

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 764

By Senator Helton

[Introduced February 5, 2026; referred
to the Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §16-7-1a; and to amend and reenact §16-7-2 and §16-7-4, relating to
3 prohibiting certain adulterated products; setting forth legislative findings; setting forth
4 substances and ingredients considered adulterated; setting forth effective date; providing
5 that criminal penalties do not apply to specific adulterated foods; and providing for civil
6 penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-1a. Legislative Findings.

1 The Legislature hereby finds that food dye from synthetic sources and preservatives have
2 been linked to health concerns such as an elevated risk of cancer, and hyperactivity and
3 neurobehavioral issues in children. While some of this research is on-going, the Legislature
4 believes that time is of the essence and regulation of these substances is necessary to protect the
5 health and welfare of citizens of the state.

§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 sold;

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

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

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

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

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

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

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

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

(7) If it contains any added substance or ingredients which are poisonous or injurious to the health; including ~~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, and FD&C Yellow No. 6;~~

(8) If it contains any of the following added substances or ingredients: 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, and FD&C Yellow No. 6;

~~(8)~~(9) If it is sold under a coined name and does not contain some ingredient suggested by such name or contains only an inconsiderable quantity; or

~~(9)~~(10) If the package containing it or any label thereon shall bear any statement regarding it or its composition which shall be false or misleading in any particular: *Provided*, That the provisions of this article do not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percent of each 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)~~(11) The amendments made to this section during the 2025 regular session of the Legislature shall ~~be effective on~~ apply to products manufactured on or after 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

8 forth in the certificate of the person making the analysis, not exceeding \$25 in any one case, which
9 shall be included in the costs of such prosecution and taxed in favor of the state department of
10 health or the West Virginia Board of Pharmacy, as the case may be; and if he or she be a
11 registered pharmacist or assistant pharmacist, his or her name shall be stricken from the register.
12 The adulterated article shall be forfeited and destroyed.

13 (b) The provisions set forth in subsection (a) of this section do not apply to not apply to
14 foods adulterated by adding butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C
15 Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and
16 FD&C Yellow No. 6.

17 (c) Whoever, by himself or herself or his or her agents, knowingly adulterates or causes to
18 be adulterated any article of food by adding butylated hydroxyanisole, propylparaben, FD&C Blue
19 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
20 No. 5, and FD&C Yellow No. 6, or knowingly manufactures for sale, offers for sale, or sells, within
21 this state, any article of food adulterated by adding butylated hydroxyanisole, propylparaben,
22 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,
23 FD&C Yellow No. 5, or FD&C Yellow No. 6, without making the same known to the buyer shall be
24 fined not more than \$500 in civil penalties in the discretion of the court; and in addition to the
25 penalties hereinbefore provided, he or shall be adjudged to pay the cost and expense of analyzing
26 such adulterated food, as set forth in the certificate of the person making the analysis, not
27 exceeding \$25 in any one case, and taxed in favor of the state Department of Health. The
28 adulterated article shall be forfeited and destroyed.

29 (b)(d) This section does not apply to any person who offers for sale, or sells, within this
30 state, less than \$5,000, in aggregate, of adulterated food, per month, when the food is adulterated
31 by including of butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2,
32 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.
33 6.

NOTE: The purpose of this bill is to define terms clarify what additives and food dyes are prohibited and to clarify penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.