

ENROLLED

**Senate Bill No. 304**

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

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[Passed March 14, 2015; in effect ninety days from passage.]

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AN ACT 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 and §19-35-4, all relating to farmers markets; stating purpose and definitions; requiring a uniform farmers market vendor permit; establishing annual permit fees; providing exemptions; allowing inspection by local health departments; 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 and §19-35-4, all to read as follows:

**ARTICLE 35. FARMERS MARKETS.**

**§19-35-1. Legislative findings.**

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;

1 (b) The number of farmers markets and the variety of products sold at farmers markets has  
2 increased significantly in the past ten years, adding millions of dollars to the state’s economy;

3 (c) Encouraging locally grown and raised food is important to the health and welfare of the  
4 citizens of West Virginia;

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

9 (e) Food permits required for farmers market vendors are currently not recognized across  
10 county lines.

11 **§19-35-2. Definitions.**

12 For purposes of this article:

13 (a) “Consignment farmers market” means a farmers market in which two or more vendors  
14 deliver their own farm and food products to a common location maintained by a third party that  
15 markets the vendors’ products and receives a percentage share of the profits from sales, with the  
16 individual vendor retaining ownership of the farm and food product until it is sold.

17 (b) “Farm and food product” means any agriculture, horticulture, agroforestry, animal  
18 husbandry, dairy, livestock, cottage food, beekeeping or other similar product. Farm and food  
19 products are to be properly labeled.

20 (c) “Farmers market” means:

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

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

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

5 (4) A consignment farmers market.

6 (d) “Farmers market vendor” or “vendor” means a person or entity that sells farm and food  
7 products at a farmers market.

8 **§19-35-3. Farmers market vendor permit; scope.**

9 (a) Vendors at a farmers market selling farm and food products that require a food  
10 establishment permit shall apply for a uniform farmers market vendor permit and pay the annual  
11 permit fee to the local health department in the jurisdiction in which the farmers market is located.  
12 The permit is valid in all counties in this state, and vendors are not required to apply to more than  
13 one local health department for a uniform farmers market vendor permit. The uniform farmers  
14 market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any  
15 other provisions of code or rule that require a food establishment permit or any other permit from  
16 a local health department.

17 (b) The application must include any other farmers market locations under the jurisdiction  
18 of another local health department that the vendor will sell farm and food products subject to the  
19 permit. The local health department which approves the application for the uniform farmers market  
20 vendor permit shall provide notice of the approval to any other local health departments that the  
21 vendor will be subject to, as indicated on the application.

22 (c) (1) The annual permit fee for the uniform farmers market vendor permit is as follows:

1 (A) For vendors selling farm and food products under the jurisdiction of only one local health  
2 department, the annual fee is \$15.

3 (B) For vendors selling farm and food products under the jurisdiction of more than one local  
4 health department, the annual fee is \$25.

5 (2) The annual permit fee shall be collected and deposited in accordance with subsection (6),  
6 section eleven, article two, chapter sixteen of this code.

7 (d)The following vendors are exempt from the requirements of the uniform farmers market  
8 vendor permit:

9 (1) Vendors delivering their products to a consignment farmers market; or

10 (2) Vendors selling fresh, uncut produce or other any other farm and food product not subject  
11 to a permit by a local health department through rule or regulation.

12 (e) A consignment farmers market shall obtain a food establishment permit issued by the  
13 local health department.

14 (f) Every uniform farmers market vendor permit shall be displayed in a conspicuous manner.

15 (g) Notwithstanding the provisions of article two, chapter sixteen of this code, a local health  
16 department has the right to inspect and suspend the uniform farmers market vendor permit for  
17 violation of rules or the local health department regulations of a vendor at any farmers market in its  
18 jurisdiction, or at the vendor's home or business address, if it is in the inspecting local health  
19 department's jurisdiction, regardless of what local health department issued the uniform farmers  
20 market vendor permit.

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

1 market.

2 **§19-35-4. Legislative rules.**

3 (a) The West Virginia Department of Health and Human Resources shall propose rules for  
4 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this  
5 code for the purposes of implementing this article.

6 (b) The West Virginia Department of Health and Human Resources shall consult with the  
7 West Virginia Department of Agriculture and shall consider the guidelines established in the Farmers  
8 Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets in promulgating  
9 the rules.