

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5349

By Delegates Thorne, Hillenbrand, Horst, Hornby, and

Hite

[Originating in the Committee on Health and Human

Resources; Reported on February 22, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §19-39-1, §19-39-2, and §19-39-3, all relating to establishing requirements of
3 food labels; defining terms; determining what constitutes mislabeling; providing
4 exceptions; and permitting the commissioner to promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 39. TRUTH IN FOOD LABELING ACT.

§19-39-1. Definitions.

1 The following terms are defined:

2 (1) "Analogue product" means a food product derived by combining processed plant
3 products, insects, or fungus with food additives to approximate the texture, flavor, appearance,
4 or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg
5 product, fish, meat, meat food product, poultry, or poultry product.

6 (2) "Cell-cultured product" means a food product derived by harvesting animal cells and
7 artificially replicating those cells in a growth medium in a laboratory to produce tissue.

8 (3) "Egg" has the meaning assigned by 21 U.S.C. § 1033(g), the Egg Products
9 Inspection Act, and by §19-10A-2 of this code. The term does not include an analogue product
10 or a cell-cultured product.

11 (4) "Egg product" has the meaning assigned by 21 U.S.C. § 1033(f), the Egg Products
12 Inspection Act. The term does not include an analogue product or a cell-cultured product.

13 (5) "Fish" has the meaning assigned by 21 C.F.R. § 123.3 and by §19-29-2(a) of this
14 code. The term does not include an analogue product or a cell-cultured product.

15 (6) "Fishery product" has the meaning assigned by 21 C.F.R. § 123.3. The term does not
16 include an analogue product or a cell-cultured product.

17 (7) "Food" and "food product" has the meaning assigned by 21 U.S.C. § 321(f) and §19-
18 29-2(d) of this code. The term includes "analogue product" and "cell-cultured product" as defined

19 by this article, and does not include “egg,” “egg product,” “fish,” “fishery product,” “meat,” “meat
20 product,” “poultry,” and “poultry product” as defined by this section.

21 (8) “Meat” has the meaning assigned by 9 C.F.R. § 301.2 and by §19-29-2(d) of this
22 code. The term does not include an analogue product or a cell-cultured product.

23 (9) “Meat food product” has the meaning assigned by 21 U.S.C. § 601(j), the Federal
24 Meat Inspection Act. The term does not include an analogue product or a cell-cultured product.

25 (10) “Poultry” has the meaning assigned by 21 U.S.C. § 453(e), the Poultry Products
26 Inspection Act. The term does not include an analogue product or a cell-cultured product.

27 (11) “Poultry product” has the meaning assigned by 21 U.S.C. § 453(f), the Poultry
28 Products Inspection Act. The term does not include an analogue product or a cell-cultured
29 product.

§19-39-2. Misbranded food.

1 A food product is misbranded:

2 (1) If its labeling is false or misleading in any manner, or fails to otherwise conform with
3 the requirements of this article if, in the case of a food to which 21 U.S.C. § 343 applies, its
4 advertising is false or misleading in a material respect or its labeling is in violation of 21 U.S.C. §
5 343;

6 (2) If it is offered for sale under the name of another food;

7 (3) If it is an imitation of another food, unless its label bears, in prominent type, the word
8 “imitation” and immediately before or after the name of the food imitated;

9 (4) If it is an analogue product of egg, egg product, fish, fishery product, meat, meat food
10 product, poultry, or poultry product, unless its label bears in prominent type immediately before
11 or after the name of the product one of the following:

12 (A) “Analogue”;

13 (B) “Meatless”;

14 (C) “Plant-based”;

15 (D) "Made from plants"; or

16 (E) A similar qualifying term or disclaimer intended to clearly communicate to a
17 consumer the contents of the product;

18 (5) If it is a cell-cultured product, unless its label bears in prominent type immediately
19 before or after the name of the product using one of the following:

20 (A) "Cell-cultured";

21 (B) "Lab-grown"; or

22 (C) A similar qualifying term or disclaimer intended to clearly communicate to a
23 consumer the contents of the product;

24 (6) If its container is so made, formed, or filled as to be misleading;

