

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4888

BY DELEGATE HAMRICK

[Introduced February 11, 2020; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, §19-38-5, §19-38-6, §19-38-7, §19-
 3 38-8, §19-38-9, §19-38-10, and §19-38-11, all relating to enacting the Food Freedom Act;
 4 permitting the sale of homemade foods if certain conditions are met; setting forth
 5 purposes; making legislative findings; defining terms; providing exemptions; permitting
 6 investigations and consultations; preempting local laws; allowing for construction; and
 7 setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. FOOD FREEDOM ACT.

§19-38-1. Short Title.

1 This article shall be known as the “Food Freedom Act”.

§19-38-2. Purposes.

1 This article’s purposes are to:

2 (1) Recognize the right of individuals to produce, procure, and consume homemade foods
 3 of their choice free from unnecessary and anticompetitive regulations; and

4 (2) Foster small businesses, innovation, and economic growth.

§19-38-3. Legislative findings.

1 The Legislature finds the following:

2 (1) There is great interest in small-scale, home-based food businesses in this state, but
 3 current law restricts entrepreneurs’ ability to establish and grow such businesses.

4 (2) Expanding the freedom of entrepreneurs to operate home-based food businesses will
 5 provide numerous benefits, including the opportunity for self-employment and to earn an honest
 6 living through work that affords flexibility, creativity, and financial rewards.

7 (3) Consumers desire foods produced by such entrepreneurs.

8 (4) Expanding the freedom of consumers to procure food from home-based food
 9 businesses will provide many benefits, including consumers gaining access to a greater variety

10 of food options, especially food produced on a small, local scale.

11 (5) There is little evidence that home-based food businesses pose a threat to the public in
12 states where they are lightly regulated.

13 (6) Allowing the production, sale, and consumption of a greater variety of homemade foods
14 respects individuals’ personal liberty, including economic liberty. Individuals should be free to
15 produce, procure, and consume the homemade foods of their choice.

§19-38-4. Definitions.

1 For purposes of this article:

2 “Delivered” means transferred to the consumer, either immediately upon sale or at a time
3 thereafter.

4 “Department” means the Department of Agriculture.

5 “Homemade food item” means a food item that is produced and, if packaged, packaged
6 at the private residence of the producer.

7 “Nonpotentially hazardous,” in relation to food, means food that does not require
8 time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

9 “Potentially hazardous,” in relation to food, means food that requires time/temperature
10 control for safety to limit pathogenic microorganism growth or toxin formation.

11 “Produce” means prepare a food item by cooking, baking, drying, mixing, cutting,
12 fermenting, preserving, dehydrating, growing, raising or other process.

13 “Producer” means the person who produces a homemade food item.

14 “Seller” means the person who sells a homemade food item to a consumer. The seller of
15 a nonpotentially hazardous homemade food item may be the producer of the item, an agent of
16 the producer, or a third-party vendor, such as a retail shop or grocery store. The seller of a
17 potentially hazardous homemade food item must be the producer of the item.

18 “State” means the State of West Virginia and its political subdivisions.

§19-38-5. Exemption.

1 (a) The production and sale of homemade food items under this article are exempt from
2 all licensing, permitting, inspection, packaging, and labeling laws of the state.

3 (b) Subsection (a) of this section, however, does not exempt a producer or seller of
4 homemade food items from any requirement to register the producer or seller’s business name,
5 address, and other identification information with the state.

§19-38-6. Conditions for exemption.

1 (a) The exemption set forth in §19-38-5 of this code applies only if the conditions in this
2 section are satisfied.

3 (b) Sale and delivery of nonpotentially hazardous homemade foods. -- The following
4 conditions apply to the sale and delivery of nonpotentially hazardous homemade food items:

5 (1) Nonpotentially hazardous homemade food items must be sold:

6 (A) By the producer to the consumer, whether in person or remotely (e.g., by telephone or
7 Internet); or

8 (B) By an agent of the producer or a third-party vendor, such as a retail shop or grocery
9 store, to the consumer.

