

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 285

BY SENATORS SYPOLT, AZINGER, BEACH, BOSO,
CLEMENTS, CLINE, FACEMIRE, HAMILTON, MAYNARD,
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TRUMP, RUCKER, ROBERTS, AND MARONEY

[Introduced January 14, 2019; Referred
to the Committee on Agriculture and Rural Development;
and then to the Committee on Government Organization]

1 A BILL to amend and reenact §19-35-2 and §19-35-5 of the Code of West Virginia,1931, as
2 amended, all relating to modification of cottage food laws.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.

§19-35-2. Definitions.

1 For purposes of this article:

2 “Canned Acidified Foods” means low-acid foods to which acid or acid foods are added
3 with a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. These
4 foods include, but are not limited to, pickled products, sauces, and salsas.

5 “Consignment farmers market” means a farmers market in which two or more vendors
6 deliver their own farm and food products to a common location maintained by a third party that
7 markets the vendors’ products and receives a percentage share of the profits from sales, with the
8 individual vendor retaining ownership of the farm and food product until it is sold. A consignment
9 farmers market may be mobile or in a stationary location.

10 “Delivered” means transferred to the consumer, either immediately upon sale or at a time
11 thereafter. “Department” means the Department of Agriculture.

12 “Farm and food product” means any agriculture, horticulture, agroforestry, animal
13 husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food
14 products are to be properly labeled.

15 “Farmers market” means:

16 A traditional farmers market in which two or more vendors gather to sell farm and food
17 products directly to consumers at a fixed location;

18 An on-farm market or farm stand run by an individual producer that sells farm and food
19 products;

20 An online farmers market in which two or more vendors collectively market farm and food
21 products and retain ownership of those products until they are sold; or

22 A consignment farmers market as defined herein.

23 “Farmers market vendor” or “vendor” means a person or entity that sells farm and food
24 products at a farmers market.

25 “Homemade food item” means a food item, including a nonalcoholic beverage, which is
26 produced and/or packaged without a food license at a home, farm, community kitchen, or
27 commercial kitchen.

28 “Non-potentially hazardous” means food that does not require time/temperature control
29 for safety to limit pathogenic microorganism growth or toxin formation. These foods include, but
30 are not limited to, baked goods without cream, custard, cheese or meat fillings; standardized jams
31 and jellies; dehydrated fruits and vegetables; candy; fudge; honey; tree syrup; apple butter;
32 molasses; nut mixes; granola; dry soup mixes; tea; roasted coffee beans; dried herbs; dry pasta;
33 and popcorn.

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

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

37 “Seller” means the person who sells a homemade food item to a consumer. The seller of
38 the homemade food item may be the producer of the item, an agent of the producer, or a third-
39 party vendor, such as a retail shop or grocery store.

§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods.

1 (a) Notwithstanding any provision of 16-14-1 et seq. of this code or any rules or regulations
2 to the contrary, the department shall regulate the sale of homemade food items.

3 (b) The production and sale of homemade food items under this section are exempt from
4 all food licensing, permitting, inspection, packaging, and labeling laws of the state. This
5 exemption shall apply only if the conditions in this section are satisfied.

6 (c) Producers may sell the following homemade food items:

- 7 (1) Nonpotentially hazardous foods, canned acidified foods, and
- 8 (2) Certain other foods as determined by the department, including certain fermented
- 9 products; certain condiments; commercially harvested mushrooms; and canned, whole, or
- 10 chopped tomatoes, tomato sauce, and tomato juice having a finished equilibrium of pH 4.6 or
- 11 below.

12 (d) The following conditions apply to the sale and delivery of homemade food items:

13 (1) Homemade food items must be sold by the producer to the consumer, whether in

14 person or remotely (e.g., by telephone or Internet); or by an agent of the producer or a third-party

15 vendor, such as a retail shop or grocery store, to the consumer.

16 (2) Homemade food items must be delivered by the producer to the consumer; or by an

17 agent of the producer, a third-party vendor, or a third-party carrier, to the consumer.

18 (e) The following information must be provided to the consumer of homemade food items,

19 in the format required by subsection (f) of this section:

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

21 food item;

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

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

24 (4) The following statement: "Made in a WV kitchen that is exempt from state licensing

25 and inspection. This product may contain allergens," with the blank space to state whether the

26 product was made in a home, farm, community, or commercial kitchen.

27 (f) The information required by subsection (e) of this section must be provided:

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

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

30 a bulk container;

31 (3) On a placard displayed at the point of sale, if the homemade food item is neither

32 packaged nor offered for sale from a bulk container; or

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

35 (f) If the homemade food item is sold by telephone or custom order and is neither
36 packaged nor in a bulk container, the seller need not display the information required by
37 subsection (e) of this section, but the seller must disclose to the consumer that the homemade
38 food item: is produced at a kitchen that is exempt from state licensing and inspection; and may
39 contain allergens. The seller must have the information required by subsection (e) of this section
40 readily available and provide it to the consumer upon request.

41 (g) A permit from the department is required to sell certain canned acidified foods. A permit
42 is not required to sell any other homemade food items pursuant to this section.

43 (h) The department shall consult with the Department of Health and Human Resources to
44 promulgate any rules deemed necessary by the Commissioner of Agriculture to ensure the health,
45 sanitation, and safety of the products produced and sold pursuant to this section.

46 (i) This act shall not be construed to:

47 (1) Impede the department in any investigation of a reported foodborne illness; preclude
48 an agency from providing assistance, consultation, or inspection at the request of the producer of
49 a homemade food item;

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

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

52 (4) Exempt producers or sellers of homemade food items from any law that requires the
53 producer or seller to register its business name, address, and other identification information with
54 the state;

55 (5) Exempt producers or sellers of homemade food items from any applicable law of the
56 federal government, including any federal law prohibiting the sale of certain food items in
57 interstate commerce; or

58 (6) Exempt producers or sellers of homemade food items from any applicable law of

- 59 another state.
- 60 (j) This act preempts county, municipal and other political jurisdictions from prohibiting and
- 61 regulating the production and sale of homemade food items.

Note: The purpose of this bill is to regulate sale and distribution of homemade food.

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

§19-35-2 and §19-35-5 have been rewritten, therefore they have been completely underlined.