

1989

Session Law 89-035

Florida Senate & House of Representatives

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H 291 GENERAL BILL/1ST ENG by Bloom; Cosgrove; Sindler and others (Similar CS/S 496)

Food Donation/Liability Immunity: provides definition re donation of food to charitable or nonprofit organizations; clarifies applicability; provides additional limitation on immunity. Amends 768.136. Effective Date: 06/01/89.

02/13/89 HOUSE Prefiled
02/15/89 HOUSE Referred to Judiciary
02/17/89 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On subcommittee agenda—Judiciary, 03/08/89, 1:00 pm, 317C
03/09/89 HOUSE Subcommittee Recommendation: Favorable with 1 amendment
04/04/89 HOUSE Introduced, referred to Judiciary -HJ 36; Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C—For ratification of referral to subcommittee; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C
04/06/89 HOUSE Preliminary Committee Action by Judiciary: Favorable with 1 amendment
04/14/89 HOUSE Comm. Report: Favorable with 1 amendment(s) by Judiciary, placed on Calendar -HJ 232
04/25/89 HOUSE Placed on Special Order Calendar; Read second time; Amendment adopted -HJ 270
04/27/89 HOUSE Read third time; Passed as amended; YEAS 112 NAYS 0 -HJ 283
04/28/89 SENATE In Messages
05/05/89 SENATE Received, referred to Judiciary-Civil -SJ 272
05/12/89 SENATE Extension of time granted Committee Judiciary-Civil
05/16/89 SENATE Withdrawn from Judiciary-Civil; Substituted for CS/SB 496; Passed; YEAS 38 NAYS 0 -SJ 372
05/18/89 Ordered enrolled
05/25/89 Signed by Officers and presented to Governor -HJ 657
06/01/89 Approved by Governor; Chapter No. 89-35 -HJ 1123

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: H0291-f.JUD
DATE: July 20, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 291
RELATING TO: Immunity/Food Donors
SPONSOR(S): Bloom, Cosgrove, Sindler
EFFECTIVE DATE: Upon Becoming law
DATE BECAME LAW: June 1, 1989
CHAPTER #: 89-35, Laws of Florida
COMPANION BILL(S): CS/SB 496
OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Under s.768.136, Florida Statutes, general immunity is provided to donors and gleaners who donate food products to charitable institutions for distribution to the needy. A donor or gleaner is immune from criminal penalty or civil damages arising from the condition of the food unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner. The term "gleaner" is defined by the statute to mean a person who harvests an agricultural crop for free distribution. The term "donor" is not defined by the statute.

As a general rule, a person or establishment serving food is held responsible for the quality of the food served to patrons either under the theories of implied warranty, or ordinary negligence. Although the cases on this issue speak in terms of "patrons", there is no specific distinction made between patrons who pay for food service and those who are guests, or otherwise are served without payment. See, e.g., Zabner v. Howard Johnson's Inc., 201 So. 2d 824 (Fla. 1st DCA 1967). Since the statute does not specifically define "donor", the extent to which statutory immunity attaches to restaurants, caterers, food suppliers, food transporters, and other food service establishments is a matter of judicial construction. To date, the statute has not been judicially construed.

B. EFFECT OF PROPOSED CHANGES:

HB 291 amends s.768.136, Florida Statutes, to define the term

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"donor" to include a broad range of persons, businesses, organizations, and institutions in the food service industry. The statute is further amended to include representatives and volunteers of charitable institutions within the specific immunity provided to charities.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 sets forth the definition of donor which specifically includes a broader range of food service establishments. This section also provides for the inclusion of volunteers and representatives of charitable institutions within the immunity provision granted charities. The bill specifically does not relieve any food service establishment from any laws relating to health or sanitation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

This legislation will minimize private actions against food donors; however, to date there are no reported Florida cases

in which a charitable food donation has resulted in civil liability.

2. Direct Private Sector Benefits:

The specific delineation of food donors may reduce the exposure to liability for a broader range of food service establishments.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

None.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

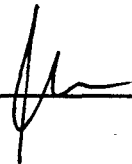
Prepared by:

David K. Sigerson, Jr.



Staff Director:

Richard Hixson



SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/SB 496

DATE: April 19, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Smawley</u>	1. <u>JCI</u>	<u>Fav/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Food Donation/Liability
Immunity

BILL NO. AND SPONSOR:

CS/SB 496 by
Judiciary-Civil and Senator
Stuart

I. SUMMARY:

A. Present Situation:

Section 768.136, F.S., immunizes a good faith donor or gleaner who gives canned or perishable food that is apparently fit for human consumption to a bona fide charitable or nonprofit organization for free distribution. The good faith donor or gleaner is not subject to criminal penalty or civil damages arising from the condition of the food unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.

The section also immunizes the charitable or nonprofit organization which accepts the food. The organization is not subject to criminal penalty or civil damages arising from the condition of the food unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of an agent of the organization.

The section applies to the good faith donation of canned or perishable food not readily marketable due to appearance, freshness, grade, surplus, or other such considerations. The section is not to be construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of food for human consumption.

"Donor" is not defined by the current statute.

"Gleaner" means a person who harvests for free distribution an agricultural crop that has been donated by the owner.

"Canned food" means any 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.

"Perishable food" means any 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.

B. Effect of Proposed Changes:

The bill would define "donor" for the purposes of the section as including, but not limited to, any person who owns or operates:

1. any place where food is regularly prepared, served, or sold for consumption on the premises or elsewhere;
2. any public location with vending machines dispensing prepared meals; or
3. any retail grocery store.

The bill defines "prepared food" and would include such food within the immunity provisions.

The bill would immunize any representative or volunteer acting on behalf of a charitable nonprofit organization when the organization itself is immune. The bill would extend this immunity to include the collection, transportation, and distribution of the food. As such, any bona fide charitable or nonprofit organization, or any representative or volunteer acting on behalf of the organization, who accepted, collected, transported, or distributed any canned, perishable, or prepared food that was apparently fit for human consumption and was obtained from a good faith donor or gleaner, would be immune from criminal penalty or civil damages arising from the condition of the food, unless an injury was caused by the gross negligence, recklessness, or intentional misconduct of an agent of the organization.

The bill would provide that the immunity granted by the section is not to be construed to relieve any donor of its duty to comply with applicable laws regulating health or sanitation.

The bill would extend coverage of the section to the good faith donation of canned, perishable, or prepared food regardless of whether the food was readily marketable.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The bill might increase donations of canned, perishable, and prepared food from some businesses, such as restaurants and caterers, as it would clarify that they have immunity. This would be a benefit to the charitable and nonprofit organizations receiving the donations.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 496

The committee substitute clarifies that "donor" is not to be limited to those persons and organizations listed.

The committee substitute clarifies that "prepared food" would be included within the immunity provisions.

Committee on Judiciary-Civil


Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)