

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 375**

BY SENATORS SYPOLT, RUCKER, TAKUBO, BALDWIN, AND

BOSO

[Originating in the Committee on Agriculture and  
Rural Development; Reported on February 8, 2018]



1 A BILL to amend and reenact §19-35-2, §19-35-3, and §19-35-4 of the Code of West Virginia,  
2 1931, as amended; and to amend said code by adding thereto a new section, designated  
3 §19-35-5, all relating to farmers markets; removing local health departments from farmers  
4 market permit process; transferring rules and regulations for farmers markets, cottage  
5 foods, acidified foods, nonpotentially hazardous foods, and exempted foods from  
6 Department of Health and Human Resources to Department of Agriculture; clarifying  
7 consignment markets; requiring farmers market registration and fees; expanding farmers  
8 market vendor permits and fee structure to include cottage foods permit; clarifying certain  
9 farm and food products require other permits; permitting sampling of certain food products;  
10 clarifying scope, labeling, and sources of cottage foods; requiring online farmers market  
11 sales be delivered in person; permitting home, farm, community, or commercial kitchen to  
12 be used by cottage foods vendor as determined by the department; and clarifying that  
13 cottage foods includes certain acidified foods, nonpotentially hazardous foods, and  
14 exempted foods.

*Be it enacted by the Legislature of West Virginia:*

**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. A consignment  
6 farmers market may be mobile or in a stationary location.  
7 "Department" means the Department of Agriculture.  
8 (b) "Farm and food product" means any agriculture, horticulture, agroforestry, animal  
9 husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food  
10 products are to be properly labeled.

11 ~~(e)~~ "Farmers market" means:

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

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

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

18 (4) A consignment farmers market as defined herein.

19 ~~(d)~~ "Farmers market vendor" or "vendor" means a person or entity that sells farm and food  
20 products at a farmers market.

**§19-35-3. Farmers markets; farmers market vendor permit permits; fees; scope.**

1 (a) Farmers markets shall register with the department and provide information to the  
2 department regarding the farmers market and its vendors.

3 (b) Vendors at a farmers market selling farm and food products that require a food  
4 establishment permit shall apply for a uniform farmers market vendor permit and pay the annual  
5 permit fee to the local health department in the jurisdiction in which the farmers market is located  
6 department. The permit is valid in all counties in this state. and vendors are not required to apply  
7 to more than one local health department for a uniform farmers market vendor permit. The uniform  
8 A farmers market vendor permit shall be required in lieu of the food establishment permit,  
9 notwithstanding any other provisions of code or rule that require a food establishment permit or  
10 any other permit from a local health department. ~~Provided, That the~~ The department shall take  
11 final action upon all completed permit applications within 30 days of receipt if the application is  
12 uncontested, or within 90 days if the application is contested.

13 ~~(b) The application must include any other farmers market locations under the jurisdiction~~  
14 ~~of another local health department that the vendor will sell farm and food products subject to the~~  
15 ~~permit. The local health department which approves the application for the uniform farmers market~~

16 ~~vendor permit shall provide notice of the approval to any other local health departments that the~~  
17 ~~vendor will be subject to, as indicated on the application~~

18 ~~(c) (1) The annual permit fee for the uniform farmers market vendor permit is as follows:~~

19 ~~(A) For vendors selling farm and food products under the jurisdiction of only one local~~  
20 ~~health department, the annual fee is \$15.~~

21 ~~(B) For vendors selling farm and food products under the jurisdiction of more than one~~  
22 ~~local health department, the annual fee is \$25.~~

23 ~~(2) The annual permit fee shall be collected and deposited in accordance with subsection~~  
24 ~~(6), section eleven, article two, chapter sixteen of this code~~

25 (c) The annual farmers market vendor permit fee is \$35.

26 (d) The following vendors are exempt from ~~the requirements of the uniform~~ obtaining a  
27 farmers market vendor permit:

28 (1) ~~Vendors~~ Producers delivering their products to a consignment farmers market only; or

29 (2) Vendors selling fresh, uncut produce ~~or other any other farm and food product not~~  
30 subject to a permit by a local health department through rule or regulation.

31 (e) A consignment farmers market shall obtain a food establishment permit issued by the  
32 local health department. Certain farm and food product also require food establishment or other  
33 permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and  
34 sprouted seeds. Notwithstanding the provisions of this article, the local health department in the  
35 jurisdiction in which the farmers market is located has the right to inspect and suspend the food  
36 establishment permit of a farmers market vendor that sells or serves food for which a food  
37 establishment permit is required.

