

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4349

BY DELEGATES HANSHAW, LOVEJOY, SHOTT, SUMMERS

AND PACK

[Introduced January 30, 2018; 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 thereto a new
 2 section, designated §19-35-5, relating to microprocessor permit; establishing
 3 permit requirements and limitations; clarifying types of microprocessor kitchens;
 4 requiring percentage of produce from garden or farm of microprocessor; requiring
 5 recordkeeping and labeling; clarifying foods requiring permit and exempted foods;
 6 setting forth permit inspections and fees; allowing suspensions and recalls; limiting
 7 sales; and providing prohibitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.

§19-35-5. Microprocessor permit.

1 (a) Notwithstanding any provision of chapter sixteen of this code or any rules promulgated
 2 pursuant to that chapter to the contrary, a farmers market vendor may apply for a microprocessor
 3 permit to sell certain foods at a farmers market, fair, or festival. A home, farm, community, or
 4 commercial kitchen may be used by a microprocessor. The microprocessor permit is required in
 5 addition to the farmers market vendor permit.

6 (b) A microprocessor must source more than 50 percent of all produce for its products
 7 from his or her own farm or garden. The microprocessor is required to keep production and food
 8 source records. The food shall be labeled in compliance with the West Virginia Department of
 9 Agriculture labeling standards and provide information about the contents and sources of the
 10 produce. The label shall include the words "MADE IN A WV KITCHEN" in capital, bold letters, 10-
 11 point type or larger, with the blank space to state whether the product was made in a home, farm,
 12 community, or commercial kitchen.

13 (c) A microprocessor permit is required to sell:

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

- 16 and a finished equilibrium of pH 4.6 or below; and
- 17 (2) Frozen but not vacuum-sealed fruits and vegetables.
- 18 (d) Other foods already exempted do not require a microprocessor permit. These include,
- 19 but are not limited to:
- 20 (1) Breads, cakes, and candies;
- 21 (2) Honey, maple syrup, apple butter, and molasses;
- 22 (3) Standardized nondietary jams and jellies;
- 23 (4) Fermented products;
- 24 (5) Whole or chopped tomatoes, tomato sauce, and tomato juice having a finished
- 25 equilibrium of pH 4.6 or below;
- 26 (6) Exempted condiments; and
- 27 (7) Dehydrated fruits and vegetables.
- 28 (e) To qualify for a microprocessor permit, the applicant must:
- 29 (1) Successfully complete a microprocessor workshop offered by West Virginia Extension
- 30 Services and approved by the West Virginia Department of Agriculture;
- 31 (2) Pass a preopening inspection conducted by the West Virginia Department of
- 32 Agriculture at the microprocessor's kitchen. The West Virginia Department of Agriculture may
- 33 conduct one additional inspection during each processing season at the microprocessor's kitchen.
- 34 The West Virginia Department of Agriculture has the right to suspend operations or recall products
- 35 for disease outbreaks or violations of rules or regulations. Any inspection made pursuant to this
- 36 section shall be in compliance with rules promulgated pursuant to §19-35-4 of this code;
- 37 (3) Possess a valid food handler's permit from the local health department, if required;
- 38 (4) Use a United States Department of Agriculture preapproved recipe, or have the recipe
- 39 tested in accordance with the procedures established by law; and
- 40 (5) Pay a one-time fee of \$50 to the West Virginia Department of Agriculture and any
- 41 additional fees assessed by the West Virginia Department of Agriculture to cover costs for

42 inspections;

43 (f) Online farmers market sales shall be delivered in person and are not permitted to be
44 shipped.

45 (g) Microprocessors shall not sell more than 7,500 units per year in the aggregate.

46 (h) The following prohibitions shall apply to persons microprocessing food for sale at a
47 farmers market, fair, or festival pursuant to a permit granted by the provisions of this section:

48 (1) No animals, including pets, are permitted in the microprocessor's kitchen or storage
49 area at any time during production, preparation, processing, or packing;

50 (2) No animals may have access to, or come into contact with, stored food items,
51 equipment used in preparation, processing, or packing;

52 (3) Smoking is not permitted in any portion of the microprocessor's home which is used
53 for preparation, packaging, storage, or handling of food and related ingredients or equipment
54 while food is being prepared, packaged, stored, or handled.

NOTE: The purpose of this bill is to permit certain micro processed foods to be sold at farmers markets, fairs, and festivals. The bill defines terms, establishes permit standards, inspection standards, and permit 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.