

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 44

BY SENATORS RUCKER, THORNE, AND DEEDS

[Reported February 24, 2026, from the Committee on
Health and Human Resources]

1 A BILL 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, §19-40-6, and §19-40-7,
3 relating to the sale of homemade food items; defining terms; requiring vendors of
4 potentially hazardous cottage foods to obtain permit; establishing list of vendors exempt
5 from obtaining a potentially hazardous cottage food vendor permit; requiring department
6 to establish the conditions and procedures for issuance of cottage food vendor permits;
7 permitting local health department in the jurisdiction in which the cottage food vendor is
8 located to invoke a cessation of production in specified circumstances; requiring
9 rulemaking; granting the Department of Agriculture jurisdiction over homemade potentially
10 hazardous cottage foods sold in West Virginia; and granting exemption to vendor engaged
11 in production or sale of nonpotentially hazardous foods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. COTTAGE FOODS.

§19-40-1. Legislative findings and purpose.

1 (a) The Legislature hereby makes the following findings:
2 (1) Small-scale, home-based food production provides meaningful economic opportunity
3 for residents of this state, particularly in rural communities;
4 (2) Encouraging locally grown and raised food is important to the health and welfare of
5 the citizens of West Virginia.
6 (b) It is the purpose of this article:
7 (1) To reduce barriers on participants producing, preparing, and selling certain foods from
8 their residence and elsewhere within West Virginia;
9 (2) To encourage the growth of the local food industry in West Virginia;
10 (3) To authorize the production and direct-to-consumer sale of certain cottage food
11 products manufactured from a home kitchen within the State of West Virginia;

12 (4) To remove the fee from the West Virginia farmers market vendor permit to ensure that
13 farmers market vendors of potentially hazardous products are not put at a disadvantage by
14 requiring a fee, while manufacturers selling similar products from home are not required to pay a
15 fee.

§19-40-2. 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
4 are considered potentially hazardous foods.

5 “Cottage foods” means a food item intended for human consumption that is produced and,
6 if packaged, packaged at the residential property of the producer and sold directly to a consumer.
7 The term includes nonpotentially hazardous foods and certain allowed potentially hazardous
8 goods as provided in this article. The term excludes meat, meat products, poultry, poultry
9 products, seafood, and Grade A dairy products.

10 “Cottage food vendor” means a home-based business producing and selling certain foods
11 directly from their homes.

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

14 “Department” means the Department of Agriculture.

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

18 “Nonpotentially hazardous cottage food” means a food item that does not require time or
19 temperature control for safety to limit pathogenic microorganism growth or toxin formation.

20 “Potentially hazardous cottage food” means a food item that requires time or temperature
21 control or other protocols for safety to limit pathogenic microorganism growth or toxin formation
22 and is made from a home kitchen.

23 “Potentially hazardous cottage food vendor permit” means a permit which allows certain
24 potentially hazardous cottage foods to be made in a home kitchen and sold directly to the
25 consumer.

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

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

29 “Retailer” means and includes every person engaging in the business of selling, leasing,
30 or renting tangible personal property.

31 “Seller” means the person who sells a nonpotentially hazardous food item to a consumer.
32 The seller of the nonpotentially hazardous food item may be the producer of the item, an agent of
33 the producer, or a third-party vendor, such as a retail shop or grocery store.

§19-40-3. Potentially hazardous cottage food vendor permits.

1 (a) Except as provided in subsection (d) of this section, all potentially hazardous cottage
2 food vendors selling farm and food products shall apply for a cottage food vendor permit from the
3 department.

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

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

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

11 (1) Vendors selling fresh, uncut produce;

- 12 (2) Vendors selling nonpotentially hazardous foods; and
13 (3) Vendors selling other farm and food products that are identified by the department.
14 (e) The department shall establish the conditions and procedures for issuance of cottage
15 food vendor permits. As a condition of obtaining a potentially hazardous cottage food vendor
16 permit, a vendor may be required to satisfy additional requirements, including, but not limited to,
17 submitting to inspections, and obtaining and maintaining certain additional licenses or
18 certifications.

§19-40-4. Role of local health departments in cottage foods.

1 If the local health department in the jurisdiction in which the cottage food vendor is located
2 has reason to believe that an imminent health hazard exists, it may invoke cessation of production
3 until it deems that the hazardous situation has been addressed to the satisfaction of the local
4 health department: *Provided*, That a local health department that invokes cessation of production
5 under this subsection shall do so in consultation with the Department of Agriculture.

§19-40-5. 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.

§19-40-6. 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 foods sold in West
3 Virginia.

4 (b) A vendor of potentially hazardous cottage foods shall apply for and obtain a cottage
5 food vendor permit as required by §19-40-3 of this code.

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

8 (d) Potentially hazardous cottage food standards shall be determined, including acidified
9 foods, and other categories identified and defined by the department.

10 (e) All potentially hazardous cottage foods shall be labeled in compliance with the
11 department's labeling, established in §19-35-1 et seq. and provide information about its content
12 and sources.

§19-40-7. Nonpotentially hazardous foods.

1 A vendor engaged in the production and sale of nonpotentially hazardous foods, when
2 done in conformity with this article and the accompanying legislative rules, is exempt from
3 licensing, permitting, inspection, and packaging laws of this state.