

City of Philadelphia



(Bill No. 090383)

AN ORDINANCE

Amending the Health Code, Title 6 of The Philadelphia Code, by amending Section 6-102 entitled "Definitions" and by creating a new Section 6-309 entitled "Outdated Products" to prohibit the sale of expired non-prescription drugs, infant formula, baby food, milk, milk products and eggs, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 6-102 of The Philadelphia Code is hereby amended to add the following definitions, the existing definitions to be renumbered accordingly:

§ 6-102. Definitions.

* * *

(...) *Chain. A group of food establishments under common ownership or control and/or doing business under the same trade name.*

* * *

(...) *Outdated product. This term shall include:*

(a) *any non-prescription drug, infant formula or baby food that is subject to expiration dating requirements issued by the federal Food and Drug Administration, if the date of expiration has passed; or*

(b) *milk, milk products and eggs, after the sell-by date designated on the container.*

* * *

SECTION 2. A new Section 6-309 of The Philadelphia Code is hereby enacted to read as follows:

§ 6-309. *Outdated Products.*

(1) *Prohibited Conduct.*

It shall be unlawful for any food establishment to sell or offer to sell to the public any outdated product or to knowingly alter, mutilate, destroy, obliterate or remove by

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means of a price sticker or otherwise the whole or any part of the expiration date displayed on the label or packaging of any non-prescription drug, infant formula, baby food, milk, milk products and eggs.

(2) Discount Incentive for Locating Outdated Products.

A person who discovers any outdated product in a food establishment and notifies an employee of that food establishment shall be entitled to purchase from that food establishment one of the same product, not-outdated, at a discount of 50% off the product's current price, for every outdated product the person discovers.

(3) Refund and Discount Incentive for Purchase of Outdated Products.

A person who purchases an outdated product at a food establishment and notifies the food establishment in person or in writing within 30 days of purchase and provides as evidence the original purchase receipt and the original product, still unused and unopened, bearing the expiration or "sell-by" date, shall immediately receive from the food establishment a cash refund of the original purchase price of the product and shall be entitled to purchase one of the same product, not-outdated, at a discount of 50% off the product's current price.

(4) Posting Requirement.

(a) Notice to consumers. All food establishments shall post signs informing consumers of the refund and discount incentive for locating outdated products provisions of this Section at the entrance and at every cash register in such establishments.

(b) Notice to employees. All food establishments shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this Section.

(5) Reporting Requirement.

Chains with more than 10 establishments in the City and food establishments whose annual revenues exceed \$1 million shall report annually to the Department the number of refunds they have issued under the refund provision of this Section at each food establishment and the number of products they have provided at a 50% discount at each food establishment under the discount incentive provisions of this Section.

(6) Inspections.

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The Department shall inspect food establishments for the presence of food and/or drug products in violation of this Section in the course of all inspections it conducts of food establishments and shall cite any violations in its written inspection reports.

(7) Penalties .

(a) All violations of each subsection of this Section which are committed on a single calendar day shall be aggregated together and constitute one single violation for the purpose of issuing citations and assessing penalties under this Section. Violations of different subsections of this Section which are committed on a single calendar day shall not be aggregated and shall constitute separate and distinct violations for the purpose of issuing citations and assessing penalties under this Section.

(b) A violation of any provision of this Section shall be classified as a Class II offense and the penalty for such violation is a fine not exceeding the maximum fine for Class II offenses as set forth in Section 1-109. The penalty shall be exclusive of and in addition to any payments under the refund provision of this Section, any provision of products at discount under the discount incentive provisions of this Section, any other subsection of this Section or any provision of Section 6-301.

(8) Injunction Against Unlawful Practices; Additional Penalties.

(a) Whenever it shall appear to the Department that a food establishment or chain has engaged in or may be engaging in any practice declared to be unlawful by this Section, the Department may apply to the Court of Common Pleas of Philadelphia County for an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof.

(b) In addition to any other remedy authorized herein the court may revoke any food establishment license issued pursuant to the Health Code upon a finding that such person has knowingly and persistently engaged in a pattern of practices declared to be unlawful by this Section. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice herein declared to be unlawful.

(c) Such orders or judgments could include, but are not limited to:

(i) directing a food establishment or chain to institute enhanced training and compliance procedures and systems to ensure that outdated products are not offered for sale;

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(ii) *directing a food establishment or chain to retain an independent monitor to perform periodic random compliance checks to ensure that outdated products are not offered for sale; and*

(iii) *directing a food establishment to pay the reasonable costs of litigation incurred by the Department in bringing the civil action.*

(9) Protection of Employees.

(a) Employees Not To Be Discharged.

No food establishment may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority any violation of this Section.

(b) Discrimination Prohibited.

No food establishment may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action relating to a violation of this Section.

(c) Cause of Action for Employees Alleging Employer Misconduct.

An employee alleging a violation of this Section may bring a civil action in the Court of Common Pleas of Philadelphia County for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

(i) Standard of Proof and Defenses.

In such an action, the employee must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority. It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(ii) Remedies Available to Prevailing Employee.

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A court, in rendering a judgment in an action brought under this Section, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

(d) This Section shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by an appropriate authority, or impair the rights of any person under a collective bargaining agreement.

SECTION 3. Effective Date. This Ordinance shall take effect immediately upon becoming law.

Explanation:

Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 18, 2009. The Bill was Signed by the Mayor on August 17, 2009.



Michael A. Decker
Deputy Chief Clerk of the City Council