25 (7) If in package form unless it bears a label containing:

26 (A) The name and place of business of the manufacturer, packer, or distributor; and

27 (B) An accurate statement, located on the principal display panel of the label, of the
28 quantity of the contents in terms of weight, measure, or numerical count: *Provided*, that under
29 this subsection reasonable variations shall be permitted, and exemptions as to small packages
30 shall be established, by department rules;

31 (8) If any word, statement, or other information required by or under the authority of this
32 chapter to appear on the label or labeling is not prominently placed thereon with such
33 conspicuousness, as compared with other words, statements, designs, or devices in the
34 labeling, and in such terms as to render it likely to be read and understood by the ordinary
35 individual under customary conditions of purchase and use;

36 (9) If it purports to be or is represented as a food for which a definition and standard of
37 identity has been prescribed by federal law or as otherwise provided by this chapter, unless:

38 (A) It conforms to such definition and standard; and

39 (B) Its label bears the name of the food specified in the definition and standard, and, in
40 so far as may be required by those regulations or rules, the common names of ingredients, other
41 than spices, flavoring, and coloring, present in such food;

42 (10) If it purports to be or is represented as:

43 (A) A food for which a standard of quality has been prescribed by federal regulations or
44 department rules as provided under this chapter, and its quality falls below such standard unless
45 its label bears, in such manner and form as those regulations or rules specify, a statement that it
46 falls below such standard; or

47 (B) A food for which a standard or standards of fill of container have been prescribed by
48 federal regulations or department rules, and it falls below the standard of fill of container
49 applicable thereto, unless its label bears, in such manner and form as those regulations or rules
50 specify, a statement that it falls below such standard;

51 (11) Unless its label bears:

52 (A) The common or usual name of the food, if any, and

53 (B) In case it is fabricated from two or more ingredients, the common or usual name of
54 each such ingredient, and if the food purports to be a beverage containing vegetable or fruit
55 juice, a statement with appropriate prominence on the information panel of the total percentage
56 of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not
57 required to be certified under 21 U.S.C. § 379e, other than those sold as such, may be
58 designated as spices, flavorings, and colors, without naming each: *Provided*, That to the extent
59 that compliance with the requirements of this paragraph is impractical or results in deception or
60 unfair competition, exemptions shall be established by department rules;

61 (12) If it purports to be or is represented for special dietary uses, unless its label bears
62 such information concerning its vitamin, mineral, and other dietary properties as the executive
63 commissioner determines to be, and by rule prescribed, as necessary in order to fully inform
64 purchasers as to its value for such uses;

65 (13) If it bears or contains any artificial flavoring, artificial coloring, or chemical
66 preservative, unless it bears labeling stating that fact; provided that, to the extent that
67 compliance with the requirements of this subsection is impracticable, exemptions shall be
68 established by department rules. The provisions of this subdivision, §29-39-2(9) and §29-39-
69 2(11) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

70 (14) If it is a raw agricultural commodity that is the produce of the soil and bears or
71 contains a pesticide chemical applied after harvest, unless the shipping container of the
72 commodity bears labeling that declares the presence of the chemical in or on the commodity
73 and the common or usual name and the function of the chemical, except that the declaration is
74 not required while the commodity, after removal from the shipping container, is being held or
75 displayed for sale at retail out of the container in accordance with the custom of the trade;

76 (15) If it is a product intended as an ingredient of another food and if used according to
77 the directions of the purveyor will result in the final food product being adulterated or
78 misbranded;

79 (16) If it is a color additive, unless its packaging and labeling are in conformity with the
80 packaging and labeling requirements applicable to the color additive as may be contained in
81 regulations issued under 21 U.S.C. § 379e;

82 (17) If its packaging or labeling is in violation of an applicable regulation issued under 15
83 U.S.C. § 1472 and 15 U.S.C. § 1473, the Poison Prevention Packaging Act of 1970;

84 (18) If it is a food intended for human consumption and is offered for sale, unless its label
85 or labeling bears nutrition information that provides:

86 (A) The serving size that is an amount customarily consumed and that is expressed in a
87 common household measure that is appropriate to the food; or

