

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### House Bill 4475

FISCAL  
NOTE

BY DELEGATES SHOTT AND ELLINGTON

[Introduced February 8, 2018; Referred  
to the Committee on Political Subdivisions then  
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7, and  
 3 §11-28-8, all relating to allowing counties and municipalities to levy a sales tax on food  
 4 and beverages sold at restaurants; providing for county and municipality options; limiting  
 5 the total tax to three percent; limiting a municipal tax to two percent; setting forth the  
 6 procedures for counties or municipalities to use to impose the tax; requiring publication;  
 7 setting forth how the collected tax may be used; setting forth apportionment of the tax  
 8 between local jurisdictions; setting forth exemptions from the tax; defining terms; and  
 9 providing criminal penalties.

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

**ARTICLE 28. LOCAL OPTION FOOD AND BEVERAGE TAX.**

**§11-28-1. Food and beverage tax.**

1 A county or municipality is authorized to levy a tax on food and beverages sold for human  
 2 consumption by a restaurant as defined in this article. Any tax levied under this article may not  
 3 exceed three percent of the gross amount charged for the food and beverages.

**§11-28-2. Definitions.**

1 As used in this article:

2 “Alcoholic beverage” means any alcohol, beer, wine and spirits, and any liquid or solid  
 3 capable of being used as a beverage, including any beverage that consists of a mixture of  
 4 alcoholic and nonalcoholic liquids or solids.

5 “Beverage” means any alcoholic or nonalcoholic liquid intended for human consumption.

6 “Fund-raising organization” means any church, school, fraternal or social organization,  
 7 volunteer fire department or rescue squad that periodically sells food and beverages for public  
 8 consumption to raise funds to benefit that organization.

9 “Municipal” or “municipality” means any city or town.

10 “Not-for-profit capacity” means the sale of food for the intentional purpose of equaling the

11 operating costs of the restaurant.

12 “Restaurant” means any place where food is prepared for service to the public on or off  
13 the premises, or any place where food is served, including, but not limited to, lunchrooms, food  
14 counters, food trucks or carts, short order or fast food eateries, cafeterias, coffee shops, cafes,  
15 taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of  
16 hospitals and nursing homes and dining accommodations of public and private schools and  
17 colleges.

**§11-28-3. County option.**

1 (a) Any tax levied under this article must be approved by referendum within the county in  
2 which the tax is to be levied by a margin of at least 60 percent of those voting.

3 (b) A referendum for imposition of a county food and beverage tax may be initiated by:

4 (1) A resolution of the county commission; or

5 (2) A petition filed with the county commission signed by a minimum of 10 percent of the  
6 county's registered voters as of January 1 in the year in which the petition is filed.

7 (c) A petition or resolution may designate the length of time of the tax's imposition and the  
8 projects or purposes for which the tax will be levied: *Provided*, That the information is included  
9 on the referendum's ballot.

10 (d) The county commission shall publish a Class III legal advertisement of the referendum  
11 in compliance with §59-3-1 *et seq.* of this code in a newspaper of general circulation in the county.

**§11-28-4. Collection of tax; use.**

1 (a) Any tax levied pursuant to §11-28-3 of this code shall be collected in a manner  
2 prescribed by the county commission.

3 (b) Any tax levied under §11-28-3 of this code shall be placed in the county's general  
4 revenue fund and expended as the county commission desires: *Provided*, That any projects or  
5 purposes designated for the imposition of the tax and included on the referendum ballot shall be  
6 paid as follows:

7 (1) At least 25 percent or such greater portion of the collected tax as may be agreed

8 between the county commission and the county's economic development authority prior to the  
9 publication required by §11-28-3(d) of this code shall be remitted by the county to the county's  
10 economic development authority to be expended for economic development purposes;

11 (2) For all restaurants located within a municipality, at least 25 percent or a greater portion  
12 of the collected tax from each restaurant as may be agreed between the county commission and  
13 the municipality shall be remitted by the county to the municipality to be expended in a manner  
14 which the municipality's governing body desires.

**§11-28-5. Municipal option.**

1 (a) Any municipality located in a county that has not levied, or sought to levy, a food and  
2 beverage tax within one year following the effective date of this article, is authorized to levy a tax  
3 on food and beverages sold for human consumption by a restaurant as defined in this article. Any  
4 tax levied under this article may not exceed two percent of the gross amount charged for the food  
5 and beverages.

6 (b) Any tax levied under this article must be approved by referendum within the  
7 municipality in which the tax is to be levied by a margin of at least 60 percent of the voters who  
8 vote in the referendum.

9 (c) A referendum for imposition of municipal food and beverage tax may be initiated by:

10 (1) A resolution of the municipality's governing body; or

11 (2) A petition filed with the municipality's governing body signed by a minimum of 10  
12 percent of the municipality's registered voters as of January 1 in the year in which the petition is  
13 filed.

14 (d) A petition or resolution may designate the length of time of the tax's imposition or  
15 projects or purposes for which the tax will be levied: *Provided*, That the information is included  
16 on the referendum's ballot.

17 (e) The municipality's governing body shall publish a Class III legal advertisement of the  
18 referendum in compliance with the provisions of §59-3-1 *et seq.* of this code in a newspaper of  
19 general circulation in the municipality.

**§11-28-6. Exemptions.**

1           (a) This tax is applicable to restaurants whose food and beverage preparation and service  
2 are regulated by county boards of health. Any tax levied under this article may not be levied upon  
3 food and beverages sold from:

4           (1) Places manufacturing packaged or canned foods which are distributed to grocery  
5 stores or other similar food retailers for sale to the public;

6           (2) Vending machines;

7           (3) Restaurants operating in a not-for-profit capacity;

8           (4) Churches serving meals as a regular part of regular religious observances;

9           (5) Fund-raising organizations; or

10          (6) Food counters or delicatessens that operate as part of a larger retail business which:

11          (A) Food and beverage sales do not exceed 30 percent of the larger retail business's total  
12 gross sales; and

13          (B) Have 10 or fewer seats on the premises at which food is consumed.

14          (b) Any tax levied pursuant to this article may not be applied to any discretionary gratuity  
15 paid by the purchaser in addition to the sales price, nor to any mandatory gratuity or service  
16 charge added by the restaurant to the sales price that does not exceed 20 percent of the sales  
17 price.

**§11-28-7. Wrongful and fraudulent use of funds; penalty.**

1           All food and beverage tax collections are considered in trust for the county or municipality  
2 imposing the applicable tax. The wrongful and fraudulent use of the proceeds other than  
3 remittance to the county or municipality as provided by this article constitutes embezzlement  
4 pursuant to §61-3-20 of this code and is subject to the criminal penalties of that section.

**§11-28-8. Apportionment.**

1           If a business is located partially within two or more local jurisdictions because of a  
2 boundary line that passes through the place of business, and one or more of the local jurisdictions  
3 imposes the food and beverage tax, the tax rate of each applicable local jurisdiction shall be

- 4 apportioned between the local jurisdictions. The apportionment shall be based on the area in the
- 5 political subdivision which the place of business actually occupies and actively uses in connection
- 6 with the business.

NOTE: The purpose of this bill is to allow local governments to levy a sales tax on food and beverages sold at restaurants. The bill provides for county and municipality options. The bill limits the total tax to three percent. The bill limits a municipal tax to two percent. The bill sets forth the procedures for counties and municipalities to use to impose the tax. The bill requires publication. The bill sets forth how the collected tax may be used. The bill sets forth apportionment of the tax between local jurisdictions. The bill sets forth exemptions from the tax. The bill defines terms. The bill provides criminal penalties.

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