

## Texas Governor Signs New Law Requiring Warning Labels On Foods Containing Synthetic Colors or “Banned” Additives<sup>1</sup>

On June 22, 2025, Texas Gov. Greg Abbott signed Senate Bill 25 (SB 25), also known as the Make Texas Healthy Again bill. With significant exceptions and exclusions, among its other provisions, the bill requires the placement of a warning label on food labels copyrighted on or after Jan. 1, 2027, if one or more of 44 specific food colors and additives are used and declared as food ingredients.<sup>2</sup>

The bill's signing comes on the heels of the Texas Attorney General's announced investigations of two major food manufacturers for using artificial colors and reflects broader pressure on the food industry to drop synthetic food colors and other additives from formulations quickly.<sup>3</sup> There are several industry groups that could be poised to challenge SB 25's warning label requirement between now and January 2027, and SB 25 includes a significant federal preemption clause. In the meantime, many industry stakeholders must assess the bill's impact and discuss how they will address its impact if it remains intact and in effect in January 2027.

### What Food and Color Additives Could Potentially Trigger the New Warning Label Requirement?

SB 25 requires the disclosure of the use of any of the additives listed below if the FDA requires the ingredient to be named on the label and the ingredient is used in a product that is intended for human consumption:<sup>4</sup>

- Acetylated Esters of Mono- and Diglycerides (Acetic Acid Ester) ([21 CFR 172.828](#), Acetylated monoglycerides)
- Anisole ([21 CFR 172.515](#))
- Azodicarbonamide (ADA) ([21 CFR 172.806](#) and others)
- Butylated Hydroxyanisole (BHA) ([21 CFR 172.110](#) and others)
- Butylated Hydroxytoluene (BHT) ([21 CFR 172.115](#) and others)
- Bleached Flour (see [21 CFR 137.105](#))
- Blue Dye No. 1 (CAS 3844-45-9) ([21 CFR 74.101](#); [40 CFR 180.920](#), CAS for seed treatment only)
- Blue Dye No. 2 (CAS 860-22-0) ([21 CFR 74.102](#))
- Bromated Flour ([21 CFR 137.155](#))
- Calcium Bromate ([21 CFR 136.110](#))
- Canthaxanthin ([21 CFR 73.75](#))
- Certified Food Colors by U.S. FDA (see [FDA Summary of Color Additives Approved for Use in Human Food](#))
- Citrus Red Dye No. 2 (CAS 6358-53-8) ([21 CFR 74.302](#); [Appendix VIII to Part 261, Title 40](#), CAS, Hazardous Constituents)
- Diacetyl ([21 CFR 184.1278](#))
- Diacetyl Tartaric and Fatty Acid Esters of Mono- and Diglycerides (DATEM) ([21 CFR 184.1101](#))
- Dimethylamylamine (DMAA) ([unsafe food additive](#))
- Dioctyl Sodium Sulfosuccinate (DSS) ([21 CFR 172.810](#) and others)
- Ficin ([21 CFR 184.1316](#))
- Green Dye No. 3 (CAS 2353-45-9) ([21 CFR 74.203](#))
- Interesterified Palm Oil
- Lye
- Morpholine ([21 CFR 172.235](#))
- Olestra ([21 CFR 172.867](#))
- Partially Hydrogenated Oil (PHO)<sup>5</sup>
- Potassium Aluminum Sulfate ([21 CFR 182.1129](#) and others)
- Potassium Bromate ([21 CFR 172.130](#))
- Potassium Iodate ([21 CFR 184.1635](#))
- Propylene Oxide ([21 CFR 172.892](#), limited to food starch)
- Propylparaben ([21 CFR 184.1670](#) and others)
- Red Dye No. 3 (CAS 16423-68-0) ([authorization recently revoked by FDA](#), effective 2027)
- Red Dye No. 4 (CAS 4548-53-2) ([21 CFR 74.2304](#), cosmetics; [21 CFR 74.1304](#), external drugs)
- Red Dye No. 40 (CAS 25956-17-6) ([21 CFR 74.340](#))
- Sodium Aluminum Sulfate ([21 CFR 182.1131](#) and others)
- Sodium Lauryl Sulfate ([21 CFR 172.822](#) and others)
- Sodium Stearyl Fumarate ([21 CFR 172.826](#))
- Stearyl Tartrate
- Synthetic Trans Fatty Acid
- Thiodipropionic Acid ([21 CFR 182.3109](#))
- Titanium Dioxide ([21 CFR 73.575](#))
- Toluene

- Interesterified Soybean Oil
- Lactylated Fatty Acid Esters of Glycerol and Propylene Glycol ([21 CFR 172.850](#))
- Yellow Dye No. 5 (CAS 1934-21-0) ([21 CFR 74.705](#))
- Yellow Dye No. 6 (CAS 2783-94-0) ([21 CFR 74.706](#))

### Are Any Foods or Beverages Exempt?

The new labeling requirements apply to food manufacturers offering food products for sale in Texas, regardless of where the product was originally produced.<sup>6</sup> However, there are many exceptions.<sup>7</sup> For example, if you are drinking at a Texas bar, you will not see the warning label on your strawberry margarita that probably contains one of the Red Dyes. You will also not see the warning label on your favorite white powdered donuts served by the local donut shop, even though the coating probably contains titanium dioxide. Additionally, if you happen to pick up beef jerky kept fresh with butylated hydroxyanisole, you also will not see a warning label.

Warning labels would not be needed for:<sup>8</sup>

- Ingredients used in a product that is not intended for human consumption;
- Foods labeled, prepared, served or sold in a restaurant;
- Foods labeled, prepared or served in a retail establishment;
- Products regulated by the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service;
- Products labeled with a governmental warning with a recommendation from the U.S. Surgeon General (*i.e.*, alcoholic beverages);
- A drug or dietary supplement; or
- Substances used as a pesticide chemical, soil or plant nutrient, or other agricultural chemical in the production, storage or transportation of a raw agricultural commodity.

Importantly, the text of SB 25 also provides that the warning label disclosing the use of an ingredient is required to be present "if the United States Food and Drug Administration requires the ingredient to be named on a food label."<sup>9</sup> This means that the use of a listed substance will not always trigger the warning label requirement.

For example, propylene glycol is a common ingredient in food flavorings. FDA's regulations provide for the declaration of many food flavorings as "natural flavor" or "artificial flavor" and do not require the listing of subingredients that meet the requirements of FDA's regulation on incidental additives.<sup>10</sup>

More broadly, FDA's regulations do not require incidental additives to be included in the ingredient list on a food label.<sup>11</sup> Therefore, food manufacturers will want to review whether the use of a listed additive qualifies as an incidental additive.

Additionally, a late-in-session amendment regarding preemption likely significantly curtailed the impact of the bill and excluded many more foods from its purported warning label requirement.

If a federal law or regulation is or has been issued by the FDA or USDA as of September 1, 2025 or after such date, SB 25 will have no effect on use or labeling of a specific additive as of the effective date of the federal law or regulation if it:<sup>12</sup>

- Prohibits the use of a specific ingredient;
- Imposes conditions on the use of an ingredient, including the requirement of a warning or disclosure statement; or
- Determines that an ingredient or class of ingredients is safe for human consumption.

There are currently effective FDA regulations imposing conditions on the use of most of the additives listed in SB 25. Impacted food manufacturers should review the potential impact of the bill's preemption provisions carefully with counsel.

Additionally, SB 25 would be preempted by any FDA or USDA law or regulation that requires a labeling statement relating to ultraprocessed or processed foods, which could help sway the FDA to tackle the topic of ultraprocessed foods at the federal level. The FDA is in the early stages of planning to gather information to define "ultraprocessed foods" and potentially issue regulations in the future.

### **If Required, How Must the Warning Appear on the Food Product Label?**

The law mandates the following warning statement to be placed on the food label, if required:<sup>13</sup>

WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom.

