

# STATE OF NEW YORK

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## IN SENATE

January 8, 2025

Introduced by Sens. KAVANAGH, SEPULVEDA, CLEARE, FAHY, FERNANDEZ, GONZALEZ, JACKSON, MAY, MYRIE, OBERACKER, RHOADS, C. RYAN, SCARCELLA-SPANTON, 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 -- again amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to 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:

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

LBD01051-16-6

1 Prohibition as to adulterated or misbranded food and certain food  
2 additives and food color additives used or intended for human consump-  
3 tion.

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

12 (i) FD&C Red No. 3;

13 (ii) Potassium bromate; or

14 (iii) Propylparaben.

15 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-  
16 sion, a retail food store as defined in subdivision two of section five  
17 hundred-a of this chapter, a food service establishment as defined in  
18 subdivision one of section five hundred-a of this chapter, a food relief  
19 organization as defined in subdivision one of section four hundred  
20 fifty-one of this chapter, a supermarket, a grocery store, a specialty  
21 food store, a farmer's market, or any other vendor that, in the regular  
22 course of business, sells food at retail directly to the public on prem-  
23 ises located in the state shall be permitted to sell, deliver, distrib-  
24 ute, hold, offer or expose for sale any food or food product containing  
25 any of the substances listed in paragraph (a) of this subdivision until  
26 the expiration date, "best by" date, or "sell by" date printed on the  
27 packaging of the food or food product by the manufacturer or producer,  
28 but no later than three years after the effective date of this para-  
29 graph, provided that such food or food product was acquired for sale  
30 within the state by such retail food store, food service establishment,  
31 food relief organization, supermarket, grocery store, specialty food  
32 store, farmer's market, or other vendor before the effective date of  
33 this paragraph.

34 (c) No less than one hundred eighty days before the effective date of  
35 paragraphs (a) and (b) of this subdivision, the commissioner shall amend  
36 the exemption list maintained pursuant to subdivision three of this  
37 section to indicate that in this state the substances prohibited in this  
38 subdivision shall not be deemed to be safe for human consumption on or  
39 after the three hundred sixty-fifth day after the effective date of this  
40 subdivision, and to further indicate that the provisions of paragraph  
41 (b) of this subdivision shall apply until three years after the effec-  
42 tive date of paragraphs (a) and (b) of this subdivision.

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

45 7-a. The term "generally recognized as safe substance" or "GRAS  
46 substance" means any substance added to food that is exempted from the  
47 definition of "food additive" under subdivision seven of this section  
48 because it is generally recognized, among experts qualified by scientifi-  
49 c training and experience to evaluate its safety, as having been  
50 adequately shown to be safe under the conditions of its intended use:

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

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

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

4 4. All data submitted to the commissioner in support of the food or  
5 color additives report under this section shall be considered confiden-  
6 tial by the commissioner and shall not be revealed to any person other  
7 than to a person authorized by the commissioner in the performance of  
8 [~~his~~] their official duties under this article. In case of an actual  
9 controversy as to the validity of an order or decision of the commis-  
10 sioner respecting the test data or report in which a proceeding to  
11 review has been instituted as authorized by section two hundred two-c of  
12 this article the petition, data and report shall be transmitted by the  
13 commissioner to the clerk of the court in which the review proceeding is  
14 instituted, together with a record of the proceedings on which the  
15 commissioner based [~~his~~] the order or decision, and such transmittal  
16 shall not be construed to be a violation of confidence. Subdivisions  
17 two and three of this section shall not apply to food additives or color  
18 additives which are safe within the meaning of the federal food, drug  
19 and cosmetic act as amended.

20 § 5. The agriculture and markets law is amended by adding a new  
21 section 199-h to read as follows:

22 § 199-h. Reporting of GRAS substances. 1. a. Except as provided in  
23 subdivision two or subdivision three of this section, unless a report  
24 described in paragraph b of this subdivision has been submitted to the  
25 commissioner and such report is made available in the database described  
26 in subdivision five of section one hundred ninety-nine-b of this arti-  
27 cle, and notwithstanding any other provision of law to the contrary, it  
28 shall be unlawful for any person, firm, association, or corporation to:

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

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

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

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

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

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

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

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

45 (4) intended conditions for the use of any GRAS substance discussed in  
46 the report, including the foods in which the substance will be used, the  
47 levels of such use in such foods, and the purposes for which the  
48 substance will be used, including, when appropriate, a description of  
49 any subpopulation expected to consume such GRAS substance or substances;

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

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

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

1 (A) make the data and information available to the commissioner; and  
2 (B) upon the commissioner's request, both of the following procedures  
3 for making the data and information available to the commissioner:

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

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

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

11 (9) certifications that, to the best of the reporter's knowledge, the  
12 GRAS report is a complete, representative, and balanced submission that  
13 includes both unfavorable and favorable information known to the repor-  
14 ter and pertinent to the evaluation of the safety and GRAS status of the  
15 use of the substance; and

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

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

20 (1) scientific data and information that identifies the GRAS  
21 substance, including:

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

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

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

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

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

36 (2) a description of the method of manufacture of the GRAS substance  
37 in sufficient detail to evaluate the safety of the notified substance as  
38 manufactured;

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

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

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

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

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

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

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

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

6 (iv) Self-limiting levels of use in circumstances where the amount of  
7 the notified substance that can be added to human food or animal food is  
8 limited because the food containing levels of the notified substance  
9 above a particular level would become unpalatable or technologically  
10 impractical.

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

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

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

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

31 (3) either:

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

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

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

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

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

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

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

54 (viii) Any previous GRAS substance notices submitted to the federal  
55 food and drug administration on the reported substance and the federal  
56 food and drug administration's responses.

