

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 375

SENATORS SYPOLT, RUCKER, TAKUBO, BALDWIN, AND

BOSO, original sponsors

[Passed March 10, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §19-35-2, §19-35-3, and §19-35-4 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §19-35-5, all relating to farmers markets; removing local health departments from farmers
4 market vendor permit process; transferring rules and regulations for farmers markets,
5 cottage foods, acidified foods, nonpotentially hazardous foods, and exempted foods from
6 Department of Health and Human Resources to Department of Agriculture; requiring rules
7 to set forth quantity limitations for cottage foods; clarifying consignment farmers markets;
8 defining terms; requiring registration of farmers markets; expanding farmers market
9 vendor permit to permit the sale of cottage foods; establishing fees for farmers market
10 vendor permits; clarifying certain farm and food products require other permits; permitting
11 local health departments to inspect and suspend food establishment permits in certain
12 circumstances; permitting the Department of Agriculture to establish regulations permitting
13 the sampling of certain farm and food products; permitting local health departments to
14 sample and inspect farmers market vendors in certain circumstances; permitting local
15 health departments to invoke cessation of production in certain circumstances; clarifying
16 scope, labeling, and sources of cottage foods; requiring online farmers market sales be
17 delivered in person; permitting home, farm, community, or commercial kitchen to be used
18 by cottage foods vendor as determined by the Department of Agriculture; and clarifying
19 that a farmers market vendor permit is not required to sell nonpotentially hazardous foods
20 and exempted foods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.

§19-35-2. Definitions.

1 For purposes of this article:

2 “Consignment farmers market” means a farmers market in which two or more vendors
3 deliver their own farm and food products to a common location maintained by a third party that

4 markets the vendors' products and receives a percentage share of the profits from sales, with the
5 individual vendor retaining ownership of the farm and food product until it is sold. A consignment
6 farmers market may be mobile or in a stationary location.

7 "Department" means the Department of Agriculture.

8 "Farm and food product" means any agriculture, horticulture, agroforestry, animal
9 husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food
10 products are to be properly labeled.

11 "Farmers market" means:

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

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

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

18 (4) A consignment farmers market as defined herein.

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

§19-35-3. Farmers markets; farmers market vendor permits; fees; scope.

1 (a) Farmers markets shall register with the department and provide information to the
2 department regarding the farmers market and its vendors.

3 (b) Vendors at a farmers market selling farm and food products shall apply for a farmers
4 market vendor permit and pay the annual permit fee to the department. The permit is valid in all
5 counties in this state. A farmers market vendor permit shall be required in lieu of the food
6 establishment permit, notwithstanding any other provisions of code or rule that require a food
7 establishment permit or any other permit from a local health department. The department shall

8 take final action upon all completed permit applications within 30 days of receipt if the application
9 is uncontested, or within 90 days if the application is contested.

10 (c) The annual farmers market vendor permit fee is \$35.

11 (d) The following vendors are exempt from obtaining a farmers market vendor permit:

12 (1) Producers delivering their products to a consignment farmers market only; or

13 (2) Vendors selling fresh, uncut produce.

14 (e) A consignment farmers market shall obtain a food establishment permit issued by the
15 local health department. Certain farm and food product also require food establishment or other
16 permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and
17 sprouted seeds. Notwithstanding the provisions of this article, the local health department in the
18 jurisdiction in which the farmers market is located has the right to inspect and suspend the food
19 establishment permit of a farmers market vendor that sells or serves food for which a food
20 establishment permit is required.

21 (f) All farmers market vendor permits shall be displayed in a conspicuous manner.

22 (g) Nothing in this article eliminates or limits other state and federal rules and regulations
23 that apply to certain farm and food products sold at a farmers market or a consignment farmers
24 market.

25 (h) The department may establish regulations permitting the sampling of certain farm and
26 food products at farmers markets by vendors.

27 (i) A vendor is subject to food sampling and inspection by the local health department in
28 the jurisdiction in which the farmers market is located if the local health department determines
29 that the vendor's food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated,
30 or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall
31 be performed in consultation with the Department of Agriculture.

32 (j) If the local health department in the jurisdiction in which the farmers market is located
33 has reason to believe that an imminent health hazard exists it may invoke cessation of production

34 until it deems that the hazardous situation has been addressed to the satisfaction of the local
35 health department: *Provided*, That a local health department that invokes cessation of production
36 under this subsection shall do so in consultation with the Department of Agriculture.

§19-35-4. Legislative rules.

1 (a) The Department of Agriculture shall propose emergency or legislative rules for
2 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes of
3 implementing this article.

4 (b) The Department of Agriculture shall consult with the Department of Health and Human
5 Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in
6 promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food
7 product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.

**§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted
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 cottage foods, acidified foods, nonpotentially
3 hazardous foods and other exempted foods.

4 (b) Online farmers market sales shall be delivered in person and are not permitted to be
5 shipped. A home, farm, community, or commercial kitchen may be used by a cottage foods
6 vendor, as determined by the department.

7 (c) All foods for which a farmers market vendor permit is required pursuant to §19-35-5(d)
8 of this code shall be labeled in compliance with the department's labeling standards and provide
9 information about its content and sources. The label shall include the words "MADE IN A WV
10 _____ KITCHEN" in capital, bold, 10-point type or larger words, with the blank space to state
11 whether the product was made in a home, farm, community, or commercial kitchen.

12 (d) A farmers market vendor permit is required to sell the following farm and food products
13 at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products,

14 sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with
15 a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of
16 the produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or
17 garden, and records of the source of the produce shall be maintained.

18 (e) A farmers market vendor permit is not required to sell the following farm and food
19 products at farmers markets:

20 (1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and
21 candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies;
22 and dehydrated fruits and vegetables; and

23 (2) Other foods that are exempted from certain regulations, including, but not limited to,
24 certain fermented products, certain exempted condiments, commercially harvested mushrooms,
25 and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished
26 equilibrium of pH 4.6 or below.

27 (f) The Department of Agriculture shall consult with the Department of Health and Human
28 Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to
29 ensure the health, sanitation, and safety of the products produced and sold pursuant to this
30 section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2018.

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Governor