

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Canned or Perishable Food Distributed Free of Charge

SPONSOR(S): Rogers and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) K-12 Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law protects most donors who give food to a charitable organization from civil and criminal liability related to injury caused by such donated food. The bill adds public schools to the list of defined donors.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 768.136, F.S., provides that a donor of food apparently fit for human consumption may donate the food to charity while enjoying liability protection.¹ The statute defines a "donor," a "gleaner," "canned food," and "perishable food." The term "donor" includes grocery stores and any place where food is regularly prepared for sale. Where the food is apparently fit for human consumption and donated to a bona fide charitable or nonprofit organization, the donor is not liable for an injury caused by the food unless the injury is caused by the gross negligence, recklessness, or misconduct of the donor.² Likewise, a nonprofit or charitable organization or a representative of such organization which distributes donated food is protected from criminal and civil penalties under the same conditions. Public schools are not specifically included in the list of donors protected by the law.

Public schools in Florida participate in school lunch and breakfast programs subsidized by the federal government. Federal law was amended in 2011 to include: "[e]ach school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations."³

The bill adds public schools to the list of defined donors protected from civil and criminal liability when they donate food to charitable organizations under the terms set forth in the statute.

B. SECTION DIRECTORY:

Section 1 amends s. 768.136, F.S., regarding liability for canned or perishable food distributed free of charge.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

¹ Section 768.136, F.S.

² Section 768.136(2), F.S.

³ 42 U.S.C. §1758(l)(1)

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."⁴ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.⁵ This right could be implicated if a court were to find that the bill abolishes a right of access to the courts that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.⁶

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁴ Fla. Jur. 2d., s. 360.

⁵ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

⁶ The enactment of the Declaration of Rights of the Florida Constitution was part of Florida's new constitution of 1968 and occurred when it was ratified by the electorate on November 5, 1968.