

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 4852

By Delegates Worrell and Burkhammer

[Originating in the Committee on Health and Human

Resources; Reported on February 9, 2026]

A BILL to amend and reenact §16-7-2 and §16-7-4 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section designated, §16-7-12; relating to additives not permitted in foods; establishing civil penalties; and providing exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-2. What constitutes adulteration.

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

(a) In the case of drugs:

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

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

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

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

(5) If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substance contained therein: *Provided*, That nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the

20 National Formulary, which are sold under the name by which they are recognized.

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

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

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

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

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

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

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

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

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

40 (9) If the package containing it or any label thereon shall bear any statement regarding it or
41 its composition which shall be false or misleading in any particular: *Provided*, That the provisions
42 of this article do not apply to mixtures or compounds recognized as ordinary articles or ingredients
43 of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in
44 words of the English language as mixtures or compounds, with the name and percent of each
45 ingredient therein; the word "compound" or "mixture" shall be printed in type not smaller in either

height or width than one half the largest type upon any label on the package, and the formula shall be printed in letters not smaller in either height or width than one fourth the largest type upon any label on the package, and said compound or mixture must not contain any ingredients injurious to the health.

~~(10) The amendments made to this section during the 2025 regular session of the 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.

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

~~(b) This section does not apply to any person who offers for sale, or sells, within this state, less than \$5,000, in aggregate, of adulterated food, per month, when the food is adulterated by including of butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, or FD&C Yellow No. 6.~~

§16-7-12. Additives not permitted in foods.

(a) The following additives are not permitted as an ingredient in food, as defined in section

16-7-1 of this chapter, that is manufactured on or after January 1, 2028.

(1) Butylated hydroxyanisole;

(2) Propylparaben;

(3) FD&C Blue No. 1;

(4) FD&C Blue No. 2;

(5) FD&C Green No. 3;

(6) FD&C Red No. 3;

(7) FD&C Red No. 40;

(8) FD&C Yellow No. 5;

(9) FD&C Yellow No. 6.

(b) A person, or by his or her agents, knowingly manufactures for sale, offers for sale, or sells, within this state, a food containing one or more of the additives listed in subsection (a) of this section shall be subject to the provisions of §16-1-15, and if found in violation thereof is subject to a civil penalty in an amount not to exceed \$500 for each individual food item.

(c) This section does not apply to:

(1) a food manufactured prior to January 1, 2028. Such food may be sold until existing inventories are depleted, but not past July 1, 2028; and

(2) to any person who offers for sale, or sells, within this state, less than \$5,000, in aggregate, of food, per month, when the food contains the additives provided in §16-7-12(a).