

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5349

BY DELEGATES THORNE, HILLENBRAND, HORST, HORNBY,

AND HITE

[Passed March 9, 2024; in effect ninety days from
passage.]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §19-39-1, §19-39-2, and §19-39-3, all relating to the Truth in Food Product
3 Labeling Act; defining terms; establishing what constitutes misbranding of a food product;
4 providing exceptions; providing certain food products subject to federal law shall comply
5 with rule; authorizing emergency and legislative rules; and providing for inapplicability of
6 provision duplicating or conflicting with federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 39. TRUTH IN FOOD PRODUCT LABELING ACT.

§19-39-1. Definitions.

1 For purposes of this article:

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

6 (2) "Cell-cultured product" means a food product derived by harvesting animal cells and
7 artificially or chemically replicating those cells in a growth medium in a laboratory to produce
8 tissue to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical
9 characteristics of any specific type of egg, egg product, fish, fishery product, meat, meat food
10 product, poultry, or poultry product.

11 (3) "Egg" has the meaning assigned by 21 U.S.C. §1033(g) and by §19-10A-2(i) of this
12 code. The term does not include an analogue product or a cell-cultured product.

13 (4) "Egg product" has the meaning assigned by 21 U.S.C. §1033(f). The term does not
14 include an analogue product or a cell-cultured product.

15 (5) "Fish" has the meaning assigned by 21 C.F.R. §123.3 and by §19-29-2(a) of this code.
16 The term does not include an analogue product or a cell-cultured product.

17 (6) "Fishery product" has the meaning assigned by 21 C.F.R. §123.3. The term does not
18 include an analogue product or a cell-cultured product.

19 (7) "Food" means any egg, egg product, fish, fishery product, meat, meat food product,
20 poultry, or poultry product, but does not include any analogue product or cell-cultured product.

21 (8) "Food product" means any analogue product or cell-cultured product, but does not
22 include any egg, egg product, fish, fishery product, meat, meat product, poultry, or poultry product.

23 (8) "Meat" has the meaning assigned by 9 C.F.R. §301.2 and by §19-29-2(d) of this code.
24 The term does not include an analogue product or a cell-cultured product.

25 (9) "Meat food product" has the meaning assigned by 21 U.S.C. §601(j). The term does
26 not include an analogue product or a cell-cultured product.

27 (10) "Poultry" has the meaning assigned by 21 U.S.C. §453(e). The term does not include
28 an analogue product or a cell-cultured product.

29 (11) "Poultry product" has the meaning assigned by 21 U.S.C. §453(f). The term does not
30 include an analogue product or a cell-cultured product.

§19-39-2. Misbranded food.

1 (a) A food product is misbranded:

2 (1) If its labeling is false or misleading in any manner, or fails to otherwise conform with
3 the requirements of this article;

4 (2) If, in the case of a food product to which 21 U.S.C. §343 applies, its advertising is false
5 or misleading in a material respect or its labeling is in violation of 21 U.S.C. §343;

6 (2) If it is offered for sale under the name of a food;

7 (3) If it is an imitation of a food, unless its label bears, in prominent type, the word
8 "imitation" and immediately before or after the name of the food imitated;

9 (4) If it is an analogue product, unless its label bears in prominent type immediately before
10 or after the name of the product one of the following:

11 (A) "Analogue";

12 (B) "Meatless";

13 (C) "Plant-based";

14 (D) "Made from plants"; or

15 (E) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a
16 consumer the contents of the product;

17 (5) If it is a cell-cultured product, unless its label bears in prominent type immediately
18 before or after the name of the product using one of the following:

19 (A) "Cell-cultured";

20 (B) "Lab-grown"; or

21 (C) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a
22 consumer the contents of the product;

23 (6) If its container is made, formed, or filled in a manner that is misleading;

24 (7) If in package form, unless it bears a label containing:

25 (A) The name and place of business of the manufacturer, packer, or distributor; and

26 (B) An accurate statement, located on the principal display panel of the label, of the
27 quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under
28 this subsection, reasonable variations may be permitted and exemptions as to small packages
29 may be established by rule;

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

35 (9) If it purports to be or is represented as a food or food product for which a definition and
36 standard of identity has been prescribed by federal law or as otherwise provided by this chapter,
37 unless:

38 (A) It conforms to such definition and standard; and

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

42 (10) If it purports to be or is represented as:

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

47 (B) A food or food product for which a standard or standards of fill of container have been
48 prescribed by federal regulations or department rules, and it falls below the standard of fill of
49 container applicable thereto, unless its label bears, in such manner and form as those regulations
50 or rules specify, a statement that it falls below such standard;

51 (11) Unless its label bears:

52 (A) The common or usual name of the food product, if any, and

53 (B) In case it is fabricated from two or more ingredients, the common or usual name of
54 each such ingredient, and if the food product purports to be a beverage containing vegetable or
55 fruit juice, a statement with appropriate prominence on the information panel of the total
56 percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and
57 colors not required to be certified under 21 U.S.C. §379e, other than those sold as such, may be
58 designated as spices, flavorings, and colors, without naming each: *Provided*, That to the extent
59 that compliance with the requirements of this paragraph is impractical or results in deception or
60 unfair competition, exemptions shall be established by department rules;

61 (12) If it purports to be or is represented for special dietary uses, unless its label bears
62 such information concerning its vitamin, mineral, and other dietary properties as the commissioner

63 determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to
64 its value for such uses;

