



# West Virginia Attorney General's Office: Ultra-Processed Foods and Consumer Protection in the State

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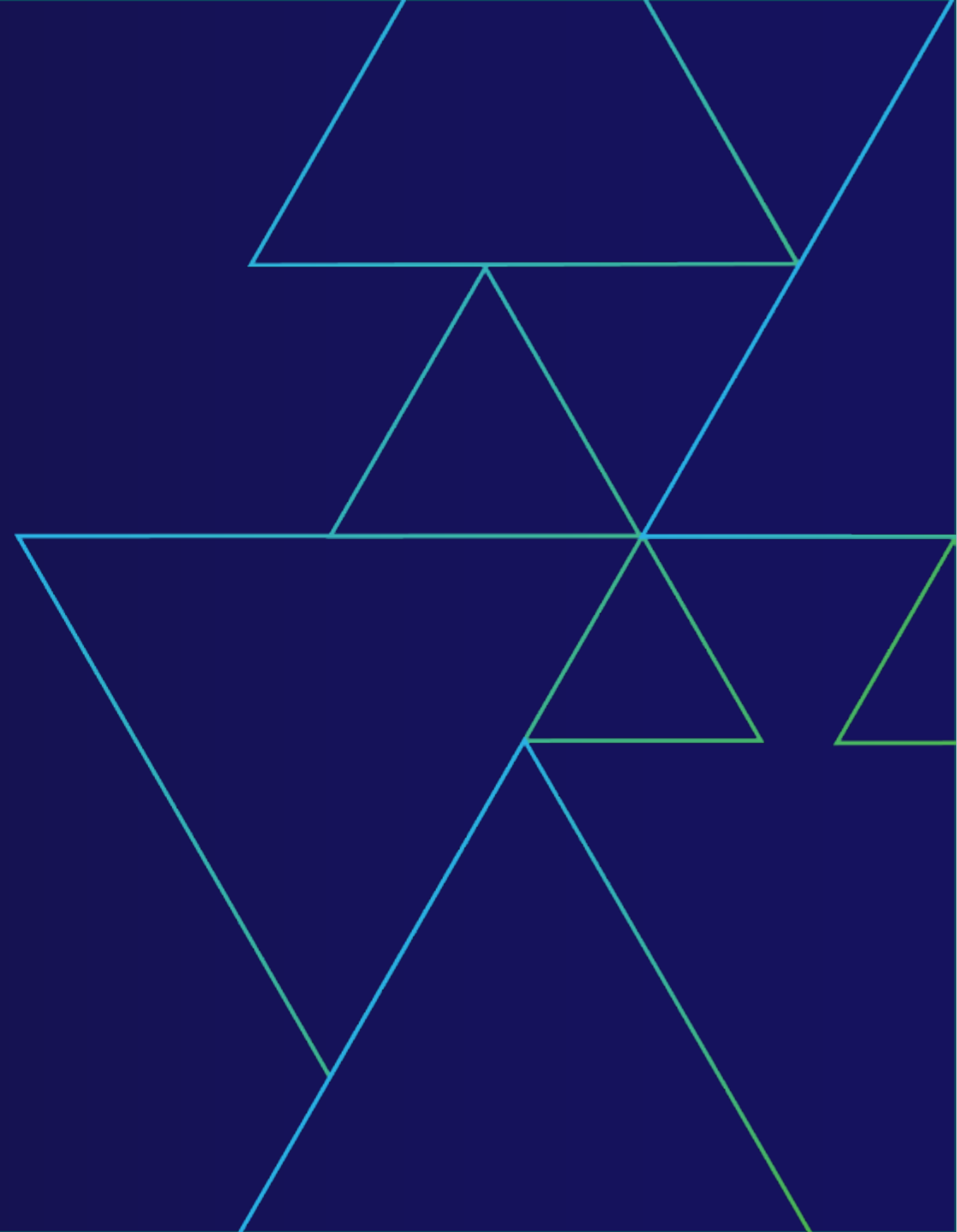


