

West Virginia Enacts Broad Ban on Several Food Dyes and Additives

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Food additive regulation has garnered more and more attention in recent months.¹ West Virginia's House Bill 2354 is the most recent in a surge of state legislation seeing to restrict food additives in certain U.S. states. However, West Virginia has gone further than other states by entirely banning food dyes and additives that other states have only restricted from inclusion in school meals.

What Food Dyes and Additives Are Banned by West Virginia's HB 2354?

As passed, West Virginia's HB 2354 amends Section 16-7-2 of the Code of West Virginia to state that, effective January 1, 2028, any food, drink, confectionery or condiment "shall be deemed to be adulterated...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."²

Effective August 1, 2025, part of HB 2354 enacted as the West Virginia Feed to Achieve Act also prohibits meals served in school nutrition programs from containing the following food dyes:

- FD&C Blue Dye No. 1 (CAS Reg. No. 3844-45-8)³
- FD&C Blue Dye No. 2 (CAS Reg. No. 860-22-0)
- FD&C Green Dye No. 3 (CAS Reg. No. 2353-45-9)
- FD&C Red Dye No. 3 (CAS Reg. No. 16423-68-0)
- FD&C Red Dye No. 40 (CAS Reg. No. 25956-17-6)
- FD&C Yellow Dye No. 5 (CAS Reg. No. 1934-21-0)
- FD&C Yellow Dye No. 6 (CAS Reg. No. 2783-94-0)⁴

What Is the Current FDA Status of These Dyes and Additives?

All but one of the food dyes and food additives listed in West Virginia's new law are currently authorized for use in food by the U.S. Food and Drug Administration (FDA).⁵ On January 15, 2025, the FDA revoked its authorization for the use of FD&C Red Dye No. 3 in foods.⁶ The removal of FD&C Red Dye No. 3's permanent listing as a color additive becomes effective on January 1, 2027.⁷ Except for FD&C Red Dye No. 3, all of the other color additives specified in the newly amended West Virginia statutes under HB 2354 are authorized for use in food in the U.S.⁸

Both butylated hydroxyanisole and propylparaben are currently authorized for use in food in the U.S. Butylated hydroxyanisole is authorized by the FDA for use in food as an antimicrobial agent, antioxidant, dough strengthener, flavor enhancer, flour treating agent and oxidizing or reducing agent.⁹ Propylparaben is authorized by the FDA for use in food as an antimicrobial agent and flavoring agent or adjuvant.¹⁰

What Is the Potential Impact of West Virginia's Ban?

Industry groups have expressed concern that this new law could potentially impact six out of every ten grocery store items and raise prices for consumers as food manufacturers grapple with having to pivot to alternative ingredients.¹¹ On the other hand, West Virginia Governor Morrisey sees the new law as “a step toward a productive dialogue about how West Virginia and our country can eat healthier and address some of the vexing health care problems facing our citizens.”¹² Governor Morrisey further believes the 2028 compliance date gives manufacturers ample time to adjust without increasing grocery prices.

[1] Prepared by Suzie Trigg and Kristi Weisner as of April 7, 2025. Please refer to the text of the engrossed version of the bill (available at https://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=hb2354%20sub%20eng.htm&yr=2025&sesstype=RS&billtype=B&houseorig=H&i=2354) and to the amended Sections 16-7-2 and 18-5D-3A of the Code of West Virginia (available at <https://code.wvlegislature.gov/>) to ensure compliance.

[2] W. Va. Code § 16-7-2(b)(7), as amended.

[3] W. Va. Code § 16-7-2(b)(7), as amended; compare with U.S. Food and Drug Admin., [Regulatory Status of Color Additives: FD&C Blue No. 1](#) (last updated Feb. 14, 2025) (which indicates that the CAS number for FDA's certified Blue Dye No. 1 is 3844-45-9, as opposed to 3844-45-8 as noted in H.B. 2354).

[4] W.Va. Code § 18-5D-3A(a), as amended.

[5] U.S. Food and Drug Admin., [Substances Added to Food](#) (last updated Feb. 13, 2025); U.S. Food and Drug Admin., [Regulatory Status of Color Additives](#) (last updated Feb. 14, 2025).

[6] 90 Fed. Reg. 4628 (Jan. 16, 2025).

[7] 90 Fed. Reg. 4628 (Jan. 16, 2025).

[8] U.S. Food and Drug Admin., [Regulatory Status of Color Additives: FD&C Blue No. 1](#) (last updated Feb. 14, 2025); see also U.S. Food and Drug Admin., [Color Additives Questions and Answers for Consumers](#) (Dec. 14, 2023); see also U.S. Food and Drug Admin., [How Safe Are Color Additives?](#) (July 13, 2023); U.S. Food and Drug Admin., [Color Additives in Foods](#) (July 6, 2023); see e.g., [Petition to Ban the Use of Yellow 5 and Other Food Dyes](#), Center for Science in the Public Interest (June 3, 2008).

[9] U.S. Food and Drug Admin., [Substances Added to Food: Butylated Hydroxyanisole](#) (last updated Feb. 13, 2025).

[10] U.S. Food and Drug Admin., [Substances Added to Food: Propylparaben](#) (last updated Feb. 13, 2025).

[11] See e.g., [American Beverage Statement on Enactment of West Virginia's Ingredient Ban Legislation](#), AmericanBeverage.org (Mar. 24, 2025); Charles Young, [Industry Group Warns West Virginia Bill Prohibiting Food Dyes, Preservatives Could Ban 60% of Grocery Items](#), WVNews.com (Mar. 11, 2025).

[12] [Governor Patrick Morrisey Signs Food Dye Legislation Into Law](#), WV.gov (Mar. 24, 2025).