

2019 DRAFTING REQUEST**Bill**

For: **Legislative Fiscal Bureau** Drafter: **kpaczusk**
 By: **Tikalsky** Secondary Drafters:
 Date: **4/1/2020** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rory.tikalsky@legis.wisconsin.gov**
 Carbon copy (CC) to: **paul.ferguson@legis.wisconsin.gov**
Becky.hannah@legis.wisconsin.gov
mary.pfotenhauer@legis.wisconsin.gov
konrad.paczuski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Prohibiting food retailers from accepting returns

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpaczusk 4/1/2020	aernstr 4/1/2020			
/P1	kpaczusk 4/2/2020	kfollett 4/2/2020	wjackson 4/1/2020		Crime
/P2	kpaczusk 4/3/2020	swinder 4/3/2020	anienaja 4/2/2020		Crime
/P3	kpaczusk	swinder	wjackson		Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	4/3/2020	4/3/2020	4/3/2020		
/P4			anienaja 4/3/2020		Crime

FE Sent For:

<END>

Parisi, Lori

From: Tikalsky, Rory
Sent: Wednesday, April 01, 2020 10:23 AM
To: Pfothenauer, Mary; Paczuski, Konrad
Cc: Ferguson, Paul
Subject: Drafting Request - COVID19
Attachments: A3865.pdf

Hi Mary and Konrad,

I didn't know who would tackle this, so I figured I would email both of you. This proposal isn't technically fiscal so I'm not sure why it ended up on my desk, but here we are. Please feel free to offer advice on how best this would be drafted, since you're the experts on the relevant statutes.

For the Vos/Fitz COVID-19 bill, they would like language drafted that creates a "no returns" provision for food bought from grocery stores and the like. Basically specifying that it would be against the law to return food, cleaning products, paper products, etc, purchased from a grocery store during a period of public health emergency or 30 days after the end of such an emergency. The one exception would be that a retailer who may accept a return for an item determined to be spoiled, not related to COVID-19 - think like you bought a can of beans at the grocery store, opened it, discovered it was rotten, and wanted a refund.

New Jersey just enacted a bill exactly like this, and I think that would be a good reference for drafting this provision up. A copy of that legislation is attached. For our purposes, do you think the definition of retail food establishment under 97.30 would be a good reference? The NJ bill has one cross reference, which directs [here](#), related to defining spoiled food, I'm not sure if we have similar language already written so I defer to you all.

Thanks for helping pull this together. If you have any questions, feel free to contact me via my direct line at 608-504-5788 or email.

Thanks,
Rory

Rory Tikalsky

Fiscal Analyst

Wisconsin Legislative Fiscal Bureau

(608) 266-3847 | Rory.Tikalsky@legis.wi.gov

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Senator DAWN MARIE ADDIEGO

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Senator SHIRLEY K. TURNER

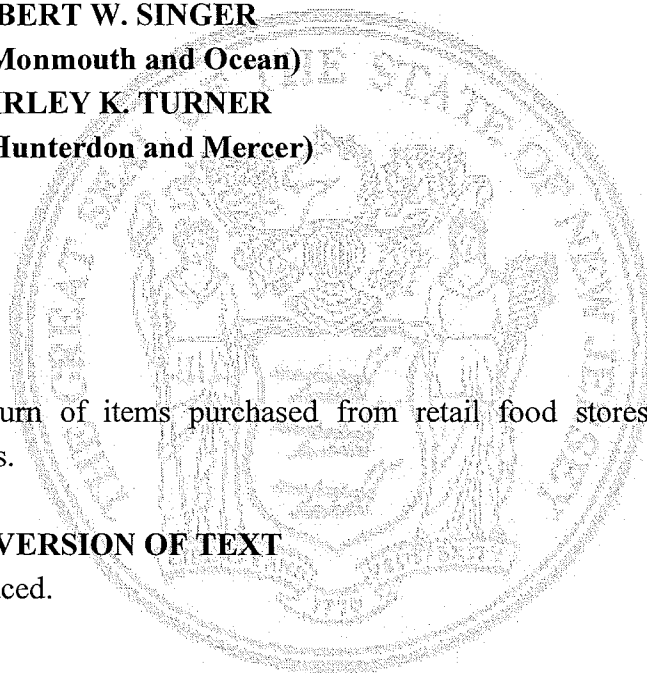
District 15 (Hunterdon and Mercer)

SYNOPSIS

Limits return of items purchased from retail food stores under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