88 (B) If the use of the food is not typically expressed in a serving size, the common
89 household unit of measure that expresses the serving size of the food;

90 (C) The number of servings or other units of measure per container;

91 (D) The total number of calories in each serving size or other unit of measure that are:

92 (i) Derived from any source; and

93 (ii) Derived from fat;

94 (E) The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates,
95 complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or
96 other unit of measure; and

97 (F) Any vitamin, mineral, or other nutrient required to be placed on the label and labeling
98 of food under 21 U.S.C. § 343; or

99 (G) If it is a food distributed at retail in bulk display cases, or a food received in bulk
100 containers, unless it has nutrition labeling prescribed by the commissioner; and

101 (H) If the commissioner determines it is necessary, nutrition labeling will be mandatory
102 for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks
103 including shellfish, amphibians, and other forms of aquatic animal life;

104 (I) §19-39-2(18) does not apply to food:

105 (i) That is served in restaurants or other establishments in which food is served for
106 immediate human consumption or that is sold for sale or use in those establishments;

107 (ii) That is processed and prepared primarily in a retail establishment, that is ready for
108 human consumption, that is of the type described in Subparagraph (i), that is offered for sale to
109 consumers but not for immediate human consumption in the establishment, and that is not
110 offered for sale outside the establishment;

111 (iii) That is an infant formula subject to 21 U.S.C. § 350a; or

112 (iv) That is a medical food as defined in 21 U.S.C. § 360ee, the Orphan Drug Act;

113 (J) §19-39-2(18) does not apply to the label of a food if the commissioner determines by
114 regulation that compliance with that subdivision is impracticable because the package of the
115 food is too small to comply with the requirements of that subdivision and if the label of that food
116 does not contain any nutrition information;

117 (K) If the commissioner determines that a food contains insignificant amounts of all the
118 nutrients required by §19-39-2(18) to be listed in the label or labeling of food, the requirements
119 of §19-39-2(18) do not apply to the food if the label, labeling, or advertising of the food does not
120 make any claim with respect to the nutritional value of the food, provided that if the
121 commissioner determines that a food contains insignificant amounts of more than half the
122 nutrients required by §19-39-2(18) to be in the label or labeling of the food, the amounts of those
123 nutrients shall be stated in a simplified form prescribed by the commissioner;

124 (19) If a person offers food for sale and has annual gross sales made or business done
125 in sales to consumers that is not more than \$500,000, or has annual gross sales made or
126 business done in sales of food to consumers that is not more than \$50,000, the requirements of
127 this subsection do not apply to food sold by that person to consumers unless the label or
128 labeling of food offered by that person provides nutrition information or makes a nutrition claim;

129 (20) If foods are subject to 21 U.S.C. § 343, the foods shall comply with §29-39-2(18) in
130 a manner prescribed by the rules; and

131 (21) If food is sold by a food distributor, §29-39-2(18) does not apply if the food
132 distributor principally sells food to restaurants or other establishments in which food is served for
133 immediate human consumption and the food distributor does not manufacture, process, or
134 repackage the food it sells;

135 (22) If it is a food intended for human consumption and is offered for sale, and a claim is
136 made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality
137 of the food to a specific disease or condition of the human body, except as permitted by 21
138 U.S.C. § 360ee;

139 (23) If it is a food intended for human consumption and its label, labeling, and retail
140 display do not comply with the requirements of 21 U.S.C. § 360ee pertaining to nutrient content
141 and health claims.

§19-39-3. Rules.

1 (a) The commissioner may propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 et seq. of this code to implement the provisions of this article.

3 (b) If a food is misbranded, the commissioner may propose rules to prescribe the
4 inspection legend and any other information as the commissioner may require in such rules to
5 assure that it will not have false or misleading labeling and that the public will be informed of the
6 manner of handling required to maintain the food in a wholesome condition.

NOTE: The purpose of this bill is to create the West Virginia Truth in Food Labeling Act. The bill provides for a short title. The bill provides for definitions. The bill defines misbranded food. Finally, the bill provides for commissioner to implement rules.

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