

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Judiciary Committee; Agriculture & Natural Resources Subcommittee; Rader and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/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	19 Y, 0 N, As CS	Ward	Havlicak

### 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 provides that the exemption from civil liability does not apply if injury or death results from known dangerous conditions not disclosed by the farmer, unless the dangerous condition is obvious. 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, unless the injury or death results from known dangerous conditions, which are not obvious and are not disclosed by the farmer. Further, 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 by relieving them from civil liability under the circumstances stated above.

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 glean excess produce, 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, unless the injury or death results from known dangerous conditions which is not obvious and which is not disclosed by the farmer. Further, the 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, 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., Definition; limiting civil liability for certain farmers; exception.

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

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**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:

None.

**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.

On April 11, 2014, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the exemption from liability does not extend to failure of the farmer to disclose a known dangerous condition, which is not obvious to a person entering upon the farmer's land.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee subcommittee.