

H. B. 2252

(By Delegates J. Miller and Overington)

[Introduced January 12, 2011; referred to the Committee on the Judiciary.]

10 A BILL to amend and reenact §55-7D-2 and §55-7D-3 of the Code of
11 West Virginia, 1931, as amended; and to amend said code by
12 adding thereto a new section, designated §55-7D-3a, all
13 relating to limiting liability for persons donating and
14 charitable organizations accepting certain food and grocery
15 items.

16 Be it enacted by the Legislature of West Virginia:

17 That §55-7D-2 and §55-7D-3 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted; and that said code be amended
19 by adding thereto a new section, designated §55-7D-3a, all to read
20 as follows:

21 ARTICLE 7D. GOOD SAMARITAN FOOD DONATION ACT.

22 §55-7D-2. Definitions.

23 As used in this section:

1 (a) "Apparently fit grocery product" means a grocery product
2 that meets all quality and labeling standards imposed by federal,
3 state and local laws and regulations even though the product may
4 not be readily marketable due to appearance, age, freshness, grade,
5 size, surplus or other conditions.

6 (b) "Apparently wholesome food" means food that meets all
7 quality and labeling standards imposed by federal, state and local
8 laws and regulations even though the food may not be readily
9 marketable due to appearance, age, freshness, grade, size, surplus
10 or other conditions.

11 (c) "Donate" means to give without requiring anything of
12 monetary value from the recipient, except that the term includes
13 donations by one nonprofit organization to another nonprofit
14 organization, notwithstanding that the donor organization has
15 charged a nominal fee to the donee organization, if the ultimate
16 recipient or user is not required to give anything of monetary
17 value.

18 (d) "Food" or "food item" means any raw, cooked, processed or
19 prepared edible substance, ice, beverage or ingredient used or
20 intended for use, in whole or in part, for human consumption.

21 (e) "Gleaner" means a person who harvests a donated
22 agricultural crop for free distribution to the needy or for
23 donation to a nonprofit organization for ultimate distribution to
24 the needy.

1 (f) "Grocery product" means a nonfood grocery product,
2 including disposable paper or plastic products, household cleaning
3 supplies, laundry detergent or other household item.

4 (g) "Gross negligence" means voluntary and conscious conduct,
5 including a failure to act, by a person who, at the time of the
6 conduct, knew that the conduct was likely to be harmful to the
7 health or well-being of another person.

8 (h) "Individually packaged food item" means any food item
9 packaged in a single serving unit, which is purchased in quantity
10 and intended for individual distribution or consumption. The
11 single serving unit must meet all federal, state and local laws
12 regarding quality standards even though the item may not be
13 readily marketable due to appearance, age, freshness, grade, size,
14 surplus or other conditions. Any food item meeting this definition
15 does not have to meet federal, state and local laws regarding
16 labeling, so long as the main packaging container meets such laws,
17 or the information required to comply with any labeling laws is
18 readily ascertainable.

19 (i) "Intentional misconduct" means conduct by a person
20 with knowledge, at the time of the conduct, that the conduct is
21 harmful to the health or well-being of another person.

22 (j) "Main packaging container" means any container that
23 contains any quantity of individually packaged food items, and has
24 printed on, or included with the container, all information

1 required to comply with federal, state and local laws regarding
2 labeling.

3 (i) (k) "Nonprofit organization" means an incorporated or
4 unincorporated entity that:

5 (1) Is operating for religious, charitable or educational
6 purposes; and

7 (2) Does not provide net earnings to or operate in any other
8 manner that inures to the benefit of, any officer, employee or
9 shareholder of the entity.

10 (1) "Perishable food item" means any food or food item that
11 must be sold or consumed by a specific date to ensure quality or
12 safety, and includes any food or food item that requires storage
13 at or below a certain temperature to guarantee freshness edibility
14 or safe consumption.

15 (j) (m) "Person" means an individual, corporation,
16 partnership, organization, association or governmental entity,
17 including a retail grocer, wholesaler, hotel, motel, manufacturer,
18 restaurant, caterer, farmer, nonprofit food distributor or
19 hospital. In the case of a corporation, partnership, organization,
20 association or governmental entity, the term includes an officer,
21 director, partner, deacon, trustee, council member or other elected
22 or appointed individual responsible for the governance of the
23 entity.

24 (n) "Prepared food" means any food item intended for buffet

1 or self-service style public consumption, which is preserved,
2 prepared and served according to any and all state and local laws,
3 rules and regulations.

4 (o) "Produce item" means any fruit, vegetable or other
5 cultivated item that meets all quality and labeling standards
6 imposed by federal, state and local laws and regulations even
7 though the item may not be readily marketable due to appearance,
8 age freshness, grade, size, surplus or other conditions.

9 §55-7D-3. Limiting liability of persons or corporations who donate

10 food or grocery products; exceptions.

11 (a) A person or gleaner is not subject to civil liability or
12 criminal liability arising from the nature, age, packaging or
13 condition of apparently wholesome food or an apparently fit grocery
14 product which the person or gleaner donates in good faith to a
15 nonprofit organization for ultimate distribution without profit or
16 gain to needy individuals: *Provided*, That this limitation on
17 liability does not apply to an injury to or the death of an
18 ultimate user or recipient of the food or grocery product which
19 results from an act or omission of the person or gleaner which
20 constitutes gross negligence or intentional misconduct.