## Agenda

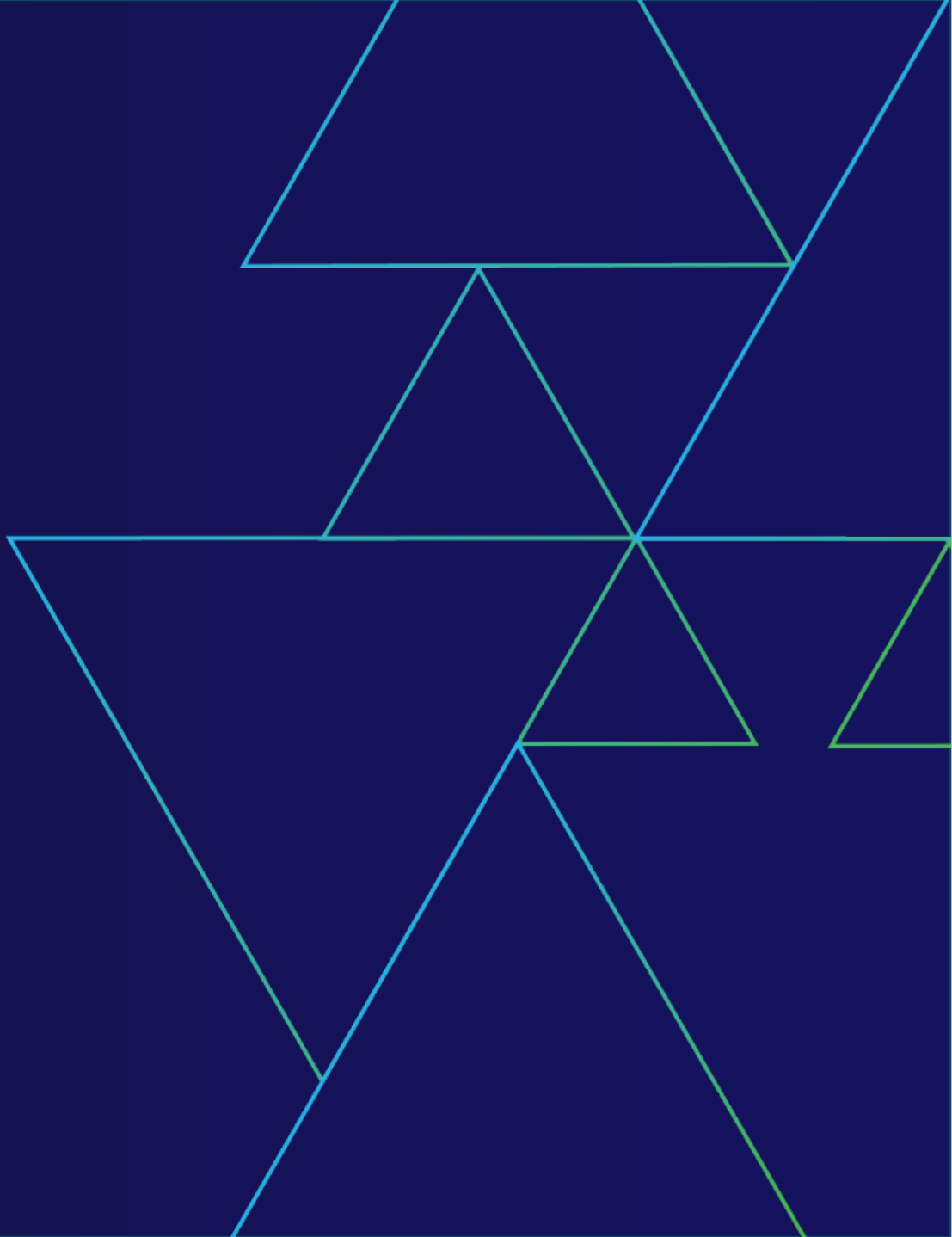
- Consumer Protection in West Virginia
- Consumer Protection Law Lightning Round
- Ultra-Processed Foods

# **Consumer Protection in West Virginia**

**Chief Deputy Jace Goins**



# Consumer Protection Lightning Round



# Consumer Protection Lightning Round: Background & Policy

- How is the AG selected in your state?
- How is consumer protection organized in your office?
- How are consumer protection priorities set in your office?
- Do you participate in multistate consumer investigations?
- Do you receive consumer complaints?
- Do you perform any complaint resolution role?

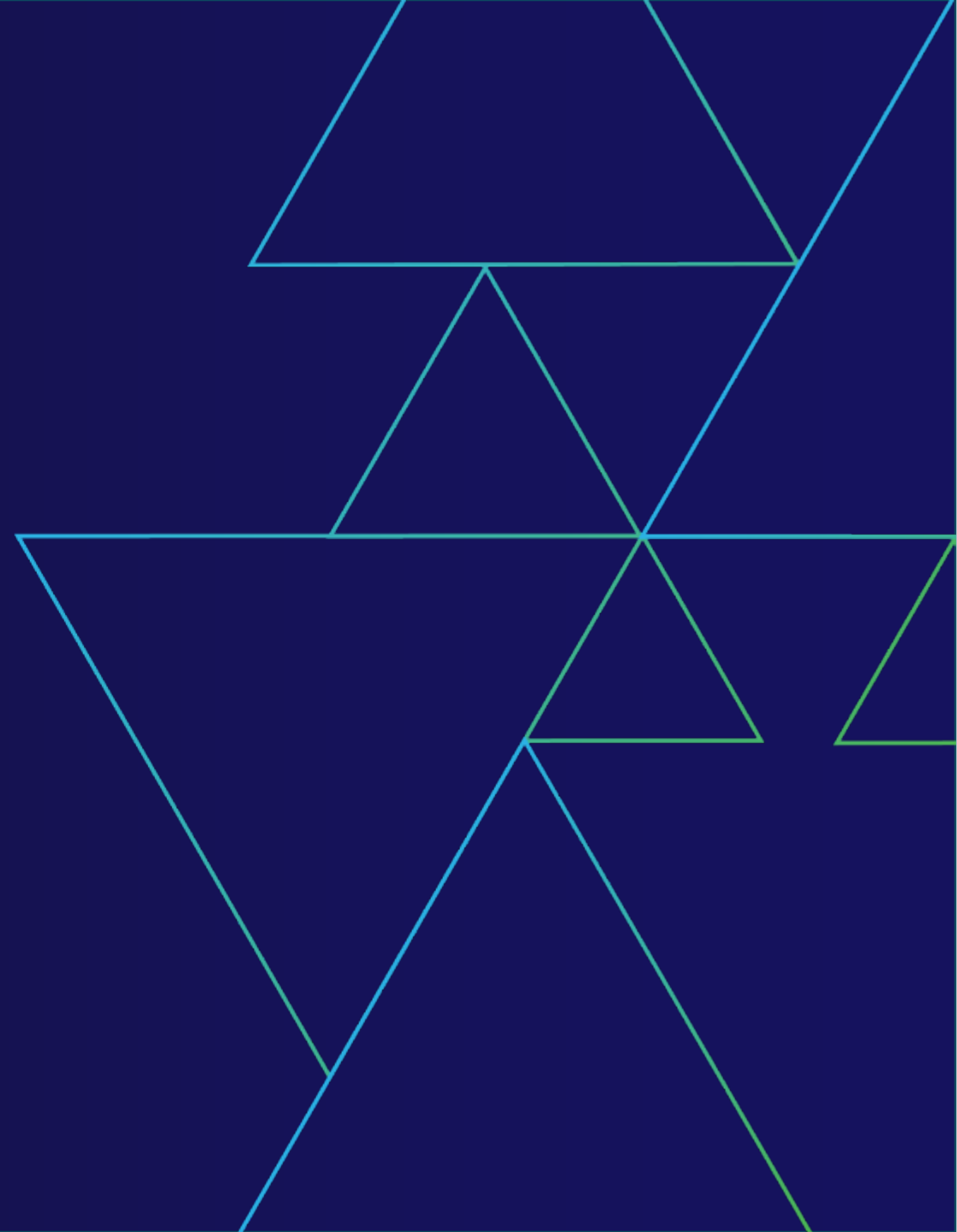
# Consumer Protection Lightning Round: State-Specific UDAP Law