To ensure the warning statement is likely to be seen and understood by ordinary consumers under customary conditions of purchase and use, it must be placed prominently in a reasonably visible location and in sufficiently high contrast to its immediate background in a font size no smaller than the smallest font used to disclose other required information on the label.<sup>14</sup>

### **If Required, Does the Warning Label Requirement Apply to Products Sold Online?**

Yes. A retailer that offers a food product covered by the warning label requirement must disclose the warning on the retailer's website.<sup>15</sup>

### **When Will Food Manufacturers Have To Determine How to Comply?**

SB 25 provides that Section 431.0815 of the Texas Health and Safety Code (*i.e.*, the new warning label requirement) applies to any food label "developed or copyrighted on or after Jan. 1, 2027."<sup>16</sup> Since not all food manufacturers copyright labels, food manufacturers may wish to explore this language further. Additionally, many food manufacturers may go years without updating food labels.

### **Will Texas Provide More Guidance to the Food Industry on the New Requirement?**

Administrative rules will follow. By Dec. 31, 2025, SB 25 requires the Texas Health and Human Services Commission to adopt rules to implement the requirements.<sup>17</sup>

### **Does the Texas Law Create the Risk of New Class Action Litigation?**

Likely, no. While the law allows potentially steep penalties for noncompliance, it does not create a private cause of action. The use of an ingredient subject to the potential warning label, however, could potentially be fodder for a plaintiff to use to support other theories in litigation. Therefore, even a food manufacturer is reasonably comfortable that a warning label is not required in connection with the use of an ingredient named in SB 25, the manufacturer should work with counsel to assess the bill's potential impact on overall risk levels.

### **What Are the Penalties for Noncompliance?**

If the Texas Attorney General believes a manufacturer has been or is in violation, he may seek an injunction against the manufacturer along with additional relief, including civil penalties up to \$50,000 per day for each violating food product and court-ordered reimbursement to the state for the reasonable cost of investigation and enforcement.<sup>18</sup>

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<sup>1</sup> Prepared by Suzie Trigg, Kristi Weisner, and Carleigh Lenz as of June 24, 2025, and updated July 10, 2025. Please refer to the text of the enrolled version of the bill (available at <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00025F.pdf#navpanes=0>) and, once codified, to amended sections of the Texas Educational Code, Texas Health & Safety Code and Texas Occupations Code (available at <https://statutes.capitol.texas.gov/>) to ensure compliance.

<sup>2</sup> [S.B. 25](#), 89th Legis. Sess. §§ 9, 19(b) (Tex. 2025).

<sup>3</sup> See [Attorney General Ken Paxton Announces Investigation into Kellogg's for Potentially Breaking the Law After Falsely Claiming to Remove Unhealthy Artificial Dyes](#), TEX. ATT'Y GEN'L (Apr. 5, 2025); [Attorney General Ken Paxton Takes Action Against General Mills as Part of Investigation into the Company for Violations of Texas Law](#), TEX. ATT'Y GEN'L (May 13, 2025).

<sup>4</sup> TEX. HEALTH & SAFETY CODE § 431.0815(a), as amended.

<sup>5</sup> As we have mentioned in our [prior coverage](#) of SB 25, FDA does not consider partially hydrogenated oil (PHO) safe for use in human food.

<sup>6</sup> TEX. HEALTH & SAFETY CODE § 431.0815(f), as amended.

<sup>7</sup> TEX. HEALTH & SAFETY CODE § 431.0815(d), as amended.

<sup>8</sup> TEX. HEALTH & SAFETY CODE § 431.0815(d), as amended.

<sup>9</sup> TEX. HEALTH & SAFETY CODE § 431.0815(a), as amended.

<sup>10</sup> See 21 CFR 101.22(h)(2).

<sup>11</sup> See 21 CFR 101.100.

<sup>12</sup> TEX. HEALTH & SAFETY CODE § 431.0817, as amended.

<sup>13</sup> TEX. HEALTH & SAFETY CODE § 431.0815(b)(1), as amended.

<sup>14</sup> TEX. HEALTH & SAFETY CODE § 431.0815(b)(1–3), as amended.

<sup>15</sup> TEX. HEALTH & SAFETY CODE § 431.0815(c), as amended.

<sup>16</sup> See *supra* note 2, at § 19(b).

<sup>17</sup> See *supra* note 2, at § 19(a).

<sup>18</sup> TEX. HEALTH & SAFETY CODE § 431.0816, as amended.