

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3204**

By Delegates Young and Longanacre

[Introduced February 02, 2023; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, §16-2S-4, §16-2S-5, §16-2S-6, and §16-2S-7,  
 3 §16-2S-8, §16-2S-9, §16-2S-10, §16-2S-11, §16-2S-12, and §16-2S-13, all relating to  
 4 creating The Mobile Food-Vendor Freedom Act; providing a short title; listing purposes;  
 5 presenting legislative findings; providing definitions; listing licensing requirements that  
 6 permit the vendor to sell food anywhere in the state; prohibiting local authorities from  
 7 barring a mobile food vendor from selling in that jurisdiction if it holds the mobile food  
 8 vending license and complies with all other state and local laws; establishing a process for  
 9 obtaining a license; requirements for mobile-food vending; providing rulemaking authority;  
 10 setting food safety and health inspection requirements; setting the parameters for  
 11 regulations by local authorities; establishing investigation authority; setting standards for  
 12 license denial, suspension, or revocation and setting penalties and the right to appeal; and  
 13 stating preemption limitations.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2S. THE MOBILE FOOD-VENDOR FREEDOM ACT.**

**§16-2S-1. Short title.**

1 This Act shall be known as the "Mobile Food-Vendor Freedom Act."

**§16-2S-2. Purposes.**

1 The purposes of this act are to:  
 2 (a) Legalize mobile food vending across the state;  
 3 (b) Promote agriculture and expand economic development;  
 4 (c) Foster opportunities for small businesses and stimulate innovation;  
 5 (d) Increase consumer access to desired local foods;  
 6 (e) Simplify and standardize mobile food vending regulations; and  
 7 (f) Protect public health and safety by ensuring mobile food vendors follow clear, narrowly  
 8 tailored regulations that address demonstrable health and safety risks.

**§16-2S-3. Legislative findings.**

1 The Legislature finds and declares the following:

2 (a) Mobile food vending provides opportunities for employment, entrepreneurship, and  
3 upward mobility;

4 (b) Mobile food vendors make significant contributions to local economies;

5 (c) Consumers desire foods produced by mobile food vendors;

6 (d) Mobile food vending contributes to a safe and dynamic public space;

7 (e) Public health and safety are best ensured by local authorities regulating mobile food  
8 vending proportionally to its risks; and

9 (f) It is a matter of statewide concern to create a uniform approach to regulating mobile  
10 food vendors and to remove unnecessary barriers to mobile food vending.

**§16-2S-4. Definitions.**

1 (a) "Applicant" means a person applying to the department to conduct business as a  
2 mobile food vendor.

3 (b) "Customer" means any person with whom a mobile food vendor conducts business.

4 (c) "Department" means the county health department for the county in which the  
5 business's address for the business license is registered.

6 (d) "Food vending vehicle" means any motorized vehicle, trailer, or tent and equipment  
7 used to sell food and beverages by a mobile food vendor.

8 (e) "Local authority" means any local government, including any city, or county.

9 (f) "Mobile food vendor" means any person who dispenses food or beverages from a food  
10 vending vehicle for immediate service and/or consumption.

11 (g) "Person" means any individual, group of individuals, firm, partnership, company,  
12 corporation, trustee, association, or any public or private entity and includes the individual or  
13 entity's employees or agents.

14 (h) "Prepackaged food" means any commercially labeled and processed food that is

15 prepackaged to prevent direct human contact with the food product upon distribution from the  
16 manufacturer, a food facility, or other approved source.

17 (i) "Private property" means all property that is not public property.

18 (j) "Public property" means any property owned by the state or local authority and includes  
19 all rights-of-way except public sidewalks and rights-of-way in state parks or locally-owned parks.

20 (k) "Sell" means to transfer or exchange for value, to expose, display or offer for sale or  
21 exchange, or to procure, store or have in one's possession or control for the purpose of selling.

**§16-2S-5. Mobile food vending permitted; license required.**

1 (a) No person may operate as a mobile food vendor in this state without obtaining a mobile  
2 food vending license from the department. A separate mobile food vending license shall be  
3 required for every food vending vehicle used by a mobile food vendor.

4 (b) No local authority may bar a mobile food vendor from operating in its jurisdiction if the  
5 vendor holds a mobile food vending license and complies with all other state and local laws not in  
6 conflict with this Act.

**§16-2S-6. License process.**

1 (a) Application. The department shall prepare an application for a statewide mobile food  
2 vending license. The department shall make the mobile food vending license application available  
3 to applicants in person and on the department's website.

4 (b) Application requirements. The department shall require an applicant to provide the  
5 following information, under oath, before issuing a license:

6 (1) The applicant's name, address, and telephone number;

7 (2) The name, address, and telephone number of any associated entities or organizations  
8 that the applicant is representing and copies of documents verifying that relationship;

9 (3) The applicant's primary residences and/or business address;

10 (4) The nature of the food or beverages that the applicant will sell for the purpose of the  
11 department establishing the applicant's food type classification; and

12 (5) Whether the applicant was denied a license to operate as a mobile food vendor or  
13 whether the applicant had a mobile food vending license suspended or revoked in any state or  
14 local jurisdiction and, if so, the reasons for the denial, suspension, or revocation.

15 (c) Requirements for each food vending vehicle. In addition to the written application, the  
16 department shall require an applicant to provide the following information for each food vending  
17 vehicle:

18 (1) A list of all vehicle license numbers, vehicle descriptions, vehicle identification  
19 numbers, and vehicle registration for the food vending vehicle(s) in this state;

20 (2) Proof of vehicle insurance for the food vending vehicle(s); a mobile food truck license,  
21 proof of registration with the Tax Department and a copy or proof of a business license issued by  
22 the Secretary of State;

23 (d) Requirements for food vending vehicle drivers. Any person who drives a food vending  
24 vehicle shall hold a current class E driver's license;

25 (e) Any other requirements necessary. The applicant shall submit one application for all  
26 vehicles which require a license. Failure to submit a complete application may result in denial of a  
27 license;

28 (f) Health inspection. Within 14 days of receiving a complete application, the department,  
29 or a local authority acting under a collaborative agreement pursuant to Section 8, shall conduct a  
30 health inspection of the applicant's food vending vehicle prior to issuing a mobile food vending  
31 license. The purpose of the inspection is to ensure the applicant's food vending vehicle is safe for  
32 preparing, handling, and selling food and the applicant follows all county health department  
33 regulations;

34 (g) Fees. The department may establish a reasonable schedule and classification of fees  
35 not to exceed two hundred dollars (\$200) for a mobile food vending license or for a license  
36 renewal. The department may also establish an inspection fee that covers the average cost of  
37 conducting health inspections for the vendor and charge that fee in conjunction with the fee for a

38 mobile food vending license or renewal.

39 (h) Issuance of license. The department shall issue a mobile food vending license to the  
40 applicant upon receipt of a complete application and the applicant’s food vending vehicle(s)  
41 passing an initial inspection. Licenses shall be valid for one year.

42 (i) Substitution of licensed food vending vehicles. Licenses are not transferable, nor shall a  
43 license authorize the activities of any person other than the licensee.

44 (j) Transfer of assets. If a mobile food vendor transfers its mobile food vending business  
45 assets, the recipient of the assets shall, before operating in this state, apply for and obtain a new  
46 mobile food vending license.

47 (k) Renewal. Licenses shall be renewed annually. The department shall send notice to the  
48 licensee. The licensee shall submit the renewal annually, prior to the license’s expiration date. A  
49 licensee may continue mobile food vending operations while an application for renewal is pending  
50 with the department.

51 (l) Unlawful conduct. It shall be unlawful for any person to intentionally provide false  
52 information or to intentionally omit requested information on an application for a license governed  
53 by this Act.

