WEST VIRGINIA CODE CHAPTER 16 ARTICLE 7

WV Legislature

§16-7-1. Manufacture or sale of adulterated food or drugs prohibited; definition of terms.

No person shall, within this state, manufacture for sale, offer for sale, or sell, any drug or article of food which is adulterated within the meaning of this article. The term "drug," as used herein, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment by man, whether simple, mixed or compound.

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§16-7-2. What constitutes adulteration.

Any drug or article of food shall be deemed to be adulterated within the meaning of this article: for the purpose of this article:

(a) In the case of drugs:

(1) If, when sold under or by a name recognized in the United States Pharmacopoeia official at that time, it differs from the standard of strength, quality, or purity laid down therein;

(2) If, when sold under or by a name not recognized in the United States Pharmacopoeia official at the time, but which is found in some other pharmacopoeia or other standard work of materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work;

(3) If its strength, quality, or purity falls below the professed standard under which it is sold;

(4) If it be an imitation of, or offered for sale under the name of, another article; or

(5) If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indicia, chloral hydrate, acetanilide, or any derivative or preparation of any such substance contained therein: *Provided*, That nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the National Formulary, which are sold under the name by which they are recognized.

(b) In the case of food, drink, confectionery, or condiment:

(1) If any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength, or purity;

(2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it;

(3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it;

(4) If it is an imitation of, or is sold under the name of, another article;

(5) If 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, if it is the product of a diseased animal;

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(6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is;

(7) If it contains any added substance or ingredients which are poisonous or injurious to the health, including butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6;

(8) If 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) If 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 do 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.

(10) The amendments made to this section during the 2025 regular session of the Legislature shall be effective on January 1, 2028;

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§16-7-3. Inspection and analysis of foods and drugs; certificate of result as prima facie evidence in prosecution.

Whenever the state health officer, the West Virginia Board of Pharmacy, or any county or municipal health officer has reason to believe that any food or drug manufactured for sale, offered for sale, or sold within this state, is adulterated, the state health officer or Board of Pharmacy, by its authorized agents, or such county or municipal health officer shall have the power, and it shall be his or her duty, to enter, during the usual hours of business, into any creamery, factory, store, salesroom, drugstore, laboratory or other place where he or she has reason to believe such food or drug is manufactured, prepared, sold or offered for sale, within the county or municipality, as the same may be, and to open any case, tub, jar, bottle or package containing, or supposed to contain, any such food or drug, and take a specimen thereof for examination and analysis. If less than a whole package is taken, the specimen shall be sealed and properly prepared for shipment to the person who shall make the analysis hereinafter provided for. No whole or less than a whole package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid.

It shall be the duty of a qualified chemist to test and analyze any such specimen, to record the result of his or her analysis among the records of the department, and to certify such findings to the state health officer, the West Virginia Board of Pharmacy, or to the county or municipal health officers, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate of such result, sworn to by the person making the analysis, who shall also state in his or her certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such adulteration in any prosecution under this article.

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§16-7-4. Penalty for adulterating food or drugs, or for manufacturing or selling adulterated food or drugs.

(a) Whoever, by himself or herself or his or her agents, knowingly adulterates or causes to be adulterated any article of food or drug, or knowingly manufactures for sale, offers for sale, or sells, within this state, any article of food or drug which is adulterated within the meaning of this article, without making the same known to the buyer, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $500, or confined in jail not more than one year, or both, in the discretion of the court; and in addition to the penalties hereinbefore provided, he or she shall be adjudged to pay the cost and expense of analyzing such adulterated food or drug, as set forth in the certificate of the person making the analysis, not exceeding $25 in any one case, which shall be included in the costs of such prosecution and taxed in favor of the state department of health or the West Virginia Board of Pharmacy, as the case may be; and if he or she be a registered pharmacist or assistant pharmacist, his or her name shall be stricken from the register. The adulterated article shall be forfeited and destroyed.

(b) This section does not apply to any person who offers for sale, or sells, within this state, less than $5,000, in aggregate, of adulterated food, per month, when the food is adulterated by including of butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, or FD&C Yellow No. 6.

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§16-7-5. Regulations by state Bureau for Public Health as to milk and milk products.

The West Virginia Bureau for Public Health shall adopt regulations to provide clean and safe milk and fresh milk products and, when promulgated, these regulations shall be the minimum requirements to be enforced by local health authorities throughout the state: Provided, That except in any case where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health, or in any case of a willful refusal to permit an authorized inspection, that any regulations promulgated by the Bureau for Public Health shall provide that prior to any suspension or revocation of a permit issued to any dairy farm, milk plant, receiving station, transfer station, and distribution station, the holder of such permit shall be served with a written notice to suspend or revoke such permit, which notice shall specify with particularity the violations in question and afford the holder reasonable opportunity to correct such violations: Provided, however, That the proposed order to deny, suspend, or revoke a permit may not be effective until notice in writing has been delivered to the holder of such permit who shall have 48 hours therefrom in which to make application to the county health officer for a hearing thereon. The county health officer shall, within 72 hours of receipt of such application, give a notice in writing to the holder of such permit setting forth the time and place of the hearing and proceed to a hearing to ascertain the facts of such violation and upon evidence presented at the hearing shall affirm, modify, or rescind the proposed order to suspend. A copy of the regulations shall be furnished to the Commissioner of Agriculture for his or her guidance in performing any duties with relation to milk and milk products imposed on him or her by law.