21 (b) A nonprofit organization is not subject to civil liability
22 or criminal liability arising from the nature, age, packaging or
23 condition of apparently wholesome food or an apparently fit grocery
24 product which the nonprofit organization received as a donation in

1 good faith from a person or gleaner for ultimate distribution
2 without profit or gain to needy individuals: *Provided*, That this
3 limitation on liability does not apply to an injury to or the death
4 of an ultimate user or recipient of the food or grocery product
5 which results from an act or omission of the nonprofit organization
6 which constitutes gross negligence or intentional misconduct.

7 (c) A person shall not be subject to civil or criminal
8 liability arising from the nature, age, packaging or condition of
9 a food item when the person donates the food item in good faith to
10 a nonprofit organization for ultimate distribution without profit
11 or gain to needy individuals when the person donates the following
12 food items:

13 (1) Any individually packaged food item that is unopened or
14 of unaffected package integrity. Any information printed on, or
15 included with the individually packaged item's main packaging
16 container which is intended to comply with labeling standards
17 imposed by federal, state and local laws shall be replicated in
18 writing and given by the donor to the donee at the time of
19 donation. Providing the donee with the original main packaging
20 container shall meet the requirements of this subdivision;

21 (2) Any produce item in edible condition and still of its
22 original integrity. The donor shall provide in writing to the donee
23 at the time of donation the following information:

24 (A) The date of purchase or delivery;

1 (B) The expiration or use-by date if available; and
2 (C) Any information printed on, or included with, the produce
3 item's original main packaging container intended to comply with
4 labeling standards imposed by federal state or local laws.

5 (3) Any perishable food item which has not surpassed the food
6 item's expiration or use-by date, is otherwise donatable under
7 this article, and has been stored or preserved in accordance with
8 federal, state and local laws and regulations. If the perishable
9 food item's packaging does not comply with labeling standards
10 imposed by federal, state or local laws, the donor shall provide
11 in writing to the donee at the time of donation the following
12 information:

13 (A) The date of purchase or delivery;
14 (B) The expiration or use-by date; and
15 (C) Any information printed on, or included with, the
16 perishable food item's original main packaging container intended
17 to comply with labeling standards imposed by federal, state or
18 local laws.

19 (d) A nonprofit organization is not subject to civil or
20 criminal liability arising from the nature age packaging or
21 condition of a food item when the organization accepts a donated
22 food item listed under subsection (c) in good faith for the
23 ultimate distribution without profit or gain to needy individuals.
24 The nonprofit organization shall require the submission of any

1 written information mandated under subsection (c) as a condition
2 precedent to a good faith donation.

3 (e) A person making a donation, or a nonprofit organization
4 accepting a donation, is not subject to civil or criminal liability
5 resulting from erroneous information provided or collected under
6 subsections (c) or (d) as long as the information was provided or
7 collected in good faith.

8 (f) The limitation on liability in subsections (c), (d) or
9 (e) does not apply to an injury or death of an ultimate user or
10 recipient of any food item which results from an act or omission
11 which constitutes gross negligence or intentional misconduct.

12 **§55-7D-3a. Limitation of liability for persons who donate prepared**
13 **food, exceptions.**

14 (a) A person is not subject to civil or criminal liability
15 arising from the nature, age, packaging or condition of a prepared
16 food item when the person donates the prepared food item in good
17 faith to a nonprofit organization for ultimate distribution without
18 profit or gain to needy individuals when the prepared food
19 donation meets the following requirements:

20 (1) The donor's preparation, storage, and presentation for
21 consumption complies with all state and local food safety laws;

22 (2) State and local food safety laws allow for the removal,
23 storage and redistribution of the prepared food;

24 (3) The donor removes the food from public consumption and

1 transfers it to the donee within six hours. A good faith effort is
2 made to preserve and maintain the prepared food's quality,
3 edibility and safety before and during its' transport from the
4 donor to the donee;

5 (4) The donee preserves and prepares the food in accordance
6 with all state and local food safety laws;

7 (5) The donee distributes, and the prepared food is consumed,
8 within forty-eight hours after receiving the donated prepared
9 food; and

10 (6) The donee's distribution for consumption of the prepared
11 food within fifty-four hours after being removed from public
12 consumption by the donor does not violate any state or local food
13 safety laws or regulations.

14 (b) A nonprofit organization is not subject to civil or
15 criminal liability arising from the nature, age, packaging or
16 condition of a prepared food item when the organization accepts a
17 donated prepared food in good faith for the ultimate distribution
18 without profit or gain to needy individuals; and the prepared food
19 donation meets the conditions outlined in subsection (a).

20 (c) The limitation on liability in subsections (a) and (b)
21 does not apply to an injury or death of an ultimate user or
22 recipient of any prepared food item which results from an act or
23 omission which constitutes gross negligence or intentional
24 misconduct.

NOTE: The purpose of this bill is to exempt persons and nonprofit organizations from civil and criminal liability when donating or receiving certain food items. The bill does not exempt liability for gross negligence or intentional misconduct.

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

§55-7D-3a is new; therefore, it has been completely underscored.