

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1480

SPONSOR: Committees on Judiciary, Criminal Justice and Senator Alexander

SUBJECT: Breaking or Injuring Fences

DATE: April 1, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	Matthews	Roberts	JU	Favorable/CS
3.	_____	_____	AG	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a third-degree felony offense consisting of the lesser included offense of breaking or injuring a fence if the fence or part thereof is used to contain animals at the time of the offense.

This bill substantially amends the following section of the Florida Statutes: 810.115.

II. Present Situation:

Some acts of trespass¹ are made punishable as misdemeanor offenses including unauthorized entry on person’s property², removal or mutilation of a property owner’s sign, and breaking and injuring fences. For example, it is a first degree misdemeanor to *willfully* and *maliciously* cut, break down or otherwise damage a fence that belongs or encloses a property owner’s land. *See s. 810.115, F.S.* A person can still be charged with this offense if he or she “caused” the damage other than directly. A property owner may obtain full restitution upon court order for all damages or losses resulting directly or indirectly from the act or commission in accordance with s. 775.089, F.S., relating to court-ordered restitution.

¹ Trespass is the unauthorized or uninvited entry onto property.

² It is a first degree misdemeanor to trespass upon fenced, cultivated or posted land. *See s. 810.09, F.S.* “Posted land” is that land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land. The signs must have a particular size lettering, be posted in a noticeable place, and contain certain information. “Cultivated land” is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard grove, pasture, or trees or is fallow land as part of a crop rotation. “Fenced land” is that land which has been enclosed by a fence of substantial construction which stands at least three feet in height. The fence may be constructed of rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material. If a trespasser willfully opens any fence or gate or otherwise exposes an animal, crops, or other property to waste, destruction, or freedom, it is also a first degree misdemeanor. *See s. 810.09(2)(b), F.S.*

However, other acts of trespass may be punished as enhanced crimes based on additional elements underlying the criminal act:

- armed trespass, s. 810.09(2)(c), F.S.
- trespass on a legally posted construction site, s. 810.09(2)(d), F.S.
- trespass on legally posted commercial horticultural property, s. 810.09(2)(e), F.S.
- trespass on a legally posted agricultural site for testing and research purposes, s. 810.09(2)(f), F.S.
- armed trespass on school property, s. 810.095, F.S. and
- shooting across private land without authorization, s. 810.09(2)(g), F.S.

III. Effect of Proposed Changes:

The bill creates a third degree felony offense consisting of the misdemeanor offense breaking or injuring a fence if the fence broken or injured is a fence or part thereof used to contain animals.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None anticipated. Although the Criminal Justice Impact Conference has not considered the potential fiscal impact of the CS, it is not likely to be significant. The new crime is not given a specific ranking in the Criminal Punishment Code and therefore is not likely to result in a prison sentence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
