

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 607 Canned or Perishable Food Distributed Free of Charge

SPONSOR(S): Civil Justice Subcommittee; Rogers and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) K-12 Subcommittee	11 Y, 0 N	Beagle	Ahearn
3) Judiciary Committee	18 Y, 0 N	Ward	Havlicak

SUMMARY ANALYSIS

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

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, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under current law, a donor of food apparently fit for human consumption may donate it without liability to a charity.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. There are a number of restrictions in the current statute that must be in place for the protection to apply, including a lack of recklessness or gross negligence, and the good faith of the donor. Public schools are not 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. Pursuant to additions to 42 U.S.C. 1758(l)(1) in 2011, "[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."

Effect of Proposed Changes

The bill adds public schools to the list of defined donors which are 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, 2013.

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:

¹ Section 768.136, F.S.
STORAGE NAME: h0607e.JDC
DATE: 3/28/2013

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

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."² 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.³ 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.⁴

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

On March 6, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a provision which added that a public school may donate food with the same protections and provisions if the school meets its school board standards for food handling and transport and the donation is approved by the school principal. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

² Fla. Jur. 2d., s. 360.

³ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

⁴ 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.