- What is your primary consumer protection statute?
- Are you able to conduct pre-suit investigations by statute?
- Can you request documents? Take statements? Send interrogatories?
- Are CIDs confidential? Are answers confidential?
- Does your law allow a party to object or set aside? If so, in what timeframe?
- How can you enforce compliance?
- Do you have a statute of limitations? If so, what is it?
- Do you have to provide pre-suit notice? If so, what timeframe?

# Consumer Protection Lightning Round: Remedies & Other Laws

- What types of settlements can you enter into?
- What is your civil penalty authority?
- Can you obtain restitution? Disgorgement?
- Are there times you don't get injunctive relief? Penalties/payment?
- How are IR terms enforced? What if they are in an AVC?
- Do you have specific laws and remedies for price gouging?
- Do you have specific laws and remedies for auto-renewals?
- Do you have a privacy law?
- Any new noteworthy CP laws recently introduced/passed?

# Ultra-Processed Foods

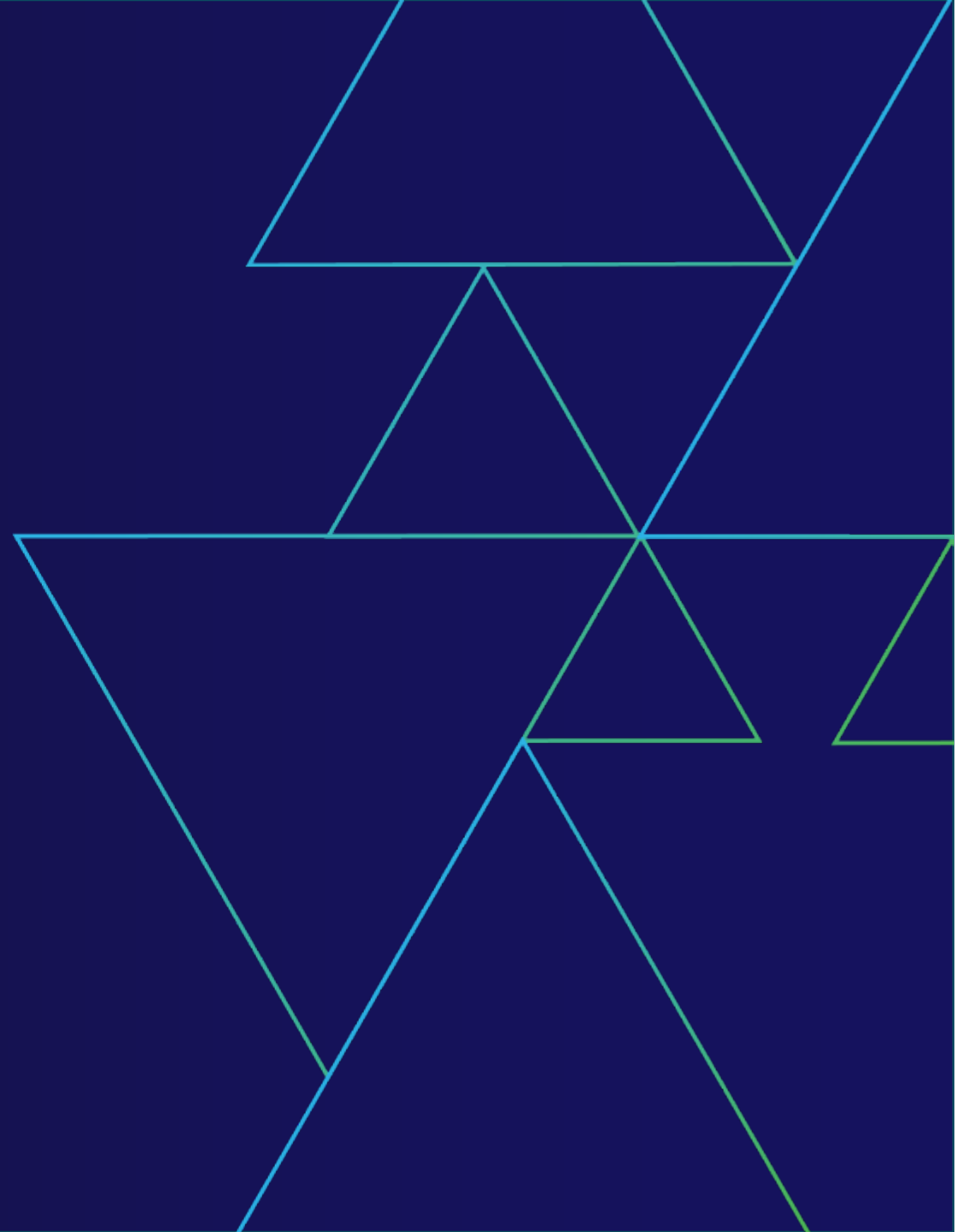




# Agenda

- Recent laws concerning **U**ltra **P**rocessed **F**oods (UPFs)
- Define and learn how to identify UPFs
- Context and timing: reasons for legislative activity
- Dive in to HB 2354
- Implications for consumer protection enforcement

