

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3287

**FISCAL
NOTE**

By Delegates Fluharty and Lewis

[Introduced March 10, 2025; referred to the
Committee on Finance]

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

**ARTICLE 13NN. TAX CREDIT FOR DONATION OF FIT GROCERY PRODUCTS AND
 WHOLESOME FOOD.**

§11-13NN-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. For this reason, the Legislature has recognized the need to encourage food distributors to
 5 make otherwise disposed-of products available to those in need.

§11-13NN-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. For the purpose of this article, "eligible taxpayer" means a person, firm,
 3 partnership, corporation, or other entity who makes apparently fit grocery products or apparently
 4 wholesome food available to an established nonprofit organization that will utilize the food
 5 products to help individuals and families in need. For the purposes of this section, the definitions

6 for "apparently fit grocery product," "apparently wholesome food," and "nonprofit organization" are
7 as found in §55-7D-2. Such credit shall be an amount equal to one tenth of the original retail sale
8 value of the apparently fit grocery product or apparently wholesome food item. A receipt for the
9 appraised amount of food product received should be made and kept by both the retail food
10 distributor and the nonprofit organization. These receipts will be retained in order to show proof of
11 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, 2025.

§11-13NN-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 et
6 seq. regarding the applicability, method of claiming the credit, recapture of the credit and
7 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 Human Services to be distributed to
10 all retail food distributors of all sizes and establishment to make such retailers, corporations, and
11 individuals aware of the tax credit allowed herein. The Department of Human Services shall
12 distribute notice of the credit herein as widely as possible to potential 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 of
4 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 donors from liability for their good faith efforts as
12 well as to 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 does
5 not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product
6 which results from an act or omission of the person or gleaner which constitutes gross negligence
7 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 the
13 food or grocery product which results from an act or omission of the nonprofit organization which
14 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 §11-13NN-1.

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.