

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 545

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RUCKER

[Reported February 28, 2025, from the Committee on

Health and Human Resources]

1 A BILL to amend and reenact §16-7-2 of the Code of West Virginia, 1931, as amended; and to
2 amend the code by adding a new section, designated §18-5D-3A, relating to prohibiting
3 certain products that are injurious to health; setting forth criteria when food, drink,
4 confectionery, or condiments are adulterated; prohibiting certain unsafe food additives in
5 school nutrition programs; providing for exceptions; and setting effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-2. What constitutes adulteration.

1 Any drug or article of food shall be deemed to be adulterated ~~within the meaning of this~~
2 ~~article-~~ for the purpose of this article:

3 (a) In the case of drugs:

4 (1) If, when sold under or by a name recognized in the United States Pharmacopoeia
5 official at that time, it differs from the standard of strength, quality, or purity laid down therein;

6 (2) If, when sold under or by a name not recognized in the United States Pharmacopoeia
7 official at the time, but which is found in some other pharmacopoeia or other standard work of
8 materia medica, it differs materially from the standard of strength, quality, or purity laid down in
9 such work;

10 (3) If its strength, quality, or purity falls below the professed standard under which it is
11 sold;

12 (4) If it be an imitation of, or offered for sale under the name of, another article; or

13 (5) If the contents of the package as originally put up shall have been removed, in whole
14 or in part, and other contents shall have been placed in such package, or if the package fails to
15 bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium,
16 cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide,

17 or any derivative or preparation of any such substance contained therein: *Provided*, That nothing
18 in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular
19 licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing
20 pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the
21 National Formulary, which are sold under the name by which they are recognized.

22 (b) In the case of food, drink, confectionery, or condiment:

23 (1) If any substance or substances have been mixed with it, so as to lower or depreciate
24 or injuriously affect its quality, strength, or purity;

25 (2) If any inferior or cheaper substance or substances have been substituted wholly or in
26 part for it;

27 (3) If any valuable or necessary constituent or ingredient has been wholly or in part
28 abstracted from it;

29 (4) If it is an imitation of, or is sold under the name of, another article;

30 (5) If it consists wholly or in part of diseased, decomposed, putrid, infected, tainted, or
31 rotten animal or vegetable substance, whether manufactured or not, or, in the case of milk, if it is
32 the product of a diseased animal;

33 (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is
34 concealed, or if by any means it is made to appear better or of greater value than it really is;

35 (7) If it contains any added substance or ingredients which are poisonous or injurious to
36 the health, including butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No.
37 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C
38 Yellow No. 6;

39 (8) If it is sold under a coined name and does not contain some ingredient suggested by
40 such name or contains only an inconsiderable quantity; or

41 (9) If the package containing it or any label thereon shall bear any statement regarding it
42 or its composition which shall be false or misleading in any particular: *Provided*, That the

43 provisions of this article ~~shall~~ do not apply to mixtures or compounds recognized as ordinary
44 articles or ingredients of articles of food or drink, if each and every package sold or offered for
45 sale is distinctly labeled in words of the English language as mixtures or compounds, with the
46 name and percent of each ingredient therein; the word "compound" or "mixture" shall be printed
47 in type not smaller in either height or width than one half the largest type upon any label on the
48 package, and the formula shall be printed in letters not smaller in either height or width than one
49 fourth the largest type upon any label on the package, and said compound or mixture must not
50 contain any ingredients injurious to the health;

51 (10) The amendments made to this section during the 2025 regular session of the
52 Legislature shall be effective on January 1, 2027.

CHAPTER 18. EDUCATION.

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-3A. Unsafe food additives prohibited.

1 (a) Effective August 1, 2025, the following food additives shall be deemed unsafe and shall
2 not be permitted as an ingredient in any meal served in a school nutrition program as set forth in
3 this article:

- 4 (1) Red Dye No. 3 (CAS Reg. No. 16423-68-0);
5 (2) Red Dye No. 40 (CAS Reg. No. 25956-17-6);
6 (3) Yellow Dye No. 5 (CAS Reg. No. 1934-21-0);
7 (4) Yellow Dye No. 6 (CAS Reg. No. 2783-94-0);
8 (5) Blue Dye No. 1 (CAS Reg. No.3844-45-8);
9 (6) Blue Dye No. 2 (CAS Reg. No. 860-22-0); and
10 (7) Green Dye No. 3 (CAS Reg. No. 2353-45-9).

11 (b) An elementary, middle, or high school may permit the sale of food items that do not
12 comply with this section as part of a school fundraising event if the sale of those items takes place

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- 13 off of and away from school premises or the sale of those items takes place on the school
- 14 premises at least one-half hour after the end of the school day.