# Recent Laws



States with  
Recent  
Legislation re:  
UPFs,  
Additives, or  
Food Dyes

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Arizona

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Arkansas

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California

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Louisiana

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Texas

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Utah

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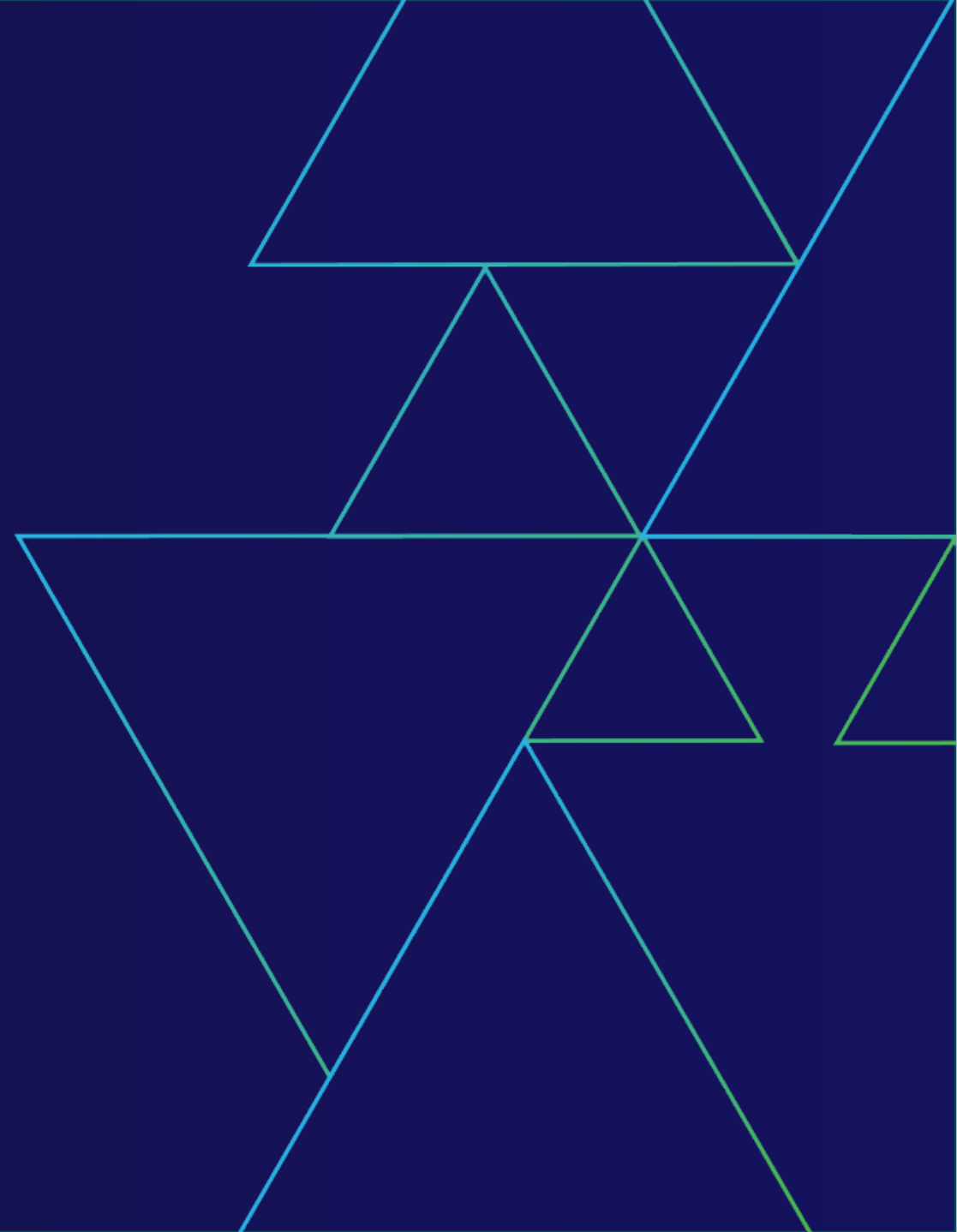
Virginia

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West Virginia

House Bill 2354  
(2025)

# What are Ultra Processed Foods?



# Defining Ultra Processed Foods

→ No consensus on a uniform definition.

→ Definitions and descriptions developed by academia, public health entities, governmental bodies, and statutes or regulations have slight differences.

