

# STATE OF NEW YORK

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## IN SENATE

January 8, 2025

Introduced by Sens. KAVANAGH, SEPULVEDA, CLEARE, FAHY, FERNANDEZ, GONZALEZ, HOYLMAN-SIGAL, JACKSON, MAY, MYRIE, OBERACKER, RHOADS, C. RYAN, WEBER, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the agriculture and markets law, in relation to enacting the "food safety and chemical disclosure act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "food safety and chemical disclosure act".

3 § 2. The section heading of section 199-a of the agriculture and  
4 markets law, as amended by chapter 797 of the laws of 1961, is amended  
5 and a new subdivision 5 is added to read as follows:

6 Prohibition as to adulterated or misbranded food and certain food  
7 additives and food color additives intended for human consumption.

8 5. (a) Notwithstanding any other provision of law to the contrary, on  
9 or after the date one year after the effective date of this paragraph it  
10 shall be unlawful for any person, firm, association, or corporation to  
11 manufacture, compound, brew, distill, produce, process, sell, deliver,  
12 distribute, hold, offer or expose for sale any of the following  
13 substances as food additives or food color additives or any food or food  
14 product containing any of the following substances intended for human  
15 consumption:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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- 1 (i) FD&C Red No. 3;  
2 (ii) Potassium bromate; or  
3 (iii) Propylparaben.

4 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-  
5 sion, a retail food store as defined in paragraph (b) of subdivision one  
6 of section five hundred of this chapter, a food service establishment as  
7 defined in paragraph (a) of subdivision one of section five hundred of  
8 this chapter, a food relief organization as defined in subdivision one  
9 of section four hundred fifty-one of this chapter, a supermarket, a  
10 grocery store, a specialty food store, a farmer's market, or any other  
11 vendor that, in the regular course of business, sells food at retail  
12 directly to the public on premises located in the state shall be permit-  
13 ted to sell, deliver, distribute, hold, offer or expose for sale any  
14 food or food product containing any of the substances listed in para-  
15 graph (a) of this subdivision until the expiration date, "best by" date,  
16 or "sell by" date printed on the packaging of the food or food product  
17 by the manufacturer or producer, but no later than three years after the  
18 effective date of this paragraph, provided that such food or food prod-  
19 uct was acquired for sale within the state by such retail food store,  
20 food service establishment, food relief organization, supermarket,  
21 grocery store, specialty food store, farmer's market, or other vendor  
22 before the effective date of this paragraph.

23 (c) No less than one hundred eighty days before the effective date of  
24 paragraphs (a) and (b) of this subdivision, the commissioner shall amend  
25 the exemption list maintained pursuant to subdivision three of this  
26 section to indicate that in this state the substances prohibited in this  
27 subdivision shall not be deemed to be safe for human consumption on or  
28 after the three hundred sixty-fifth day after the effective date of this  
29 subdivision, and to further indicate that the provisions of paragraph  
30 (b) of this subdivision shall apply until three years after the effec-  
31 tive date of paragraphs (a) and (b) of this subdivision.

32 § 3. Section 198 of the agriculture and markets law is amended by  
33 adding a new subdivision 7-a to read as follows:

34 7-a. For purposes of this section, the term "generally recognized as  
35 safe substance" or "GRAS substance" means any substance added to food  
36 that is exempted from the definition of "food additive" under subdivi-  
37 sion seven of this section because it is generally recognized, among  
38 experts qualified by scientific training and experience to evaluate its  
39 safety, as having been adequately shown to be safe under the conditions  
40 of its intended use:

41 (a) either through scientific procedures using the same quantity and  
42 quality of scientific evidence as is required to obtain approval of the  
43 substance as a food additive; or

44 (b) for a substance used in food prior to January first, nineteen  
45 hundred fifty-eight, through experience based on common use in food.

46 § 4. Subdivision 4 of section 199-a of the agriculture and markets  
47 law, as amended by chapter 671 of the laws of 1966, is amended to read  
48 as follows:

49 4. All data submitted to the commissioner in support of the food or  
50 color additives report under this section shall be considered confiden-  
51 tial by the commissioner and shall not be revealed to any person other  
52 than to a person authorized by the commissioner in the performance of  
53 ~~his~~ their official duties under this article. In case of an actual  
54 controversy as to the validity of an order or decision of the commis-  
55 sioner respecting the test data or report in which a proceeding to  
56 review has been instituted as authorized by section two hundred two-c of

1 this article the petition, data and report shall be transmitted by the  
2 commissioner to the clerk of the court in which the review proceeding is  
3 instituted, together with a record of the proceedings on which the  
4 commissioner based [~~his~~] the order or decision, and such transmittal  
5 shall not be construed to be a violation of confidence. Subdivisions  
6 two and three of this section shall not apply to food additives or color  
7 additives which are safe within the meaning of the federal food, drug  
8 and cosmetic act as amended.