2 of emergency declared in response to COVID-19 and
3 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. The Legislature finds and declares that in response to the
9 public health emergency resulting from the COVID-19 virus,
10 consumers have been purchasing large quantities of products in
11 order to prepare for a possible quarantine or isolation period. The
12 Centers for Disease Control and Prevention (CDC) has advised that
13 the COVID-19 virus may be spread from person-to-person from
14 contaminated surfaces. The CDC further has advised that current
15 evidence suggests that the COVID-19 virus may remain viable on
16 contaminated surfaces for anywhere from hours to days. Following
17 a quarantine or period of isolation, a consumer may attempt to
18 return unused items purchased in bulk, which may contribute to the
19 spread of COVID-19 if the items being returned are contaminated
20 with the virus. The legislature finds that in order to inhibit the
21 further spread of COVID-19 and protect the public health, it is
22 necessary to limit the return of groceries and other foodstuffs
23 purchased during a state of emergency declared in response to
24 COVID-19.
25

26 2. As used in this act:

27 "Groceries and other foodstuffs" means dairy products, meat and
28 delicatessen products, produce products, seafood products,
29 carbonated beverages, coffee and other beverages, snack foods,
30 candy products, baked products, paper products, household cleaning
31 items, health and beauty products, frozen foods, pet foods and
32 supplies, and any other edible product not previously listed.

33 "Retail food store" means any retail establishment where
34 groceries and other foodstuffs are regularly and customarily sold in
35 a bona fide manner for off-premises consumption.
36

37 3. It shall be an unlawful practice and a violation of
38 P.L.1960, c.39 (C.56:8-1 et seq.) for any retail food store to accept
39 the return of any groceries and other foodstuffs purchased by a
40 consumer during, and for 30 days following, a state of emergency
41 declared in response to COVID-19. A retail food store may accept
42 the return of groceries and other foodstuffs if it determines, in its
43 sole discretion, that the groceries and other foodstuffs are unsafe for
44 use or otherwise adulterated within the meaning of R.S.24:5-8 as a
45 result of any manufacturing error or defect. Any groceries or other
46 foodstuffs accepted for return by a retail food store shall not be
47 offered for resale.

1 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

2
3 STATEMENT
4

5 This bill makes it an unlawful practice for a retail food store to
6 accept the return, with limited exceptions, of any groceries and
7 other foodstuffs purchased during, and for 30 days following, a
8 state of emergency declared in response to COVID-19.

9 In response to the public health emergency resulting from the
10 COVID-19 virus, consumers have been purchasing large quantities
11 of products in order to prepare for a possible quarantine or period of
12 isolation. The Centers for Disease Control and Prevention (CDC)
13 has advised that the COVID-19 virus may remain viable on
14 contaminated surfaces for hours to days. Following a quarantine or
15 period of isolation, a consumer may attempt to return any unused
16 items purchased in bulk, which may contribute to the spread of
17 COVID-19 if the items being returned are contaminated with the
18 virus. The legislature finds that in order to inhibit the further
19 spread of COVID-19 and protect the public health, it is necessary to
20 limit the return of groceries and other foodstuffs purchased during a
21 state of emergency declared in response to COVID-19.

22 Under the provisions of this bill, it would be an unlawful practice
23 for any retail food store to accept the return of any groceries and
24 other foodstuffs purchased by a consumer during, and for 30 days
25 following, a state of emergency declared in response to COVID-19.
26 However, a retail food store may accept the return of groceries and
27 other foodstuffs if it determines, in its sole discretion, that the
28 purchased items are unsafe for use or otherwise adulterated as a
29 result of any manufacturing error or defect. Any groceries or other
30 foodstuffs accepted for return by a retail food store are not to be
31 offered for resale.

32 The bill defines "groceries and other foodstuffs" to mean dairy
33 products, meat and delicatessen products, produce products, seafood
34 products, carbonated beverages, coffee and other beverages, snack
35 foods, candy products, baked products, paper products, household
36 cleaning items, health and beauty products, frozen foods, pet foods
37 and supplies, and any other edible product not previously listed. In
38 addition, the bill defines "retail food store" to mean any retail
39 establishment where groceries and other foodstuffs are regularly
40 and customarily sold in a bona fide manner for off-premises
41 consumption.

42 An unlawful practice under the consumer fraud act,
43 P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary
44 penalty of not more than \$10,000 for a first offense and not more
45 than \$20,000 for any subsequent offense. In addition, a violation
46 can result in cease and desist orders issued by the Attorney General,
47 the assessment of punitive damages, and the awarding of treble



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to create* 97.30 (6) of the statutes; **relating to:** prohibiting retail food
2 establishments from accepting returns.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Prohibiting retail food establishments from accepting returns

This bill prohibits a retail food establishment from accepting a return of merchandise during a public health emergency or during the 30 days immediately after a public health emergency ends. The bill contains an exception, allowing retail food establishments to accept returns of merchandise that is adulterated due to a production error or defect.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 97.30 (6) of the statutes is created to read:
4 **97.30 (6) RETURNS DURING EMERGENCY PROHIBITED.** (a) Except as provided in par.
5 (b), a retail food establishment may not accept a return of merchandise during the

1 period covered by a public health emergency declared under s. 323.10, including any
2 extension under s. 323.10, or during the 30 days immediately after the public health
3 emergency ends.

