

Memorandum of SUPPORT

A1556E/S1239E (Kelles/Kavanagh) – The Food Safety and Chemical Disclosure Act

The undersigned organizations strongly support the New York Food Safety and Chemical Disclosure Act,^{1,2} which will bring long-overdue transparency to the safety of food chemicals consumed by New Yorkers and ban three dangerous chemicals from the food supply.

Importantly, the bill ensures safer food without placing any new burdens on small businesses.

The bill is structured to hold large corporations accountable while explicitly exempting small businesses with fewer than 100 employees from compliance requirements. All retailers, food establishments, and food relief organizations are also given up to three years after the effective date to sell through non-compliant stock, ensuring a smooth and flexible transition.

FSCDA will:

- **Require companies to publicly disclose safety evidence** for generally recognized as safe (GRAS) food chemicals, promoting greater transparency and accountability.
- **Prohibit three harmful chemicals** linked to cancer, reproductive toxicity, and hormone disruption—Red 3, potassium bromate, and propylparaben—from food sold in New York.

Why New York Must Act Now

While U.S. Health and Human Services (HHS) Secretary Robert F. Kennedy Jr. has taken initial steps to address unsafe food chemicals, they fall short of confronting the systemic weaknesses within the FDA. Chronic underfunding and internal dysfunction, highlighted in the 2022 Reagan-Udall Foundation report³ and intensified by recent federal actions cutting FDA staff, have left the agency unable to keep pace with modern food safety challenges. Although Secretary Kennedy recently directed the FDA to explore rulemaking to close the GRAS loophole, this exploratory step lacks a timeline, enforceability, or guaranteed follow-through, and could be reversed if political priorities shift.

Fortunately, states are not waiting for federal action that may never come. Over 25 states have introduced or passed legislation to limit or ban harmful food chemicals and address the broader regulatory system. California has already banned the three chemicals targeted in FSCDA.⁴ West Virginia⁵ and Arkansas⁶ recently passed legislation prohibiting a subset of these chemicals statewide, and Pennsylvania⁷ is advancing legislation that mirrors FSCDA's GRAS disclosure provision. By passing FSCDA, New York can lead in food safety transparency and the growing national movement for safer food.

Companies Should Provide Evidence that their Chemicals are Safe to Eat

FSCDA will help close the “secret GRAS” loophole, which allows food companies to self-determine that a new chemical is safe and then add it to our foods without notifying FDA or disclosing any safety evidence.⁸ For example, in 2022, Daily Harvest sold tara flour, a vegetable protein powder, through this loophole. After receiving 393 reports of adverse illnesses, including

133 hospitalizations, associated with tara flour, FDA took two years to conclude that there was not a single toxicological study that established its safety.⁹

A1556E would take the secret out of GRAS by requiring companies to notify New York State of their GRAS determinations that have not been reviewed by the FDA. This summary of key safety information (which does not include trade secrets) would then be made publicly available by the state. In effect, this bill will expose when food companies use unsafe or inadequately tested food chemicals in New York. The FDA, New York health officials, and the public will have more information to understand which foods pose safety risks.

Carcinogenic and Other Toxic Chemicals Have No Place in Our Food Systems

FSCDA would protect New Yorkers from three dangerous food chemicals: Red 3, potassium bromate, and propylparaben. The FDA concluded that Red 3 causes cancer in animals over 30 years ago,¹⁰ but only recently announced that it plans to ban the dye, which will take effect in 2027.¹¹ In 1992, the World Health Organization determined that potassium bromate, a flour-bleaching agent, was linked to cancer.¹² The European Food Safety Authority linked propylparaben, a preservative, with reproductive toxicity and hormone disruption.¹³ The European Union has essentially banned these three chemicals, only allowing Red 3 to be used in certain kinds of processed cherries.¹⁴ California passed a 2023 law prohibiting the sale of foods containing Red 3, potassium bromate, and propylparaben by 2027.¹⁵ As manufacturers reformulate their products to comply with the California ban, FSCDA would push those companies to offer reformulated products in New York as well.

Conclusion

The Senate has passed this critical legislation, and the Assembly now has a clear opportunity to act. A1556E represents more than a ban on harmful chemicals—it's a long-overdue step toward rebuilding a food safety system based on transparency, accountability, and public trust.

We respectfully urge you to advance this important legislation through the Assembly.

Sincerely,

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References

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- ² NY Senate Bill S1239E. <https://www.nysenate.gov/legislation/bills/2025/S1239/amendment/E>.
- ³ Reagan-Udall Foundation. *Operational Evaluation of the FDA Human Foods Program*. December 2022. <https://reaganudall.org/operational-evaluation-fdas-human-foods-programs>. Accessed April 29, 2025.
- ⁴ The California Food Safety Act. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB418.
- ⁵ West Virginia House Bill 2354. https://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=hb2354%20sub%20enr.htm&yr=2025&sesstype=RS&billtype=B&houseorig=H&i=2354
- ⁶ Make Arkansas Healthy Again Act. Arkansas Senate Bill 9. <https://arkleg.state.ar.us/Bills/Detail?id=sb9&ddBienniumSession=2025%2F2025R>.
- ⁷ Pennsylvania House Bill 1130. April 21, 2025. https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2025&sind=0&body=H&type=B&bn=1130
- ⁸ U.S. Government Accountability Office. *FDA Should Strengthen Its Oversight of Food Ingredients Determined to Be Generally Recognized as Safe (GRAS)*. 2010. <https://www.gao.gov/products/GAO-10-246>. Accessed 30 January 2025.
- ⁹ U.S. Food and Drug Administration. *Memorandum: Regulatory status and review of available information pertaining to tara protein/flour derived from the seed germ of the plant, Caesalpinia spinosa: lack of general recognition of safety for its use in foods*. 10 April 2024. <https://www.fda.gov/media/178582/download?attachment>. Accessed 3 February 2025.
- ¹⁰ U.S. Food and Drug Administration. *Filing of Color Additive Petition from Center for Science in the Public Interest, et al.; Request to Revoke Color Additive Listing for Use of FD&C Red No. 3 in Food and Ingested Drugs*. 2023. <https://www.regulations.gov/docket/FDA-2023-N-0437>.
- ¹¹ U.S. Food and Drug Administration. *FD&C Red No. 3*. 15 January 2025. <https://www.fda.gov/industry/color-additives/fdc-red-no-3>. Accessed 30 January 2025.
- ¹² World Health Organization. Evaluation of Certain Food Additives and Contaminants. *WHO Technical Report Series*. 1995; 859. https://iris.who.int/bitstream/10665/37246/1/WHO_TRS_859.pdf. Accessed 30 January 2025.
- ¹³ European Food Safety Authority. Opinion of the Scientific Panel on food additives, flavourings, processing aids and materials in contact with food (AFC) related to para hydroxybenzoates (E 214-219). *EFSA Journal*. 2004; 2(9):83,1-26.
- ¹⁴ Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives. <https://eur-lex.europa.eu/eli/reg/2008/1333/oj>. Accessed 30 January 2025.
- ¹⁵ The California Food Safety Act. Assembly Bill 418. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB418.