

FOOD SAFETY
State and Federal Standards and Regulations

West Virginia

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WEST VIRGINIA

West Virginia's Pure Food and Drug Law is at W. VA. CODE §§16-7-1 to 16-7-11. The state department of health is responsible for enforcing the statute. The director of the department, board of pharmacy and local health officers are granted the power and duty to enter an establishment and open any food products that the person suspects is adulterated.

Any food, drink, confectionery or condiment is adulterated if:

- (1) any substance or substances that have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity;
- (2) any inferior or cheaper substance or substances have been substituted wholly or in part for it;
- (3) any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it;
- (4) it is an imitation of, or is sold under the name of another article;
- (5) it consists wholly or in part of diseased decomposed, putrid, infected, tainted or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, it is the product of a diseased animal;
- (6) it is colored, coated, polished or powdered whereby damage or inferiority is concealed, or by any means, it is made to appear better or of greater value than it really is;
- (7) it contains any added substance or ingredients which are poisonous or injurious to the health;
- (8) it is sold under a coined name and does not contain some ingredient suggested by

such name or contains only an inconsiderable quantity; or

- (9) the package containing it or any label thereon shall bear any statement regarding it or its composition which shall be false or misleading in any particular: provided, that the provisions of this article shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percent of each ingredient therein; the word “compound” or “mixture” shall be printed in type not smaller in either height or width than one half the largest type upon any label on the package, and the formula shall be printed in letters not smaller in either height or width than one fourth the largest type upon any label on the package, and said compound or mixture must not contain any ingredients injurious to the health.²⁸⁷⁷

Manufacturing for sale, selling or offering for sale any adulterated food product is a violation of the statute. Food includes all articles used for food, drink, confectionery or condiment for human consumption, whether simple, mixed or compound.²⁸⁷⁸ The statute also sets forth some specific provisions for “baby food,” defined as food intended for the consumption by a child under the age of two.²⁸⁷⁹

Violating this statute constitutes a misdemeanor, resulting in a fine of up to \$500 and jail confinement not to exceed one year. Violators may also be charged costs of analyzing the

²⁸⁷⁷ W. VA. CODE §16-7-2(b) (1998).

²⁸⁷⁸ § 16-7-1.

²⁸⁷⁹ § 16-7-8.

adulterated product, up to \$25. The adulterated product must be forfeited and destroyed.²⁸⁸⁰

Eggs

The West Virginia Egg Marketing Law of 1998 is found at W. VA. CODE §§19-10A-1 to 19-10A-16. Producers or distributors marketing less than 150 dozen eggs per week are exempt from the act. Persons distributing eggs must obtain a permit from the Commissioner of agriculture (the “Commissioner”) authorizing them to sell or distribute eggs. USDA standards, grades and weight classes are effective in West Virginia. The statute sets forth temperature and humidity requirements for egg handling facilities, in addition to sanitation and cleaning requirements. The Commissioner has the authority to enforce this act. Violators are guilty of a misdemeanor, and may be fined \$100 to \$500. Civil penalties are also available for violators.

Dairy

The West Virginia board of health is authorized to adopt regulations to provide clean and safe milk and milk products, to be enforced by the local health officials throughout the state.²⁸⁸¹

On the other hand, West Virginia’s bulk milk trade law is found at W. VA. CODE §§19-11-1 to 19-11-15. In addition to food safety issues, this statute addresses licensing and grading by milk handlers. “Milk” is defined as the normal lacteal secretion, practically free from colostrum obtained by the complete milking of one or more healthy cows or goats prior to pasteurization or ultra pasteurization.²⁸⁸² Adulterated milk is defined as milk that:

- (1) bears or contains any poisonous or deleterious substance or compound in a

²⁸⁸⁰ §§ 16-7-4, 16-7-10.

²⁸⁸¹ § 16-7-5.

²⁸⁸² § 19-11-2(k) (1997).

- quantity which may render it injurious to health;
- (2) bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or which is found in the product in excess of an established tolerance;
 - (3) is or has been produced, transported, or held under unsanitary conditions;
 - (4) contains any substance added thereto so as to make it appear better or of a greater value than it is; or
 - (5) meets or has met other conditions of adulteration as established by rule.²⁸⁸³

This definition applies to milk and milk products.

