

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 285

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[Originating in the Committee on Agriculture and
Rural Development; Reported on January 25, 2019]

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 modifying 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.

12 “Department” means the Department of Agriculture.

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

16 “Farmers market” means:

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

19 (2) An on-farm market or farm stand run by an individual producer that sells farm and food
20 products;

21 (3) An online farmers market in which two or more vendors collectively market farm and

22 food products and retain ownership of those products until they are sold; or

23 (4) A consignment farmers market as defined herein.

24 "Farmers market vendor" or "vendor" means a person or entity that sells farm and food
25 products at a farmers market.

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

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

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

37 "Producer" means the person who produces a homemade food item.

38 "Retailer" means and includes every person engaging in the business of selling, leasing,
39 or renting tangible personal property.

40 "Seller" means the person who sells a homemade food item to a consumer. The seller of
41 the homemade food item may be the producer of the item, an agent of the producer, or a third-
42 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 §16-7-1 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; 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 (g) 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:

39 (1) Is produced at a kitchen that is exempt from state licensing and inspection; and

40 (2) may contain allergens.

41 The seller must have the information required by subsection (e) of this section readily
42 available and provide it to the consumer upon request.

43 (h) A permit from the department is required to sell canned acidified foods not exempted
44 in subsection (c)(2) above. A permit is not required to sell any other homemade food items
45 pursuant to this section.

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

49 (j) This act shall not be construed to:

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

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

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

55 (4) Exempt producers or sellers of homemade food items from any law that requires the

56 producer or seller to register its business name, address, and other identification information with
57 the state;

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

61 (6) Exempt producers or sellers of homemade food items from any applicable law of
62 another state.

63 (k) This act preempts county, municipal and other political jurisdictions from prohibiting
64 and 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.