

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3192**

BY DELEGATE GRAVES

[Introduced March 16, 2021; Referred to the  
Committee on Agriculture and Natural Resources  
then Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
 2 designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, §19-38-5, §19-38-6, §19-38-7, and  
 3 §19-38-8 relating to agriculture; creating the West Virginia Farm Fresh Dairy Act;  
 4 exempting certain sales from licensure and certification; providing definitions; providing  
 5 conforming amendments; and providing for an effective date.

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

**ARTICLE 38. WEST VIRGINIA FARM FRESH DAIRY ACT**

**§19-38-1. Short title.**

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

**§19-38-2. Definitions.**

1 As used in this article:

2 (a) “Delivery” means the transfer of a product resulting from a transaction between a  
 3 producer and an informed end consumer. The delivery may occur by the producer’s designated  
 4 agent at a farm, ranch, farmers market, home, office or any location agreed to between the  
 5 producer and the informed end consumer;

6 (b) “Farmers market” means as defined in §19-35-2(c) of this code;

7 (c) “Home consumption” means milk or milk products consumed within a private home by  
 8 family members, employees or nonpaying guests;

9 (d) “Homemade” means food that is prepared in a private home or farm kitchen for  
 10 eventual sale to a consumer;

11 (e) “Informed end consumer” means a person who is the last person to purchase any raw  
 12 milk or raw milk product, who does not resell the product, and who has been informed that the  
 13 product is not pasteurized;

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

17 (g) "Raw Milk" means FLUID milk sold for consumption in its natural state at the time of  
18 milking and that has not been pasteurized or homogenized.

19 (h) "Raw Milk Products" means any food product prepared from Raw Milk for human  
20 consumption including, but not necessarily limited to skim milk, cream, buttermilk, whey, butter,  
21 cheese, ice cream, and yogurt.

22 (i) "Transaction" means the exchange of buying and selling.

**§19-38-3. West Virginia Farm Fresh Dairy Act; purpose; exemptions; assumption of risk.**

1 (a) The purpose of the West Virginia Farm Fresh Dairy 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 the West  
12 Virginia Farm Fresh Dairy Act and to register and inspect participating small dairy farms for  
13 compliance with the act.

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

20 (c) Transactions under this section shall:

21 (1) Be directly and exclusively between the producer and the informed end consumer. No  
22 consumer resale of farm fresh raw milk or raw milk products purchased under this act shall be  
23 permitted;

24 (2) Be only for home consumption by the informed end consumer;

25 (3) Occur only in West Virginia; and

26 (4) Not involve interstate commerce.

27 (d) Nothing in this article shall be construed to impede the West Virginia Department of  
28 Agriculture and/or Department of Health and Human Resources in any investigation and/or  
29 prosecution of a food borne illness that has been determined by a qualified physician to have  
30 been caused by a food-borne pathogen ingested from a food product sold under this article.

31 (e) Nothing in this article shall be construed to change the requirements for animal health  
32 inspections and/or any applicable vaccination requirements.

33 (f) Producers selling farm fresh foods in full compliance with the West Virginia Farm Fresh  
34 Dairy Act shall not be held liable for any consumer illness that may result from improper handling,  
35 storage, contamination, or use of the food product by the customer that occurs after the sale.

**§19-38-4. Best Sanitary Milking and Milk Handling Practices.**

1 All of the following milking and dairy herd practices shall be followed in the production of  
2 raw milk sold or processed into dairy products for human consumption in accordance with the  
3 West Virginia Farm Fresh Dairy Act:

4 (a) All dairy animals shall be milked in a fully enclosed structure or room with a concrete  
5 floor that is separated from indoor animal housing pens by a wall. Any animal waste and/or spilled  
6 animal feed or soiled bedding debris, as may incidentally result from the milking operation, shall  
7 be swept or washed from the concrete flooring of the animal milking area or parlor as soon as  
8 practicable after each milking. For small animal milking herds (goats and/or sheep), the milking  
9 area may be housed in a fully enclosed room or accessory structure (such as, but not necessarily

10 limited to, a shed or garage) having a concrete or alternative durable, washable, and impervious,  
11 flooring surface, such as but not limited to tile or vinyl, as long as its integrity is properly maintained  
12 against routine animal traffic wear and tear.

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

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

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

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

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

28 (g) All milk handling components shall be thoroughly cleaned and sanitized as soon as  
29 practicable after each milking.

30 (h) Any and all raw milk intended for sale under the West Virginia Farm Fresh Dairy Act  
31 shall be stored in a refrigeration device or system that will maintain the temperature of the milk  
32 between 35 and 40 degrees Fahrenheit until the date of sale.

