

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2618

FISCAL  
NOTE

BY DELEGATES FLUHARTY, HANSEN, LOVEJOY AND ROWE

[Introduced February 19, 2021; Referred to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, by adding thereto a new article, designated  
 2 §11-13KK-1, §11-13KK-2, and §11-13KK-3; and to amend and reenact §55-7D-1 and §55-  
 3 7D-3 of said code, all relating to Good Samaritan Food Donation Act; establishing a tax  
 4 credit against corporation net income tax for retail food distributors that donate certain  
 5 surplus food products to nonprofit organizations; providing for credit to apply to either  
 6 personal income or corporate net income tax liabilities; placing limitations and  
 7 qualifications for the tax; directing the Tax Commissioner to promulgate rules and forms;  
 8 and directing the Department of Health and Human Resources to distribute certain  
 9 information regarding tax credit availability.

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 13. TAX CREDIT FOR DONATION OF FIT GROCERY PRODUCTS AND**

#### **WHOLESOME FOOD.**

##### **§11-13KK-1. Legislative purpose.**

1 The Legislature finds that wholesale and retail food distributors, shipping terminals and  
 2 other establishments across the state are disposing of food that could be made available to those  
 3 in need despite being covered for liability through the Good Samaritan Food Donation Act in §55-  
 4 7D-1 of this code. For this reason, the Legislature has recognized the need to encourage food  
 5 distributors to make otherwise disposed-of products available to those in need.

##### **§11-13KK-2 Credit allowed; amount of credit; recapture of credit and effective date.**

1 (a) There shall be allowed to eligible taxpayers a credit against the taxes imposed in §11-  
 2 21-1 and §11-24-1 of this code. For the purpose of this article, "eligible tax payer" means a person,  
 3 firm, partnership, corporation, or other entity who makes apparently fit grocery products or  
 4 apparently wholesome food available to an established nonprofit organization that will utilize the  
 5 food products to help individuals and families in need. For the purpose of this section, the

6 definitions for “apparently fit grocery product,” “apparently wholesome food,” and “nonprofit  
7 organization” are as found in §55-7D-2 of this code. Such credit shall be an amount equal to one  
8 tenth of the original retail sale value of the apparently fit grocery product or apparently wholesome  
9 food item. A receipt for the appraised amount of food product received should be made and kept  
10 by both the retail food distributor and the nonprofit organization. These receipts will be retained  
11 in order to show proof of eligibility for tax credit.

12 (b) The credit set forth in this article shall apply to corporation net or personal income tax  
13 liabilities, as applicable, arising after December 31, 2021.

**§11-13KK-3 Application of credit; limitation of credit; tax commissioner to promulgate forms and legislative rules; notice of credit.**

1 (a) The credit allowed in this article shall be first applied to a taxpayer’s corporate net  
2 income, or the taxpayer’s personal income tax liability.

3 (b) The credit allowed in this article shall not exceed \$5,000 per year and shall not be  
4 refundable, nor carried forward nor backward to other tax years.

5 (c) The State Tax Commissioner shall promulgate legislative rules pursuant to §29A-3-1  
6 et seq. of this code regarding the applicability, method of claiming the credit, recapture of the  
7 credit and documentation necessary to claim the credit herein allowed.

8 (d) The State Tax Commissioner shall develop a written notice setting forth the availability  
9 of this credit and shall provide this notice to the Department of Health and Human Resources to  
10 be distributed to all retail food distributors of all sizes and establishment to make such retailers,  
11 corporations, and individuals aware of the tax credit allowed herein. The Department of Health  
12 and Human Resources shall distribute notice of the credit herein as widely as possible to potential  
13 participants.

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

**ARTICLE 7D. GOOD SAMARITAN FOOD DONATION ACT.**

**§55-7D-1. Legislative findings.**

1           The Legislature finds that wholesale and retail food distributors, shipping terminals and  
2 other establishments across the state are disposing of food that could be made available to those  
3 in need. However, many potential food donors are discouraged from donating this food because  
4 of potential liability. The United States Congress has recognized the need to encourage food  
5 distributors to make otherwise disposed-of food products available to those in need and has  
6 adopted Title 42 United States Code §1791 entitled the “Bill Emerson Good Samaritan Food  
7 Donation Act.” This federal law encourages state and local governments to enact good samaritan  
8 or donor liability limitation laws to encourage private cooperative efforts to provide food for hungry  
9 people within their respective jurisdictions. The Legislature finds that this is a worthy goal, and  
10 therefore it is appropriate for the state to encourage participation in food donation programs by  
11 providing a statutory framework to protect food donators from liability for their good faith efforts  
12 as well as, provide a tax credit for donors who make apparently fit grocery products or apparently  
13 wholesome food available to established nonprofit organizations who will distribute the food to  
14 individuals and families in need.

**§55-7D-3. Limiting liability of persons or corporations who donate food or grocery products; exceptions.**

1           (a) A person or gleaner is not subject to civil liability or criminal liability arising from the  
2 nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery  
3 product which the person or gleaner donates in good faith to a nonprofit organization for ultimate  
4 distribution without profit or gain to needy individuals: *Provided*, That this limitation on liability  
5 does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery  
6 product which results from an act or omission of the person or gleaner which constitutes gross  
7 negligence or intentional misconduct.

8           (b) A nonprofit organization is not subject to civil liability or criminal liability arising from the  
9 nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery

10 product which the nonprofit organization received as a donation in good faith from a person or  
11 gleaner for ultimate distribution without profit or gain to needy individuals: *Provided*, That this  
12 limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of  
13 the food or grocery product which results from an act or omission of the nonprofit organization  
14 which constitutes gross negligence or intentional misconduct.

15 (c) Tax credit incentives for retail food distributors who make wholesome and fit grocery  
16 products available to nonprofit organizations are established to help end food waste here in West  
17 Virginia. Nonprofit organizations may claim a portion of the value of the food donated as provided  
18 in §11-13EE-1 of this code.

NOTE: The purpose of this bill is to expand the Good Samaritan Food Donation Act to include tax incentives for retail food distributors who make wholesome and fit grocery products available for nonprofit organizations who will distribute the food to individuals and families in need.

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