

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 86

FISCAL  
NOTE

BY SENATORS KARNES, TRUMP, CLINE, AND TAKUBO

[ Introduced January 10, 2018; Referred  
to the Committee on Agriculture and Rural Development;  
then to the Committee on Health and Human Resources;  
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §19-35-5, relating to permitting sale of home-based, micro-processed foods at  
3 farmers markets; requiring 70 percent from vendor's garden or farm; requiring  
4 recordkeeping and labeling; clarifying foods requiring permit and exempted foods;  
5 establishing permit requirements and limitations; setting forth permit inspections and fees;  
6 and limiting sales to 750 units per year.

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

## **ARTICLE 35. FARMERS MARKETS.**

### **§19-35-5. Home-based, micro-processing permit.**

1 (a) Notwithstanding any provision of §16-1-1 through §16-51-8 of this code or rules  
2 promulgated pursuant to that chapter to the contrary, a kitchen in a private home or community  
3 kitchen where home-based, micro-processed foods are prepared for sale by a vendor at a farmers  
4 market is permitted if the vendor has a micro-processing permit in compliance with this article.

5 (b) A farmers market vendor may apply for a home-based, micro-processing permit to sell  
6 home-based, micro-processed foods at a farmers market. Online farmers market sales shall be  
7 delivered in person and are not permitted to be shipped. The home-based, micro-processing  
8 permit is required in addition to any other permits that are required by a local health department.

9 (c) Foods qualifying for sale under the home-based, micro-processing permit must source  
10 seventy percent of any produce for a recipe from the vendor's own farm or garden. The vendor is  
11 required to keep production and food source records. The food shall be labeled in compliance  
12 with the West Virginia Department of Agriculture labeling standards and provide information about  
13 the contents and sources of the produce. The label shall include the words "MADE IN A FARM  
14 HOME KITCHEN" in capital, bold, 10-point type or larger.

15 (d) A home-based, micro-processing permit is required to sell:

16 (1) Canned acidified foods, such as pickled products, sauces and salsas. Acidified foods  
17 are low acid foods to which acid or acid foods are added with a water activity of greater than .085

- 18 and a finished equilibrium of pH 4.6 or below; and
- 19 (2) Frozen fruits and vegetables, which are not permitted to be vacuum-sealed.
- 20 (e) Nonpotentially hazardous foods, and those already exempted, do not require a home-
- 21 based, micro-processing permit but require registration with the local health department. These
- 22 include honey, maple syrup, apple butter and molasses; standardized, nondietary jams and jellies;
- 23 fermented products; whole or chopped tomatoes, tomato sauce and tomato juice having a finished
- 24 equilibrium pH of less than 4.7; exempted condiments; and dehydrated fruits and vegetables.
- 25 (f) In order to qualify for a home-based, micro-processing permit, the applicant must:
- 26 (1) Attend the Better Process Control School or an equivalent program;
- 27 (2) Pass a preopening inspection conducted by the local health department at the home
- 28 kitchen or community kitchen where the home-based, micro-processing is occurring. The local
- 29 health department may also conduct at least one operational inspection during the canning
- 30 season at the home kitchen or community kitchen when warranted;
- 31 (3) Possess a valid food handler's permit from the local health department, if applicable;
- 32 (4) Use a USDA preapproved recipe or have the recipe tested in accordance with the
- 33 procedures established by the department; and
- 34 (5) Pay a fee of \$50 to the local health department issuing the home-based, micro-
- 35 processing permit and any additional fees assessed by the local health department to cover costs
- 36 for inspections; and
- 37 (g) Home-based, micro-processing vendors may not sell more than seven hundred and
- 38 fifty units per year in the aggregate.

NOTE: The purpose of this bill is to permit home-based, micro-processing foods to be sold at farmers markets. The bill establishes permit requirements and limitations, inspection standards and permits fees.

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