

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 320

FISCAL
NOTE

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CLINE, HAMILTON, AND JEFFRIES

[Introduced January 13, 2020

to the Committee on Health and Human Resources]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a
 2 new article, designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, §19-38-5, §19-38-6, §19-
 3 38-7, and §19-38-8, all relating to agriculture; creating the West Virginia Farm Fresh Dairy
 4 Act; exempting certain sales from licensure and certification; providing definitions;
 5 providing conforming amendments; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. WEST VIRGINIA FARM FRESH DAIRY ACT.

§19-38-1. Short Title: The West Virginia Farm Fresh Dairy Act.

1 This article is known and may be cited as the “West Virginia Farm Fresh Dairy Act.”

§19-38-2. Definitions.

1 As used in this article:

2 “Delivery” means the transfer of a product resulting from a transaction between a producer
 3 and an informed end consumer. The delivery may occur by the producer’s designated agent at a
 4 farm, ranch, farmers market, home, office or any location agreed to between the producer and
 5 the informed end consumer;

6 “Farmers market” means as defined in §19-35-2(c) of this code;

7 “Home consumption” means milk or milk products consumed within a private home by
 8 family members, employees or nonpaying guests;

9 “Homemade” means food that is prepared in a private home or farm kitchen for eventual
 10 sale to a consumer;

11 “Informed end consumer” means a person who is the last person to purchase any raw milk
 12 product, who does not resell the product, and who has been informed that the product is not
 13 pasteurized;

14 “Producer” means any person who milks a dairy animal (cow, goat, or sheep) to obtain
 15 milk for direct sale or processing into a milk-based product that is intended for human consumption
 16 as food or drink;

17 “Raw milk” means FLUID milk sold for consumption in its natural state at the time of milking
18 and that has not been pasteurized or homogenized;

19 “Raw milk Products” means any food product prepared from raw milk for human
20 consumption including, but not necessarily limited to skim milk, cream, buttermilk, whey, butter,
21 cheese, ice cream, and yogurt; and

22 “Transaction” means the exchange of buying and selling.

§19-38-3. West Virginia Farm Fresh Dairy Act; purpose; exemptions; assumption of risk.

1 (a) The purpose of the West Virginia Farm Fresh Dairy Act is to allow for the sale and
2 consumption of homemade and farm fresh raw milk and raw milk products and to encourage the
3 expansion of raw milk dairy sales by small farm producers and accessibility of their products to
4 informed end consumers by:

5 (1) Permitting the limited purchase and consumption of farm fresh raw milk and dairy
6 products made from raw milk;

7 (2) Expanding the agricultural economy and opening competitive markets for small dairy
8 farms;

9 (3) Providing informed West Virginia consumers with unimpeded and convenient access
10 to farm fresh raw milk and raw milk products from known sources; and

11 (4) Empowering the West Virginia Department of Agriculture to administer the West
12 Virginia Farm Fresh Dairy Act and to register and inspect participating small dairy farms for
13 compliance with the Act.

14 (b) Notwithstanding any other provisions of law or specific requirements of the West
15 Virginia Farm Fresh Dairy Act, there shall be no licensure, permitting, or certification required by
16 any agency of any political subdivision of the state which pertains to the preparation, serving, use,
17 consumption or storage of raw milk or raw milk products under the West Virginia Farm Fresh
18 Dairy Act. Nothing in this article shall preclude an agency from providing assistance, consultation
19 or inspection, with the consent of the producer.

20 (c) Transactions under this section shall:

21 (1) Be directly and exclusively between the producer and the informed end consumer. No
22 consumer resale of farm fresh raw milk or raw milk products purchased under this article shall be
23 permitted;

24 (2) Only be for home consumption by the informed end consumer;

25 (3) Occur only in West Virginia; and

26 (4) Not involve interstate commerce.

27 (d) Nothing in this article shall be construed to impede the West Virginia Department of
28 Agriculture and/or Department of Health and Human Resources in any investigation and/or
29 prosecution of a food borne illness that has been determined by a qualified physician to have
30 been caused by a food-borne pathogen ingested from a food product sold under this article.

31 (e) Nothing in this article shall be construed to change the requirements for animal health
32 inspections and/or any applicable vaccination requirements.

