

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1135 Limitation of Civil Liability for Farmers

**SPONSOR(S):** Rader and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Kaiser	Blalock
3) Judiciary Committee			

### SUMMARY ANALYSIS

Current law provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields *after harvest* is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence or intentional act of the farmer, or from known dangerous conditions not disclosed by the farmer.

The bill removes statutory language that limits the exemption from liability to *post-harvest* removal of produce or crops, and removes additional statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer. The effect is that any farmer who, without receiving compensation, allows persons to enter his or her land *at any time* for the purpose of removing produce or crops is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop, even if the injury or death results from known dangerous conditions not disclosed by the farmer. Consistent with current law, this exemption will not apply if injury or death directly results from the gross negligence or intentional act of the farmer.

The bill does not appear to have a fiscal impact on the state or local governments. The bill has a potentially positive fiscal impact on farmers who allow persons to enter their land, at any time, for the purpose of removing produce or crops by exempting them from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop even if the injury or death results from known dangerous conditions not disclosed by the farmer.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### *Landowner Liability*

A plaintiff who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff and the plaintiff suffered damages as a result of the landowner's breach.<sup>1</sup> A landowner's duty to persons on his or her land is governed by the status of the injured person.

An "invitee" is a person who was invited to enter the land.<sup>2</sup> Florida law defines "invitation" to mean "that 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."<sup>3</sup> The duties owed to most invitees are the duty to keep property in reasonably safe condition; the duty 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, the duty to refrain from wanton negligence or willful misconduct.<sup>4</sup>

###### *Farms*

Persons invited to pick crops on another's land are considered "invitees," according to the above definition. In the absence of contract, the farmer<sup>5</sup> owning and working the land has a duty of care to parties who are invited to u-pick farms, or who enter upon the land for cooperative farming, or other harvesting reasons.

Current law<sup>6</sup> provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields *after harvest* is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence or intentional act of the farmer, or from known dangerous conditions not disclosed by the farmer.<sup>7</sup>

##### **Effect of Proposed Changes**

The bill removes current statutory language that limits the exemption from liability to *post-harvest* removal of produce or crops, and removes current statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer. The effect is that any farmer who, without receiving compensation, allows persons to enter his or her land *at any time* for the purpose of removing produce or crops is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop, even if the injury or death results from known dangerous conditions not disclosed by the farmer. Consistent with current law, this exemption will not apply if injury or death directly results from the gross negligence or intentional act of the farmer.<sup>8</sup>

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<sup>1</sup> 74 Am.Jur 2d Torts s. 7 (2013).

<sup>2</sup> *Post v. Lunney*, 261 So.2d 147-48 (Fla. 1972).

<sup>3</sup> Section 768.075(3)(a)1., F.S.

<sup>4</sup> See, e.g., *Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 205 (Fla. 5th DCA 2012).

<sup>5</sup> "[T]he term 'farmer' means a person who is engaging in the growing or producing of farm produce, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land . . ." Section. 768.137(1), F.S.

<sup>6</sup> Section 768.137, F.S.

<sup>7</sup> Section 768.137(3), F.S.

<sup>8</sup> *Id.*

**B. SECTION DIRECTORY:**

Section 1: Amends s. 768.137, F.S., limiting civil liability for certain farmers.

Section 2: Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None
2. Expenditures: None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None
2. Expenditures: None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill has a potentially positive fiscal impact on farmers who, without receiving compensation, allow persons to enter their land, at any time, for the purpose of removing produce or crops by exempting them from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop.

**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:**

The bill provides that a farmer who, without receiving compensation, allows a person or group of people onto his property to harvest crops at any time is exempt from civil liability arising from any injury or death resulting from the condition of the land or crop, unless the farmer acts with gross negligence or commits an intentional act. This provision in the bill could possibly be an unconstitutional violation of Article I, Section 21 of the Florida Constitution.

Article I, s. 21, Fla. Stat. provides the following:

SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.<sup>9</sup> In order to make a 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.<sup>10</sup> A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.<sup>11</sup> If the legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation.

The Florida Supreme Court, in the case *Kluger v. White*, 281 So.2d 1 (Fla. 1973), held that, "where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown". *Id.* at 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 24, 2014, the Agriculture and Natural Resources (ANR) Subcommittee reported HB 1135 favorably as a committee substitute. The ANR subcommittee adopted one amendment to HB 1135. The amendment removes current statutory language providing that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer. This analysis is drafted to the committee substitute as passed by the ANR subcommittee.

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<sup>9</sup> [DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach](#), 819 So. 2d 971 (Fla. Dist. Ct. App. 4th Dist. 2002).

<sup>10</sup> [Yachting Promotions, Inc. v. Broward Yachts, Inc.](#), 792 So. 2d 660 (Fla. Dist. Ct. App. 4th Dist. 2001); [Strohm v. Hertz Corporation/Hertz Claim Management](#), 685 So. 2d 37 (Fla. Dist. Ct. App. 1st Dist. 1996).

<sup>11</sup> [Preferred Medical Plan, Inc. v. Ramos](#), 742 So. 2d 322 (Fla. Dist. Ct. App. 3d Dist. 1999); [Swain v. Curry](#), 595 So. 2d 168 (Fla. Dist. Ct. App. 1st Dist. 1992).