

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5403**

By Delegates Clark, Lucas, Hite, and McCormick

[Introduced February 10, 2026; referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §19-36-5 of the Code of West Virginia, 1931, as amended, relating to  
2 the agritourism responsibility act; and providing fire safety requirements for agritourism  
3 businesses.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.**

### **§19-36-5. Maintenance of property status for certain purposes; exceptions.**

1 (a) Notwithstanding any provision of this code to the contrary, the occurrence of  
2 agritourism does not change the nature or use of property that otherwise qualifies as agricultural  
3 for building code, zoning, or property tax classification purposes.

4 (b) An agritourism business may use certain of its facilities for ~~occasional~~ events without  
5 complying with building and fire codes applicable to structures used for such purposes on a full-  
6 time basis if such facilities are deemed structurally sound and otherwise safe for the intended use.

7 Provided, That the following facilities shall not be eligible for exemption from CSR 87-01:

8 (1) Educational facilities other than those used for incidental use such as field trips, club  
9 meetings and day trips;

10 (2) Daycare facilities;

11 (3) Correctional facilities;

12 (4) Health care or medical treatment facilities; and

13 (5) Sleeping and lodging facilities.

14 (c) An eligible agritourism business involving fully enclosed permitted buildings shall  
15 provide the following minimum fire safety standards:

16 (1) A minimum of two exits for occupancy for 75-400 persons and one additional exit for  
17 each 250 persons thereafter based on the calculated occupant load, located remotely from each  
18 other, each providing at least 36 inches of clear open width with free swinging doors or panic bars  
19 that open outward; provided that Barn-style doors may be used as exits only if they remain  
20 unlocked and functional when the building is occupied;

21 (2) Exit signs that are clearly visible and either illuminated or using photoluminescent  
22 lettering so they remain visible in low lighting;

23 (3) Portable fire extinguishers appropriately rated for ordinary hazards, mounted, and  
24 accessible, that are installed, inspected, maintained according to State Fire Code and tagged,  
25 mounted and accessible at each exit door and other locations with no more than 75 feet between  
26 each extinguisher in any occupied area;

27 (4) Fire alarm system detection when occupant load exceeds 300 persons, provided that  
28 sprinkler systems shall be required only when the occupant load exceeds 1,000 persons;

29 (5) Carbon monoxide detection that is installed and maintained if the building uses fuel-  
30 fired equipment;

31 (6) Posted occupant load for the structure as determined by subsection(i);

32 (7) Emergency lighting if the building is windowless, lacks adequate natural lighting to  
33 permit safe egress during a power failure or is used during nighttime hours;

34 (8) Emergency evacuation plan prepared and maintained by the owner or operator of the  
35 facility, posted at all exits and inside any interior fully enclosed spaces such as dressing rooms,  
36 restrooms or kitchens; and

37 (9) Kitchen and other spaces where food is prepared using residential or commercial grade  
38 cooking equipment shall have GFCI electrical receptacles and a Class K fire extinguisher that is  
39 maintained and readily available, provided that kitchens and other interior food preparation spaces  
40 using commercial-grade cooking equipment also shall comply with NFPA 96 and NFPA 17A and  
41 be installed by a licensed fire protection contractor.

42 (d) Unless determined that an imminent danger exists, all existing electrical wiring, fixtures,  
43 appliances and equipment that have already gained an agritourism exemption from the  
44 department shall be permitted to continue operation: *Provided*, That new agritourism structures be  
45 maintained in accordance with the edition of the NFPA 70 (National Electrical Code) in effect at the  
46 time of installation; provided that where it is determined that imminent danger exists, fire code

authorities are authorized to order repairs to ensure the building is safe for occupancy.

(e) Unless expressly authorized by the authority having jurisdiction, open flame devices, indoor pyrotechnics, spark-producing devices and flame effects are prohibited unless the building is equipped with a compliant automatic sprinkler system, provided that the authority having jurisdiction retains the authority to prohibit any or all open flames or other sources of ignition where circumstances make such conditions hazardous to life safety;

(f) Overnight lodging or sleeping is prohibited unless the building complies with all requirements of the West Virginia State Fire Code.

(g) Overall structure height shall not exceed two stories, provided that a second floor used for assembly shall have a means of egress and fire extinguishers equivalent to the first floor, including the number of exits, exit placement, door width and minimum distance between fire extinguishers.

(h) The Office of the State Fire Marshal or the local authority having jurisdiction must perform an initial inspection of any agritourism business seeking an exemption from state fire code and provide a written report on that inspection to the property owner and the West Virginia Department of Agriculture before the Department determines eligibility for exemption.

(i) Occupant load shall be determined by dividing the occupiable square footage by seven persons for assembly use or divided by 30 persons if the space is used for other purposes other than assembly. Occupiable areas include assembly spaces, restrooms, corridors and other spaces intended for human use; provided that mechanical rooms, storage areas and other non-occupiable spaces shall not be included in square footage.

(j) Unless required otherwise, the following buildings are not subject to the provisions of this article:

(1) Gazebos;

(2) Pavilions;

(3) Open-wall barns;

- 73        (4) Other similar open-air facilities;
- 74        (5) Greenhouses;
- 75        (6) High Tunnels;
- 76        (7) Buildings primarily intended for grain storage; and
- 77        (8) Agricultural structures not used for agritourism.

NOTE: The purpose of this bill is to provide reasonable minimum safety standards for fully enclosed buildings participating in the state's agritourism program.

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