

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2643

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AND COWLES

[Introduced January 24, 2019; Referred
to the Committee on Agriculture and Natural
Resources then Government Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §19-37-1, §19-37-2 and §19-37-3, all relating to raw milk; creating the West
3 Virginia Farm Fresh Raw Milk Act; exempting certain sales from licensure and certification;
4 providing definitions; requiring the use of best sanitary milking and milk handling
5 procedures; empowering the Department of Agriculture to conduct inspections and
6 administer the program; providing requirements for sales; and providing immunity to
7 producers when a consumer illness results from improper handling by customers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. WEST VIRGINIA FARM FRESH RAW MILK ACT.

§19-37-1. Short title.

1 This article is known and may be cited as the “West Virginia Farm Fresh Raw Milk Act.”

§19-37-2. Definitions.

1 As used in this article:

2 “Best sanitary milking and milk handling practices” means the following milking and dairy
3 herd practices in the production of raw milk sold or processed into dairy products for human
4 consumption:

5 (A) All dairy animals shall be milked in a fully enclosed structure or room with a concrete
6 floor that is separated from indoor animal housing pens by a wall. Any animal waste and/or spilled
7 animal feed or soiled bedding debris, as may incidentally result from the milking operation, shall
8 be swept or washed from the concrete flooring of the animal milking area or parlor as soon as
9 practicable after each milking. For small animal milking herds (goats and/or sheep), the milking
10 area may be housed in a fully enclosed room or accessory structure (such as, but not necessarily
11 limited to a shed or garage) having a concrete or alternative durable, washable, and impervious,
12 flooring surface, such as but not limited to tile or vinyl, as long as its integrity is properly maintained
13 against routine animal traffic wear and tear. Any accessory structure containing a milking area
14 for small animal milking herds may incidentally include a temporary, fenced dairy animal housing

15 pen (for birthing or sick animal recovery).

16 (B) Prior to milking, each udder and teat of the dairy animal shall be cleaned using a
17 sanitary wash or wipe.

18 (C) Prior to milking, a strip test of milk from each teat shall be performed to check for
19 possible milk infections. If the strip test results indicate that the animal's milk is clotted and/or
20 bloody, no milk from that animal shall be sold until the animal has been determined to be healthy
21 and subsequently produces a clean strip test.

22 (D) Each dairy animal shall be milked using a fully sealed and self-contained mechanical-
23 or hand- operated vacuum system that conveys all milk directly from the teat via hoses to a glass,
24 FDA approved food grade plastic, or stainless-steel receiving vessel.

25 (E) After a dairy animal has been milked, a sanitary teat wash or dip shall be applied to
26 each teat before the animal is released from the milking stand, stanchion, or parlor.

27 (F) All milk collected in a self-contained milking system shall be subsequently strained
28 (using a sanitary strainer material) when transferred to a sanitized container for eventual
29 consumer sale and stored in a cooling device that will effectively reduce the temperature of the
30 milk to 40 degrees Fahrenheit or less within two hours after milking is complete.

31 (G) All milk handling components shall be thoroughly cleaned and sanitized as soon as
32 practicable after each milking.

33 (H) Any and all raw milk intended for sale under the West Virginia Fresh Food Freedom
34 Act shall be stored in a refrigeration device or system that will maintain the temperature of the
35 milk between 35 and 40 degrees Fahrenheit until the date of sale.

36 (I) Any dairy animal determined to be ill with a disease or infection that could be contagious
37 to the rest of the herd and/or would materially impair the natural quality of the milk produced shall
38 be housed in a separate holding pen or facility from the rest of the herd and not milked until the
39 illness has been treated and the animal has fully recovered. No milk incidentally or accidentally
40 produced from any such ill dairy animal may be sold from the farm.

41 (J) All dairy animals shall be fed water from a clean, potable water source. All hay shall
42 be stored in a dry location, and all pelletized feed shall be stored in a dry location and in a storage
43 container that effectively restricts pest infestation.

44 “Delivery” means the transfer of a product resulting from a transaction between a producer
45 and an informed end consumer. The delivery may occur by the producer’s designated agent at a
46 farm, ranch, farmers market, home, office or any location agreed to between the producer and
47 the informed end consumer.

48 “Farmers market” is used as defined in §19-35-2(c) of this code.

49 “Home consumption” means milk or milk products consumed within a private home by
50 family members, employees or nonpaying guests.

51 “Homemade” means food that is prepared in a private home or farm kitchen, that is not
52 licensed or regulated.

53 “Informed end consumer” means a person who is the last person to purchase any raw milk
54 or raw milk product, who does not resell the product, and who has been informed that the product
55 is not licensed or regulated.

56 “Producer” means any person who milks a dairy animal (cow, goat, or sheep) to obtain
57 milk for direct sale or processing into a milk-based product that is intended for human consumption
58 as food or drink.

59 “Raw milk” means milk sold for fluid consumption in its natural state at the time of milking
60 and that has not been pasteurized or homogenized.

61 “Raw milk products” means any food product prepared from raw milk for human
62 consumption including, but not necessarily limited to skim milk, cream, buttermilk, whey, butter,
63 cheese, ice cream, and yogurt.

64 “Transaction” means the exchange of buying and selling.

§19-37-3. Purpose; exemptions; assumption of risk.

1 (a) The purpose of the West Virginia Farm Fresh Raw Milk Act is to allow for the sale and

2 consumption of homemade and farm fresh raw milk and raw milk products and to encourage the
3 expansion of raw milk dairy sales by small farm producers and accessibility of their products to
4 informed end consumers by:

5 (1) Permitting the limited purchase and consumption of farm fresh raw milk and dairy
6 products made from raw milk;

7 (2) Expanding the agricultural economy and opening competitive markets for small dairy
8 farms;

9 (3) Providing informed West Virginia consumers with unimpeded and convenient access
10 to farm fresh raw milk and raw milk products from known sources; and

11 (4) Empowering the West Virginia Department of Agriculture to administer this article and
12 to register and inspect participating small dairy farms for compliance.

