

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2354

BY DELEGATES BURKHAMMER, MASTERS, PRITT,
WORRELL, HITE, MAZZOCCHI, BROOKS, AND HORST
[Passed March 14, 2025; in effect from passage]

1 AN ACT to amend and reenact §16-7-2 and §16-7-4 of the Code of West Virginia, 1931, as
2 amended, and to amend the code by adding a new section, designated §18-5D-3A,
3 relating to prohibiting certain products that are injurious to health; setting forth criteria
4 considered adulterated; prohibiting certain unsafe food additives in school nutrition
5 programs; providing exceptions; exempting criminal penalties; 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 do not apply to mixtures or compounds recognized as ordinary articles or
44 ingredients of articles of food or drink, if each and every package sold or offered for sale is
45 distinctly labeled in words of the English language as mixtures or compounds, with the name and
46 percent of each ingredient therein; the word "compound" or "mixture" shall be printed in type not
47 smaller in either height or width than one half the largest type upon any label on the package, and
48 the formula shall be printed in letters not smaller in either height or width than one fourth the
49 largest type upon any label on the package, and said compound or mixture must not contain any
50 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, 2028;

**§16-7-4. Penalty for adulterating food or drugs, or for manufacturing or selling adulterated
food or drugs.**

1 (a) Whoever, by himself or herself or his or her agents, knowingly adulterates or causes
2 to be adulterated any article of food or drug, or knowingly manufactures for sale, offers for sale,
3 or sells, within this state, any article of food or drug which is adulterated within the meaning of this
4 article, without making the same known to the buyer, shall be guilty of a misdemeanor, and, upon
5 conviction thereof, shall be fined not exceeding \$500, or confined in jail not more than one year,
6 or both, in the discretion of the court; and in addition to the penalties hereinbefore provided, he or
7 she shall be adjudged to pay the cost and expense of analyzing such adulterated food or drug,
8 as set forth in the certificate of the person making the analysis, not exceeding \$25 in any one
9 case, which shall be included in the costs of such prosecution and taxed in favor of the state
10 department of health or the West Virginia Board of Pharmacy, as the case may be; and if he or
11 she be a registered pharmacist or assistant pharmacist, his or her name shall be stricken from
12 the register. The adulterated article shall be forfeited and destroyed.

13 (b) This section does not apply to any person who offers for sale, or sells, within this state,
14 less than \$5,000, in aggregate, of adulterated food, per month, when the food is adulterated by

15 including of butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C
16 Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, or FD&C Yellow No. 6.

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
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.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2025.

.....
Governor