THAT
8 PERMITS A SUBSEQUENT PERIOD BEFORE DETERIORATION OF THE FOOD.

9 (F) "**SEMI-PERISHABLE FOOD**" MEANS ANY FOOD FOR WHICH A
10 SIGNIFICANT RISK OF SPOILAGE, LOSS OF VALUE, OR LOSS OF
11 PALATABILITY DOES NOT OCCUR SOONER THAN 60 DAYS, BUT WITHIN 6
12 MONTHS, AFTER THE DATE OF PACKAGING.

13 (2) A retail food establishment shall not sell or offer for
14 sale a prepackaged perishable food unless there is clearly and
15 conspicuously stamped upon or attached to the package a **SELL-BY**
16 date identified by month and day except that bakery products with a
17 shelf life of 7 days or less may be dated with a day of the week or
18 an abbreviation.

19 (3) The **SELL-BY** date may be displayed with or without
20 explanatory terms. If explanatory terms are used, such terms shall
21 be limited to 1 of the following: "Sell by _____", "Sell before
22 _____", "Last date of sale _____", "Recommended last date of sale
23 _____", or "Recommended sale date _____". Other meaningful terms
24 may be used if specifically approved by the department.

25 (4) This section does not prohibit the sale of food after the
26 **SELL-BY** date if the product is wholesome and sound and is clearly
27 identified as having passed the **SELL-BY** date.

1 (5) The retail or final seller is responsible for the proper
2 advertisement of perishable food sold after the **SELL-BY** date.

3 (6) A person who prepackages perishable food shall do all of
4 the following:

5 (a) Establish a meaningful **SELL-BY** date that takes into
6 consideration the food quality and characteristics of the food, its
7 packaging, and customary conditions encountered in commercial
8 channels.

9 (b) Allow a reasonable period after the **SELL-BY** date for
10 consumption of the food without physical spoilage.

11 (c) Keep a record of the method of determination of the **SELL-**
12 **BY** date.

13 (7) A retailer who purchases prepackaged perishable food may,
14 upon written agreement with the person prepackaging ~~such~~ **THAT**
15 food, determine, identify, and be responsible for the **SELL-BY** date
16 placed on, or attached to, each package of ~~such~~ **THAT** food.

17 (8) The **SELL-BY** date shall not be altered. A person shall not
18 rewrap or repackage a perishable food, in its original form and
19 texture, with a **SELL-BY** date on the package different from the
20 original.

21 (9) The **SELL-BY** date shall be calculated to allow a reasonable
22 period for the subsequent consumption of the food, but shall not
23 allow for a period which would result in a health nuisance as
24 described in section 2107.

25 (10) This section does not apply to ~~fresh~~ **THE FOLLOWING:**

26 **(A) FRESH** fruits and vegetables, canned food, and frozen food.
27 ~~, nor to milk~~

1 **(B) MILK** and milk products dated in accordance with section ~~1~~
2 **69** of the ~~fluid milk act of 1965, 1965 PA 233, MCL 288.21~~ **GRADE A**
3 **MILK LAW OF 2001, 2001 PA 266, MCL 288.539.**

4 (11) The requirements of this section do not apply to any of
5 the following:

6 (a) An individually packaged food item that is a component of
7 a larger food item if the larger food item is identified with a
8 **SELL-BY** date the same as or earlier than the **SELL-BY** date of that
9 component.

10 (b) Perishable foods packaged under, and in compliance with,
11 federal laws and regulations, if providing information equal to or
12 greater than the information required by this section.

13 (c) Smoked fish under the smoked fish rules.

14 **SEC. 8108. (1) A RETAIL FOOD ESTABLISHMENT SHALL NOT SELL OR**
15 **OFFER FOR SALE A PREPACKAGED SEMI-PERISHABLE OR LONG SHELF-LIFE**
16 **FOOD UNLESS THERE IS CLEARLY AND CONSPICUOUSLY STAMPED UPON OR**
17 **ATTACHED TO THE PACKAGE A BEST-IF-USED-BY DATE IDENTIFIED BY MONTH**
18 **AND DAY.**

19 **(2) THE BEST-IF-USED-BY DATE MAY BE DISPLAYED WITH OR WITHOUT**
20 **EXPLANATORY TERMS. IF EXPLANATORY TERMS ARE USED, SUCH TERMS SHALL**
21 **BE LIMITED TO 1 OF THE FOLLOWING: "BEST IF USED BY _____", "USE**
22 **BEFORE _____", "LAST DATE OF USE _____", OR "RECOMMENDED LAST DATE**
23 **OF USE _____". OTHER MEANINGFUL TERMS MAY BE USED IF SPECIFICALLY**
24 **APPROVED BY THE DEPARTMENT.**