9 § 5. The agriculture and markets law is amended by adding a new  
10 section 199-g to read as follows:

11 § 199-g. Reporting of GRAS substances. 1. a. Except as provided in  
12 subdivision two or subdivision three of this section, unless a report  
13 described in paragraph b of this subdivision has been submitted to the  
14 commissioner and such report is made available in the database described  
15 in subdivision five of section one hundred ninety-nine-b of this arti-  
16 cle, and notwithstanding any other provision of law to the contrary, it  
17 shall be unlawful for any person, firm, association, or corporation to:

18 (i) sell or offer or expose for sale for use in or on food, or to use  
19 in the manufacturing, compounding, brewing, distilling, producing, or  
20 processing of any food or food product, any GRAS substance or combina-  
21 tion of GRAS substances;

22 (ii) make any new use of any GRAS substance or combination of GRAS  
23 substances in or on food; or

24 (iii) sell or offer or expose for sale any food or food product  
25 containing any GRAS substance or combination of GRAS substances.

26 b. The report required pursuant to paragraph a of this subdivision  
27 shall include but not be limited to the following information:

28 (i) Signed statements and a certification, including:

29 (1) the date and signature of a responsible official of the reporter  
30 or reporting organization;

31 (2) the name and address of the reporter or reporting organization;

32 (3) the name of any GRAS substances discussed in the report, using an  
33 appropriately descriptive term;

34 (4) intended conditions for the use of any GRAS substance discussed in  
35 the report, including the foods in which the substance will be used, the  
36 levels of such use in such foods, and the purposes for which the  
37 substance will be used, including, when appropriate, a description of  
38 any subpopulation expected to consume such GRAS substance or substances;

39 (5) the statutory basis for the conclusion of GRAS status;

40 (6) a statement that the reported substance is not subject to the  
41 premarket approval requirements of the federal food, drug, and cosmetic  
42 act based on the conclusion that the notified substance is GRAS under  
43 the conditions of its intended use;

44 (7) a statement that, if asked to see the data and information that  
45 are the basis for the GRAS conclusion, the reporter will agree to:

46 (A) make the data and information available to the commissioner; and

47 (B) upon the commissioner's request, both of the following procedures  
48 for making the data and information available to the commissioner:

49 (I) allow the commissioner to review and copy the data and information  
50 during customary business hours at the address specified for where these  
51 data and information will be available; and

52 (II) provide a complete copy of the data and information either in an  
53 electronic format or on paper;

54 (8) views as to whether any of the data and information in the GRAS  
55 report are exempt from disclosure under the freedom of information law;

1 (9) certifications that, to the best of the reporter's knowledge, the  
2 GRAS report is a complete, representative, and balanced submission that  
3 includes both unfavorable and favorable information known to the repor-  
4 ter and pertinent to the evaluation of the safety and GRAS status of the  
5 use of the substance; and

6 (10) the name and position or title of the person who signs the GRAS  
7 report.

8 (ii) The identity, method of manufacture, specifications, and physical  
9 or technical effect of the notified substance, including:

10 (1) scientific data and information that identifies the GRAS  
11 substance, including:

12 (A) examples of appropriate data and information including the chemi-  
13 cal name, applicable registry numbers (such as a chemical abstracts  
14 service (CAS) registry number or an enzyme commission (EC) number),  
15 empirical formula, structural formula, quantitative composition, and  
16 characteristic properties; and

17 (B) when the source of a notified substance is a biological material,  
18 data and information sufficient to identify:

19 (I) the taxonomic source (e.g., genus, species) of the GRAS substance,  
20 including, as applicable, data and information at the sub-species level  
21 (e.g., variety, strain);

22 (II) the part of any plant or animal used as the source of the GRAS  
23 substance; and

24 (III) any known toxicants that could be in the source of the GRAS  
25 substance;

26 (2) a description of the method of manufacture of the GRAS substance  
27 in sufficient detail to evaluate the safety of the notified substance as  
28 manufactured;

29 (3) specifications for food-grade material; and

30 (4) when necessary to demonstrate safety, relevant data and informa-  
31 tion bearing on the physical or other technical effect the GRAS  
32 substance is intended to produce, including the quantity of the GRAS  
33 substance required to produce such effect.