4 (b) A retail food establishment may accept a return of merchandise that is
5 adulterated as a result of a production error or defect.

6 (END)

Parisi, Lori

From: Tikalsky, Rory
Sent: Thursday, April 02, 2020 4:54 PM
To: Paczuski, Konrad
Subject: No-Return Provision (LRB 6071/P1)

Konrad,

I've gotten word from up the chain and there's a few small changes they want made to LRB-6071/P1, related to prohibiting returns during a public health emergency.

- 1) They want to narrow this to just food, cleaning supplies, and paper products, and limit allowable to returns to those made within 7 days. Perhaps we amend the language on page 1, line 5, to replace "merchandise" with "any fresh or packaged food products, cleaning supplies or paper products purchased more than 7 days previously"?
- 2) They want to allow returns of non-food/paper/cleaning products if a retailer wants to accept them. Perhaps create a 97.30(6)(c) to say "The return of any product not listed in par. (a) may be accepted at the discretion of the retail food establishment"? (Also update it to except as provided in par. (b) or (c). in page 1 line 5.)

Please feel free to adjust this language to fit the appropriate convention or if you think there's a better way to phrase things. Thanks for your help, and please let me know if you have any questions.

Rory

Rory Tikalsky

Fiscal Analyst

Wisconsin Legislative Fiscal Bureau

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**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-6071/P2ins
KP:...

- 1.** Page 1, line 2: after “accepting” insert “certain”.
- 2.** Page 1, analysis subheading: after “accepting” insert “certain”.
- 3.** Page 1, analysis paragraph 1, line 2: delete “merchandise” and substitute “food products, cleaning products, and paper products”.
- 4.** Page 1, analysis paragraph 1, line 4: delete “merchandise that is” and substitute “food, cleaning, or paper products that are”.
- 5.** Page 1, analysis paragraph 1, line 5: after “defect.” insert “The bill also allows retail food establishments to accept returns of other types of products.”.
- 6.** Page 1, line 4: delete “EMERGENCY PROHIBITED” and substitute “EMERGENCY; PROHIBITION”.
- 7.** Page 1, line 5: delete “merchandise” and substitute “a food product, cleaning product, or paper product”.
- 8.** Page 2, line 4: delete “merchandise” and substitute “a food product, cleaning product, or paper product”.
- 9.** Page 2, line 5: after “defect” insert “if the return occurs no more than 7 days after the purchase of the product”.
- 10.** Page 2, line 5: after that line insert:
 - (c) A retail food establishment may accept a return of product that is not prohibited by par. (a).



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to create* 97.30 (6) of the statutes; **relating to:** prohibiting retail food
2 establishments from accepting certain returns.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Prohibiting retail food establishments from accepting certain returns

This bill prohibits a retail food establishment from accepting a return of food products, cleaning products, and paper products during a public health emergency or during the 30 days immediately after a public health emergency ends. The bill contains an exception, allowing retail food establishments to accept returns of food, cleaning, or paper products that are adulterated due to a production error or defect. The bill also allows retail food establishments to accept returns of other types of products.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 97.30 (6) of the statutes is created to read:

Parisi, Lori

From: Tikalsky, Rory
Sent: Friday, April 03, 2020 10:30 AM
To: Paczuski, Konrad
Subject: RE: Draft review: LRB -6071/P2

Konrad,

Thinking on this further, now that we're limiting returns related to non-food products, I think we need to have this apply to all retailers, not just retail food establishments. I'm thinking of a situation where this would apply to say, festival foods, but not a hardware store next door that also sells paper products and cleaning supplies. Can we adjust this to apply to ALL retailers, not just retail food establishments?

One other note, in terms of allowable returns, the idea would be: (a) to allow returns of adulterated items at any time, and (b) to allow returns of food, paper products, and cleaning supplies within a 7-day window after purchase. If I read the draft correctly right now, it's only allowing returns of adulterated items within 7 days. Sorry if these got jumbled along the way.

Thanks,
Rory

Rory Tikalsky
Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
(608) 266-3847 | Rory.Tikalsky@legis.wi.gov

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Thursday, April 02, 2020 5:56 PM
To: Tikalsky, Rory <Rory.Tikalsky@legis.wisconsin.gov>
Subject: Draft review: LRB -6071/P2

Following is the PDF version of draft LRB -6071/P2.