33 (i) Any dairy animal determined to be ill with a disease or infection that could be contagious  
34 to the rest of the herd and/or would materially impair the natural quality of the milk produced shall  
35 be housed in a separate holding pen or facility (such as a designated quarantine or recovery pen)

36 from the rest of the herd and not milked until the illness has been treated and the animal has fully  
37 recovered. No milk incidentally or accidentally produced from any such ill dairy animal shall be  
38 processed or sold from the farm.

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

**§19-38-5. Registration and required permits.**

1 (a) All producers wishing to sell raw milk and/or raw milk products shall first register with  
2 the Department of Agriculture, providing the name of the farm, the name of the proprietor or  
3 primary operator, the mailing/physical address of the farm, a daytime contact telephone number,  
4 and the e-mail, website, and/or Facebook address of the farm, the specific milk products to be  
5 sold, and the type and number of milking animals in the producing herd. The producer shall be  
6 responsible for updating the registration information with the Department of Agriculture within 10  
7 days of any changes to the required information.

8 (b) Prior to selling any raw milk or producing any authorized raw milk product for consumer  
9 sale, every producer shall request an inspection by the Department of Agriculture to establish the  
10 producer's compliance with all applicable requirements of the WV Farm Fresh Dairy Act, to ensure  
11 producer understanding of the applicable administration and penalty provisions, and to work with  
12 the inspector to identify and evaluate potential sanitary and health safety concerns regarding the  
13 producer's proposed milk handling and processing operation. The Inspector may make a written  
14 or e-mail note of his/her concerns to which the producer must respond in writing or by e-mail with  
15 proposed measures to address the Inspector's concerns, prior to authorization by the Department  
16 of Agriculture to commence sales of the intended raw milk or raw milk products. In the event that  
17 the sanitary or health safety concerns affect only one discrete element of the producer's operation,  
18 the Department of Agriculture may authorize commencement of the producer's operation limited  
19 exclusively to those elements of the operation not affected by the unremedied sanitary and/or

20 health safety concerns, until such time as the producer has submitted an acceptable measure to  
21 address or an acceptable response to refute the applicable concerns.

22 (c) Prior to preparing and/or selling any authorized raw milk products, each producer shall  
23 obtain a valid WV Food Handlers card from the Department of Health and Human Resources.

24 The Department of Agriculture shall inspect the raw milk production facilities as part of the initial  
25 inspection prior to the processing and sale of raw milk products, as required by §19-38-5(b) of  
26 this code.

**§19-38-6. Administration, violations, and penalties.**

1 (a) The Department of Agriculture shall conduct annual pre-scheduled inspections of a  
2 raw milk dairy farm operation to ensure compliance with all required Best Sanitary Milking and  
3 Milk Handling Practices or other applicable provisions of the West Virginia Farm Fresh Dairy Act.  
4 Such inspections may be conducted during the producer's standard milking times to ensure  
5 compliance with all applicable milking and milk handling requirements. The Department of  
6 Agriculture also may conduct more frequent pre-scheduled follow-up inspections as may be  
7 deemed necessary in accordance with subsection(b) and/or (c) of this section to address any  
8 violations of the aforementioned requirements and provisions or until full compliance has been  
9 determined.

10 (b) If, during the course of a farm inspection, an inspector has determined that a producer  
11 has violated one or more of the Best Sanitary Milking and Milk Handling requirements specified  
12 in §19-38-4 of this code, the Department of Agriculture may, at its discretion and based on the  
13 severity of the violation, require the producer to comply with any or all of the following corrective  
14 measures:

15 (1) For a first violation:

16 (A) Attend a routine or special compliance training class to be scheduled and conducted  
17 by the Department of Agriculture for a reasonable training fee to be established by the  
18 Department;

19 (B) Suspend all sales of raw milk and milk products by the producer for not more than  
20 three consecutive weeks or until the violation has been corrected as determined by a follow-up  
21 inspection (whichever is less). Any follow-up inspection(s) conducted by the Department of  
22 Agriculture to confirm a violation has been remedied shall be conducted on or before expiration  
23 of the raw milk sales suspension; and

24 (C) Compel the producer to submit to and pass not more than four additional periodic  
25 inspections within one year of the date that the violation first occurred.

26 (2) For repeat violations:

27 (A) Any or all corrective measures specified in subsection (b)(1) of this section;

28 (B) Pay a fine of \$50 for each documented inspection violation of the act, but not more  
29 than \$500 for all documented violations in any single inspection; and

30 (C) If livestock illness is a suspected concern, the producer may be required to hire a  
31 veterinarian to certify the health condition of the milking herd.