Effective July 1, 2019, the Bureau for Public Health may no longer adopt or enforce regulations to provide clean and safe milk and fresh milk products. Effective July 1, 2019, all authority to regulate milk and milk products shall be transferred to the Department of Agriculture.

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§16-7-5a

Repealed

Acts, 2019 Reg. Sess., Ch. 9.

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§16-7-6. Killing young calves for purpose of sale.

Whoever, by himself or his agents, kills, for the purpose of sale, any calf less than four weeks old, or sells, or has in his possession with the intent to sell, the meat of any calf which he knows to have been killed when less than four weeks old, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than $15, or imprisoned not more than sixty days, or both.

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§16-7-7. Selling, etc., of meat or shellfish containing preservatives; penalties.

If any person shall sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, as fresh, any meat, poultry, game, or shellfish which contains any substance, article or ingredient possessing a preservative character or action, or which contains any coal- tar dye, or any other substance or ingredient possessing a coloring character or action, he shall be deemed guilty of a misdemeanor and, upon conviction thereof shall be fined not more than $100 and all costs, or shall be imprisoned in the county jail not less than sixty days nor more than ninety days, or both, at the discretion of the court. Upon a second conviction he shall be fined not less than $200 nor more than $400, or be imprisoned not less than sixty days nor more than four months, or both, at the discretion of the court: Provided, That nothing in this section shall be construed to prohibit the use of ice as a preservative, or the use of refrigeration.

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§16-7-8. Resale of certain food, drug, and medical devices prohibited; definitions; source documentation required; confiscation of food, drugs or medical devices; penalty and exceptions; rules.

(a) The Legislature finds that food manufactured and packaged for sale for consumption by a child under the age of two and nonprescription drugs sold by transient vendors at places such as flea markets and swap meets, where the sources of the food and nonprescription drugs are unknown, may be adulterated and thus constitute a hazard to the public's health and welfare. It further finds that these foods, nonprescription drugs or medical devices are likely to have been stolen. The Legislature determines that it is the policy of this state to prohibit the sale of these foods, nonprescription drugs and medical devices if the transient vendor cannot provide and document the sources of the merchandise.

(b) For the purposes of this section:

(1) The term "babyfood" or "food" means any food manufactured and packaged for sale for consumption by a child under the age of two;

(2) The term "nonprescription drugs" does not include natural or herbal nonprescription drugs;

(3) The term "medical device" means any apparatus or tool which is defined by federal law as a medical device and which has been specified by the Secretary of the Department of Health through legislative rules as a device which may be marketed or sold by transient vendors.

(c) Any transient vendor who sells babyfood, nonprescription drugs or medical devices at any flea market or swap meet in this state shall keep and make available records of the sources of such babyfood, nonprescription drugs or medical devices offered for sale or sold. The records may be receipts or invoices from the persons who sold the babyfood, nonprescription drugs or medical devices to the transient vendor or any other documentation that establishes the sources of the babyfood, nonprescription drugs or medical devices. The transient vendor shall keep those records with the babyfood, nonprescription drugs or medical devices being offered for sale so long as such goods are in his or her possession and shall maintain those records for a period of two years after the babyfood, nonprescription drugs or medical devices are sold.

(d) Upon the request of a law-enforcement agent or a representative of the state department of health, a transient vendor shall produce records of the sources of babyfood, nonprescription drugs or medical devices offered for sale or sold. If the transient vendor fails to immediately produce the requested records for goods offered for sale, the law-enforcement agent or representative for the state department of health may confiscate the babyfood, nonprescription drugs or medical devices then in possession of the vendor. If the transient vendor fails to produce the requested records for goods previously sold within a reasonable time, the law-enforcement agent or representative for the state department of

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health may confiscate any babyfood, nonprescription drugs or medical devices then in the possession of the vendor.

(e) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 for each babyfood item, nonprescription drug or medical device offered for sale or sold.

(f) The provisions of this section do not apply to a merchant who is licensed by the state Department of Tax and Revenue; who sells food or nonprescription drugs or medical devices by sample, catalog or brochure for future delivery; or who sells at a residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

(g) The secretary of the Department of Health shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the designation and authorized sale of medical devices sold by transient vendors pursuant to this subdivision.

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§16-7-9. Enforcement; disposition of penalties.

The State department of health shall be charged with the enforcement of all the provisions of this act and all penalties which may be recovered shall be paid to the treasurer of the State of West Virginia general fund.

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§16-7-10. Adulterated articles to be forfeited and destroyed.

All articles adulterated in violation of the provisions of this act shall be forfeited by the owner and destroyed by the state department of health.

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§16-7-11. Effect of repeal on pending actions.

The repeal of inconsistent acts shall in no way interfere with or prevent the prosecution to final termination of any action or prosecution now pending, or which may hereafter be commenced for any violation of said act which has already been committed.

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