

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 Committee on Agriculture

BILL: CS/SB 1138

INTRODUCER: Agriculture Committee and Senator Evers

SUBJECT: Civil Liability of Farmers

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1138 exempts a farmer from civil liability if he gratuitously allows a person to come onto his land to remove farm produce or crops at any time. Presently the exemption applies only when that activity takes place after harvesting. It also removes the requirement that the farmer must disclose known dangerous conditions to be entitled to this exemption.

II. Present Situation:

Gleaning is defined as the gathering of grain after the reapers, or of grain left ungathered by reapers.¹ In everyday terms, gleaning is the practice of going over a field or area that has just been harvested and gather by hand any usable parts of the crop that remain. It raises liability questions, especially with respect to the quality of the food gathered and donated and any harmful effects that may come from donated foods. Prior to 1990, every state and the District of Columbia had some form of statutory protection from liability for charitable food donation and distribution. Because of the inconsistency of state laws, Congress passed federal legislation providing uniform protection to gleaners, citizens, businesses, and nonprofit organizations that act in good faith to donate, recover, and distribute excess food.² Even though the federal law takes precedence over individual states' laws on the subject, it does not supersede state or local health regulations and does not limit liability in the case of injury or death due to gross neglect or intentional misconduct.

¹ See <http://thelawdictionary.org/letter/g/page/20>. (last visited Mar 12, 2014).

² Pub. Law No. 104-210, H.R. 2428, 104th Cong. (Oct. 1, 1996).

While the federal law was aimed at gleaning where the food was ultimately distributed to the needy, Florida passed a more protective law for farmers by exempting them from civil liability if they gratuitously allow a person to enter onto their land to remove any farm produce or crops remaining in the fields after harvesting unless injury or death resulted from gross negligence or intentional act of the farmer.³ Some farmers have indicated that there are circumstances where they would allow gleaning before harvesting but are reluctant to do so because of a concern about exposure to legal liability.⁴

Prior to 1992 there was no specific statutory law governing the liability of farmers who gratuitously allow others to come onto their land to gather crops that remain after harvest. The legislature essentially imposed the common law standard of care owed to a licensee or invitee by passing a bill that said the exemption from civil liability would not apply if injury or death resulted from the gross negligence, intention act, or from known dangerous conditions not disclosed by the farmer.⁵ It has long been the case that a landowner has a duty to exercise reasonable care for the protection of invitees. This duty is broken down into two specific duties: (1) to use reasonable care in maintaining the property in a reasonably safe condition; and (2) to warn of dangers of which the owner knew, or should have known, and which are unknown to the invitee and cannot be discovered through the use of reasonable care.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 768.137, F.S., to exempt a farmer from civil liability if he gratuitously allows a person to come onto his land to remove farm produce or crops. It deletes language that requires the farmer to disclose known dangerous conditions to be entitled to this exemption.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ Chapter 92-151, L.O.F.

⁴ Telephone conversation with Adam Basford, Director of State Legislative Affairs, Florida Farm Bureau (Mar. 11, 2014).

⁵ Chapter 92-85, s. 1, and ch. 92-151, s. 3, L.O.F.

⁶ Benjamin Jiled, Attorney, *The "Open and Obvious" Defense and Summary Judgment in Premises Liability Claims*, Trial Advocate Quarterly (25 No. 4, Fall 2006); *Hall v. Holland*, 47 So. 2d 889 (Fla. 1950); and *Hickory House v. Brown*, 77 So. 2d 249 (Fla 1955).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The exemption from civil liability for a farmer who allows a person to enter onto his land to glean produce or crops has been expanded to include both before and after harvesting. It also shifts the cost of damages from injury or death of an invitee from the farmer or his insurer to the injured invitee or his insurer in circumstances where the farmer did not disclose known dangerous conditions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provisions of the bill removing the requirement to warn invitees of known dangerous conditions are in conflict with established case law, and therefore, may make judicial resolution necessary.

VIII. Statutes Affected:

This bill substantially amends section 768.137 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Agriculture on March 17, 2014:**

The committee substitute removes the requirement that the farmer must disclose known dangerous conditions to be exempt from civil liability for injury to invitees who come onto his land to remove farm produce or crops.

B. Amendments:

None.