

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Committee Substitute**

**for**

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**for**

**Senate Bill 745**

BY SENATORS HELTON, RUCKER, AND TAYLOR

[Reported February 24, from the Committee on

Finance]



1 A BILL to amend and reenact §18-5d-3a of the Code of West Virginia, 1931, as amended, relating  
2 to requirements for public school nutrition programs; setting forth additives not to be  
3 included in a school nutrition program; setting forth requirements related for sugar; setting  
4 forth requirements to post a list of ingredients online; setting forth effective dates;  
5 permitting waiver in certain circumstances; setting forth requirements for waiver; and  
6 requiring reporting.

*Be it enacted by the Legislature of West Virginia:*

**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) Effective August 1, 2027, the following food additives shall be deemed unsafe and shall  
12 not be permitted as an added ingredient in any meal served in a nutrition program as set forth in  
13 this article in a public school under the general supervision of the State Board of Education:

- 14 (1) Titanium dioxide;
- 15 (2) Butylated hydroxytoluene (BHT);
- 16 (3) Butylated hydroxyanisole (BHA);
- 17 (4) Tert-butylhydroquinone (TBHQ);

18 (5) Sodium benzoate;

19 (6) Propyl gallate;

20 (7) Azodicarbonamide;

21 (8) Aloe vera;

22 (9) Propylparaben;

23 (10) Potassium bromate;

24 (11) Butylparaben;

25 (12) Acetaldehyde;

26 (13) Propylene oxide;

27 (14) Ethoxyquin;

28 (15) Acrolein;

29 (16) Aspartame;

30 (17) Sucralose;

31 (18) Acesulfame K;

32 (19) Diacetyl;

33 (20) Octyl gallate;

34 (21) Dodecyl gallate;

35 (22) Calcium bromate; and

36 (23) Calcium sorbate.

37 (c) Effective August 1, 2027, no more than 10 percent of daily calories served in a school

38 nutrition program as set forth in this article may come from added sugars or as provided by the

39 United States Department of Agriculture's Child Nutrition Programs, whichever is less: *Provided,*

40 That effective August 1, 2028, no more than seven percent of daily calories served in a school

41 nutrition program as set forth in this article may come from added sugars or as provided by the

42 United States Department of Agriculture's Child Nutrition Programs, whichever is less: *Provided,*

43 However, That effective August 1, 2029, no more than five percent of daily calories served in a

44 school nutrition program as set forth in this article may come from added sugars or as provided  
45 by the United States Department of Agriculture's Child Nutrition Programs, whichever is less.

46 (d) Effective August 1, 2027, a school shall post on the school's website the school's  
47 breakfast and lunch menu, as applicable, with the list of ingredients for each item on the menu.

48 (e) An individual school may be granted a waiver of the requirements of subsection (b) of  
49 this section in the event that the nutrition director, or other individual responsible for purchasing  
50 food for the school, is:

51 (1) Unable to locate a product for sale that is free from ingredients listed in subsection (b)  
52 of this section within the existing vendor inventory; or

53 (2) Unable to purchase a product for sale that is free from the ingredients listed in  
54 subsection (b) of this section at a price equal to or lower in price than the previously purchased  
55 product from the existing vendor inventory.

56 (f) To obtain the waiver the nutrition director, or other individual responsible for purchasing  
57 food, for the school shall:

58 (1) Document the item being purchased and all other possible substitute items and their  
59 ingredients to obtain a waiver;

60 (2) This information shall be submitted to the Department of Education Office of Child  
61 Nutrition to validate and approve the waiver: *Provided*, That the Department of Education Office  
62 of Child Nutrition has access to the vendor list and can independently validate the information  
63 submitted;

64 (3) If the waiver is approved, then no substitution shall be required; and

65 (4) If the waiver is not approved, then a substitute product is available, and the substitution  
66 shall be made.

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

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

71 (h) The Department of Education shall submit an annual report to the Legislative Oversight  
72 Commission on Health and Human Resources Accountability and to the Legislative Oversight  
73 Commission on Education Accountability beginning July 1, 2028, and annually thereafter  
74 regarding the following: how many waivers are requested, granted, and denied each year.