Persons who violate this statute face criminal and civil penalties. Persons guilty of a misdemeanor under this statute face a fine between \$100 and \$500 for the first offense, and \$500 and \$1,000 for each offense thereafter. Persons may also be jailed for no more than six months. Civil penalties are assessed by the Commissioner, up to \$1,000. The county prosecutor has the duty of initiating the proceedings.²⁸⁸⁴

Prohibited acts under this statute related to food safety include the following:

- (1) possessing adulterated milk with the intent to sell, transport or manufacture;
- (2) interfering with or prohibiting the Commissioner from performing the duties of his office;
- (3) failing to comply with the provisions of an embargo, revocation, suspension or denial order issued under this statute;

²⁸⁸³ § 19-11-7.

²⁸⁸⁴ § 19-11-12.

- (4) obtaining information, while acting in an official capacity, that would be considered trade secrets and using that information for personal gain;
- (5) purchasing milk on the basis of weight or measure or amount of components in the product without a valid “permit for the purchase of milk” and establishing price based on measurements or tests that have been performed in a dishonest, incompetent or inaccurate manner, or falsifying records thereof;
- (6) weighing, measuring, sampling or testing milk for the purpose of establishing price without a valid “milk tester license,” or performing these duties in a dishonest, incompetent or inaccurate manner, falsifying records thereof, or using a testing method without being certified to use that method;
- (7) weighing, measuring or sampling milk for the purpose of establishing price without a valid “milk weighers and samplers license,” or performing these duties in a dishonest, incompetent or inaccurate manner, or falsifying records thereof;
- (8) hauling milk in a tank truck that has previously been used to haul chemicals or a foreign substance without first being cleaned and sanitized according to rules promulgated by the Commissioner; or
- (9) selling, offering for sale, or exposing for sale any milk that is from a herd that does not meet the requirements for animal health as set by rule under this statute.²⁸⁸⁵

The Commissioner is permitted access and to inspect all places where milk is stored, purchased on the basis of weight or components, transferred, transported, held or used. A plant

²⁸⁸⁵ § 19-11-8.

or facility that refuses to cooperate may have their permit or certification suspended. The Commissioner has the authority to issue embargoes for any milk which is or is believed to be adulterated or not in compliance with this statute.²⁸⁸⁶

Meat and Poultry

The West Virginia Meat and Poultry Inspection Act is found at W. VA. CODE §§19-2B-1 to 19-2B-12. The Commissioner is responsible for coordinating efforts with USDA so that the state rules and regulations are at least equal to those of the federal meat inspection act and the federal poultry products inspection act.²⁸⁸⁷ All establishments for commercial or custom slaughtering, commercial or custom processing or distributing must be licensed by the Commissioner.²⁸⁸⁸ The Commissioner appoints inspectors to examine and inspect all animals²⁸⁸⁹ and poultry which are to be sold or offered for sale through a commercial outlet, establishment or distributor.²⁸⁹⁰ The Commissioner also provides reinspection of carcasses, meat products and poultry products during further processing even though they have already been inspected. Inspections must be performed in accordance with rules promulgated by the Commissioner. Inspectors must mark, tag, stamp or label all carcasses as “inspected and passed” or “inspected and condemned.”²⁸⁹¹ All carcasses, and meat products derived from custom slaughter or

²⁸⁸⁶ § 19-11-9.

²⁸⁸⁷ § 19-2B-3 (1997 & Supp. 1998).

²⁸⁸⁸ § 19-2B-4.

²⁸⁸⁹ “Animals” are defined as cattle, swine, sheep and goats. W. VA. CODE §19-2B-2(w).

²⁸⁹⁰ § 19-2B-6.

²⁸⁹¹ § 19-2B-6(j).

processing must be marked as custom slaughtered.²⁸⁹²

The Commissioner can seize and destroy any of the following:

- (a) any animal or poultry to be slaughtered in the state and thereafter sold or offered for sale through a commercial outlet or distributor which cannot be made fit for human consumption;
- (b) any animal or poultry, carcass, meat product or poultry product slaughtered or processed in the state in violation of this act or rules;
- (c) any carcass, meat product or poultry product that does not bear an inspection legend or label provided by this act, or has not been passed and inspected under the federal act, and which is intended to be sold or offered for sale through a commercial outlet or distributor; or
- (d) any animal or poultry, carcass, meat product or poultry product which is adulterated.²⁸⁹³

Adulterated is defined as a carcass, part of a carcass, meat or meat good product under one or more of the following circumstances:

- (1) if it bears or contains a poisonous or harmful substance which may render it injurious to health; but if the substance is not an added substance, the article is not adulterated if the quantity of the substance in or on the article does not ordinarily make it injurious to health;
- (2) if it bears or contains, by administration of a substance to the live animal or

²⁸⁹² § 19-2B-6(l).

²⁸⁹³ § 19-2B-6(n).

otherwise, an added poisonous or harmful substance, other than (1) a pesticide chemical in or on a raw agricultural commodity; (2) a food additive; or (3) a color additive, which may, in the judgment of the Commissioner, make the article unfit for human food;

- (3) if it is, in whole or in part, a raw agricultural commodity that bears or contains a pesticide chemical which is unsafe within the meaning of the federal act;
- (4) if it bears or contains a food additive which is unsafe within the meaning of the federal act;
- (5) if it bears or contains a color additive which is unsafe within the meaning of the federal act; provided that a carcass, meat or poultry product that is not deemed adulterated under (3), (4) or (5), shall nevertheless be deemed adulterated if the use of a pesticide, food additive or color additive is prohibited by rules in establishments at which inspection is maintained;
- (6) if it contains a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
- (7) if it has been processed, packed or held under unsanitary conditions so that it may be contaminated with filth or microorganisms or is otherwise harmful to health;
- (8) if it is wholly or partly the product of an animal which has died otherwise than by slaughter;
- (9) if its container is wholly or partly composed of a poisonous or harmful substance which may make the contents harmful to health;
- (10) if it has been intentionally subjected to radiation, unless the use of the radiation

conformed with a regulation or exemption in effect under section 409 of the federal act; or

- (11) if a valuable constituent has been wholly or partly omitted or removed from it; if a substance has been wholly or partly substituted for it; if damage or inferiority has been concealed; or if a substance has been added to it or mixed or packed with it so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.²⁸⁹⁴

Any carcass that is inspected and condemned must be destroyed for food purposes in the presence of the inspector. The Commissioner may forego destroying the carcass, meat product or poultry product and permit reprocessing if that will eliminate or correct the conditions that justified its destruction.²⁸⁹⁵ Inspectors have access to processing establishments at all times.

Once the meat has been “inspected and passed,” it must be marked with the inspection legend. Labeling sizes and specifications are found in rules promulgated by the Commissioner.²⁸⁹⁶ Moreover, any persons dealing with carcass and meat products must keep records that may be examined by the Commissioner at all reasonable times.²⁸⁹⁷

It is unlawful for any person to work in any place where food is manufactured, stored or sold if that person has a communicable disease or an infected wound. The Commissioner may require any employee or prospective employee to submit to a health examination and furnish a

²⁸⁹⁴ § 19-2B-2(aaa).

²⁸⁹⁵ § 19-2B-6(o).

²⁸⁹⁶ § 19-2B-6(i)-(j).

²⁸⁹⁷ § 19-2B-5.

physician's certificate concerning the findings.²⁸⁹⁸

It is unlawful to knowingly kill a calf less than four weeks old, or intend to sell meat from such a calf. Violators are guilty of a misdemeanor, with a fine of \$5 to \$15, or imprisonment up to 60 days, or both.²⁸⁹⁹

Additional prohibitions under the West Virginia Act make it unlawful:

- (1) for any person to operate any establishment under state inspection that is not clean and sanitary;
- (2) to slaughter any animal, sell or offer for sale any carcass, meat or poultry product that is adulterated or has been tagged "W. Va. inspected and condemned;"
- (3) to process in a state inspected establishment for sale any carcass, meat or poultry product intended for human consumption and derived in whole or part from any calf, pig, kid, lamb, chicken or turkey which is so immature as to be lacking in nutritional value;
- (4) to knowingly or intentionally expose any carcass, meat or poultry product to insects, live animals or other contamination;
- (5) to add any kangaroo meat, horse meat, mule meat or other equine meat to any animal meat for sale or offered for sale, or to bring any of the same into an establishment that processes meat for human consumption;
- (6) to remove the hide, skin or any other part of an unborn or stillborn animal in a room where animals are slaughter or processed, or is to be sold or offered for sale;

²⁸⁹⁸ § 19-2B-6(q).

²⁸⁹⁹ § 16-7-6.

- (7) to process for human consumption in any state inspected establishment any carcass, meat or poultry product derived from any animal which died other than by slaughter;
- (8) to transport to any commercial outlet or distributor for the purpose of sale, and for the commercial outlet or distributor to receive, any carcass, meat or poultry product which is not marked, branded or stamped as having been inspected and passed by the Commissioner or USDA;
- (9) to slaughter any horse, mule or other equine in a state inspected establishment where animals or poultry are slaughtered for human consumption for the purpose of being sold or offered for sale;
- (10) to transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat for human consumption unless it is conspicuously labeled as such;
- (11) for any person to use an establishment number not assigned to him or her, or to use such number fraudulently;
- (12) to remove from any article any retained tag, or to remove from any room, compartment, equipment or utensil a rejection tag, affixed by the Commissioner, unless such removal is authorized;
- (13) for a licensee to use any container with an official mark unless it contains the exact carcass, meat or poultry product which was in the container at the time the mark was affixed;
- (14) to possess, keep or use any label or device for the affixing of a mark, brand or

- stamp prescribed for inspection purposes, unless authorized by the Commissioner;
- (15) to falsely make, falsely issue, falsely publish, alter, forge, simulate or counterfeit any inspection certificate, memorandum, label, mark, brand or stamp, or device for making an inspection mark, brand, or stamp, or to possess, keep or use the same with intent to deceive;
 - (16) for any person to refuse to permit an inspector to enter and inspect the establishment, or to examine and copy records; or to forcibly assault, resist, oppose, impede, intimidate or interfere with an inspector engaged in official duties;
 - (17) for a person to prevent or fail to decharacterize or denature carcasses, meat or poultry products as prescribed by rule;
 - (18) for a person to transport offal, blood or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries unless in accordance with the statute;
 - (19) for a person to knowingly deliver a dead or dying animal or poultry to an establishment;
 - (20) for a person to transport carcasses, meat or poultry products intended for human consumption in a manner which would permit the product to become adulterated;
or
 - (21) for a person to deliver, with intent to deceive, any graded meat or poultry product or any other agricultural commodity to a state institution that does not meet the

grade specifications for that grade when a grade is specified in the contract.²⁹⁰⁰

It is also unlawful to sell, ship, consign, offer for sale or possess with intent to sell, as fresh, any meat, poultry, game or shellfish which contains any preservative or coloring agent.²⁹⁰¹

Exemptions from the meat inspection act may be made by reasonable rules promulgated by the Commissioner for any of the following situations:

- (1) any commercial dealer, provided that all carcasses and product sold or offered for sale by the dealer were slaughtered and/or processed in commercial establishments under state or federal inspection and shall be identified, labeled, and sold in normal retail quantities as prescribed in the rules;
- (2) slaughtering by an individual of his or her own animals and the preparation by that person of the carcasses, meat or poultry products exclusively for use by that person, member's of his or her family and nonpaying guests and employees; or custom slaughtered and processed products for the same purposes; provided that the custom slaughterer or processor is not handling adulterated carcasses, meat or poultry products, maintains identity and acceptable sanitation and operational controls as prescribed;
- (3) antemortem and postmortem inspection of a licensed custom slaughterer; or
- (4) other operations as the Commissioner may determine to the extent that they conform to the federal Meat Inspection Act and the federal Poultry Products

²⁹⁰⁰ § 19-2B-10.

²⁹⁰¹ § 16-7-7.

Inspection Act.²⁹⁰²

The state act does not apply to slaughterhouses or processing plants operating under the federal meat inspection act or the federal poultry products inspection act, or those approved by the USDA.

Violators will be guilty of a misdemeanor. First offenders face fines of \$200 to \$1,000 and each subsequent offense shall be fined between \$400 and \$2,000. Any person who knowingly sells, distributes or attempts to sell or distribute contaminated or otherwise adulterated carcasses, meat products or poultry products is guilty of a misdemeanor and can be fined \$5,000 to \$10,000 for each offense.²⁹⁰³

²⁹⁰² § 19-2B-8.

²⁹⁰³ § 19-2B-11.