65 (13) If it bears or contains any artificial flavoring, artificial coloring, or chemical
66 preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that
67 compliance with the requirements of this subdivision is impracticable, exemptions shall be
68 established by department rules. The provisions of this subdivision, §29-39-2(9) of this code, and
69 §29-39-2(11) of this code with respect to artificial coloring do not apply in the case of butter,
70 cheese, and ice cream;

71 (14) If it is a raw agricultural commodity that is the produce of the soil and bears or
72 contains a pesticide chemical applied after harvest, unless the shipping container of the
73 commodity bears labeling that declares the presence of the chemical in or on the commodity and
74 the common or usual name and the function of the chemical, except that the declaration is not
75 required while the commodity, after removal from the shipping container, is being held or
76 displayed for sale at retail out of the container in accordance with the custom of the trade;

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

80 (16) If it is a color additive, unless its packaging and labeling are in conformity with the
81 packaging and labeling requirements applicable to the color additive as may be contained in
82 regulations issued under 21 U.S.C. §379e;

83 (17) If its packaging or labeling is in violation of an applicable regulation issued under 15
84 U.S.C. §1472 and 15 U.S.C. §1473, the Poison Prevention Packaging Act of 1970;

85 (18) If it is a food product intended for human consumption and is offered for sale, unless
86 its label or labeling bears nutrition information that provides:

87 (A) The serving size that is an amount customarily consumed and that is expressed in a
88 common household measure that is appropriate to the food product; or

89 (B) If the use of the food product is not typically expressed in a serving size, the common
90 household unit of measure that expresses the serving size of the food product;

91 (C) The number of servings or other units of measure per container;

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

93 (i) Derived from any source; and

94 (ii) Derived from fat;

95 (E) The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates,
96 complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or
97 other unit of measure; and

98 (F) Any vitamin, mineral, or other nutrient required to be placed on the label and labeling
99 of food or food product under 21 U.S.C. §343; or

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

102 (H) If the commissioner determines it is necessary, nutrition labeling will be mandatory for
103 raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks
104 including shellfish, amphibians, and other forms of aquatic animal life;

105 (22) If it is a food product intended for human consumption and is offered for sale, and a
106 claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional
107 quality of the food product to a specific disease or condition of the human body, except as
108 permitted by 21 U.S.C. §360ee; or

109 (23) If it is a food product intended for human consumption and its label, labeling, and
110 retail display do not comply with the requirements of 21 U.S.C. §360ee pertaining to nutrient
111 content and health claims.

112 (b) The provisions of §29-39-2(a)(18) of this code do not apply to a food product:

113 (1) That is served in restaurants or other establishments in which food or food product is
114 served for immediate human consumption or that is sold for sale or use in those establishments;

115 (2) That is processed and prepared primarily in a retail establishment, that is ready for
116 human consumption, that is of the type described in subdivision (1) of this subsection, that is
117 offered for sale to consumers but not for immediate human consumption in the establishment,
118 and that is not offered for sale outside the establishment;

119 (3) That is an infant formula subject to 21 U.S.C. §350a;

120 (4) That is a medical food as defined in 21 U.S.C. §360ee;

121 (5) If the commissioner determines by rule that compliance with §29-39-29(a)(18) of this
122 code is impracticable because the package of the food product is too small to comply with the
123 requirements of that subdivision and if the label of that food product does not contain any nutrition
124 information;

125 (6) If the commissioner determines that a food product contains insignificant amounts of
126 all the nutrients required by §19-39-2(18) of this code to be listed on the label or labeling of food
127 products as long as the label, labeling, or advertising of the food product does not make any claim
128 with respect to the nutritional value of the food product: *Provided*, That if the commissioner
129 determines that a food product contains insignificant amounts of more than half the nutrients
130 required by §19-39-2(18) of this code to be in the label or labeling of the food product, the amounts
131 of those nutrients shall be stated in a simplified form prescribed by the commissioner; or

132 (7) If a food product is sold by a food distributor, as long as the food distributor principally
133 sells the food product to restaurants or other establishments in which the food product is served
134 for immediate human consumption and the food distributor does not manufacture, process, or
135 repackage the food product it sells.

136 (c) If a food product is subject to 21 U.S.C. §343, the food product shall comply with §29-
137 39-2(18) of this code in a manner prescribed by rule.

138 (d) If a person offers a food product for sale and has annual gross sales made or business
139 done in sales to consumers that is not more than \$500,000, or has annual gross sales made or

140 business done in sales of the food product to consumers that is not more than \$50,000, the
141 requirements of this section do not apply.

§19-39-3. Rulemaking; duplication or conflict with federal law.

1 (a) The commissioner may propose emergency rules and rules for legislative approval in
2 accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of
3 this article, which may include, but are not limited to:

4 (1) Inspection requirements;

5 (2) Any other labeling information necessary to ensure that a misbranded food product will
6 not have false, misleading, or inaccurate labeling and that the public will be informed of the
7 manner of handling required to maintain the food product in a wholesome condition;

8 (3) Violations of this article and administrative fines or forfeitures therefor;

9 (4) Procedures for administrative enforcement of violations of this article; and

10 (5) Procedures for appeals of proceedings under this article.

11 (b) In the event any provision of this article duplicates or conflicts with federal law or
12 regulation, that provision under this article shall not apply and the federal law or regulation
13 controls.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris
.....
Clerk of the House of Delegates

Joe Linn
.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

FILED
2024 MAR 27 A 11: 10
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Les VanDerKam
.....
Speaker of the House of Delegates

Colin P. Clavin
.....
President of the Senate

The within is approved this the 27th
Day of March 2024.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am