

STATE OF NEW YORK

1556

2025-2026 Regular Sessions

IN ASSEMBLY

January 10, 2025

Introduced by M. of A. KELLES, COLTON, EPSTEIN, GIBBS, GLICK, JACKSON, LEE, LEVENBERG, RAGA, REYES, ROSENTHAL, SAYEGH, SEAWRIGHT, SHIMSKY, SIMON, STECK, STIRPE, TAPIA -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the education law, in relation to prohibiting certain food additives and food color additives and to the reporting of GRAS substances

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

Section 1. The section heading of section 199-a of the agriculture and markets law, as amended by chapter 797 of the laws of 1961, is amended and a new subdivision 5 is added to read as follows:

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

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

(i) FD&C Red No. 3;

(ii) Potassium bromate; or

(iii) Propylparaben.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, a store shall be permitted to sell, deliver, distribute, hold, offer or expose for sale any food or food product containing any of the substances listed in paragraph (a) of this subdivision until the expiration date, "best by" date, or "sell by" date printed on the packaging of the food or food product by the manufacturer or producer, but no later

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

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1 than three years after the effective date of this subdivision, provided,
2 however, that:

3 (i) the store sells food or food products at retail and is not prima-
4 rily engaged in the sale of food for consumption on the premises;

5 (ii) the store is independently owned and operated by a business that
6 employs ten or fewer persons; and

7 (iii) the food or food product was acquired by the business.

8 (c) Within thirty days of the effective date of this subdivision, the
9 commissioner shall amend the exemption list maintained pursuant to
10 subdivision three of this section to indicate that in this state the
11 substances prohibited in this subdivision shall not be deemed to be safe
12 for human consumption on or after one year after the effective date of
13 this subdivision.

14 § 2. The education law is amended by adding a new section 915-a to
15 read as follows:

16 § 915-a. Prohibiting the sale of foods containing synthetic color
17 additives. 1. No foods or beverages, including competitive foods as
18 defined under 7 CFR 210.11(a)(2) and meals reimbursed under programs
19 authorized by the federal Richard B. Russell National School Lunch Act
20 (Public Law 113-79) and the federal Child Nutrition Act of 1966 (42
21 U.S.C. Sec. 1771 et seq.), containing any of the following substances
22 shall be sold in any public school within the state:

23 a. FD&C Red No. 3

24 b. FD&C Red No. 40

25 c. FD&C Blue No. 1

26 d. FD&C Blue No. 2

27 e. FD&C Green No. 3

28 f. FD&C Yellow No. 5

29 g. FD&C Yellow No. 6

30 2. A school may permit the sale of foods and beverages that do not
31 comply with subdivision one of this section if the sale of such items
32 takes place either:

33 a. off and away from the premises of the school; or

34 b. on school premises at least one-half hour after the end of the
35 school day.

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

38 7-a. For purposes of this section, the term "generally recognized as
39 safe substance" or "GRAS substance" means any substance added to food
40 that is not exempted from the definition of "food additive" under subdi-
41 vision seven of this section because it is generally recognized, among
42 experts qualified by scientific training and experience to evaluate its
43 safety, as having been adequately shown to be safe under the conditions
44 of its intended use:

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

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

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

53 4. All data submitted to the commissioner in support of the food or
54 color additives report under this section shall be considered confiden-
55 tial by the commissioner and shall not be revealed to any person other
56 than to a person authorized by the commissioner in the performance of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (1) scientific data and information that identifies the GRAS
15 substance, including:

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

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

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

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

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

30 (2) a description of the method of manufacture of the GRAS substance
31 in sufficient detail to evaluate the safety of the notified substance as
32 manufactured;

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

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

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

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

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

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

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

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

1 (iv) Self-limiting levels of use in circumstances where the amount of
2 the notified substance that can be added to human food or animal food is
3 limited because the food containing levels of the notified substance
4 above a particular level would become unpalatable or technologically
5 impractical.

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

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

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

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

26 (3) either:

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

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

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

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

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

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

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

49 (viii) Any previous GRAS substance notices submitted to the federal
50 food and drug administration on the reported substance and the federal
51 food and drug administration's responses.

52 (ix) All relevant currently available safety information.

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

55 a. Any GRAS substance for which the federal food and drug adminis-
56 tration has received a GRAS notice and issued a letter stating that the

1 federal food and drug administration has no questions regarding the
2 conclusion that the substance is generally recognized as safe under its
3 intended conditions of use;

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

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

8 d. Any substances subject to regulation approving its intended use for
9 food;

10 e. A food ingredient of natural biological origin that has been widely
11 consumed for its nutrient properties in the United States prior to Janu-
12 ary first, nineteen hundred fifty-eight without known detrimental
13 effects, which is subject only to conventional processing as practiced
14 prior to January first, nineteen hundred fifty-eight, and for which no
15 known safety hazard exists;

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

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

22 3. Any person may file a report to the commissioner under this
23 section.

24 4. A small business, defined as a business that is independently owned
25 and operated and employs ten or fewer persons, shall be exempt from the
26 requirements of this section.

27 5. Data establishing the general recognition of safety shall be based
28 on publicly available information and shall not be based on trade
29 secrets.

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

32 5. The commissioner:

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

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

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

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

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

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

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

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

51 (i) a projected completion date;

52 (ii) a description of obstacles to development and implementation of
53 the database system; and

54 (iii) an estimate of the costs to complete the implementation of the
55 database system; and

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

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

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

24 § 8. This act shall take effect on the one hundred eightieth day after
25 it shall have become a law.