

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4295**

BY DELEGATES EVANS, A., R. ROMINE, HAMILTON,

ROWAN, STATLER, LOVE AND CAMPBELL

[Introduced January 25, 2018; Referred  
to the Committee on Agriculture and Natural  
Resources then the Judiciary.]

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 egg permit and cottage foods permit;  
 9 clarifying certain farm and food products require other permits; permitting sampling of  
 10 certain food products; clarifying scope, labeling and sources of cottage foods; requiring  
 11 online farmers market sales be delivered in person; permitting home, farm, community or  
 12 commercial kitchen to be used by cottage foods vendor as determined by the department;  
 13 and clarifying that cottage foods includes certain acidified foods, nonpotentially hazardous  
 14 foods and 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 (b) "Department" means the Department of Agriculture.

8 ~~(b)~~ (c) "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 ~~(c)~~ (d) "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)~~ (e) "Farmers market vendor" or "vendor" means a person or entity that sells farm and  
20 food 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, provide information regarding the  
2 farmers market and its vendors and pay a \$25 registration fee.

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) There are three farmers market vendor permits that may be obtained by a vendor:

19 (1) General farm and food products:

20 (2) Eggs, of less than 30 dozen per week that are raised and sold by the vendor and  
21 properly labeled in accordance with the provisions and exemptions for small producers in §19-  
22 10A-1 et seq. of this code.

23 (3) Cottage foods, as set forth in §19-35-5 of this code.

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

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

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

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

31 (d) The annual farmers market vendor permit fee is \$25 for each permit, or \$50 for two or  
32 three permits.

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

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

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

38 ~~(e)(f)~~ A consignment farmers market shall obtain a food establishment permit issued by  
39 the local health department. Certain farm and food product also require food establishment or

40 other permits to be sold at farmers markets including, but no limited to, meat, poultry, dairy, fish  
 41 and sprouted seeds.

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

44 (g) ~~Notwithstanding the provisions of article two, chapter sixteen of this code, a local health~~  
 45 ~~department has the right to inspect and suspend the uniform farmers market vendor permit for~~  
 46 ~~violation of rules or the local health department regulations of a vendor at any farmers market in~~  
 47 ~~its jurisdiction, or at the vendor's home or business address, if it is in the inspecting local health~~  
 48 ~~department's jurisdiction, regardless of what local health department issued the uniform farmers~~  
 49 ~~market vendor permit.~~

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

#### **§19-35-4. Legislative rules.**

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

4 (b) The West Virginia Department of ~~Health and Human Resources~~ Agriculture shall  
 5 consult with the West Virginia Department of ~~Agriculture~~ Health and Human Resources and shall  
 6 consider the guidelines established in the Farmers Market Vendor ~~Guide and Memorandum F-~~  
 7 ~~16, Food Permits at Farmers Markets~~ in promulgating the rules.

#### **§19-35-5. Cottage foods; Acidified foods; Nonpotentially 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) A farmers market vendor may apply for a cottage foods permit to sell certain foods at

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

8 (c) Cottage foods shall be labeled in compliance with the department's labeling standards  
9 and provide information about its content and sources. The label shall include the words "MADE  
10 IN A WV \_\_\_\_\_ KITCHEN" in capital, bold, 10-point type or larger words, with the blank space  
11 to state whether the product was made in a home, farm, community or commercial kitchen.

12 (d) A cottage foods permit is required to sell the following farm and food products at  
13 farmers markets:

14 (1) Certain canned acidified foods, including, but not limited to, pickled products, sauces  
15 and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with a water  
16 activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of the  
17 produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or  
18 garden, and records of the source of the produce shall be maintained;

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

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

NOTE: The purpose of this bill is to remove local health departments from 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 and fees; expand farmers market vendor permits and fee structure to include egg permit and cottage foods permit; 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.