

**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.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 158

INTRODUCER: Senators Evers and Latvala

SUBJECT: Civil Liability of Farmers

DATE: February 17, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhvein</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____

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**I. Summary:**

SB 158 expands existing law which affords farmers an exemption from civil liability from injury or death of person entering a farm, without charge, in order to remove farm produce or crops remaining in the fields *after harvest*. The bill exempts a farmer from civil liability if he gratuitously allows a person to remove farm produce or crops, *at any time*.

The bill further provides that farmers having actual knowledge, but who fail to warn of a dangerous condition, will be liable for damages unless such 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.<sup>1</sup> Gleaning was common in earlier civilizations as a means of providing for widows and the poor. Today, gleaning is often practiced by humanitarian organizations as a method of providing food for impoverished people.<sup>2</sup> However, the opening up of someone's land for gleaning may result in injury, damages, and litigation, causing some farmers to be reluctant to allow gleaning.

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<sup>1</sup> See [www.merriam-webstr.com/dictionary/glean](http://www.merriam-webstr.com/dictionary/glean).

<sup>2</sup> 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.

## 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.<sup>3</sup> 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.<sup>4</sup>

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."<sup>5</sup> 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"<sup>6</sup> but are not known to the invitee and cannot be discovered by the invitee exercising due care.<sup>7</sup>

## 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<sup>8</sup> for farmers<sup>9</sup> 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 conditions of the farm produce or crop.<sup>10</sup> The exemption does not apply if an injury or death directly results from the gross negligence, intentional act, or known dangerous conditions that are not disclosed by the farmer.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 768.137, F.S., to expand and clarify a farmer's protection from civil liability from negligence actions by a person who, without compensation, enters onto a farmer's land to remove farm produce or crops. 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.

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<sup>3</sup> 74 AM. JUR. 2d Torts s. 7 (2014).

<sup>4</sup> 41 FLA. JUR. 2d Premises Liability s. 4 (2014).

<sup>5</sup> Thomas D. Sawaya, FLORIDA PERSONAL INJURY LAW AND PRACTICE WITH WRONGFUL DEATH ACTIONS, s. 10:6(2014 edition).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Chapter 92-85, s. 1, Laws of Fla.

<sup>9</sup> "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.

<sup>10</sup> Section 768.137(2), F.S.

<sup>11</sup> Section 768.137(3), F.S.

**Section 2** provides that this act shall take effect July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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. Persons seeking redress might be adversely affected by their inability to pursue litigation and receive monetary compensation for damages.

C. Government Sector Impact:

The Office of the State Courts Administrator has indicated that permitting removal of produce and crops at times other than after harvest will not alone have any substantial impact on the courts. The provision, however, which requires *actual knowledge* of undisclosed dangerous conditions not obvious to a person entering a farm will restrict instances in which farmers may otherwise be found civilly liable. Proposed changes will have little impact on court workload, though civil matters requiring proof of actual knowledge will entail additional judicial time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 768.137 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.