

Senate Bill No. 304

(By Senators Miller, Williams, Beach,
D. Hall, Nohe, Sypolt, Snyder and Stollings)

[Introduced January 26, 2015;
referred to the Committee on
Agriculture and Rural Development;
and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3, §19-35-4 and §19-35-5, all relating to farmers markets; stating purpose and definitions; establishing farmers market vendor permit, scope and fees; permitting consignment farmers markets; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3, §19-35-4 and §19-35-5, all to read as follows:

ARTICLE 35. FARMERS MARKETS.

§19-35-1. Purpose.

1 (a) Farmers markets are critical incubators for small farm and food businesses because they
2 offer an inexpensive, accessible, entry-level market for reaching consumers directly, though research
3 has shown that the average vendor makes only a nominal dollar amount in sales on any given market
4 day.

5 (b) The Legislature recognizes a rising and existing consumer-driven market interested in

1 purchasing locally grown food, which keeps food dollars circulating in the state’s economy. The
2 number of farmers markets and the variety of products sold at farmers markets has increased
3 significantly in the past ten years, adding millions of dollars to the state’s economy.

4 © The increase of West Virginia farm production to meet the state’s in-season demand for
5 fresh fruit and vegetables would create over 1,700 jobs and add over \$100 million to the state’s
6 economy. The Legislature has found that encouraging locally grown and raised food is important to
7 the health and welfare of the citizens of West Virginia.

8 (d) However, permit fees and requirements for farmers market vendors can vary widely from
9 county to county and from one regulatory official to the other. Current food permit categories are not
10 designed for farmers markets and their vendors, but rather for restaurants, grocery stores or
11 concessioners;

12 (e) The West Virginia Department of Health and Human Resources, in conjunction with the
13 West Virginia Department of Agriculture and the West Virginia Farmers Market Association, has
14 issued a Farmers Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets.
15 These guidelines are not being applied consistently by local health departments and are causing great
16 difficulty and confusion for vendors selling goods at farmers markets.

17 (f) Further, food permits required for farmers market vendors are currently not recognized
18 across county lines, putting additional regulatory and fiscal burdens on vendors selling in more than
19 one county.

20 **§19-35-2. Definitions.**

21 For purposes of this article:

22 (a) “Farm and food product” means any agriculture, horticulture, agroforestry, animal

1 husbandry, dairy, livestock, cottage food, beekeeping or other similar product. Farm and food
2 products are to be labeled as “West Virginia grown” or otherwise properly labeled.

3 (b) “Farmers market” means:

4 (1) A traditional farmers market, in which two or more vendors gather to sell farm and food
5 products directly to consumers;

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

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

10 (4) A consignment farmers market.

11 © “Farmers market vendor” or “vendor” means a person or entity that sells farm and food
12 products at a farmers market.

13 **§19-35-3. Farmers market vendor permit; scope.**

14 (a) The West Virginia Department of Health and Human Resources shall establish a uniform
15 farmers market vendor permit for vendors that sell farm and food products to the public necessitating
16 a food permit. No additional, unnecessary or duplicative permits may be issued to a vendor by a
17 health department.

18 (b) Vendors delivering their products to a consignment farmers market and vendors selling
19 fresh, uncut produce or other exempted farm and food products are not required to obtain a farmers
20 market vendor permit or a retail food establishment permit.

21 © A farmers market vendor permit is issued by the local health department in which the
22 vendor is domiciled.

1 (d) A farmers market vendor permit is valid throughout West Virginia and shall be
2 recognized by all health departments.

3 (e) A farmers market vendor permit is \$25 and is valid for a period of two years. The fee for
4 the permit shall be collected and deposited in accordance with subsection (6), section eleven, article
5 two, chapter sixteen of this code.

6 (f) A local health department has the right to inspect and issue citations for a farmers market
7 vendor at any farmers market in its jurisdiction, or at the vendor's home or business address,
8 regardless of whether it issued the permit.

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

12 **§19-35-4. Consignment farmers market.**

13 (a) A consignment farmers market is a farmers market in which two or more vendors deliver
14 their own farm and food products to a common location maintained by a third party who markets the
15 vendors' products and receives a percentage share of the profits from sales. The individual vendor
16 retains ownership of the farm and food product until it is sold.

17 (b) A consignment farmers market shall obtain a food establishment permit issued by the
18 local health department. Individual vendors are not required to obtain a farmers market vendor
19 permit unless the vendor also sells its products at another farmers market.

20 **§19-35-5. Legislative rules.**

21 (a) The West Virginia Department of Health and Human Resources shall propose rules for
22 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this

1 code for the purposes of implementing this article.

2 (b) The West Virginia Department of Health and Human Resources shall consult with the
3 West Virginia Department of Agriculture, and shall consider the guidelines established in the
4 Farmers Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets as the
5 foundation for the rules.

(NOTE: The purpose of this bill is to establish a farmers market vendor permit and its scope and fees. It states a purpose and provides definitions. The bill permits consignment farmers markets. The bill requires the West Virginia Department of Health and Human Resources to propose rules for legislative approval.

§19-35-1 et seq are new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on Agriculture and Rural Development.)

AGRICULTURE AND RURAL DEVELOPMENT COMMITTEE AMENDMENT

On page four, section three, line eight, by striking out the words “\$25 and is valid for a period of two years” and inserting in lieu thereof the words “\$15 annually”.