25 **(3) THIS SECTION DOES NOT PROHIBIT THE SALE OF PREPACKAGED**
26 **SEMI-PERISHABLE OR LONG SHELF-LIFE FOOD AFTER THE BEST-IF-USED-BY**
27 **DATE IF THE PRODUCT IS WHOLESOME AND SOUND AND IS CLEARLY**

1 IDENTIFIED AS HAVING PASSED THE BEST-IF-USED-BY DATE.

2 (4) THE RETAIL OR FINAL SELLER IS RESPONSIBLE FOR THE PROPER
3 ADVERTISEMENT OF PREPACKAGED SEMI-PERISHABLE OR LONG SHELF-LIFE
4 FOOD SOLD AFTER THE BEST-IF-USED-BY DATE.

5 (5) A PERSON WHO PREPACKAGES PREPACKAGED SEMI-PERISHABLE OR
6 LONG SHELF-LIFE FOOD SHALL DO ALL OF THE FOLLOWING:

7 (A) ESTABLISH A MEANINGFUL BEST-IF-USED-BY DATE THAT TAKES
8 INTO CONSIDERATION THE FOOD QUALITY, FORMULATION, PROCESSING
9 IMPACT, PACKAGING, CONTAINER, AND CHARACTERISTICS OF THE
10 PREPACKAGED SEMI-PERISHABLE OR LONG SHELF-LIFE FOOD, ITS PACKAGING,
11 AND CUSTOMARY CONDITIONS ENCOUNTERED IN COMMERCIAL CHANNELS.

12 (B) ALLOW A REASONABLE PERIOD AFTER THE BEST-IF-USED-BY DATE
13 FOR CONSUMPTION OF THE PREPACKAGED SEMI-PERISHABLE OR LONG SHELF-
14 LIFE FOOD WITHOUT PHYSICAL SPOILAGE.

15 (C) KEEP A RECORD OF THE METHOD OF DETERMINATION OF THE BEST-
16 IF-USED-BY DATE.

17 (6) A RETAILER WHO PURCHASES PREPACKAGED SEMI-PERISHABLE OR
18 LONG SHELF-LIFE FOOD MAY, UPON WRITTEN AGREEMENT WITH THE PERSON
19 PREPACKAGING SUCH FOOD, DETERMINE, IDENTIFY, AND BE RESPONSIBLE FOR
20 THE BEST-IF-USED-BY DATE PLACED ON, OR ATTACHED TO, EACH PACKAGE OF
21 THAT FOOD.

22 (7) THE BEST-IF-USED-BY DATE SHALL NOT BE ALTERED. A PERSON
23 SHALL NOT REWRAP OR REPACKAGE A PREPACKAGED SEMI-PERISHABLE OR LONG
24 SHELF-LIFE FOOD, IN ITS ORIGINAL FORM AND TEXTURE, WITH A BEST-IF-
25 USED-BY DATE ON THE PACKAGE DIFFERENT FROM THE ORIGINAL.

26 (8) THE BEST-IF-USED-BY DATE SHALL BE CALCULATED TO ALLOW A
27 REASONABLE PERIOD FOR THE SUBSEQUENT CONSUMPTION OF THE PREPACKAGED

1 SEMI-PERISHABLE OR LONG SHELF-LIFE FOOD, BUT SHALL NOT ALLOW FOR A
2 PERIOD THAT WOULD RESULT IN A HEALTH NUISANCE AS DESCRIBED IN
3 SECTION 2107.

4 (9) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

5 (A) FRESH FRUITS AND VEGETABLES, CANNED FOOD, AND FROZEN FOOD.

6 (B) MILK AND MILK PRODUCTS DATED IN ACCORDANCE WITH SECTION 69
7 OF THE GRADE A MILK LAW OF 2001, 2001 PA 266, MCL 288.539.

8 (10) THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO ANY OF
9 THE FOLLOWING:

10 (A) AN INDIVIDUALLY PACKAGED FOOD ITEM THAT IS A COMPONENT OF
11 A LARGER FOOD ITEM IF THE LARGER FOOD ITEM IS IDENTIFIED WITH A
12 BEST-IF-USED-BY DATE THE SAME AS OR EARLIER THAN THE BEST-IF-USED-
13 BY DATE OF THAT COMPONENT.

14 (B) PERISHABLE FOODS PACKAGED UNDER, AND IN COMPLIANCE WITH,
15 FEDERAL LAWS AND REGULATIONS, IF PROVIDING INFORMATION EQUAL TO OR
16 GREATER THAN THE INFORMATION REQUIRED BY THIS SECTION.

17 (C) SMOKED FISH UNDER THE SMOKED FISH RULES.