

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 44

BY SENATORS RUCKER, THORNE, AND DEEDS

[Passed March 14, 2026; in effect 90 days from
passage (June 12, 2026)]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated, §19-40-1, §19-40-2, §19-40-3, §19-40-4, §19-40-5, and §19-40-6, relating to
3 the sale of homemade food items; defining terms; requiring a permit; providing
4 exemptions; requiring the department to create regulations; permitting local health
5 department in the jurisdiction in which the cottage food vendor is located to invoke a
6 cessation of production in specified circumstances; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. COTTAGE FOODS.

§19-40-1. Definitions.

1 For purposes of this article:

2 “Acidified food” means as that term is defined in §19-35-2.

3 “Cottage food” means a food item intended for human consumption that is produced and,
4 if packaged, packaged at the residential property of the producer and sold directly to a consumer.
5 The term includes nonpotentially hazardous foods, but excludes meat, meat products, poultry,
6 poultry products, seafood, and Grade A dairy products.

7 “Cottage food vendor” means a home-based business producing and selling cottage
8 foods.

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

11 “Department” means the Department of Agriculture.

12 “Grade A dairy products” means milk and milk products that are manufactured in
13 accordance with the Pasteurized Milk Ordinance, 2023 Revision, as published by the U.S.
14 Department of Health and Human Services, Public Health Service, Food and Drug Administration.

15 “Nonpotentially hazardous” means as that term is defined in §19-35-2.

16 “Potentially hazardous” means as that term is defined in §19-35-2.

17 “Potentially hazardous cottage food vendor permit” means a permit which allows
18 potentially hazardous cottage foods to be produced and sold.

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

21 “Producer” means the person who produces a cottage food item.

§19-40-2. Potentially hazardous cottage food vendor permits.

1 (a) Except as provided in subsection (d) of this section, a person wanting to sell potentially
2 hazardous cottage food shall apply for a potentially hazardous cottage food vendor permit from
3 the department.

4 (b) A potentially hazardous cottage food vendor permit, once issued, is valid in all counties
5 in this state. A cottage food produced pursuant to this article shall be sold only within the
6 geographic boundaries of the State of West Virginia.

7 (c) Notwithstanding any other provisions of code or rule to the contrary, a potentially
8 hazardous cottage food vendor permittee is not required to obtain a food establishment permit to
9 sell from home.

10 (d) The following are exempt from obtaining a potentially hazardous cottage food vendor
11 permit:

12 (1) A person selling fresh, uncut produce;

13 (2) A person selling nonpotentially hazardous foods; and

14 (3) A person selling other farm and food products that are identified by the department.

15 (e) The department shall establish the conditions and procedures for issuance of a
16 potentially hazardous cottage food vendor permit. As a condition of obtaining a potentially
17 hazardous cottage food vendor permit, a person may be required to satisfy additional
18 requirements, including, but not limited to, submitting to inspections, and obtaining and
19 maintaining certain additional licenses or certifications, as provided by legislative rule.

20 (f) A potentially hazardous food vendor permittee when acting under this article is not
21 required to obtain a farmer's market vendor permit as required by §19-35-3(a).

§19-40-3. Role of local health departments in cottage foods.

1 If the local health department in the jurisdiction in which the potentially hazardous cottage
2 food vendor permittee is located has reason to believe that an imminent health hazard exists, the
3 local health department may invoke cessation of production until it deems that the hazardous
4 situation has been addressed to the satisfaction of the local health department. A local health
5 department that invokes cessation of production shall do so in consultation with the department.

§19-40-4. Legislative rules.

1 The department shall propose emergency or legislative rules for approval in accordance
2 with the provisions of §29A-3-1 *et seq.* of this code for the purposes of implementing this article,
3 including the setting of any fees.

§19-40-5. 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 cottage food sold in West
3 Virginia.

4 (b) A home, farm, community, or commercial kitchen may be used by a potentially
5 hazardous cottage food vendor, as determined by the department.

6 (c) Potentially hazardous cottage food standards shall be determined, including acidified
7 foods, and other categories identified and defined by the department.

8 (d) Potentially hazardous cottage foods shall be labeled in compliance with the
9 department's labeling standards and provide information about its content and sources.

§19-40-6. Nonpotentially hazardous foods.

1 The production and sale of a nonpotentially hazardous food, when done in conformity with
2 §19-35-6 and the accompanying legislative rules, is not subject to the provisions of this article.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the Senate

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Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.

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President of the Senate

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Speaker of the House of Delegates

The within is this the.....
Day of, 2026.

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Governor