38 (f) ~~Every uniform~~ All farmers market vendor permit permits shall be displayed in a  
39 conspicuous manner.

40 (g) ~~Notwithstanding the provisions of article two, chapter sixteen of this code, a local health~~  
41 ~~department has the right to inspect and suspend the uniform farmers market vendor permit for~~

42 violation of rules or the local health department regulations of a vendor at any farmers market in  
43 its jurisdiction, or at the vendor's home or business address, if it is in the inspecting local health  
44 department's jurisdiction, regardless of what local health department issued the uniform farmers  
45 market vendor permit.

46 ~~(h)~~(g) Nothing in this article eliminates or limits other state and federal rules and  
47 regulations that apply to certain farm and food products sold at a farmers market or a consignment  
48 farmers market.

49 (h) The department may establish regulations permitting the sampling of certain farm and  
50 food products at farmers markets by vendors.

51 (i) A vendor is subject to food sampling and inspection by the local health department in  
52 the jurisdiction in which the farmers market is located if the local health department determines  
53 that the vendor's food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated,  
54 or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall  
55 be performed in consultation with the Department of Agriculture.

56 (j) If the local health department in the jurisdiction in which the farmers market is located  
57 has reason to believe that an imminent health hazard exists it may invoke cessation of production  
58 until it deems that the hazardous situation has been addressed to the satisfaction of the local  
59 health department: *Provided*, That a local health department that invokes cessation of production  
60 under this subsection shall do so in consultation with the Department of Agriculture.

**§19-35-4. Legislative rules.**

1 (a) The ~~West Virginia Department of Health and Human Resources~~ Department of  
2 Agriculture shall propose emergency or legislative rules for legislative approval in accordance  
3 with the provisions of §29A-3-1 *et seq.* of this code for the purposes of implementing this article.

4 (b) The ~~West Virginia Department of Health and Human Resources~~ Department of  
5 Agriculture shall consult with the Department of ~~Agriculture~~ Health and Human Resources and  
6 shall consider the guidelines established in the Farmers Market Vendor Guide and Memorandum

7 ~~F-16, Food Permits at Farmers Markets~~ in promulgating the rules. The rules shall set forth  
8 quantity limitations for each type of farm and food product for which a farmers market vendor  
9 permit is required pursuant to §19-35-5(d) of this code.

**§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods.**

1 (a) Notwithstanding any provision of §16-1-1 et seq. of this code or any rules or regulations  
2 to the contrary, the department shall regulate cottage foods, acidified foods, nonpotentially  
3 hazardous foods and other exempted foods.

4 (b) Online farmers market sales shall be delivered in person and are not permitted to be  
5 shipped. A home, farm, community, or commercial kitchen may be used by a cottage foods  
6 vendor, as determined by the department.

7 (c) All foods for which a farmers market vendor permit is required pursuant to §19-35-5(d)  
8 of this code shall be labeled in compliance with the department's labeling standards and provide  
9 information about its content and sources. The label shall include the words "MADE IN A WV  
10 \_\_\_\_\_ KITCHEN" in capital, bold, 10-point type or larger words, with the blank space to state  
11 whether the product was made in a home, farm, community, or commercial kitchen.

12 (d) A farmers market vendor permit is required to sell the following farm and food products  
13 at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products,  
14 sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with  
15 a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of  
16 the produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or  
17 garden, and records of the source of the produce shall be maintained.

18 (e) A farmers market vendor permit is not required to sell the following farm and food  
19 products at farmers markets:

20 (1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and  
21 candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies;  
22 and dehydrated fruits and vegetables; and

23           (2) Other foods that are exempted from certain regulations, including, but not limited to,  
24 certain fermented products, certain exempted condiments, commercially harvested mushrooms,  
25 and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished  
26 equilibrium of pH 4.6 or below.

NOTE: The purpose of this bill is to remove local health departments from the farmers market permit process; transfer rules and regulations for farmers markets, cottage foods, acidified foods, nonpotentially hazardous foods and exempted foods from Department of Health and Human Resources to Department of Agriculture; clarify consignment markets; require farmers market registration; expand farmers market vendor permits to include cottage foods; clarify certain farm and food products require other permits; permit sampling of certain food products; clarify scope, labeling and sources of cottage foods; require online farmers market sales be delivered in person; permitting home, farm, community or commercial kitchen to be used by cottage foods vendor as determined by the department; and clarify that cottage foods includes certain acidified foods, nonpotentially hazardous foods and exempted foods.

This bill is recommended for introduction and passage during the 2018 Regular Session by the Joint Interim Committee on Agriculture and Rural Development.

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