10 (2) Nonpotentially hazardous homemade food items must be delivered:

11 (A) By the producer to the consumer; or

12 (B) By an agent of the producer, a third-party vendor, or a third-party carrier to the
13 consumer.

14 (c) Sale and delivery of potentially hazardous homemade foods. -- Potentially hazardous
15 homemade food items must be sold by the producer to the consumer, either in person or remotely
16 (e.g., by telephone or Internet), and delivered by the producer to the consumer in person.

17 (d) Required disclosures. -- The following information must be provided to the consumer,
18 in the format required by subsection (d) of this section:

19 (1) The name, home address, and telephone number of the producer of the homemade
20 food item;

21 (2) The common or usual name of the homemade food item;

22 (3) The ingredients of the homemade food item in descending order of predominance; and

23 (4) The following statement: "This product was produced at a private residence that is
24 exempt from state licensing and inspection. This product may contain allergens."

25 (e) Format of disclosures. -- The information required by subsection (c) of this section must
26 be provided:

27 (1) On a label affixed to the package, if the homemade food item is packaged;

28 (2) On a label affixed to the container, if the homemade food item is offered for sale from
29 a bulk container;

30 (3) On a placard displayed at the point of sale, if the homemade food item is neither
31 packaged nor offered for sale from a bulk container; or

32 (4) On the webpage on which the homemade food item is offered for sale, if the homemade
33 food item is offered for sale on the Internet.

34 If the homemade food item is sold by telephone or custom order, the seller need not
35 display the information required by subsection (c) of this section, but the seller must disclose to
36 the consumer that the homemade food item is produced at a private residence that is exempt
37 from state licensing and inspection and may contain allergens. The seller must have the
38 information required by subdivision (1) through (3), subsection (c) of this section readily available
39 and provide it to the consumer upon request.

40 (e) Production and sale of meat and poultry. -- The homemade food item shall not be
41 meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as
42 those terms are defined for purposes of the Federal Meat Inspection Act and federal Poultry
43 Products Inspection Act, unless the production and sale of the items:

44 (1) Are within an exemption in 9 C.F.R. §303.1(d), 9 C.F.R. §381.10(c) or 9 C.F.R.
45 §381.10(d)[3]; and

46 (2) Comply with other applicable federal regulations.

§19-38-7. Investigation.

1 Nothing in this article may be construed to impede the department in any investigation of
2 a reported foodborne illness.

§19-38-8. Consultation.

1 Nothing in this article precludes an agency from providing assistance, consultation, or
2 inspection at the request of the producer of a homemade food item.

§19-38-9. Construction.

1 This article shall not be construed to:

2 (1) Preclude the production or sale of food items otherwise allowed by law;

3 (2) Preclude the sale of live animals or portions of live animals before slaughter for future
4 delivery;

5 (3) Change the regulation of other goods and services where homemade food items are
6 also produced or sold;

7 (4) Exempt producers or sellers of homemade food items from any applicable tax law;

8 (5) Exempt producers or sellers of homemade food items from any applicable fishing or
9 hunting law;

10 (6) Exempt producers or sellers of homemade food items from any applicable law of the
11 federal government, including any federal law prohibiting the sale of certain food items in
12 interstate commerce; or

13 (7) Exempt producers or sellers of homemade food items from any applicable law of
14 another state.

§19-38-10. Preemption.

1 This article preempts county, municipal and other political jurisdictions from prohibiting
2 and regulating the production and sale of homemade food items.

§19-38-11. Effective Date.

1 This article takes effect on July 1, 2020.

NOTE: The purpose of this bill is to enact the Food Freedom Act. The bill permits the sale of homemade foods if certain conditions are met. The bill sets forth purposes. The bill makes legislative findings. The bill defines terms. The bill provides exemptions. The bill permits investigations and consultations. The bill preempts local laws. The bill allows for construction. The bill sets an effective date.

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