

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 276

INTRODUCER: Senator Rich

SUBJECT: Food Donation by Public Food Service Establishment

DATE: January 8, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides that this act may be cited as the “Florida Restaurant Lending a Helping Hand Act.”

The bill amends provisions regarding liability for canned or perishable food distributed free of charge by expanding the definition of "perishable food" to include foods that have been prepared at a licensed public food service establishment.

The bill has an effective date of July 1, 2008.

This bill substantially amends section 768.136, Florida Statutes.

II. Present Situation:

Liability for Canned or Perishable Food Distributed Free of Charge

Section 768.136(2), F.S., provides protection from criminal and civil liability to a good faith donor or gleaner of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution. This immunity from criminal penalty or civil damages arising from the condition of the food does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.

Section 768.136(3), F.S., provides the same criminal and civil liability protection for bona fide charitable or nonprofit organizations, or any representatives or volunteers acting on behalf of such organizations or an uncompensated persons acting in a philanthropic manner providing

services similar to those of such an organization, which accept, collect, transport, or distribute any canned or perishable food, apparently fit for human consumption, from a good faith donor or gleaner for free distribution.

Section 768.136(1)(a), F.S., defines the term “donor” to mean:

[A] person, business, organization, or institution which owns, rents, leases, or operates:

1. Any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure, that is maintained and operated as a place where food is regularly prepared, served, or sold for immediate consumption on or in the vicinity of the premises; or to be called for or taken out by customers; or to be delivered to factories, construction camps, airlines, locations where catered events are being held, and other similar locations for consumption at any place;
2. Any public location with vending machines dispensing prepared meals; or
3. Any retail grocery store.

Section 768.136(1)(b), F.S., defines the term “gleaner” to mean “a person who harvests for free distribution an agricultural crop that has been donated by the owner.”

Section 768.136(1)(c), F.S., defines the term “canned food” to mean:

[A]ny food which has been commercially processed and prepared for human consumption and which has been commercially packaged in such a manner as to remain nonperishable without refrigeration for a reasonable length of time.

Section 768.136(1)(d), F.S., defines the term “perishable food” to mean:

[A]ny food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. “Perishable food” includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables, and foods that have been noncommercially packaged or that have been frozen or otherwise require refrigeration to remain nonperishable for a reasonable length of time.

Section 768.136(4), F.S., provide that the provisions of this section apply to the good faith donation of canned or perishable food regardless of whether such food is readily marketable due to appearance, freshness, grade, surplus, or other such considerations.

Section 768.136(5), F.S., specifies that the provisions of this section shall not be construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of food for human consumption. It also provides that the immunity from liability granted by this section shall not be construed to relieve any donor of its duty to comply with any law regulating such donor with respect to health or sanitation.

Regulation of Public Food Service Establishments

The Division of Hotels and Restaurant (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the DBPR, there are over 43,000 licensed public food service establishments.¹

Section 509.013(5), defines a public food service establishment as follows:

- (a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.
- (b) The following are excluded from the definition in paragraph (a):
 1. Any place maintained and operated by a public or private school, college, or university:
 - a. For the use of students and faculty; or
 - b. Temporarily to serve such events as fairs, carnivals, and athletic contests.
 2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - a. For the use of members and associates; or
 - b. Temporarily to serve such events as fairs, carnivals, or athletic contests.
 3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
 4. Any eating place maintained by a hospital, nursing home, sanitarium, assisted living facility, adult day care center, or other similar place that is regulated under s. 381.0072.
 5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
 6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
 7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
 8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
 9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
 10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

¹ For FY 2005-2006, there were 43,216 licensed public food service establishments. *Annual Report, Fiscal Year 2005-2006*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myflorida.com/dbpr/hr/annualreports/ar2005_06.pdf (Last visited April 11, 2007).

III. Effect of Proposed Changes:

The bill provides that this act may be cited as the “Florida Restaurant Lending a Helping Hand Act.”

The bill amends s. 768.136, F.S., to expand the definition of "perishable food" to include foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. It appears that the current definition of “perishable food” would include in the immunity restaurant prepared meals or foods only if they are refrigerated to maintain nonperishable for a reasonable period of time. It is not clear whether non-refrigerated restaurant prepared foods would be subject to the immunity protection. The bill would clarify this uncertainty and permit restaurants or other public food service establishments to donate perishable foods to persons in need.

The bill does not require that the public food service establishments refrigerate or freeze the prepared food in order to maintain the food nonperishable. However, s. 768.136(5), F.S., requires that the donor comply with laws regulating health or sanitation.

The bill has an effective date of July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
