

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 285

SENATORS SYPOLT, AZINGER, BEACH, BOSO, CLEMENTS,

CLINE, FACEMIRE, HAMILTON, MAYNARD, PREZIOSO,

SMITH, STOLLINGS, SWOPE, TAKUBO, TARR, TRUMP,

RUCKER, ROBERTS, AND MARONEY, *original sponsors*

[Passed March 7, 2019; in effect 90 days from passage]

1 AN ACT to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §19-35-6, all relating to the
3 sale of homemade food items; defining terms; authorizing production and sale of
4 homemade food items under certain circumstances; establishing conditions for exemption
5 from licensure, permitting, inspection, packaging, and labeling laws; providing required
6 notices to consumer; defining manner of providing notices; exempting certain products
7 from the scope of this provision; permitting local health departments and the Department
8 of Agriculture to investigate and cease production or sale of food items reported to have
9 caused a foodborne illness; authorizing Department of Agriculture to provide assistance,
10 consultation, or inspection at request of producer; providing for preemption of county,
11 local, and municipal ordinances; providing that preemption does not apply to space rentals
12 at government-owned or operated facilities, government-sanctioned or operated events,
13 or product placement agreements with government-owned facilities, as well as temporary
14 events 14 days or less in duration; and providing for exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS AND COTTAGE FOODS.

§19-35-2. Definitions.

1 For purposes of this article:

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

7 “Delivered” means transferred to the consumer, either immediately upon sale or at a time
8 thereafter.

9 “Department” means the Department of Agriculture.

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

13 “Farmers market” means:

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

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

18 (3) An online farmers market in which two or more vendors collectively market farm and
19 food products and retain ownership of those products until they are sold; or

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

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

23 “Homemade food item” means a nonpotentially hazardous food item, including a
24 nonalcoholic beverage, which is produced and/or packaged at the private residence of the
25 producer.

26 “Nonpotentially hazardous” means food that does not require time/temperature control for
27 safety to limit pathogenic microorganism growth or toxin formation.

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

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

31 “Retailer” means and includes every person engaging in the business of selling, leasing,
32 or renting tangible personal property.

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

§19-35-6. Direct sale of homemade food items.

1 (a) The production and sale of homemade food items, when done in conformity with this
2 section, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this
3 state.

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

5 (1) The homemade food item must be sold by the producer to the consumer, whether in
6 person or remotely, or by an agent of the producer or a third-party vendor; and

7 (2) The homemade food items must be delivered to the consumer by the producer, an
8 agent of the producer, a third-party vendor, or a third-party carrier.

9 (c) The following information must be provided to the consumer, in the format required by
10 subsection (d) of this section:

11 (1) The name, home address, and telephone number of the producer of the homemade
12 food item;

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

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

15 (4) The following statement: "This product was produced at a private residence that is
16 exempt from State licensing and inspection. This product may contain allergens."

17 (d) The information required by subsection (c) of this section must be provided:

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

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

21 (3) On a placard displayed at the point of sale, if the homemade food item is neither
22 packaged nor offered for sale from a bulk container;

23 (4) On the webpage on which the homemade food item is offered for sale, if the homemade
24 food item is offered for sale on the Internet; or

25 (5) On a receipt or other document provided to the customer with the homemade food
26 item.

27 (e) The homemade food item must not be meat, meat byproduct, meat food product,
28 poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the
29 federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production
30 and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d)
31 and comply with other applicable federal regulations.

32 (f) This section shall not be construed to:

33 (1) Impede the authority of a local health department or the department to investigate or
34 cease the production or sale of food items reported to have caused a foodborne illness;

35 (2) Preclude the department from providing assistance, consultation, or inspection at the
36 request of the producer of a homemade food item;

37 (3) Preclude the production or sale of food items otherwise allowed by law;

38 (4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable
39 tax law;

40 (5) Exempt producers or sellers of homemade food items from any law that requires the
41 producer, seller, third-party vendor, or third-party agent to register its business name, address,
42 and other identification information with the state;

43 (6) Exempt producers or sellers of homemade food items from any applicable law of the
44 federal government, including any federal law prohibiting the sale of certain food items in
45 interstate commerce; or

46 (7) Exempt producers or sellers of homemade food items from any applicable law of
47 another state.

48 (g) This section preempts county, municipal, and other political jurisdictions from
49 prohibiting and regulating the production and sale of homemade food items: *Provided*, That such
50 preemption shall not include space rentals at government-owned or operated facilities,

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- 51 government-sanctioned or operated events, or product placement agreements with government-
- 52 owned facilities, as well as temporary events 14 days or less in duration.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor