

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5349**

By Delegates Thorne, Hillenbrand, Horst, Hornby, and

Hite

[Introduced January 30, 2024; Referred to the  
Committee on Agriculture and Natural Resources  
then Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §19-39-1, §19-39-2, §19-39-3, §19-39-4, and §19-39-5, all relating to the  
 3 creation of the West Virginia Truth in Food Labeling Act; providing for a short title; providing  
 4 for definitions; defining misbranded food; providing for the labeling of cell-cultured product;  
 5 and providing for rules.

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

**ARTICLE 39. WEST VIRGINIA TRUTH IN FOOD LABELING ACT.**

**§19-39-1. Short title.**

1 This article shall be cited as the "West Virginia Truth in Food Labeling Act."

**§19-39-2. Definitions.**

1 (a) "Analogue product" means a food product derived by combining processed plant  
 2 products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or  
 3 other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product,  
 4 fish, meat, meat food product, poultry, or poultry product.

5 (b) "Cell-cultured product" means a food product derived by harvesting animal cells and  
 6 artificially replicating those cells in a growth medium in a laboratory to produce tissue.

7 (c) "Egg" has the meaning assigned in §19-10A-2 of this code, and the Egg Products  
 8 Inspection Act (21 U.S.C. Section 1033(g)). The term does not include an analogue product or a  
 9 cell-cultured product.

10 (d) "Egg product" has the meaning assigned by the Egg Products Inspection Act (21  
 11 U.S.C. Section 1033(f)). The term does not include an analogue product or a cell-cultured product.

12 (e) "Fish" has the meaning assigned by § 403 of the federal Act (21 U.S.C. Section  
 13 343(q)(4)(E)). The term does not include an analogue product or a cell-cultured product.

14 (f) "Meat" has the meaning assigned by 9 C.F.R. Section 301.2. The term does not include  
 15 an analogue product or a cell-cultured product.

16 (g) "Meat food product" has the meaning assigned by Section 1(j), Federal Meat Inspection  
17 Act (21 U.S.C. Section 601(j)). The term does not include an analogue product or a cell-cultured  
18 product.

19 (h) "Poultry" has the meaning assigned by the Poultry Products Inspection Act (21 U.S.C. §  
20 453(e)). The term does not include an analogue product or a cell-cultured product.

21 (i) "Poultry product" has the meaning assigned by the Poultry Products Inspection Act (21  
22 U.S.C. Section 453(f)). The term does not include an analogue product or a cell-cultured product.

**§19-39-3. Misbranded food.**

1 A food shall be deemed to be misbranded:

2 (a) If its labeling is false or misleading in any manner, or fails to otherwise conform with the  
3 requirements of this article if, in the case of a food to which Section 411 of the federal Act applies,  
4 its advertising is false or misleading in a material respect or its labeling is in violation of Section  
5 411(b)(2) of the federal Act;

6 (b) If it is offered for sale under the name of another food;

7 (c) If it is an imitation of another food, unless its label bears, in prominent type of uniform  
8 size, the word "imitation" and immediately thereafter the name of the food imitated;

9 (d) If it is an analogue product of meat, a meat food product, poultry, a poultry product, an  
10 egg product, or fish, unless its label bears in prominent type of uniform size immediately before the  
11 name of the product one of the following:

12 (1) "Analogue";

13 (2) "Meatless";

14 (3) "Plant-based";

15 (4) "Made from plants"; or

16 (5) A similar qualifying term or disclaimer intended to clearly communicate to a consumer  
17 the contents of the product;

18 (e) If its container is so made, formed, or filled as to be misleading;

19 (f) If in package form unless it bears a label containing:  
20 (1) The name and place of business of the manufacturer, packer, or distributor; and  
21 (2) An accurate statement, in a uniform location on the principal display panel of the label,  
22 of the quantity of the contents in terms of weight, measure, or numerical count; provided,  
23 that under this subsection reasonable variations shall be permitted, and exemptions as to small  
24 packages shall be established, by department rules;

25 (g) If any word, statement, or other information required by or under the authority of this  
26 chapter to appear on the label or labeling is not prominently placed thereon with such  
27 conspicuousness (as compared with other words, statements, designs, or devices in the labeling)  
28 and in such terms as to render it likely to be read and understood by the ordinary individual under  
29 customary conditions of purchase and use;

30 (h) If it purports to be or is represented as a food for which a definition and standard of  
31 identity has been prescribed by federal regulations or department rules as provided by this  
32 chapter, unless:

33 (1) It conforms to such definition and standard; and

34 (2) Its label bears the name of the food specified in the definition and standard, and, in so  
35 far as may be required by those regulations or rules, the common names of ingredients, other than  
36 spices, flavoring, and coloring, present in such food;

37 (i) If it purports to be or is represented as:

38 (1) A food for which a standard of quality has been prescribed by federal regulations or  
39 department rules as provided under this chapter, and its quality falls below such standard unless  
40 its label bears, in such manner and form as those regulations or rules specify, a statement that it  
41 falls below such standard; or

42 (2) A food for which a standard or standards of fill of container have been prescribed by  
43 federal regulations or department rules, and it falls below the standard of fill of container applicable

44 thereto, unless its label bears, in such manner and form as those regulations or rules specify, a  
45 statement that it falls below such standard;

46 (j) Unless its label bears:

47 (1) The common or usual name of the food, if any, and

48 (2) In case it is fabricated from two or more ingredients, the common or usual name of  
49 each such ingredient, and if the food purports to be a beverage containing vegetable or fruit juice,  
50 a statement with appropriate prominence on the information panel of the total percentage of the  
51 fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required  
52 to be certified under Section 721(c) of the federal Act, other than those sold as such, may be  
53 designated as spices, flavorings, and colors, without naming each: *Provided*, That to the extent  
54 that compliance with the requirements of this subdivision is impractical or results in deception or  
55 unfair competition, exemptions shall be established by department rules;

56 (k) If it purports to be or is represented for special dietary uses, unless its label bears such  
57 information concerning its vitamin, mineral, and other dietary properties as the executive  
58 commissioner determines to be, and by rule prescribed, as necessary in order to fully inform  
59 purchasers as to its value for such uses;

60 (l) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative,  
61 unless it bears labeling stating that fact; provided that, to the extent that compliance with the  
62 requirements of this subsection is impracticable, exemptions shall be established by department  
63 rules. The provisions of this subsection and Subsections (h) and (j) with respect to artificial  
64 coloring do not apply in the case of butter, cheese, and ice cream;

65 (m) If it is a raw agricultural commodity that is the produce of the soil and bears or contains  
66 a pesticide chemical applied after harvest, unless the shipping container of the commodity bears  
67 labeling that declares the presence of the chemical in or on the commodity and the common or  
68 usual name and the function of the chemical, except that the declaration is not required while the

69 commodity, after removal from the shipping container, is being held or displayed for sale at retail  
70 out of the container in accordance with the custom of the trade;

71 (n) If it is a product intended as an ingredient of another food and if used according to the  
72 directions of the purveyor will result in the final food product being adulterated or misbranded;

73 (o) If it is a color additive, unless its packaging and labeling are in conformity with the  
74 packaging and labeling requirements applicable to the color additive as may be contained in  
75 regulations issued under Section 721 of the federal Act;

76 (p) If its packaging or labeling is in violation of an applicable regulation issued under  
77 Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

78 (q) If it is a food intended for human consumption and is offered for sale, unless its label or  
79 labeling bears nutrition information that provides:

80 (1) The serving size that is an amount customarily consumed and that is expressed in a  
81 common household measure that is appropriate to the food; or

82 (2) If the use of the food is not typically expressed in a serving size, the common household  
83 unit of measure that expresses the serving size of the food;

84 (3) The number of servings or other units of measure per container;

85 (4) The total number of calories in each serving size or other unit of measure that are:

86 (A) Derived from any source; and

87 (B) Derived from fat;

88 (5) The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex  
89 carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of  
90 measure; and

91 (6) Any vitamin, mineral, or other nutrient required to be placed on the label and labeling of  
92 food under the federal Act; or

93 (7) If it is a food distributed at retail in bulk display cases, or a food received in bulk  
94 containers, unless it has nutrition labeling prescribed by the commissioner; and

95 (8) If the commissioner determines it is necessary, nutrition labeling will be mandatory for  
96 raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks  
97 including shellfish, amphibians, and other forms of aquatic animal life, except that:

98 (9) The subdivisions of subsection (q) do not apply to food:

99 (A) That is served in restaurants or other establishments in which food is served for  
100 immediate human consumption or that is sold for sale or use in those establishments;

101 (B) That is processed and prepared primarily in a retail establishment, that is ready for  
102 human consumption, that is of the type described in Subparagraph (i), that is offered for sale to  
103 consumers but not for immediate human consumption in the establishment, and that is not offered  
104 for sale outside the establishment;

105 (C) That is an infant formula subject to Section 412 of the federal Act;

106 (D) That is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C.  
107 Section 360ee(b)); or

108 (E) That is described in Section 405, clause (2), of the federal Act;

109 (10) Subsection (q) does not apply to the label of a food if the commissioner determines by  
110 regulation that compliance with that subdivision is impracticable because the package of the food  
111 is too small to comply with the requirements of that subdivision and if the label of that food does not  
112 contain any nutrition information;

113 (11) If the commissioner determines that a food contains insignificant amounts of all the  
114 nutrients required by subsection (q) to be listed in the label or labeling of food, the requirements of  
115 subsection (q) do not apply to the food if the label, labeling, or advertising of the food does not  
116 make any claim with respect to the nutritional value of the food, provided that if the commissioner  
117 determines that a food contains insignificant amounts of more than half the nutrients required by  
118 subsection (q) to be in the label or labeling of the food, the amounts of those nutrients shall be  
119 stated in a simplified form prescribed by the commissioner;

120 (12) If a person offers food for sale and has annual gross sales made or business done in  
121 sales to consumers that is not more than \$500,000 or has annual gross sales made or business  
122 done in sales of food to consumers that is not more than \$50,000, the requirements of this  
123 subsection do not apply to food sold by that person to consumers unless the label or labeling of  
124 food offered by that person provides nutrition information or makes a nutrition claim;

125 (13) If foods are subject to Section 411 of the federal Act, the foods shall comply with  
126 subsection (q) in a manner prescribed by the rules; and

127 (14) If food is sold by a food distributor, subsection (q) does not apply if the food distributor  
128 principally sells food to restaurants or other establishments in which food is served for immediate  
129 human consumption and the food distributor does not manufacture, process, or repackage the  
130 food it sells;

131 (r) If it is a food intended for human consumption and is offered for sale, and a claim is  
132 made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of  
133 the food to a specific disease or condition of the human body, except as permitted by Section  
134 403(r) of the federal Act; or

135 (s) If it is a food intended for human consumption and its label, labeling, and retail display  
136 do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient  
137 content and health claims.

**§19-39-4. Labeling cell-cultured product.**

1 (a) In this section, "cell-cultured product" has the meaning assigned by this chapter.

2 (b) A cell-cultured product must be labeled in prominent type of uniform size immediately  
3 before the name of the product using one of the following:

4 (1) "Cell-cultured";

5 (2) "Lab-grown"; or

6 (3) A similar qualifying term or disclaimer intended to clearly communicate to a consumer  
7 the contents of the product.

8            (c) The provisions of this subsection apply to a cell-cultured product, as applicable.

**§19-39-5.** **Rules.**

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1            As soon as practicable after the effective date of this article, the executive commissioner of  
2 the Health and Human Services Commission shall adopt any rules necessary to implement this  
3 article.

NOTE: The purpose of this bill is to create the West Virginia Truth in Food Labeling Act. The bill provides for a short title. The bill provides for definitions. The bill defines misbranded food. The bill provides for the labeling of cell-cultured product. Finally, the bill provides for rules.

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