34 (iii) Dietary exposure to the notified substance, including informa-  
35 tion about dietary exposure (i.e., the amount of relevant substances  
36 that consumers are likely to eat or drink as part of a total diet),  
37 including:

38 (1) an estimate of dietary exposure to the notified substance that  
39 includes exposure from its intended use and all sources in the diet;

40 (2) when applicable, an estimate of dietary exposure to any other  
41 substance that is expected to be formed in or on food because of the use  
42 of the notified substance (e.g., hydrolytic products or reaction  
43 products);

44 (3) when applicable, an estimate of dietary exposure to any other  
45 substance that is present with the notified substance either naturally  
46 or due to its manufacture (e.g., contaminants or by-products);

47 (4) sources of any food consumption data used to estimate dietary  
48 exposure, in accordance with clauses one through three of this subpara-  
49 graph; and

50 (5) any assumptions made to estimate dietary exposure, in accordance  
51 with clauses one through three of this subparagraph.

52 (iv) Self-limiting levels of use in circumstances where the amount of  
53 the notified substance that can be added to human food or animal food is  
54 limited because the food containing levels of the notified substance  
55 above a particular level would become unpalatable or technologically  
56 impractical.

1 (v) If the statutory basis for GRAS status is through experience based  
2 on common use in food, evidence of a substantial history of consumption  
3 of the notified substance for food use by a significant number of  
4 consumers prior to January first, nineteen hundred fifty-eight.

5 (vi) A narrative that provides the basis for the conclusion of GRAS  
6 status, including:

7 (1) an explanation for why the data and information in the report  
8 provide a basis for that the notified substance is safe under the condi-  
9 tions of its intended use. Such explanation shall address the safety of  
10 the notified substance, considering all dietary sources and taking into  
11 account any chemically or pharmacologically related substances in such  
12 diet, and identify what specific data and information discussed in  
13 accordance with this clause are generally available and not generally  
14 available, by providing citations to the list of data and information  
15 required in subparagraph (vii) of this paragraph;

16 (2) an explanation of how the generally available data and information  
17 relied on to establish safety in accordance with clause one of this  
18 subparagraph provides a basis for the conclusion that the reported  
19 substance is generally recognized, among qualified experts, to be safe  
20 under the conditions of its intended use;

21 (3) either:

22 (A) data and information that are, or may appear to be, inconsistent  
23 with the conclusion of GRAS status; or

24 (B) a statement that the available data and information was reviewed  
25 and the reporter is not aware of any data and information that are, or  
26 may appear to be, inconsistent with the conclusion of GRAS status;

27 (4) if any data and information in the report is exempt from disclo-  
28 sure under the freedom of information law, a statement that identifies  
29 such data and information; and

30 (5) for non-public, safety-related data and information considered in  
31 reaching a conclusion of GRAS status, an explanation of how there could  
32 be a basis for a conclusion of GRAS status if qualified experts do not  
33 have access to such data and information.

34 (vii) A list of the generally available data, information, and methods  
35 the notifier cites in the GRAS notice, including:

36 (1) a list of all of the data and information required by subparagraph  
37 (vi) of this paragraph to provide a basis for determining that the noti-  
38 fied substance is safe under the conditions of its intended use, as  
39 described in accordance with clause one of subparagraph (vi) of this  
40 paragraph; and

41 (2) identification of specific data and information listed in accord-  
42 ance with clause one of this subparagraph that are generally available  
43 and not generally available.

44 (viii) Any previous GRAS substance notices submitted to the federal  
45 food and drug administration on the reported substance and the federal  
46 food and drug administration's responses.

47 (ix) All relevant currently available safety information.

48 c. A report that includes the information specified in paragraph b of  
49 this subdivision and has been submitted to the commissioner and made  
50 available in the database described in subdivision five of section one  
51 hundred ninety-nine-b of this article, shall be applicable to subsequent  
52 uses of a GRAS substance that is the subject of such report that is to  
53 be used under the same conditions of intended use, regardless of who  
54 submitted such report.

55 2. The following substances are exempt from the reporting requirements  
56 of subdivision one of this section:

1 a. Any GRAS substance for which the federal food and drug adminis-  
2 tration has received a GRAS notice and issued a letter stating that the  
3 federal food and drug administration has no questions regarding the  
4 conclusion that the substance is generally recognized as safe under its  
5 intended conditions of use;

6 b. Any substances recognized in federal regulations as prior sanc-  
7 tioned or GRAS substances for use in food or food packaging;

8 c. Any food contact substance for which there is an effective premar-  
9 ket notification demonstrating safety for its intended use;

10 d. Any substances subject to regulation approving its intended use for  
11 food;

12 e. A food ingredient that has been widely consumed in the United  
13 States prior to January first, nineteen hundred fifty-eight without  
14 known detrimental effects, which is subject only to conventional proc-  
15 essing as practiced prior to January first, nineteen hundred fifty-  
16 eight, and for which no known safety hazard exists;

17 f. Any substance for which the federal food and drug administration  
18 has received a new dietary ingredient notification and issued a letter  
19 of acknowledgement without objection that the substance is safe under  
20 its notification's intended conditions of use; and

21 g. Any substance determined safe to be added to foods by the commis-  
22 sioner through rulemaking.

