



# Legislative Link

A legislative update provided by the United Way of Florida

## Clawback 2 Moving

During the bull markets of the early and mid 2000s, a number of white collar criminals such as Bernie Madoff and Art Nadel, who were ultimately brought to justice, donated millions of ill-gotten dollars to numerous charities. Receivers have been appointed to recoup or “clawback” the fraudulently obtained funds, so they can be remitted to those who were defrauded.

The Florida Uniform Fraudulent Transfer Act (FUFTA) prevents “clawbacks” from individuals and for-profit corporations by providing them a defense if it is found that there was an exchange of reasonably equivalent value in return for the transfer of funds. However, until last year that defense had not been extended to non-profits because nonprofit services are not considered as "reasonably equivalent value" for the donated funds.

The 2013 Florida Legislature passed [CS/HB 95](#), which amended FUFTA to provide protection against creditors’ clawback actions for charitable contributions received in good faith by a qualified religious or charitable organization.

A charitable contribution made by a natural person is still subject to clawback if received within two years of the commencement of an action under FUFTA, a bankruptcy petition, or an insolvency proceeding, unless the transfer was consistent with the debtor’s practices in making charitable contributions or the transfer did not exceed 15 percent of the debtor’s gross annual income.

The 2013 legislation “fixed” the clawback situation for non-profits in one part of FUFTA (s.726.105(1)(b)), but not in another part (s.726.106(1)).

[SB 856](#) amends s.726.106(1) to expand the protection against a creditor's clawback action for charitable contributions received in good faith by qualified religious or charitable organizations to align with last year’s amendment and with similar provisions in the Federal Bankruptcy Code.

For additional information, please contact  
the United Way of Florida at: (850) 488-8276.

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