54 (m) Application guide. The department shall prepare a guide for applicants. The guide shall  
55 include instructions for obtaining, maintaining, and renewing a mobile food vending license and  
56 shall describe the standards used to inspect food vending vehicles. The application shall be made  
57 available to applicants at the local health department’s office and on the department’s website.

**§16-2S-7. Mobile Food Vending Operations.**

1 (a) Compliance with state and local law. Mobile food vendors shall follow all state and local  
2 laws governing operations in the jurisdiction where the vendor operates, including without  
3 limitation all fire codes, zoning codes, and any other applicable state or local code provisions not in  
4 conflict with this Act.

5 (b) Location of operations. A mobile food vendor may operate in the following locations:

6           (1) Public property. A mobile food vendor may operate on public property, so long as the  
7 vending vehicle is not parked within 20 feet of an intersection. A mobile food vendor may operate  
8 from legal parking spaces, including metered spaces upon payment of appropriate fees, on the  
9 public right-of-way. When operating on public property, a mobile food vendor is subject to the same  
10 parking rules and restrictions as a commercial vehicle.

11           (2) Private property. A mobile food vendor may operate on private property under the  
12 following circumstances:

13           (A) The property is in a zoning district where food service establishments are permitted,  
14 and the vendor has permission of the property owner and/or his or her designee.

15           (B) The property is in a Residential Zoning District, and the mobile food vendor has been  
16 invited by a resident in that district to operate on their property for the purpose of serving food to  
17 that resident or their guests.

18           (3) No interference with pedestrians or vehicles. A mobile food vendor shall not obstruct  
19 the passage of pedestrians or vehicles along any street, sidewalk or parkway.

20           (c) Operational standards.

21           (1) When operating, a mobile food vendor shall:

22           (A) Maintain a food vending vehicle in good operating order;

23           (B) Park so that its service window faces the sidewalk when operating on public property;

24           (C) Provide a waste receptacle for customers which is clearly marked and request its use  
25 by customers;

26           (D) Pick up, remove, and dispose of all refuse within twenty-five (25) feet of the vendor's  
27 operating area at the conclusion of service;

28           (E) Submit to and pass any required health inspections pursuant to §16-2S-8 of this code;  
29 and

30           (F) Display its mobile food vendor license and inspection certificate in a conspicuous  
31 location for public view.

32 (2) A mobile food vendor operating at a temporary mass gathering that occurs over  
33 multiple days may operate in a stationary manner for the duration of the temporary mass  
34 gathering, not to exceed fourteen consecutive days, without moving or changing location if the  
35 mobile food vendor maintains sanitary conditions.

36 (d) Rulemaking authority.

37 (1) The department may promulgate administrative rules regulating mobile food vendors to  
38 implement this Act. Any rule adopted by the department must be narrowly tailored to address a  
39 demonstrable health or safety risk.

40 (2) Rules adopted pursuant to this section may not:

41 (A) Require a mobile food vendor to operate a specific distance from the perimeter of an  
42 existing commercial establishment or restaurant;

43 (B) Require a mobile food vendor to obtain licenses, permits or background checks for the  
44 vendor's employees;

45 (C) Require a mobile food vendor to enter into any agreement with a commercial  
46 establishment or restaurant;

47 (D) Address the operating hours of a mobile food vendor;

48 (E) Require a mobile food vendor that sells only prepackaged food to have a handwashing  
49 sink in the vendor's food vending vehicle;

50 (F) Require a mobile food vendor to associate with a commissary if the vendor carries the  
51 equipment necessary to comply with the regulations of the county health department;

52 (G) Restrict a mobile food vendor's propane capacity below the capacity allowed by state  
53 law for commercial vehicles.