13 (b) Notwithstanding any other provisions of law, there may be no licensure, permitting, or
14 certification required by any agency of any political subdivision of the state which pertains to the
15 preparation, serving, use, consumption or storage of raw milk or raw milk products under the West
16 Virginia Farm Fresh Raw Milk Act. Nothing in this article precludes an agency from providing
17 assistance, consultation or inspection, with the consent of the producer.

18 (c) Transactions under this section:

19 (1) Shall be directly and exclusively between the producer and the informed end
20 consumer. No consumer resale of farm fresh raw milk or raw milk products purchased under this
21 article is permitted;

22 (2) May only be for home consumption by the informed end consumer;

23 (3) May occur only in West Virginia;

24 (4) May not involve interstate commerce;

25 (5) Shall permit the sale of raw milk and raw milk products, where all of the following sale
26 requirements are satisfied by each producer:

27 (A) Raw milk sales may not exceed 80 gallons per day.

28 (B) Sales of raw milk products (encompassing, but not limited to, butter, cheese, ice
29 cream, and yogurt) may not exceed 40 pounds per day.

30 (C) All producers wishing to sell raw milk and/or raw milk products shall register for a raw
31 milk production and sales license from the West Virginia Department of Agriculture, providing the
32 name of the farm, the name of the proprietor or primary operator, the mailing/physical address of
33 the farm, a daytime contact telephone number, and the e-mail/Facebook address of the farm, the
34 specific milk products to be sold, and the type and number of milking animals in the producing
35 herd. The producer is responsible for updating the registration information with the Department of
36 Agriculture within 10 days of any changes to the required information.

37 (D) All milk sold shall be produced in full compliance with the best sanitary milking and
38 milk handling practices specified in §19-37-2 of this code.

39 (E) All fluid raw milk shall be sold to a consumer within two days from the date of milking.
40 The processing of any raw milk product intended for sale under this article shall commence within
41 two days from the milking date of the fluid raw milk.

42 (F) All milk products sold shall be labeled, in a form required by the cognizant Department
43 of Agriculture, to identify the producer, provide contact information, state the date upon which the
44 milk (or milk product) was produced, and clearly state that the milk contained has been prepared
45 in compliance with all best sanitary milking and milk handling practices, but is not processed,
46 licensed, or certified by any state or federal agency.

47 (G) All producers shall make available and offer each customer specific written safe raw
48 milk handling and use guidelines stating, at a minimum, that raw milk should always be kept in a
49 pre-sanitized container and refrigerated at a temperature between 35 and 40 degrees Fahrenheit;
50 not left to sit unrefrigerated for periods of time longer than may be necessary for immediate use;
51 should be consumed or used not more than seven days from the date of purchase, and should
52 be disposed and not used or consumed if incidentally or accidentally contaminated by the
53 consumer. The guidelines shall also include a statement that pregnant women and customers

54 with weakened immune systems should consult a qualified physician prior to consuming raw milk
55 or milk products. The producer may add any further handling and use guidelines that is
56 considered necessary, in consultation with his or her insurance provider, to address specific
57 liability concerns. The guidelines may further state that the producer assumes no liability for
58 illness that is caused by improper handling and use by the customer.

59 (H) The producer shall offer and afford any potential customer an opportunity to schedule
60 a tour or inspection of the producer's farm, animal housing, milking operation, and/or milk
61 processing operation prior to purchase of any raw milk or milk product under this article. The
62 producer shall, as a minimum requirement of each tour, specifically explain and demonstrate how
63 his or her operation complies with each of the required best sanitary milking and milk handling
64 practices and either provide a printed copy of those requirements or permanently post a printed
65 copy of those requirements in the milking area/room, which shall be replaced as may be
66 necessary to ensure legibility against fading, wear, and tear.

67 (I) Any formal agreement or contract for raw milk or milk product sales between a producer
68 and customer shall include and state (affirm) the producer's compliance with the best sanitary
69 milking and milk handling practices.

70 (d) This article does not:

71 (1) Impede the West Virginia Department of Agriculture or Department of Health and
72 Human Resources in any investigation and prosecution of a food borne illness that has been
73 determined by a qualified physician to have been caused by a food-borne pathogen ingested from
74 a food product sold under this article.

75 (2) Prevent the West Virginia Department of Agriculture and/or Department of Health and
76 Human Resources from conducting annual pre-scheduled inspections of a raw milk dairy farm
77 operation to ensure compliance with all required best sanitary milking and milk handling practices
78 or other applicable provisions of the West Virginia Farm Fresh Raw Milk Act.

79 (3) Prevent the West Virginia Department of Agriculture or Department of Health and

80 Human Resources from conducting more frequent pre-scheduled follow-up inspections (not to
81 exceed a total of four in any calendar year) on any dairy farm for one year following any finding
82 of noncompliance with the aforementioned requirements and provisions or until full compliance
83 has been determined.

84 (4) Change the requirements for animal health inspections.

85 (e) Producers selling farm fresh foods in full compliance with the West Virginia Farm Fresh
86 Raw Milk Act may not be held liable for a consumer illness that results from improper handling,
87 storage, contamination, or use of the food product by the customer that occurs after the sale.

NOTE: The purpose of this bill is to enact the West Virginia Farm Fresh Raw Milk Act. The bill authorizes the production and sale of raw milk by milk producers, requires producers to use best sanitary milking and milk handling practices, and establishes sanitary and other requirements for production and sales.

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