

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 137 Civil Liability of Farmers

**SPONSOR(S):** Rader

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
2) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Hastings	Blalock
3) Judiciary Committee			

### SUMMARY ANALYSIS

Removing produce or crops remaining in the fields after harvest, generally by hand, is commonly referred to as "gleaning."

A farmer who allows gleaning after harvest is exempt from some civil liability arising from any injury or death resulting from the condition of the land, or from the condition of the produce or crop harvested. The exemption from civil liability does not apply if injury or death results from gross negligence, intentional act, or a known dangerous condition not disclosed by the farmer.

The bill extends the current exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time. The bill also provides that the exemption from civil liability does not apply if injury or death directly results from 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 bill does not appear to have a fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### *Landowner Liability in General*

A person 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, the plaintiff suffered damages as a result of the landowner's breach, and the damages were actually and proximately caused by the landowner's breach.<sup>1</sup> A landowner's duty of care 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 and the duty to warn of concealed dangers that are known or should be known to the property holder and that the invitee cannot discover through the exercise of due care.<sup>4</sup>

##### *Farms and Gleaning*

The historical use of the term "gleaning" refers to the practice of allowing persons to pick up crops in the field after the normal harvest. Most of the food available for gleaning is food that was missed by mechanical harvesting implements and thus only available for harvest by hand. Gleaning by volunteers on behalf of local charities is a time-honored tradition in farming communities.

##### *Farm Liability in Statute*

Current law in s. 768.137, F.S., 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, intentional act, or from a known dangerous condition not disclosed by the farmer.

The exemption from civil liability does not apply to a farmer who allows a gleaning at any time other than after harvest. The liability standard for such farmer would be that described above under *Landowner Liability in General*.

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

The bill amends s. 768.137, F.S., to:

- Extend the exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time.
- Provide that the exemption from civil liability does not apply if injury or death directly results 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.

---

<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> s. 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).

- Make grammatical and style improvements.

**B. SECTION DIRECTORY:**

Section 1 amends s. 768.137, F.S., regarding the limitation for civil liability for certain farmers.

Section 2 provides an effective date of July 1, 2015.

**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. According to the Department of Agriculture and Consumer Services, the bill will not have an economic impact on the department.<sup>5</sup>

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

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

Insurance and litigation costs paid by farmers who allow gratuitous gleaning of crops at any time of the year may be reduced as a result of the expanded exemption from civil liability. In addition, farmers may be more likely to allow gratuitous gleaning of crops as a result of the extension.

**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.

---

<sup>5</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 137 (Jan. 12, 2015).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.