

Alert | California Government Law & Policy



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California Assembly Passes Bill that Would Prohibit Certain Food Additives

On May 15, 2023, the California State Assembly passed [Assembly Bill \(AB\) 418](#) by Assemblymember Jesse Gabriel, legislation that would prohibit parties from manufacturing, distributing, or selling food products that contain certain additive substances. This comes on the heels of the European Union and other foreign jurisdictions banning or restricting the use of similar additives in food products for human consumption, including the five at issue in this bill. This furthers a recent trend of California following the European Union's lead on restricted substances in consumer products.

Commencing on Jan. 1, 2027, AB 418 would prohibit individuals or entities from manufacturing, distributing, delivering, holding, selling, or offering for sale into California food products for human consumption containing any of the following five additives:

1. **Brominated Vegetable Oil**, an additive used in many store-brand citrus-flavored sodas to keep the citrus flavor from separating and floating to the top;
2. **Potassium Bromate**, an additive commonly used to enhance the rising properties in baked goods;
3. **Propylparaben**, a preservative typically found in store-bought tortillas and shelf-stable icing;
4. **Titanium Dioxide**, a color additive that creates bright whites and bold colors in products; and
5. **Red Dye 3**, a color additive often used in brightly colored candies and snacks.

In its present form, there do not appear to be any exceptions to the bill's application, meaning any party engaged in manufacturing, delivering, distributing, holding, offering for sale, or selling food products with these chemicals likely would be subject to the bill's prohibitions. Additionally, the bill does not appear to provide for any "safe harbor" levels of the chemicals; a safe harbor might allow certain amounts of the additives to be used. As written, it appears any amount of the listed additives would be prohibited.

Noticeably absent from the bill's language are provisions regarding testing, labeling, and agency enforcement. Whether parties would affirmatively have to commence testing of their own products or provide a certification on the label in addition to an ingredient list that the product complies with this legislation remains to be seen. Whether there would be any additional enforcement provisions, such as product registration or reporting to a state agency, is not clear at the moment. Additionally absent from the bill's language are any definitions for terms such as "deliver" and "hold," calling into question the reach of the bill's language and whether liability could span to parties that are merely transporting or even purchasing items with these additives.

While this legislation does not create a private right of action like California's Proposition 65 does, as currently written, it would afford the California Attorney General, a city attorney, a county counsel, or a district attorney the right to bring an action for civil penalties against violators. Violators would be subject to \$5,000 for a first violation, and a maximum fine of \$10,000 for each subsequent violation.

Currently, AB 418 remains under review in the Senate, where it passed the Senate Environmental Quality Committee on July 12. The next hearing is scheduled to take place in the Senate Appropriations Committee on Aug. 14, 2023. If enacted, AB 418 would substantially alter food production not only in California but also globally, as non-California-based parties also would have to alter their products to comply with these restrictions if they wished to do business in California.

Authors

This GT Alert was prepared by:

- [Alice L. Kessler](#) | +1 916.868.0605 | kesslera@gtlaw.com
- [Madeline Orlando](#) | +1 916.442.1111 | orlandom@gtlaw.com
- [Dezeray Cruz](#) [~] | Summer Associate | Sacramento

[~] *Not admitted to the practice of law.*

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