23 3. Notwithstanding the provisions of subdivision one of this section,  
24 a retail food store as defined in paragraph (b) of subdivision one of  
25 section five hundred of this chapter, a food service establishment as  
26 defined in paragraph (a) of subdivision one of section five hundred of  
27 this chapter, or a food relief organization as defined in section four  
28 hundred fifty-one of this chapter, a supermarket, a grocery store, a  
29 specialty food store, a farmer's market, or any other vendor that, in  
30 the regular course of business, sells food at retail directly to the  
31 public on premises located in the state shall be permitted to sell,  
32 deliver, distribute, hold, offer or expose for sale any food or food  
33 product the sale of which would otherwise be prohibited by the  
34 provisions of subdivision one of this section, until the expiration  
35 date, "best by" date, or "sell by" date printed on the packaging of the  
36 food or food product by the manufacturer or producer, but no later than  
37 three years after the effective date of this subdivision. This subdivi-  
38 sion shall not affect the applicability of any provision of law other  
39 than subdivision one of this section, provided that such food or food  
40 product was acquired for sale within the state by such retail food  
41 store, food service establishment, food relief organization, supermar-  
42 ket, grocery store, specialty food store, farmer's market, or other  
43 vendor before the effective date of this section.

44 4. A small business, defined as a business that is resident in this  
45 state, is independently owned and operated, and employs one hundred or  
46 fewer persons, shall be exempt from the requirements of this section.

47 5. Data establishing the general recognition of safety shall be based  
48 on publicly available information and shall not be based on trade  
49 secrets.

50 6. Nothing in this section shall impose any requirement regarding food  
51 labelling not otherwise required by law.

52 § 6. Section 199-b of the agriculture and markets law is amended by  
53 adding a new subdivision 5 to read as follows:

54 5. The commissioner:

1 a. shall make reports submitted pursuant to section one hundred nine-  
2 ty-nine-g of this article available to the public in a database on its  
3 website. The database shall:

4 (i) be searchable by members of the public;

5 (ii) enable consumers to download and print displayed information; and

6 (iii) accommodate reasonably anticipated and actual public use.

7 b. shall redact from the public report any information that has been  
8 designated by the submitter as a trade secret, provided, however, that  
9 data establishing the general recognition of safety shall not be redact-  
10 ed;

11 c. shall update the database with any new information that the commis-  
12 sioner receives relating to the safety of the GRAS substance;

13 d. may refuse to list a GRAS substance if the commissioner determines  
14 the report does not contain the information required by section one  
15 hundred ninety-nine-g of this article;

16 e. shall provide an interim progress report concerning efforts to  
17 develop and implement the database system required by this subdivision,  
18 which shall include:

19 (i) a projected completion date;

20 (ii) a description of obstacles to development and implementation of  
21 the database system; and

22 (iii) an estimate of the costs to complete the implementation of the  
23 database system; and

24 f. may charge a fee to the reporter of a GRAS substance in order to  
25 recover the costs incurred in listing such GRAS substance and maintain-  
26 ing the database.

27 § 7. The second undesignated paragraph of section 202-c of the agri-  
28 culture and markets law, as amended by chapter 671 of the laws of 1966,  
29 is amended to read as follows:

30 The commissioner may institute such action at law or in equity as may  
31 appear necessary to enforce compliance with sections one hundred nine-  
32 ty-nine-a, one hundred ninety-nine-g, two hundred and two hundred one of  
33 this article, and any rule or order respecting a GRAS substance, food  
34 additive, or color additive promulgated pursuant to sections one hundred  
35 ninety-nine-b and two hundred fourteen-b of this article and, in addi-  
36 tion to any other remedy under this chapter or otherwise, may apply for  
37 relief by injunction to protect the public interest without being  
38 compelled to allege or prove that an adequate remedy at law does not  
39 exist. In an action instituted by the commissioner to enforce compliance  
40 with said sections one hundred ninety-nine-a, two hundred and two  
41 hundred one the commissioner shall not be required to prove that the  
42 food, food additive or color additive mentioned in the complaint is  
43 unsafe and the claim or defense of the defendant as to its safety shall  
44 be immaterial, provided, however, that the recognition by the federal  
45 food and drug administration of a food additive or color additive as  
46 safe may be alleged as a proper defense.

47 § 8. This act shall take effect one year after it shall have become a  
48 law; provided, however, that paragraph (c) of subdivision 5 of section  
49 199-a of the agriculture and markets law as added by section two of this  
50 act shall take effect immediately. Effective immediately, the addition,  
51 amendment and/or repeal of any rule or regulation necessary for the  
52 implementation of this act on its effective date are authorized to be  
53 made and completed by the commissioner of agriculture and markets on or  
54 before such effective date.