- NOVA classification system
- International Food Policy Research Institute
- Johns Hopkins
- Harvard Medical School
- National Health Service of the United Kingdom
- CA Assembly Bill 1264 (2025)
- USDA 2026 dietary guidelines

... among others

# Defining Ultra Processed Foods - Consistent Themes and Elements

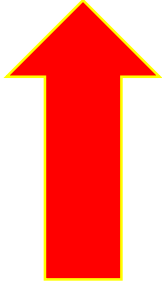
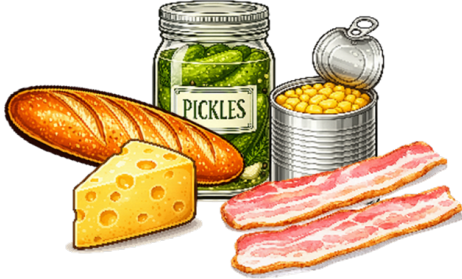
## Ultra-Processed Foods:

- ❖ Use industrially manufactured ingredients not found in home cooking
- ❖ Contain additives with cosmetic purposes or specific functional purposes
- ❖ Formulated from extracted or refined substances rather than whole foods
- ❖ Undergo extensive, transformative industrial processing
- ❖ Contain high amounts of calories, added salt, sugar, or fat
- ❖ Are designed for convenience, shelf-stability, palatability, and profitability

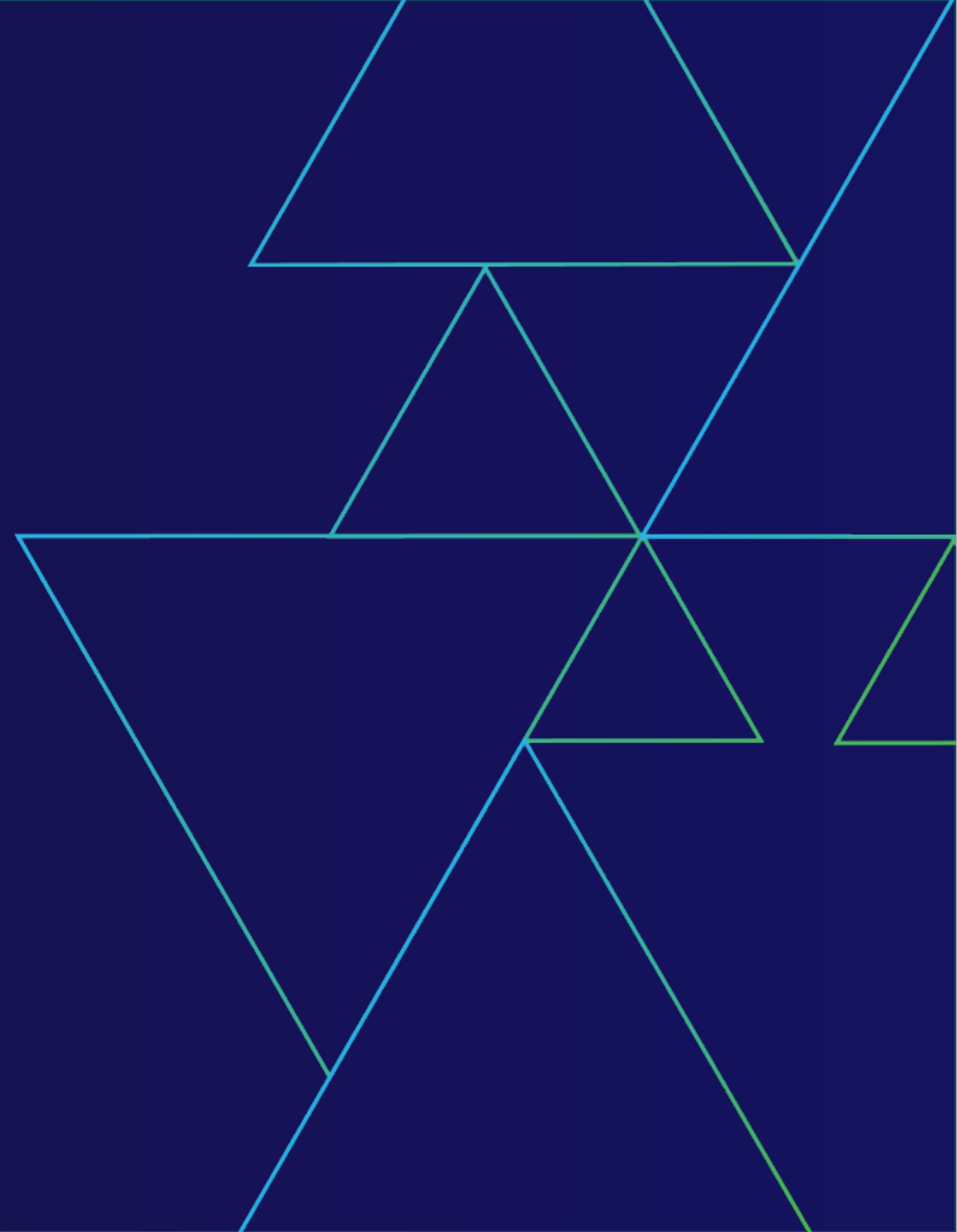
# The Processing Spectrum

← Least Processed

Most Processed →



# Context and Timing



**TYPE 2  
DIABETES**



**OBESITY**

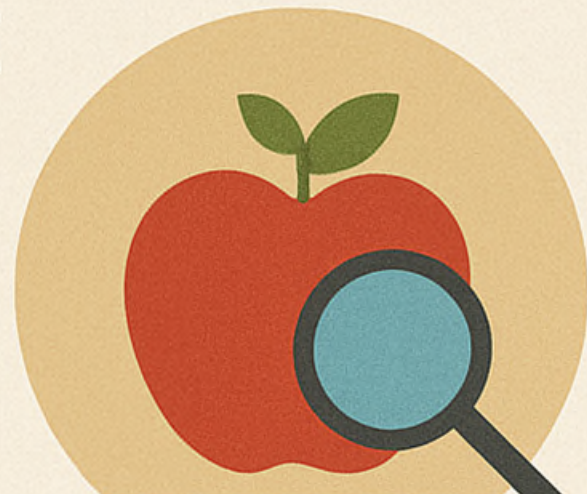


**CHILDHOOD  
OBESITY**



**HEART DISEASE**

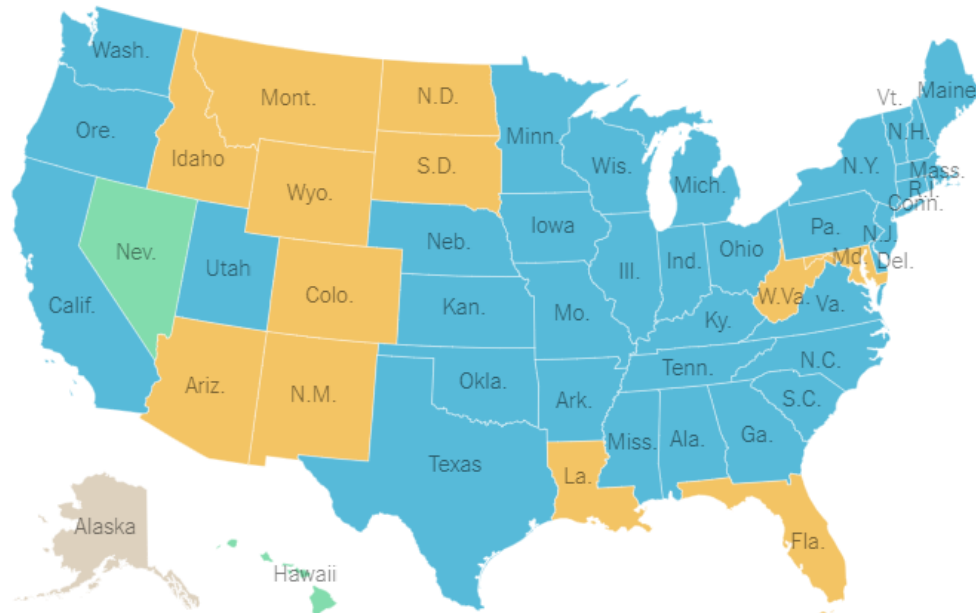
**INCREASED INTEREST IN  
DIET AND FOOD INGREDIENTS**



# Health Care Dominance

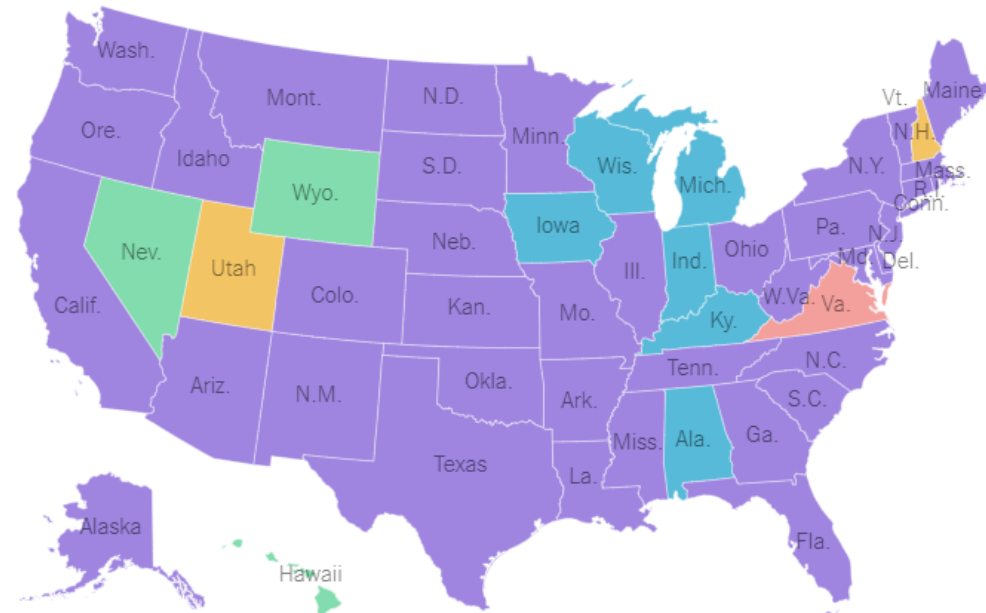
Top employer in each state in 1990

- Manufacturing
- Retail
- Hospitality
- Public administration



Top employer in each state in 2024

- Manufacturing
- Retail
- Hospitality
- Health care
- Professional services



Source: New York Times analysis of Quarterly Census of Employment and Wages

# Specific Health Concerns

## UPFs, Generally

- Increased caloric intake
- Weight gain/obesity
- Type 2 Diabetes
- Cardiovascular events
- All cause mortality

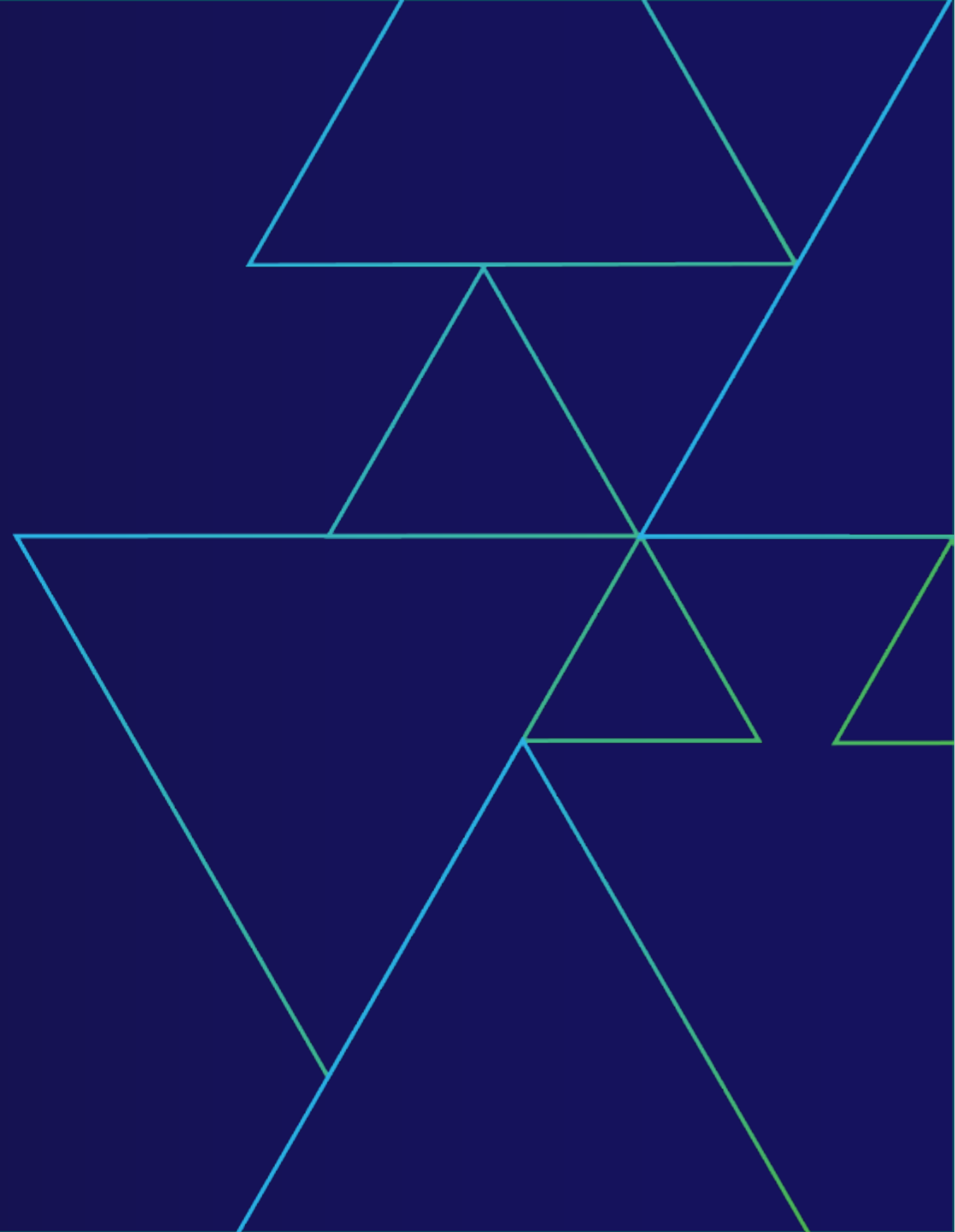
## Petroleum-Based Food Dyes

- Allergic reactions
- Cancer risks
- Negative impact on gut microbiome
- Hyperactivity and irritability in children

## Additives, incl. preservatives

- Systemic inflammation
- Asthma
- Cancer risks
- Endocrine disruption
- Reproductive harms

**HB 2354**



# West Virginia House Bill 2354 (2025)

Relating to School  
Nutrition Programs

Adds new section  
to State Education  
Code

W. Va. Code § 18-5D-3

**Effective August 1, 2025**, prohibits certain harmful additives (synthetic, petroleum-based food dyes) from being used in school nutrition programs, including:

- Blue No. 1
- Blue No. 2
- Green No. 3
- Red No. 3
- Red No. 40
- Yellow No. 5
- Yellow No. 6

# West Virginia House Bill 2354 (2025)

Relating to the  
Manufacture or Sale  
of Food

Modifies WV Pure  
Food and Drugs Act

W. Va. Code § 16-7-2

W. Va. Code § 16-7-4

**Effective January 1, 2028**, statewide ban on the manufacture or sale of food products containing the following additives:

- Butylated hydroxyanisole (BHA)
- Propylparaben
- Blue No. 1
- Blue No. 2
- Green No. 3
- Red No. 3
- Red No. 40
- Yellow No. 5
- Yellow No. 6

