



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

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
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. Color additives prohibited in food.

4 (a) For purposes of this section:

5 (1) "Color additive" means as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301, et seq,
6 and any implementing regulations.

7 (2) "Food" means as defined in § 3301 of this title, except that it only includes articles for consumption by
8 humans.

9 (b) Notwithstanding §§ 3311, 3313, or 3314 of this title, a person may not manufacture, sell, deliver, distribute,
10 hold with the intent to sell, or offer for sale in this State food that contains any of the following color additives:

11 (1) Red dye 3 (CAS no. 16423-68-0).

12 (2) Red dye 40 (CAS no. 25956-17-6).

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

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

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

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

18 Section 2. This Act takes effect on January 15, 2027.

SYNOPSIS

This Act is a substitute for Senate Bill No. 41. Both this Act and SB 41 ban 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). After the release of SB 41, the Food and Drug Administration (FDA) revoked the authorization to use Red dye 3 in food and ingested drugs under the Delaney Clause of the federal Food, Drug, and Cosmetic Act. The Delaney Clause prohibits FDA authorization of a food or color additive if it has been found to induce cancer in humans or animals. This substitute retains the prohibition against Red dye 3 in food products to ensure it will remain banned in the State of Delaware.

This Act differs from SB 41 by:

(1) Adding and defining the term “color additive”.

(2) Banning the manufacture, sale, delivery, distribution, holding with the intent to sell, and offering for sale in Delaware of food that contains the color additive, Red dye 40 (CAS no. 25956-17-6).

Red dye 40 is a synthetic food coloring derived from petroleum. It is found in food products such as cereal, beverages, gelatins, puddings, popsicles, chips, dairy products, and confections. As with Red dye 3, Red dye 40 is used solely to enhance the appearance of food and does not provide any nutritional value.

Consumption of Red dye 40 has been associated with hyperactivity, aggression, and other neurobehavioral problems in some children. Red dye 40 may also be linked with migraines and learning difficulties. The European Union requires a warning label to be placed on food products with Red dye 40, stating that it “may have an adverse effect on activity and attention in children”.

In addition to banning Red dye 3, California became the first state to prohibit the provision of and sale of foods in schools that contain Red dye 40. Presently, 9 other states have introduced legislation to ban, limit, or require warning labels on food products containing Red dye 40.

(3) Changing the effective date of this Act to January 15, 2027, to align with the date by which Red dye 3 must be removed from foods under federal law.

The penalty provisions remain the same in this substitute; 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.

Author: Senator Buckson