

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 27

BY SENATORS KARNES, TRUMP, RUCKER AND SYPOLT

[Originating in the Committee on Health and Human

Resources; reported on March 17, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §19-35-5, relating to microprocessor permit; establishing permit requirements
3 and limitations; clarifying types of microprocessor kitchens; requiring percentage of
4 produce from garden or farm of microprocessor; requiring recordkeeping and labeling;
5 clarifying foods requiring permit and exempted foods; setting forth permit inspections and
6 fees; allowing suspensions and recalls; limiting sales; and providing prohibitions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §19-35-5, to read as follows:

ARTICLE 35. FARMERS MARKETS.

§19-35-5. Microprocessor permit.

1 (a) Notwithstanding any provision of chapter sixteen of this code or any rules promulgated
2 pursuant to that chapter to the contrary, a farmers market vendor may apply for a microprocessor
3 permit to sell certain foods at a farmers market. A home, farm, community or commercial kitchen
4 may be used by a microprocessor. The microprocessor permit is required in addition to the
5 farmers market vendor permit.

6 (b) A microprocessor must source seventy percent of all produce for its products from his
7 or her farm or garden. The microprocessor is required to keep production and food source
8 records. The food shall be labeled in compliance with the West Virginia Department of Agriculture
9 labeling standards and provide information about its content and sources. The label shall include
10 the words "MADE IN A WV KITCHEN" in capital, bold, 10-point type or larger, with the
11 blank space to state whether the product was made in a home, farm, community or commercial
12 kitchen.

13 (c) A microprocessor permit is required to sell:

14 (1) Canned acidified foods, such as pickled products, sauces and salsas. Acidified foods
15 are low-acid foods to which acid or acid foods are added with a water activity of greater than .085
16 and a finished equilibrium of pH 4.6 or below; and

17 (2) Frozen fruits and vegetables, which are not permitted to be vacuum-sealed.

18 (d) Nonpotentially hazardous foods, and those already exempted, do not require a
19 microprocessor permit but require registration with the local health department. These include,
20 but are not limited to:

21 (1) Breads, cakes and candies;

22 (2) Honey, maple syrup, apple butter and molasses;

23 (3) Standardized nondietary jams and jellies;

24 (4) Fermented products;

25 (5) Whole or chopped tomatoes, tomato sauce and tomato juice having a finished
26 equilibrium of pH 4.6 or below;

27 (6) Exempted condiments; and

28 (7) Dehydrated fruits and vegetables.

29 (e) To qualify for a microprocessor permit, the applicant must:

30 (1) Successfully complete a microprocessor workshop offered by West Virginia extension
31 services and approved by the West Virginia Department of Agriculture;

32 (2) Pass an annual permit inspection conducted by the local health department at the
33 microprocessor's kitchen. The local health department shall conduct at least one operational
34 inspection during the processing season at the microprocessor's kitchen when warranted. The
35 local health department has the right to suspend operations or recall products for disease
36 outbreaks, or violations of rules or regulations. Any inspection by a local health department shall
37 be in compliance with rules promulgated by the West Virginia Department of Health and Human
38 Resources pursuant to section four of this article;

39 (3) Possess a valid food handler's permit from the local health department, if required;

40 (4) Use a USDA pre-approved recipe or have the recipe tested in accordance with the
41 procedures established by the West Virginia Department of Health and Human Resources; and

42 (5) Pay an annual permit fee of \$50 to the local health department issuing the
43 microprocessor permit and any additional fees assessed by the local health department to cover
44 costs for inspections.

45 (f) Online farmers market sales shall be delivered in person and are not permitted to be
46 shipped.

47 (g) Microprocessors shall not sell more than one thousand five hundred units per year in
48 the aggregate.

49 (h) The following prohibitions shall apply to persons microprocessing food for sale at a
50 farmers market pursuant to a permit granted by the provisions of this section:

51 (1) No animals, including pets, may be in the dwelling unless caged at all times;

52 (2) No animals, including pets, are permitted in the microprocessor's kitchen at any time
53 during production, preparation, processing or packing;

54 (3) No animals may have access to, or come into contact with, stored food items,
55 equipment used in preparation of food items and food being assembled for distribution;

56 (4) No domestic activities related to running the home or to family relations are permitted
57 in the microprocessor's kitchen at any time during processing, preparing, packaging or handling
58 food intended for sale; and

59 (5) Smoking is not permitted in any portion of the microprocessor's home which is used
60 for preparation, packaging, storage or handling of food and related ingredients or equipment while
61 food is being prepared, packaged, stored or handled.

NOTE: The purpose of this bill is to permit certain microprocessed foods to be sold at farmers markets. The bill establishes permit requirements and limitations, inspection standards and permits fees.

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