



SPONSOR: Sen. Buckson & Rep. Michael Smith
Sen. Lawson; Reps. Hilovsky, K. Johnson, Morrison,
Ross Levin, Shupe, Kamela Smith, Wilson-Anton

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 41

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO PURE FOOD AND DRUGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 33, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3325. Red dye 3 prohibited in food.

4 (a) For purposes of this section, "food" means as defined in § 3301 of this title, except that it only includes articles
5 for consumption by humans.

6 (b) Notwithstanding §§ 3311, 3313, or 3314 of this title, a person may not manufacture, sell, deliver, distribute,
7 hold with the intent to sell, or offer for sale in this State food that contains Red dye 3 (CAS no. 16423-68-0).

8 (c) A person that violates subsection (b) of this section is subject to a civil penalty as follows:

9 (1) For a first occurrence, not to exceed \$5,000, in addition to costs.

10 (2) For a subsequent occurrence, not to exceed \$10,000, in addition to costs.

11 (d) Each day on which a violation of subsection (b) of this section occurs is a separate occurrence under subsection
12 (c) of this section.

13 Section 2. This Act takes effect on October 1, 2027.

SYNOPSIS

This Act bans the manufacture, sale, delivery, distribution, holding with the intent to sell, and offering for sale in Delaware of food that contains Red dye 3 (CAS no. 16423-68-0). For purposes of this chapter and section, food includes drink, ice, confectionary, and condiments. Red dye 3 is a color additive made from petroleum that gives foods a bright cherry-red color. Any person that violates this Act is subject to a civil penalty as follows:

(1) For a first occurrence, not to exceed \$5,000, in addition to costs.

(2) For a subsequent occurrence, not to exceed \$10,000, in addition to costs.

Each day on which a violation of this Act occurs constitutes a separate occurrence.

In 2023, California became the first state to ban Red dye 3. Since then, 10 other states have introduced legislation to ban this dye, including our neighboring states of Maryland, New Jersey, and Pennsylvania. The Food and Drug Administration (FDA) received a petition in November 2022 calling on them to ban Red dye 3. The petition is actively pending consideration. The FDA has not yet issued a decision.

Red dye 3, also labeled Red 3 or FD&C Red No. 3, is a synthetic additive used to color food and drink that has been linked to behavioral concerns in children and cancer. Red dye 3 is in thousands of foods, including those marketed to

children. The U.S. Department of Agriculture's Branded Foods Database at FoodData Central identified 9,201 U.S. food products that contain Red dye 3, including hundreds of products made by the country's biggest food companies. However, Red dye 3 does not need to be in our food supply. Companies could replace Red dye 3 with natural colors from foods like beets, red cabbage, or black currants, or could simply leave it out entirely. Red dye 3 is added to food only to make it look more appealing.

This Act takes effect on October 1, 2027, which is 9 months after California's ban will go into effect.

Author: Senator Buckson