1 (ix) All relevant currently available safety information.

2 c. A report that includes the information specified in paragraph b of  
3 this subdivision and has been submitted to the commissioner and made  
4 available in the database described in subdivision five of section one  
5 hundred ninety-nine-b of this article, shall be applicable to subsequent  
6 uses of a GRAS substance that is the subject of such report that is to  
7 be used under the same conditions of intended use, regardless of who  
8 submitted such report.

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

11 a. Any GRAS substance for which the federal food and drug adminis-  
12 tration has received a GRAS notice and issued a letter stating that the  
13 federal food and drug administration has no questions regarding the  
14 conclusion that the substance is generally recognized as safe under its  
15 intended conditions of use;

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

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

20 d. Any substances subject to regulation approving its intended use for  
21 food;

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

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

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

33 3. Notwithstanding the provisions of subdivision one of this section,  
34 a retail food store as defined in subdivision two of section five  
35 hundred-a of this chapter, a food service establishment as defined in  
36 subdivision one of section five hundred-a of this chapter, or a food  
37 relief organization as defined in section four hundred fifty-one of this  
38 chapter, a supermarket, a grocery store, a specialty food store, a farm-  
39 er's market, or any other vendor that, in the regular course of busi-  
40 ness, sells food at retail directly to the public on premises located in  
41 the state shall be permitted to sell, deliver, distribute, hold, offer  
42 or expose for sale any food or food product the sale of which would  
43 otherwise be prohibited by the provisions of subdivision one of this  
44 section, until the expiration date, "best by" date, or "sell by" date  
45 printed on the packaging of the food or food product by the manufacturer  
46 or producer, but no later than three years after the effective date of  
47 this subdivision. This subdivision shall not affect the applicability of  
48 any provision of law other than subdivision one of this section,  
49 provided that such food or food product was acquired for sale within the  
50 state by such retail food store, food service establishment, food relief  
51 organization, supermarket, grocery store, specialty food store, farmer's  
52 market, or other vendor before the effective date of this section.

53 4. Notwithstanding the provisions of subdivision one of this section,  
54 a retail food store as defined in subdivision two of section five  
55 hundred-a of this chapter, a food service establishment as defined in  
56 subdivision one of section five hundred-a of this chapter, a food relief

1 organization as defined in subdivision one of section four hundred  
2 fifty-one of this chapter, a supermarket, a grocery store, a specialty  
3 food store, a farmer's market, or any other vendor that, in the regular  
4 course of business, sells food at retail directly to the public on prem-  
5 ises located in the state, shall not be found in violation of subpara-  
6 graph (iii) of paragraph a of subdivision one of this section for sell-  
7 ing or offering or exposing for sale any food or food product containing  
8 an unreported GRAS substance or combination of GRAS substances if such  
9 retailer, as identified in this subdivision, has a valid written  
10 contract or renewal agreement with the manufacturer, producer, distrib-  
11 utor, or supplier for the purchase of any food or food product that  
12 provides such food or food product sold to such retailer, as identified  
13 in this subdivision, is compliant with this section. This subdivision  
14 shall not affect the applicability of this act to manufacturers, produc-  
15 ers, distributors, or suppliers of GRAS substances, food, or food  
16 products.

17 5. This section shall only apply to food or food products used or  
18 intended for human consumption.

19 6. A small business, defined as a business that is independently owned  
20 and operated, and employs one hundred or fewer persons, shall be exempt  
21 from the requirements of this section.

22 7. Data establishing the general recognition of safety shall be based  
23 on publicly available information and shall not be based on trade  
24 secrets.

25 8. Nothing in this section shall impose any requirement regarding food  
26 labelling not otherwise required by law.

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

29 5. The commissioner:

30 a. shall make reports submitted pursuant to section one hundred nine-  
31 ty-nine-h of this article available to the public in a database on its  
32 website. The database shall:

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

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

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

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

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

42 d. may refuse to list a GRAS substance if the commissioner determines  
43 the report does not contain the information required by section one  
44 hundred ninety-nine-h of this article;

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

48 (i) a projected completion date;

49 (ii) a description of obstacles to development and implementation of  
50 the database system; and

51 (iii) an estimate of the costs to complete the implementation of the  
52 database system; and

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

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

4 The commissioner may institute such action at law or in equity as may  
5 appear necessary to enforce compliance with sections one hundred nine-  
6 ty-nine-a, one hundred ninety-nine-h, two hundred and two hundred one of  
7 this article, and any rule or order respecting a GRAS substance, food  
8 additive, or color additive promulgated pursuant to sections one hundred  
9 ninety-nine-b and two hundred fourteen-b of this article and, in addi-  
10 tion to any other remedy under this chapter or otherwise, may apply for  
11 relief by injunction to protect the public interest without being  
12 compelled to allege or prove that an adequate remedy at law does not  
13 exist. In an action instituted by the commissioner to enforce compliance  
14 with said sections one hundred ninety-nine-a, two hundred and two  
15 hundred one the commissioner shall not be required to prove that the  
16 food, food additive or color additive mentioned in the complaint is  
17 unsafe and the claim or defense of the defendant as to its safety shall  
18 be immaterial, provided, however, that the recognition by the federal  
19 food and drug administration of a food additive or color additive as  
20 safe may be alleged as a proper defense.

21 § 8. This act shall take effect one year after it shall have become a  
22 law; provided, however, that paragraph (c) of subdivision 5 of section  
23 199-a of the agriculture and markets law as added by section two of this  
24 act shall take effect immediately. Effective immediately, the addition,  
25 amendment and/or repeal of any rule or regulation necessary for the  
26 implementation of this act on its effective date are authorized to be  
27 made and completed by the commissioner of agriculture and markets on or  
28 before such effective date.