33 (f) Producers selling farm fresh foods in full compliance with the West Virginia Farm Fresh
34 Dairy Act shall not be held liable for any consumer illness that may result from improper handling,
35 storage, contamination, or use of the food product by the customer that occurs after the sale.

§19-38-4. Best Sanitary Milking and Milk Handling Practices.

1 All of the following milking and dairy herd practices shall be followed in the production of
2 raw milk sold or processed into dairy products for human consumption in accordance with the
3 West Virginia Farm Fresh Dairy Act.

4 (a) All dairy animals shall be milked in a fully enclosed structure or room with a concrete
5 floor that is separated from indoor animal housing pens by a wall. Any animal waste and/or spilled
6 animal feed or soiled bedding debris, as may incidentally result from the milking operation, shall
7 be swept or washed from the concrete flooring of the animal milking area or parlor as soon as
8 practicable after each milking. For small animal milking herds (goats and/or sheep), the milking
9 area may be housed in a fully enclosed room or accessory structure (such as, but not necessarily

10 limited to a shed or garage) having a concrete or alternative durable, washable, and impervious,
11 flooring surface, such as but not limited to tile or vinyl, as long as its integrity is properly maintained
12 against routine animal traffic wear and tear.

13 (b) Prior to milking, each udder and teat of the dairy animal shall be cleaned using a
14 sanitary wash or wipe.

15 (c) Prior to milking, a strip test of milk from each teat shall be performed to check for
16 possible milk infections. If the strip test results indicate that the animal's milk is clotted and/or
17 bloody, no milk from that animal shall be sold or processed until the animal has been determined
18 to be healthy and subsequently produces a clean strip test.

19 (d) Each dairy animal shall be milked using a fully sealed and self-contained mechanical
20 or hand-operated vacuum system that conveys all milk directly from the teat via hoses to a glass,
21 FDA approved food grade plastic, or stainless-steel receiving vessel.

22 (e) After a dairy animal has been milked, a sanitary teat wash or dip shall be applied to
23 each teat before the animal is released from the milking stand, stanchion, or parlor.

24 (f) All milk collected in a self-contained milking system shall be subsequently strained
25 (using a sanitary strainer material) when transferred to a sanitized container for eventual
26 consumer sale and stored in a cooling device that will effectively reduce the temperature of the
27 milk to 40 degrees Fahrenheit or less within two hours after milking is complete.

28 (g) All milk handling components shall be thoroughly cleaned and sanitized as soon as
29 practicable after each milking.

30 (h) Any and all raw milk intended for sale under the West Virginia Farm Fresh Dairy Act
31 shall be stored in a refrigeration device or system that will maintain the temperature of the milk
32 between 35 degrees and 40 degrees Fahrenheit until the date of sale.

33 (i) Any dairy animal determined to be ill with a disease or infection that could be contagious
34 to the rest of the herd and/or would materially impair the natural quality of the milk produced shall
35 be housed in a separate holding pen or facility (such as a designated quarantine or recovery pen)

36 from the rest of the herd and not milked until the illness has been treated and the animal has fully
37 recovered. No milk incidentally or accidentally produced from any such ill dairy animal shall be
38 processed or sold from the farm.

39 (j) All dairy animals shall be fed water from a clean, potable water source. All hay shall be
40 stored in a dry location, and all pelletized feed shall be stored in a dry location and in a storage
41 container that effectively restricts pest infestation.

§19-38-5. Registration and required permits.

1 (a) All producers wishing to sell raw milk and/or raw milk products shall first register with
2 the West Virginia Department of Agriculture, providing the name of the farm, the name of the
3 proprietor or primary operator, the mailing/physical address of the farm, a daytime contact
4 telephone number, and the e-mail, website, and/or facebook address of the farm, the specific milk
5 products to be sold, and the type and number of milking animals in the producing herd. The
6 producer shall be responsible for updating the registration information with the Department of
7 Agriculture within 10 days of any changes to the required information.

