

**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 Environmental Preservation and Conservation Committee

BILL: SB 802

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Premises Liability

DATE: January 17, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	<b>Favorable</b>
2.			CA	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill allows private property owners who provide outdoor recreational opportunities on their land to enter into written agreements with the state, as opposed to a formal lease, and still receive the benefit of the limitation of liability.

The bill also provides limitation of liability protection to private landowners who make their land available to specific persons, as opposed to only “the public,” for the purpose of hunting, fishing or wildlife viewing. To limit liability, the landowner must provide notice of the liability limits to the person or persons using the land and must not make a profit from or charge a fee for using the land.

This bill substantially amends s. 375.251 of the Florida Statutes.

**II. Present Situation:**

**Legal Duties for Landowners Towards Persons on Their Land**

In tort law to be entitled to certain remedies, a plaintiff must prove:

- a lawful duty exists,
- the duty was breached, and
- damages were suffered as a result of the breach.

Current tort law in Florida related to landowners’ duty to persons on their land is governed by the status of the person. There are two basic categories of persons on land: invitees and trespassers.

An invitee is a person who was invited to enter the land. Section 768.075(3)(a)1., F.S., defines “invitation” to mean “the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs.” Landowners owe certain duties to invitees and can be sued in tort if an injury is caused by a breach of a duty. The duties owed to most invitees are:

- to keep property in reasonably safe condition;
- to warn of concealed dangers which are known or should be known to the property holder and which the invitee cannot discover through the exercise of due care; and
- to refrain from wanton negligence or willful misconduct.

A trespasser can either be a “discovered trespasser” or an “undiscovered trespasser.” A discovered trespasser is a person who did not have an express or implied invitation and whose actual presence was discovered in the preceding 24 hours before an injury occurred. An undiscovered trespasser is a person whose actual presence was not discovered in the preceding 24 hours before an injury occurred. To avoid liability to an undiscovered trespasser, a property owner must not engage in intentional misconduct that causes the injury. The duty owed to a discovered trespasser is broader and includes:

- refraining from gross negligence or intentional misconduct that causes the injury; and
- warning the trespasser of hidden dangerous conditions.

### **Current Law for Private Landowners or Lessees who Allow the Public on Their Land**

Section 375.251, F.S., provides limited liability protection to private landowners who enter into “lease” agreements with the state to provide outdoor recreational activities on their land or who otherwise provide recreational opportunities to the public. To take advantage of the limited liability protection afforded by statute, the property owner:

- cannot charge for entry to the property or conduct commercial or other activity where profit is derived from public patronage on any part of the property; or
- may lease the property to the state for outdoor recreational purposes.

Outdoor recreational purposes include, but are not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic or scientific sites.

### ***Limitation of Liability for Private Landowners Who Enter Into Leases with the State***

If private landowners enter into leases with the state to provide recreational opportunities on their land, they are provided with limited liability protection. If, however, the written agreements are anything other than a formal lease, the law does not afford them the same protection. For example, the Florida Fish and Wildlife Conservation Commission (FWC) may enter into leases with private landowners for the purpose of facilitating scheduled hunts. The only purpose of the lessor/lessee relationship is to avail the private party of the liability protection provided by s. 375.251, F.S. This arrangement creates legal obligations and rights that exceed what is necessary to accomplish the specific goal of offering hunts to the public.

FWC would like to provide outdoor recreational activities on privately owned lands that would not require the degree of legal control and complexity of a lease. In some instances use or management agreements, contracts for services or easements would be more appropriate arrangements between private landowners and the state.<sup>1</sup> When landowners enter into leases with the state, they give the state a possessory interest in the property (the intent and right to occupy or exercise control over a piece of property). Other types of arrangements, however, transfer fewer rights to the state and do not give the state a possessory interest in the land. For instance, if a landowner grants the state an easement to a property, the state has a limited right to use the property for a specific purpose. The state would only exercise as much control over the property as is necessary to use the easement for the intended purpose. This is a more limited *nonpossessory* interest in the land. According to the FWC, the state would also benefit from alternative types of written arrangements because the parties would not be subject to landlord/tenant law, which creates certain obligations on both the landowner and the state.

### ***Private Landowners Who Allow the Public to Use Their Land for Recreational Activities***

Under current law, private landowners who make their land available to the public for outdoor recreational activities are also afforded limited liability protection. This protection does not apply for individuals or groups of individuals. For example, if landowners allow troops of Boy Scouts on their land but do not want anyone else in the general public to have the same access, they are not afforded any limitation on liability protection.

According to the FWC, Georgia, Alabama, Louisiana and South Carolina all provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes.<sup>2</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 375.251, F.S., to provide limitation of liability protection to private landowners who makes their land available to *any person* (not just the public generally) for the purpose of hunting, fishing or wildlife viewing. For landowners to benefit from the limitation of liability protection, they must provide notice to the person or persons using the land of their liability limits, and make no profit or charge no fee for using the land.

The bill would allow private property owners to execute written agreements with state agencies to provide outdoor recreational opportunities to any person and still maintain limitation of liability protection. The change will enable the state to execute written agreements to expand outdoor recreational activities without taking a leasehold interest in the property where the activities are conducted. This may simplify the legal arrangement and provide better protection for a private property owner should a lawsuit arise.

**Section 2** provides an effective date of July 1, 2012.

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<sup>1</sup> An easement is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose." Black's Law Dictionary (9th ed. 2009).

<sup>2</sup> Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Oct. 6, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues

Article 1, section 21 of the Florida Constitution addresses access to the courts. It states, “[t]he courts shall be open to every person for redress of any injury.” Tort limitations may implicate judicial review under this section of the Florida Constitution; however, the Florida Supreme Court has held that the current statute does not deny access to courts.<sup>3</sup>

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

There is the potential for a positive fiscal impact on private sector landowners in the form of reduced litigation and liability. Conversely, the bill will limit legal remedies available to a person who is injured on private land.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>3</sup> See *Abdin v. Fischer*, 374 So. 2d 1379 (1979) (holding that s. 375.251, F.S., limiting liability of owners and lessees who provide the public with a park area for outdoor recreational purposes, is a reasonable exercise of legislative power and does not violate Art. 1, s. 21, FLA. CONST., regarding access to courts).

**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.

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

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