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 Judiciary

BILL:	CS/CS/SB 1138
INTRODUCER:	Judiciary Committee; Agriculture Committee and Senator Evers
SUBJECT:	Civil Liability of Farmers
DATE:	April 2, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Becker	AG	**Fav/CS**
2.	Davis	Cibula	JU	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1138 expands and clarifies a farmer's protection from civil liability from negligence actions by a person who, without compensation, enters onto the farmer's land to remove farm produce or crops.

Under existing law, if a farmer allows a person without charge onto a farm to harvest crops or produce leftover after the farm is harvested, the farmer is not liable for damages caused by the condition of the crops or produce or the condition of the land. Under the bill, a farmer may allow a person to harvest crops or produce at any time without being liable for the condition of the crops or produce or the condition of the land.

Under existing law, a farmer may be liable for damages caused by dangerous conditions not disclosed by the farmer to a person who is allowed to harvest leftover crops or produce. Under the bill, the farmer is liable for those damages that result from the failure of the farmer to warn of a dangerous condition of which the farmer has "actual knowledge" unless the dangerous condition would be obvious to a person entering upon the farmer's land. The farmer, however, remains liable for injury or death directly resulting from the farmer's gross negligence or intentional acts.

II. Present Situation:

Gleaning

Gleaning is the process of gathering leftover crops from fields after commercial harvesters or reapers complete their work.[1] Gleaning was common in earlier civilizations as a means of providing for widows and the poor who had no harvests. Today, gleaning is often practiced by humanitarian organizations as a method of providing food for impoverished people.[2] However, the opening up of someone's land for gleaning may result in injury, damages, and litigation.

Premises Liability

A person who is injured on someone else's property may seek damages for tort liability if the person in control of the property breached a duty of care owed to the injured person.[3] People who enter the property of another person are categorized as invitees, licensees, or trespassers, and that status is determined by the relationship between the parties.[4]

Florida law has generally defined an invitee as a person "who entered the premises of another for purposes connected with the business of the owner or occupier."[5] The two duties owed by the landowner to the invitee are the duties to:

- Use reasonable care in keeping the property in a reasonably safe condition; and
- Warn of concealed conditions "which are known or should be known to the landowner"[6] but are not known to the invitee and cannot be discovered by the invitee exercising due care.[7]

Legislative History

Before 1992 there was no specific statute governing or limiting the liability of farmers who allowed others to enter their land to gather crops that remained after harvest. However, in 1992, Florida passed a protective law[8] for farmers[9] that exempts them from civil liability if they gratuitously allow a person to enter onto their land to remove any farm produce or crops that remain in the fields after harvesting. The farmer is exempt from civil liability due to any injury or death that results from the nature or condition of the land or the nature, age, or condition of the farm produce or crop.[10] The exemption does not apply if an injury or death directly results

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[1] See www.merriam-webster.com/dictionary/glean.
[2] The Palm Beach County Legislative Affairs Department estimates that millions of pounds of produce, representing different commodities, are plowed under each year in Palm Beach County.
[3] 74 AM. JUR. 2d *Torts* s. 7 (2014).
[4] 41 FLA. JUR. 2d *Premises Liability* s. 4 (2014).
[5] Thomas D. Sawaya, FLORIDA PERSONAL INJURY LAW AND PRACTICE WITH WRONGFUL DEATH ACTIONS, s. 10:6 (2014 edition).
[6] *Id*.
[7] *Id*.
[8] Chapter 92-85, s. 1, Laws of Fla.
[9] "Farmer" is defined as "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 or a person designated in writing by the owner or lessee to act as her or his agent." Section 768.137(1), F.S.
[10] Section 768.137(2), F.S.

from the gross negligence, intentional act, or known dangerous conditions that are not disclosed by the farmer.[11]

Some farmers have indicated that there are circumstances under which they would allow gleaning before harvesting but are reluctant to do so because of their concern about exposure to legal liability.[12]

III. Effect of Proposed Changes:

This bill expands and clarifies a farmer's protection from civil liability from negligence actions by a person who, without compensation, enters onto the farmer's land to remove farm produce or crops.

Under existing law, if a farmer allows a person without charge onto a farm to harvest crops or produce leftover after the farm is harvested, the farmer is not liable for damages caused by the condition of the crops or produce or the condition of the land. Under the bill, a farmer may allow a person to harvest crops or produce at any time without being liable for the condition of the crops or produce or the condition of the land.

Under existing law, a farmer may be liable for damages caused by dangerous conditions not disclosed by the farmer to a person who is allowed to harvest leftover crops or produce. Under the bill, the farmer is liable for those damages that result from the failure of the farmer to warn of a dangerous condition of which the farmer has "actual knowledge" unless the dangerous condition would be obvious to a person entering upon the farmer's land. The farmer, however, remains liable for injury or death directly resulting from the farmer's gross negligence or intentional acts.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[11] Section 768.137(3), F.S.

[12] Telephone conversation with Adam Basford, Director of State Legislative Affairs, Florida Farm Bureau (March 27, 2014) and conversation with Todd Bonlarron, Palm Beach County Legislative Affairs Department (March 27, 2014).

D. Other Constitutional Issues:

This bill grants farmers exemptions from liability. Exemptions from liability, however, may violate Article I, section 21 of the State Constitution which guarantees access to the courts and provides that "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The access to courts provision limits the power of the Legislature to abolish causes of action.

In interpreting the access to courts provision, the Florida Supreme Court held in *Kluger v. White*[13] 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 the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., 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.

Actions based on premises liability or an implied warranty that food must be reasonably fit for human consumption predate the adoption of the Constitution of 1968. However, committee staff have not found a specific case or statute predating the current Constitution which expressly found that a gleaner could bring a premises liability action against a farmer or an action based on the condition of crops or produce gleaned. Accordingly, whether the bill violates Article I, section 21 of the State Constitution is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Humanitarian organizations that pick up produce and crops to provide food to the needy might see an increase in the willingness of farmers to allow them to gather more produce. This could result in food banks, charitable organizations, and ministries receiving more food for their clients.

Persons seeking redress as discussed above under "Other Constitutional Issues" might be adversely affected by their inability to pursue litigation and receive monetary compensation for damages.

[13] *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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/CS by Judiciary on April 1, 2014:
The CS/CS differs substantially from the previous version regarding the farmer's civil liability for damages arising from known dangerous conditions not disclosed by the farmer. The CS/CS states that the farmer is liable for damages that result from the failure of the farmer to warn of a dangerous condition of which the farmer has actual knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land. The previous version deleted the farmer's duty to disclose known dangerous conditions to receive an exemption for civil liability for damages resulting from a dangerous condition.

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.