54 (H) Limit the number of mobile food vendor licenses issued;

55 (I) Require a mobile food vendor to obtain any additional permits from a local authority,  
56 unless the mobile food vendor seeks to operate in a local, public park;

57 (J) Require a mobile food vendor to be fingerprinted;



58 (K) Require a mobile food vendor to install a GPS tracking device on the vendor's vehicle;

59 (L) Require a mobile food vendor to stay in constant motion except for when serving  
60 customers;

61 (M) Require a mobile food vendor to maintain insurance that names a local authority as an  
62 additional insured unless the vendor is attending an event sponsored by the local authority or  
63 operating in a public park;

64 (N) Require a mobile food vendor to obtain a bond that names a local authority as a  
65 beneficiary unless the vendor is attending an event sponsored by the local authority or operating in  
66 a public park;

67 (O) Require a food vending vehicle to receive a fire inspection if the vehicle can  
68 demonstrate that it has passed a state or local fire inspection within the previous year; and

69 (P) Require a mobile food vendor to submit to health inspections beyond those conducted  
70 by the department or by a local authority under a collaborative agreement, unless the department  
71 is investigating a reported foodborne illness.

**§16-2S-8. Food safety; health inspections for mobile food vendors.**

1 (a) Food hygiene standards. Mobile food vendors shall follow the regulations of the County  
2 Health Department for the county in which the food truck lists on its business license.

3 (b) Recordkeeping. The department shall establish and maintain a statewide database for  
4 the department and local authorities to use to record the names of licensees, inspections,  
5 inspection reports, and public complaints. The database shall also permit mobile food vendors to  
6 provide periodic itineraries to the department.

7 (c) Inspection certificate. Upon completion of an inspection, the department, or local  
8 authority operating under a collaborative agreement, shall issue a certificate to the mobile food  
9 vendor displaying the vendor's letter grade or achievement of excellence and record the grade in  
10 the state's database. The mobile food vendor shall display its certificate indicating its letter grade  
11 or achievement of excellence in a conspicuous place for public view.

12 (e) Frequency of Inspections. Health inspections shall occur on a randomized basis,  
 13 pursuant to the following frequency, based on the mobile food vendor’s classification: A Mobile  
 14 Food Vendor shall be inspected once per calendar year

**§16-2S-9. Regulation by Local Authority.**

1 Limitation on local regulation. In relation to the operations of a state-licensed mobile food  
 2 vendor, a local authority may not:

3 (1) Prohibit or restrict a mobile food vendor from operating in a lawful manner provided for  
 4 in this Act;

5 (2) Address the operating hours of a mobile food vendor;

6 (3) Require a mobile food vendor to receive any special permit from the local authority in  
 7 addition to a state mobile food vending license or permit to operate as a commercial vehicle,  
 8 unless the mobile food vendor seeks to operate in a local, public park;

9 (4) Require a mobile food vendor to pay an additional fee to the local authority to operate  
 10 on private property or require a private property owner to submit a zoning plan to the local authority  
 11 as a condition of allowing vending on the owner’s property;

12 (5) Require a mobile food vendor to obtain licenses, permits or background checks for the  
 13 vendor’s employees;

14 (6) Require a food vending vehicle to receive a fire inspection if the vehicle can  
 15 demonstrate that it has passed a state or local fire inspection within the previous year;

16 (7) Restrict the duration of time a mobile food vendor may operate on private property in  
 17 zoning districts where food service establishments operate;

18 (8) Require a mobile food vendor to operate a specific distance from restaurants or  
 19 commercial establishments;

20 (9) Require a mobile food vendor to enter into any agreement with a commercial  
 21 establishment or restaurant;

22 (10) Regulate the equipment requirements for a food vending vehicle;

23 (11) Restrict a mobile food vendor’s propane capacity below the capacity allowed by state  
24 law for commercial vehicles.

25 (12) Require a mobile food vendor to associate with a commissary;

26 (13) Require a mobile food vendor to be fingerprinted;

27 (14) Require a mobile food vendor to install a GPS tracking device on its vehicle;

28 (15) Require a mobile food vendor to stay in constant motion except for when serving  
29 customers;

30 (16) Require a mobile food vendor to maintain an insurance policy that names the local  
31 authority as an additional insured unless the vendor is attending an event sponsored by the local  
32 authority or operating in a local, public park.