1. Page 1, line 1: delete the material beginning with “retail” and ending with “establishments” on line 2 and substitute “retailers”.

2. Page 1, analysis subheading: delete “retail food establishments” and substitute “retailers”.

3. Page 1, analysis paragraph 1, line 1: delete “retail food establishment” and substitute “retailer”.

4. Page 1, analysis paragraph 1, line 4: delete “contains an exception” and substitute “contains exception”.

5. Page 1, analysis paragraph 1, line 4: delete the material beginning with “contains” and ending with “to” on line 6 and substitute “contains exceptions, allowing retailers to accept returns of food, cleaning, or paper products made within 7 days of purchase and returns of adulterated or defective food, cleaning, or paper products. Under the bill, retailers may”.

6. Page 1, line 3: delete the material beginning with that line and ending on page 2, line 10 and substitute:

SECTION 1. 100.307 of the statutes is created to read:

100.307 Returns during emergency; prohibition. (1) DEFINITION. In this section “food product” has the meaning given in s. 93.01 (6).

(2) CERTAIN RETURNS PROHIBITED DURING EMERGENCY. Except as provided in sub. (3), no person who sells food products, cleaning products, or paper products at retail may accept a return of a food product, cleaning product, or paper product during the period covered by a public health emergency declared under s. 323.10, including any

extension under s. 323.10, or during the 30 days immediately after the public health emergency ends.

(3) EXCEPTIONS. A person who sells food products, cleaning products, or paper products at retail may accept a return of a food product, cleaning product, or paper product if any of the following applies:

(a) The product is returned no more than 7 days after purchase.

(b) The product is adulterated within the meaning of s. 97.02 or defective as a result of a production error or defect.

(4) OTHER RETURNS ALLOWED. A retailer may accept a return of a product that is not prohibited by sub. (2).



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to create* 100.307 of the statutes; **relating to:** prohibiting retailers from
2 accepting certain returns.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Prohibiting retailers from accepting certain returns

This bill prohibits a retailer from accepting a return of food products, cleaning products, and paper products during a public health emergency or during the 30 days immediately after a public health emergency ends. The bill contains exceptions, allowing retailers to accept returns of food, cleaning, or paper products made within seven days of purchase and returns of adulterated or defective food, cleaning, or paper products. Under the bill, retailers may accept returns of other types of products.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 100.307 of the statutes is created to read:

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-6071/P4ins
KP:...

- 1.** Page 1, analysis paragraph 1, line 1: after “food products,” insert “personal care products,”.
- 2.** Page 1, analysis paragraph 1, line 4: after “food,” insert “personal care,”.
- 3.** Page 1, line analysis paragraph 1, line 5: after “food,” insert “personal care,”.
- 4.** Page 2, line 2: delete that line and substitute:
section:
 - (a) “Food product” has the meaning given in s. 93.01 (6).
 - (b) “Personal care product” has the meaning given in s. 299.50 (1) (b).
- 5.** Page 2, line 4: after “food products,” insert “personal care products,”.
- 6.** Page 2, line 5: after “food product,” insert “personal care product,”.
- 7.** Page 2, line 9: after “food products,” insert “personal care products,”.
- 8.** Page 2, line 10: after “food product,” insert “personal care product,”.

Parisi, Lori

From: Tikalsky, Rory
Sent: Friday, April 03, 2020 2:36 PM
To: Paczuski, Konrad
Subject: RE: Draft review: LRB -6071/P3

Konrad,

This is just what I wanted, thanks. Hopefully this is the last thing, but would you please add to the list of non-returnable items personal care products, as defined under 299.50(1)(b)?

Thanks,
Rory

Rory Tikalsky
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From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Friday, April 03, 2020 11:56 AM
To: Tikalsky, Rory <Rory.Tikalsky@legis.wisconsin.gov>
Subject: Draft review: LRB -6071/P3

Following is the PDF version of draft LRB -6071/P3.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to create** 100.307 of the statutes; **relating to:** prohibiting retailers from
2 accepting certain returns.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Prohibiting retailers from accepting certain returns

This bill prohibits a retailer from accepting a return of food products, personal care products, cleaning products, and paper products during a public health emergency or during the 30 days immediately after a public health emergency ends. The bill contains exceptions, allowing retailers to accept returns of food, personal care, cleaning, or paper products made within seven days of purchase and returns of adulterated or defective food, personal care, cleaning, or paper products. Under the bill, retailers may accept returns of other types of products.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 100.307 of the statutes is created to read:

