

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 434

**FISCAL
NOTE**

BY SENATORS KARNES AND TAKUBO

[Introduced January 29, 2016;

Referred to the Committee on Agriculture and Rural
Development.]

1 A BILL to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §19-35-5, all relating to
 3 permitting sale of home-based, micro-processed foods at farmers markets; defining a
 4 term; establishing standards; permitting fees; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That §19-35-2 the Code of West Virginia, 1931, as amended, be amended and reenacted;
 2 and that said code be amended by adding thereto a new section, designated §19-35-5, all to read
 3 as follows:

ARTICLE 35. FARMERS MARKETS.

§19-35-2. Definitions.

1 For purposes of this article:

2 ~~(a)~~ "Consignment farmers market" means a farmers market in which two or more vendors
 3 deliver their own farm and food products to a common location maintained by a third party that
 4 markets the vendors' products and receives a percentage share of the profits from sales, with the
 5 individual vendor retaining ownership of the farm and food product until it is sold.

6 ~~(b)~~ "Farm and food product" means any agriculture, horticulture, agroforestry, animal
 7 husbandry, dairy, livestock, cottage food, beekeeping or other similar product. Farm and food
 8 products are to be properly labeled.

9 ~~(c)~~ "Farmers market" means:

10 (1) A traditional farmers market in which two or more vendors gather to sell farm and food
 11 products directly to consumers at a fixed location;

12 (2) An on-farm market or farm stand run by an individual producer that sells farm and food
 13 products;

14 (3) An online farmers market in which two or more vendors collectively market farm and
 15 food products and retain ownership of those products until they are sold; or

16 (4) A consignment farmers market.

17 ~~(d)~~ “Farmers market vendor” or “vendor” means a person or entity that sells farm and food
18 products at a farmers market.

19 “Home-based micro-processed food” means any potentially hazardous food product
20 produced in a noncommercial kitchen.

§19-35-5. Home-based micro-processing permit; standards; scope; rule-making.

1 (a) Vendors at farmers markets with valid farmers market permits may apply for a home-
2 based micro-processing permit to sell home-based micro-processed foods at a farmers market.
3 The home-based micro-processing permit is required in addition to any other permits that are
4 required by a local health department.

5 (b) Notwithstanding any provision of chapter sixteen of this code or any rules promulgated
6 pursuant to that chapter to the contrary, a kitchen in a private home or community kitchen where
7 home-based micro-processed foods are prepared for sale by a vendor at a farmers market is
8 permitted if the vendor has a micro-processing permit in compliance with this article.

9 (c) Foods qualifying for sale under the home-based micro-processing permit must source
10 seventy percent of produce from the vendor’s own farm or garden. The food shall be labeled in
11 compliance with the West Virginia Department of Agriculture labeling standards and provide
12 information about the contents and sources of the produce.

13 (d) Foods that may be processed with a home-based micro-processing permit include, but
14 are not limited to, whole canned vegetables, pickled products, fermented products, tomato-based
15 products, salsa, tomato sauce, pepper sauce, mustard, pesto, minced garlic, soup mixes, frozen
16 fruits and vegetables, and dehydrated fruits and vegetables.

17 (e) In order to qualify for a home-based micro-processing permit, the applicant must:

18 (1) Receive a certification from the West Virginia Department of Agriculture program for
19 better process control or similar quality control program;

20 (2) Pass an inspection conducted by the local health department at the home kitchen or

- 21 community kitchen where the home-based micro-processing is occurring;
- 22 (3) Possess a valid food handler’s permit from the local health department, if applicable;
- 23 (4) Pay a fee of \$50 to the local health department issuing the home-based micro-
- 24 processing permit and any additional fees assessed by the Department of Health and Human
- 25 Resources designed to adequately cover costs associated with inspections; and
- 26 (5) Use a recipe approved or tested in a manner similar to the department’s current
- 27 practices.
- 28 (f) Home-based micro-processing vendors are limited to a sale of a maximum of five
- 29 thousand units per year in the aggregate.
- 30 (g) The West Virginia Department of Health and Human Resources and the West Virginia
- 31 Department of Agriculture shall comply with the rule-making and compliance requirements of
- 32 section four of this article.

NOTE: The purpose of this bill is to permit home-based micro-processing foods to be sold at farmers markets. The bill defines a term, establishes standards, permits fees and provides for rule-making.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.