# West Virginia House Bill 2354 (2025)

Relating to the  
Manufacture or  
Sale of Food –

Penalties under  
WV Pure Food  
and Drugs Act

## **Potential for:**

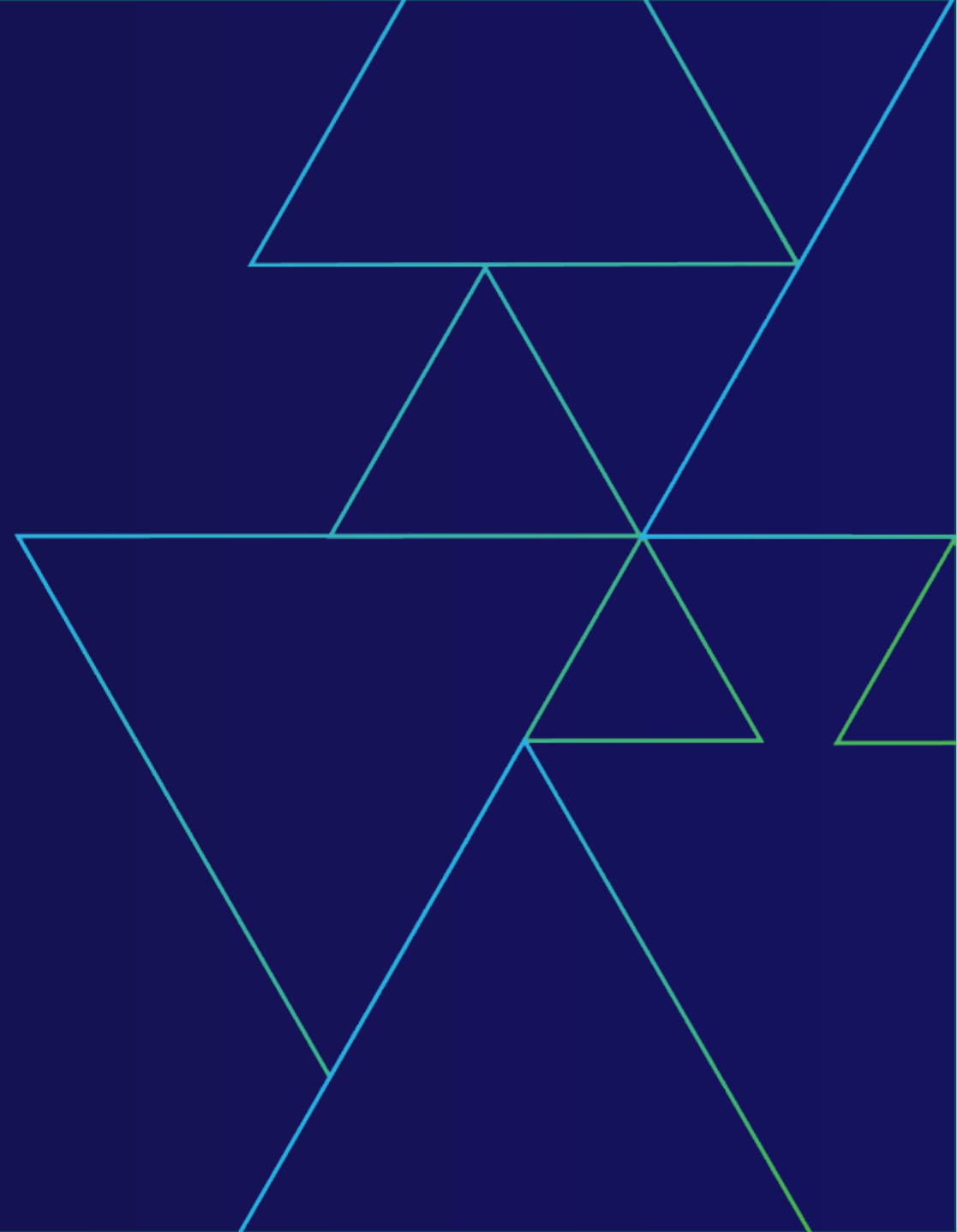
- Fines up to \$500
- Imprisonment up to one year
- Payment of costs of analyzing adulterated food products
- Forfeiture and destruction of adulterated food products

## **Exception:**

Does not apply to any individual who sells less than \$5,000 worth of food containing the specified additives per month.

**W. Va. Code § 16-7-2; 7-4**

# Implications for Consumer Protection Enforcement



# Background on the West Virginia Consumer Credit and Protection Act (WVCCCPA)

## Purpose

Protect the public and foster fair and honest competition

## Regulated Conduct

Unfair methods of competition or unfair or deceptive acts or practices “in the conduct of any trade or commerce.” W. Va. Code § 46A-6-104 (emphasis added)

## Scope

Applies to advertising, selling, or distributing any goods or services, including trade or commerce that indirectly affects West Virginia consumers.

WVCCPA actions  
are routinely  
permitted against  
regulated  
entities.



Public-protection  
laws can set  
standards of care  
that industry  
must follow when  
engaging in trade  
or commerce.

HB 2354 establishes that certain substances are unsafe or harmful, and the unsafe or harmful substances are illegal to use in food.

## Proving Deception:

- Representation, omission or practice
  - ■ Express claim, implied claim, failure to disclose
- Materiality
  - ■ Representation or omission would influence a consumer's decision
- Likely to mislead a reasonable consumer
  - ■ What does an ordinary consumer walk away believing?

## Proving Unfairness:

- Substantial consumer injury
  - Economic harm, health risk, safety exposure ←
- Not reasonably avoidable
  - Consumers lack meaningful ability to detect, assess, or avoid harm ←
  - Information asymmetry
- Injury not outweighed by countervailing benefits
  - Benefits to consumers, commerce, or competition do not justify harm. ←

# From Statutory Violation to Liability Under the WVCCPA

Violations of laws enacted to protect the public, when committed in the course of trade or commerce, constitute actionable unfair or deceptive acts or practices.



# Recap

WV HB 2354 creates:

- Standard of care for industry to ensure food manufactured or sold within the State is free of specific banned substances;
- Fines and penalties for violations of the statute.

WV HB 2354 also:

- Establishes a predicate for UDAP claims under WV's Consumer Protection statute.
- Removes or lessens burden to prove certain facts.

# Additional Resources

- West Virginia Consumer Credit and Protection Act, <https://code.wvlegislature.gov/46A/>
- HB 2354, <https://tinyurl.com/re5nwjvu>
- Emily Broad Lieb, et al, *State Regulation of Food Additives and Chemicals: Preemption, the Commerce Clause, and the Breadth of State Authority*, HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, <https://chlpi.org/food-law-and-policy/>
- *Dietary Guidelines for Americans 2025-2030*, U.S. DEPT OF AGRICULTURE, <https://www.realfood.gov/#resources>
- NutriNet-Santé Study, <https://info.etude-nutrinet-sante.fr/>

# Thank you



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