

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 137

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Rader and others

113 Y's

0 N's

**COMPANION
BILLS:** SB 158

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 137 passed the House on April 22, 2015, as SB 158. The bill provides extended liability protection for farmers.

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 was approved by the Governor on May 21, 2015, ch. 2015-38, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ 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.² 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."³ 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.⁴

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

Section 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.

¹ 74 Am. Jur. 2d Torts s. 7 (2013).

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

³ s. 768.075(3)(a)1., F.S.

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

- Make grammatical and style improvements.

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.⁵

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.

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