8 (b) Prior to selling any raw milk or producing any authorized raw milk product for consumer
9 sale, every producer shall request an inspection by the Department of Agriculture to establish the
10 producer's compliance with all applicable requirements of the West Virginia Farm Fresh Dairy Act,
11 to ensure producer understanding of the applicable administration and penalty provisions, and to
12 work with the inspector to identify and evaluate potential sanitary and health safety concerns
13 regarding the producer's proposed milk handling and processing operation. The Inspector may
14 make a written or e-mail note of his or her concerns to which the producer must respond in writing
15 or by e-mail with proposed measures to address the Inspector's concerns, prior to authorization
16 by the Department of Agriculture to commence sales of the intended raw milk or raw milk products.
17 In the event that the sanitary or health safety concerns affect only one discrete element of the
18 producer's operation, the Department of Agriculture may authorize commencement of the
19 producer's operation limited exclusively to those elements of the operation not affected by the

20 unremedied sanitary and/or health safety concerns, until such time as the producer has submitted
21 an acceptable measure to address or an acceptable response to refute the applicable concerns.

22 (c) Prior to preparing and/or selling any authorized raw milk products, each producer shall
23 obtain a valid WV Food Handlers card from the WV Department of Health and Human Resources.

24 The Department of Agriculture shall inspect the raw milk production facilities as part of the initial
25 inspection prior to the processing and sale of raw milk products, as required by subsection (b) of
26 this section.

§19-38-6. Administration, violations, and penalties.

1 (a) The West Virginia Department of Agriculture shall conduct annual prescheduled
2 inspections of a raw milk dairy farm operation to ensure compliance with all required Best Sanitary
3 Milking and Milk Handling Practices or other applicable provisions of the West Virginia Farm Fresh
4 Diary Act. Such inspections may be conducted during the producer's standard milking times to
5 ensure compliance with all applicable milking and milk handling requirements. The West Virginia
6 Department of Agriculture also may conduct more frequent prescheduled follow-up inspections
7 as may be deemed necessary in accordance with subsections (b) and (c) of this section to
8 address any violations of the aforementioned requirements and provisions or until full compliance
9 has been determined.

10 (b) If, during the course of a farm inspection, an inspector has determined that a producer
11 has violated one or more of the Best Sanitary Milking and Milk Handling requirements specified
12 in §19-38-4 of this code, the Department of Agriculture may, at its discretion and based on the
13 severity of the violation, require the producer to comply with any or all of the following corrective
14 measures:

15 (1) For a first violation:

16 (A) Attend a routine or special compliance training class to be scheduled and conducted
17 by the Department of Agriculture for a reasonable training fee to be established by the
18 Department;

19 (B) Suspend all sales of raw milk and milk products by the producer for not more than
20 three consecutive weeks or until the violation has been corrected as determined by a follow-up
21 inspection (whichever is less). Any follow-up inspection(s) conducted by the Department of
22 Agriculture to confirm a violation has been remedied shall be conducted on or before expiration
23 of the raw milk sales suspension.

24 (C) Compel the producer to submit to and pass not more than four additional periodic
25 inspections within one year of the date that the violation first occurred.

26 (2) For repeat violations:

27 (A) Any or all corrective measures specified in subsection (b) subdivision (1) of this
28 section;

29 (B) Pay a fine of \$50 for each documented inspection violation of the act, but not more
30 than \$500 for all documented violations in any single inspection; and

31 (C) If livestock illness is a suspected concern, the producer may be required to hire a
32 veterinarian to certify the health condition of the milking herd.

33 (c) If an investigation by the Department of Health or the Department of Agriculture
34 determines that a producer's milk or milk product has caused a food-borne pathogen illness to
35 occur, or that a producer has falsified required registration information or materially interfered with
36 any food-borne pathogen investigation, the following corrective measures and penalties may be
37 imposed by the Commissioner of Agriculture on the producer:

38 (1) For a suspected, but not confirmed customer illness caused by the producer's milk, the
39 Commissioner of Agriculture may, at his/her discretion, temporarily suspend all sales of raw milk
40 and milk products by the producer until the source of the contamination has been determined, not
41 to exceed 30 consecutive days. Any follow-up inspection(s) conducted by the Department of
42 Agriculture to confirm the violation has been remedied shall be conducted on or before expiration
43 of the raw milk sales suspension;

44 (2) If a food-borne pathogen illness is confirmed to have been caused by a producers milk