33 (17) Require a mobile food vendor to obtain a bond that names the local authority as a  
34 beneficiary unless the vendor is attending an event sponsored by the local authority or operating in  
35 a local, public park; and

36 (18) Require a mobile food vendor to submit to inspections beyond health inspections  
37 conducted under a collaborative agreement with the department, unless the local authority is  
38 investigating a reported foodborne illness.

**§16-2S-10.** **Investigation.**

1 (a) The department or a local authority may investigate a mobile food vendor upon  
2 reasonable suspicion the vendor is violating the law or upon receipt of a health or safety complaint.  
3 Any complaint shall be recorded in the state’s mobile food vending database. The local authority  
4 shall report suspected violations of state law to the department and may recommend the  
5 department suspend or revoke a mobile food vending license.

6 (b) The mobile food vendor shall cooperate with the department or local authority during an  
7 investigation. Failure to cooperate with the department or local authority may result in suspension  
8 or revocation of a license.

9 (c) Nothing in this Act shall be construed to impede the department or local authority in any

10 investigation of a reported foodborne illness.

**§16-2S-11. License denial, suspension, or revocation; penalties**

1 (a) The department may deny, suspend, or revoke a license issued under this Act only for  
2 the following reasons:

3 (1) Fraud, misrepresentation, or a false statement contained in the application for a  
4 license.

5 (2) Fraud, misrepresentation, or a false statement made in connection with the selling of  
6 food or beverages.

7 (3) Any facts or conditions that would justify the denial of an application for a license.

8 (4) Three (3) or more violations of this Act over a period of 12 months.

9 (b) Any person who has been notified regarding the denial of their mobile food vending  
10 application or the possible suspension or revocation of their mobile food vending license may  
11 request a hearing in accordance with [state's administrative procedures act] within 14 calendar  
12 days of receipt of said notice. Other than as described in subsection (c) of this section, no license  
13 shall be suspended or revoked prior to a hearing if a mobile food vendor requests a hearing within  
14 the 14-day period required. Upon receipt of a request for a hearing, the department shall hold a  
15 hearing within 14 calendar days and issue findings of fact, conclusions of law, and a decision.

16 (c) When circumstances demonstrate that continued operation by a mobile food vendor  
17 poses an imminent threat to the public's health and safety, the department may immediately  
18 suspend or revoke a mobile food vending license. The mobile food vendor may request a hearing  
19 regarding the suspension or revocation within 14 calendar days of receiving notice of the  
20 suspension or revocation. Any hearing regarding the summary suspension or revocation of a  
21 license shall be given priority over all potential license denial, suspension, or revocation  
22 proceedings and shall be held within seven calendar days from the date the department receives a  
23 mobile food vendor's request for a hearing. At the conclusion of the hearing, the department shall  
24 issue findings of fact, conclusions of law and a decision.

25 (d) It is unlawful for a mobile food vendor whose license is suspended or revoked to  
 26 operate. The department may issue civil penalties to a mobile food vendor who operates with a  
 27 suspended license or after a license is revoked.

**§16-2S-12. Right to appeal.**

1 A mobile food vendor aggrieved by an agency decision following a hearing has the right to  
 2 appeal the decision under §29A-1-1, et seq. of this code.

**§16-2S-13. Preemption.**

1 This Act preempts local authorities from prohibiting mobile food vending and regulating  
 2 mobile food vending in conflict with this Act.

NOTE: The purpose of this bill is to create The Mobile Food-Vendor Freedom Act: list licensing requirements that permit the vendor to sell food anywhere in the state; prohibit local authorities from barring a mobile food vendor from selling in that jurisdiction if it holds the mobile food vending license and complies with all other state and local laws; establish a process for obtaining a license; list requirements for mobile-food vending; set food safety and health inspection requirements; set the parameters for regulations by local authorities; establish investigation authority; set standards for license denial, suspension or revocation and setting penalties and the right to appeal; stating preemption limitations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.