32 (c) If an investigation by the Department of Health or the Department of Agriculture  
33 determines that a producer's milk or milk product has caused a food-borne pathogen illness to  
34 occur, or that a producer has falsified required registration information or materially interfered with  
35 any food-borne pathogen investigation, the following corrective measures and penalties may be  
36 imposed by the Commissioner of Agriculture on the producer:

37 (1) For a suspected, but not confirmed customer illness caused by the producer's milk, the  
38 Commissioner of Agriculture may, at his/her discretion, temporarily suspend all sales of raw milk  
39 and milk products by the producer until the source of the contamination has been determined, not  
40 to exceed 30 consecutive days. Any follow-up inspection(s) conducted by the Department of  
41 Agriculture to confirm the violation has been remedied shall be conducted on or before expiration  
42 of the raw milk sales suspension; and

43 (2) If a food-borne pathogen illness is confirmed to have been caused by a producer's milk  
44 or milk products, or a producer has falsified information or testimony or otherwise obstructed or



45 interfered with an investigation of a food-borne pathogen incident, the violations shall be  
46 prosecuted and penalties assigned to the producer in accordance with the procedures specified  
47 in §19-11e-10 through §19-11e-15 of this code, inclusive. As an element of required remedial  
48 actions, the Commissioner of Agriculture may require the producer to submit to the WV  
49 Department of Agriculture two samples of blended, unpasteurized raw milk from the producer's  
50 active milking herd for testing at his/her own expense. The required samples must be obtained  
51 on different days taken prior to authorized resumption of raw milk sales and/or raw milk products  
52 for sale. Said blended milk samples shall be determined by the WV Department of Agriculture to  
53 comply with the bacterial, somatic cell, and coliform counts/levels required by the Grade A  
54 Pasteurized Milk Ordinance, as amended, for raw milk that is to be pasteurized.

**§19-38-7. Product sales requirements and standards.**

1 The sale of raw milk and raw milk products shall be permitted where all of the following  
2 sale requirements are satisfied by each producer:

3 (a) Raw milk sales shall not exceed 80 gallons per day;  
4 (b) Sales of raw milk products (encompassing, but not limited to, butter, cheese, ice cream,  
5 and yogurt) shall not exceed 40 pounds per day;  
6 (c) All milk sold shall be produced in full compliance with the Best Sanitary Milking and  
7 Milk Handling Practices specified in §19-38-4 of this code;  
8 (d) All fluid raw milk shall be sold to a consumer within three days from the date of milking.  
9 The processing of any raw milk product intended for sale under this Act shall commence within  
10 three days from the milking date of the fluid raw milk; and

11 (e) All milk products sold shall be labeled, in a form required by U.S. Food and Drug  
12 Administration guidelines, to identify the producer, provide a physical address and contact  
13 information, state the date upon which the milk (or milk product) was produced, net quantity of  
14 contents (in both U.S. and metric measures), the common name of the hooved animal producing  
15 the milk or milk product, and clearly state that the milk contained has been prepared in compliance

16 with all Best Sanitary Milking and Milk Handling Practices, but is not processed, licensed, or  
17 certified by any State or Federal Agency. For all processed products prepared with raw milk, the  
18 labeling shall also list all ingredients in order from most to least by weight and list any potential  
19 allergens that the product may contain.

20 (f) All producers shall make available and offer each customer specific written Safe Raw  
21 Milk Handling and Use guidelines stating, at a minimum, that raw milk should always be kept in a  
22 pre-sanitized container and refrigerated at a temperature between 35 and 40 degrees; not left to  
23 sit unrefrigerated for periods of time longer than may be necessary for immediate use; should be  
24 consumed or used not more than seven days from the date of purchase, and should be disposed  
25 and not used or consumed if incidentally or accidentally contaminated by the consumer. The  
26 guidelines shall also include a statement that pregnant women and customers with weakened  
27 immune systems should consult a qualified physician prior to consuming raw milk or milk products.  
28 The producer may add any further handling and use guidelines that may be deemed necessary,  
29 in consultation with his/her insurance provider, to address specific liability concerns. The  
30 guidelines may further state that the producer assumes no liability for illness that is caused by  
31 improper handling and use by the customer.

32 (g) The producer shall offer and afford any potential customer an opportunity to schedule  
33 a tour/inspection of the producer's farm, animal housing, milking operation, and/or milk processing  
34 operation prior to purchase of any raw milk or milk product under this act. The producer shall, as  
35 a minimum requirement of each tour, specifically explain and demonstrate how his/her operation  
36 complies with each of the required Best Sanitary Milking and Milk Handling Practices outlined in  
37 §19-38-4 of this code and either provide a printed copy of those requirements or permanently  
38 post a printed copy of those requirements in the milking area/room, which shall be replaced as  
39 may be necessary to ensure legibility against fading, wear, and tear.

40 (h) Any formal agreement or contract for raw milk or milk product sales between a producer  
41 and customer shall include and state (affirm) the producer's compliance with the Best Sanitary

42 Milking and Milk Handling Practices outlined in §19-38-4 of this code.

**§19-38-8. Effective date.**

- 1 This act is effective immediately upon completion of all acts necessary for a bill to become
- 2 law as provided by the West Virginia Constitution.

NOTE: The purpose of this bill is to create the West Virginia Farm Fresh Dairy Act.

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