

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 588

By Senators Rucker, Grady, Hart, Martin, Maynard,
Rose, Tarr, and Willis

[Introduced February 24, 2025; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §19-35-2, §19-35-5, and §19-35-6 of the Code of West Virginia,
2 1931, as amended, relating to the sale of homemade food items; defining terms;
3 authorizing production and sale of homemade food items under certain circumstances;
4 establishing conditions for exemption from licensure, permitting, inspection, packaging,
5 and labeling laws; providing required notices to consumer; defining manner of providing
6 notices; exempting certain products from the scope of this provision; and permitting local
7 health departments and the Department of Agriculture to investigate and cease production
8 or sale of food items reported to have caused a foodborne illness.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.

§19-35-2. Definitions.

1 For purposes of this article:

2 "Acidified food" means a low-acid food item to which acid or acid foods are added with a
3 water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are
4 considered potentially hazardous foods.

5 "Dairy product" shall have the same definition as in federal law.

6 "Delivered" means transferred to the consumer, either immediately upon sale or at a time
7 thereafter.

8 "Department" means the Department of Agriculture.

9 "Farm and food product" means any agriculture, horticulture, agroforestry, animal
10 husbandry, dairy, livestock, beekeeping, or other similar product, and includes potentially
11 hazardous foods and nonpotentially hazardous food produced or manufactured therefrom.

12 "Farmers market" means:

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

15 (2) An on-farm market or farm stand run by an individual producer that sells farm and food

products;

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

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

(5) A mobile farmers market;

(6) An area within a fair or festival at which farm and food products are sold; or

(7) Any other form of farmers market approved by the commissioner.

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

"Homemade food item" means a food item for human consumption, including a nonalcoholic beverage, which is produced and, if packaged, packaged at the residential property of the producer. It excludes alcoholic beverages and food containing drugs.

"Meat," "meat byproduct," or "meat food product" have the same definitions as federal law.

"Nonpotentially hazardous" means a food item that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

"Potentially hazardous" means a food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

"Poultry," "poultry byproduct," and "poultry food product" have the same definition as federal law.

To "produce" means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

"Producer" means the person who produces a nonpotentially hazardous food item or a

42 homemade food item.

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

45 "Seller" means the person who sells a nonpotentially hazardous or homemade food item to
46 a consumer. The seller of the nonpotentially hazardous food item or homemade food item sold
47 pursuant to §19-35-6(b) of this code may be the producer of the item, an agent of the producer, or
48 a third-party vendor, such as a retail shop, restaurant, or grocery store.

§19-35-5. Potentially hazardous foods.

1 (a) Notwithstanding any provision of §16-1-1 *et seq.* of this code or any rules or regulations
2 to the contrary, the department shall regulate potentially hazardous foods sold at farmers markets.
3 The department shall allow the sale of potentially hazardous homemade food items sold in
4 accordance with §19-35-6 of this code but may require a farmers market vendor permit under this
5 section to sell potentially hazardous homemade food items at farmers markets. No permit shall be
6 required to sell homemade food items under §19-35-6 of this code outside farmers markets.

7 (b) A vendor of potentially hazardous foods shall apply for and obtain a farmers market
8 vendor permit as required by §19-35-3a of this code.

9 (c) A home, farm, community, or commercial kitchen may be used by a potentially
10 hazardous foods vendor, as determined by the department.

11 (d) The department shall establish by legislative rule the requirements for obtaining a
12 vendor permit for potentially hazardous foods, including acidified foods, and other categories
13 identified and defined by the department.

14 (e) All potentially hazardous foods sold at farmers markets shall be labeled in compliance
15 with the department's labeling standards and provide information about its content and sources.

§19-35-6. Nonpotentially hazardous foods.

1 (a) Except for a farmers market vendor permit under § 19-35-5 of this code, ~~the~~
2 production and sale of nonpotentially hazardous foods and homemade food items, when done in

conformity with this section and the accompanying legislative rules, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of nonpotentially hazardous foods, including nonpotentially hazardous homemade foods items, and potentially hazardous homemade food items that are not dairy products and that do not contain meat, poultry, or meat or poultry products or byproducts:

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

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

(c) All nonpotentially hazardous foods and homemade food items shall be labeled in compliance with the department's labeling standards and provide information about their content, and sources and potential allergens. The homemade food item shall include the following statement on its label: "This product was made in a non-commercial kitchen that may not be subject to inspection and may contain cross-contact allergens not included in the allergen statement." The department shall not require homemade food producers to have a food label reviewed prior to selling homemade food items.

(d) A home, farm, community, or commercial kitchen may be used by a nonpotentially hazardous or homemade foods vendor, ~~as determined by the department.~~

(e) The following conditions also apply to the sale and delivery of potentially hazardous homemade food items that are dairy products or that contain allowed meat, meat products, meat byproducts, poultry, poultry products, or poultry byproducts under this subsection:

(1) The food shall be sold by the producer to the consumer, either in person or remotely, including by telephone or Internet, and delivered by the producer to the consumer in person.

(2) Allowed meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product include, but is not limited to:

29 (A) Poultry, poultry byproduct, or poultry food product, when the homemade foods vendor
30 is a poultry producer operating in accordance with the 1,000-poultry exemption provided in 9
31 C.F.R. § 381.10(c) and uses only exempted poultry products, byproduct, or food product; or in
32 accordance with 9 C.F.R. § 381.10(d), only federally or State inspected and passed poultry
33 products are used that bear the mark of inspection and the homemade foods vendor satisfies the
34 other requirements for an exemption under 9 C.F.R. § 381.10(d); and

35 (B) Meat, meat byproduct, or meat food product when, in accordance with 9 C.F.R. §
36 303.1(d), only federally or state inspected and passed product is used that bear the mark of
37 inspection and the homemade foods vendor satisfies the other requirements for an exemption
38 under 9 C.F.R. § 303.1(d).

39 (f) If potentially hazardous homemade food items are transported before final delivery to
40 the consumer, the food shall be maintained at an appropriate temperature during transport to
41 protect food safety, cannot be transported more than once, and cannot be transported for longer
42 than two hours.

43 (g) If a homemade food item is sold by a third-party vendor, the food shall be sold in a
44 separate section of the store or on a separate display case from non-homemade food items. A
45 sign shall clearly indicate that the foods are homemade and exempt from state licensing and
46 inspection.

47 (h) In addition to the transactions permitted under this section, homemade food producers
48 may sell homemade food items to the maximum extent permitted by federal law. Nothing in this
49 section shall be construed to be more restrictive than applicable federal requirements.

50 (e)(i) This section shall not be construed to:

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

53 (2) Preclude the department from providing assistance, consultation, or inspection at the
54 request of the producer of a nonpotentially hazardous food or homemade food item;

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

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

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

(6) Exempt producers or sellers of no potentially hazardous food or homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

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

~~(f)(j)~~ This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of nonpotentially hazardous food items or homemade food items: *Provided*, That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.

NOTE: The purpose of this bill is to authorize production and sale of homemade food items under certain circumstances.

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