45 or milk products, or a producer has falsified information or testimony or otherwise obstructed or
46 interfered with an investigation of a food-borne pathogen incident, the violations shall be
47 prosecuted and penalties assigned to the producer in accordance with the procedures specified
48 in §19-11E-10 through §19-11E-15 of this code, inclusive. As an element of required remedial
49 actions, the Commissioner of Agriculture may require the producer to submit to the WV
50 Department of Agriculture two samples of blended, unpasteurized raw milk from the producer's
51 active milking herd for testing at his/her own expense. The required samples must be obtained
52 on different days taken prior to authorized resumption of raw milk sales and/or raw milk products
53 for sale. The blended milk samples shall be determined by the WV Department of Agriculture to
54 comply with the bacterial, somatic cell, and coliform counts/levels required by the Grade A
55 Pasteurized Milk Ordinance, as amended, for raw milk that is to be pasteurized.

§19-38-7. Product sales requirements and standards.

1 The sale of raw milk and raw milk products shall be permitted where all of the following
2 sale requirements are satisfied by each producer:

3 (a) Raw milk sales shall not exceed 80 gallons per day;

4 (b) Sales of raw milk products (encompassing, but not limited to, butter, cheese, ice cream,
5 and yogurt) shall not exceed 40 pounds per day;

6 (c) All milk sold shall be produced in full compliance with the Best Sanitary Milking and
7 Milk Handling Practices specified in §19-38-4 of this code;

8 (d) All fluid raw milk shall be sold to a consumer within three days from the date of milking.

9 The processing of any raw milk product intended for sale under this article shall commence within
10 three days from the milking date of the fluid raw milk;

11 (e) All milk products sold shall be labeled, in a form required by U.S. Food and Drug
12 Administration guidelines, to identify the producer, provide a physical address and contact
13 information, state the date upon which the milk or milk product was produced, net quantity of
14 contents in both U.S. and metric measures, the common name of the hooved animal producing

15 the milk or milk product, and clearly state that the milk contained has been prepared in compliance
16 with all Best Sanitary Milking and Milk Handling Practices, but is not processed, licensed, or
17 certified by any State or Federal Agency. For all processed products prepared with raw milk, the
18 labeling shall also list all ingredients in order from most to least by weight and list any potential
19 allergens that the produce may contain;

20 (f) All producers shall make available and offer each customer specific written Safe Raw
21 Milk Handling and Use guidelines stating, at a minimum, that raw milk should always be kept in a
22 presanitized container and refrigerated at a temperature between 35 and 40 degrees; not left to
23 sit unrefrigerated for periods of time longer than may be necessary for immediate use; should be
24 consumed or used not more than seven days from the date of purchase, and should be disposed
25 and not used or consumed if incidentally or accidentally contaminated by the consumer. The
26 guidelines shall also include a statement that pregnant women and customers with weakened
27 immune systems should consult a qualified physician prior to consuming raw milk or milk products.
28 The producer may add any further handling and use guidelines that may be deemed necessary,
29 in consultation with his/her insurance provider, to address specific liability concerns. The
30 guidelines may further state that the producer assumes no liability for illness that is caused by
31 improper handling and use by the customer;

32 (g) The producer shall offer and afford any potential customer an opportunity to schedule
33 a tour/inspection of the producer's farm, animal housing, milking operation, and/or milk processing
34 operation prior to purchase of any raw milk or milk product under this act. The producer shall, as
35 a minimum requirement of each tour, specifically explain and demonstrate how his/her operation
36 complies with each of the required Best Sanitary Milking and Milk Handling Practices outlined in
37 §19-38-4 of this code and either provide a printed copy of those requirements or permanently
38 post a printed copy of those requirements in the milking area/room, which shall be replaced as
39 may be necessary to ensure legibility against fading and wear and tear; and

40 (h) Any formal agreement or contract for raw milk or milk product sales between a producer

41 and customer shall include and state (affirm) the producer's compliance with the Best Sanitary
42 Milking and Milk Handling Practices outlined in §19-38-4 of this code.

§19-38-8. Effective date.

1 This act is effective immediately upon completion of all acts necessary for a bill to become
2 law as provided by the West Virginia Constitution.

NOTE: The purpose of this bill is to create the West Virginia Farm Fresh Dairy Act.

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