

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 Rules

BILL: CS/HB 347

INTRODUCER: Judiciary Committee and Representative Truenow

SUBJECT: Exemptions from Products Liability Actions

DATE: February 23, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Twogood	RC	Favorable

I. Summary:

CS/HB 347 provides that an agricultural employer, or a distributor, dealer, or applicator of pesticides, may not be sued in a product liability action related to pesticides unless such persons are at fault for harm resulting from a defective pesticide product. The type of conduct that would make an employer, distributor, dealer, or applicator of pesticides at fault for a defective pesticide product is limited to:

- Exercising substantial control over the aspect of the design, testing, manufacture, or labeling that led to the personal injury;
- Altering or modifying the product and the alteration or modification was a substantial factor in causing the injury;
- Acting inconsistently with the manufacturer's product label and such action caused the injury.

However, an employer, distributor, dealer, or applicator will remain subject to liability without fault for products whose manufacturer is not subject to the jurisdiction of the courts of this state. Manufacturers will also remain liable for any defects in a pesticide product.

A product liability action is a type of strict liability action in which every party in the chain of distribution of a product can be held liable for harm caused by defects in the product regardless of the party's fault.

The bill is effective July 1, 2024.

II. Present Situation:

Florida Pesticide Law

The sale and use of pesticides is governed by the Florida Pesticide Law.¹ The purpose of the law is to regulate the distribution, sale, and use of pesticides and to protect people and the

¹ Part I of ch. 487, F.S.

environment from the adverse effects of pesticides. Pesticides are “inherently dangerous” and safety gains related to pesticides are achieved not through modifying a pesticide’s design, but by improving the warnings and instructions contained on its label.² The law does not apply to mosquito control or to pest control services.³

Product Liability Law

Product liability refers to a civil tort action against a manufacturer or retailer of goods that cause damages. Product liability law is primarily set forth in the common law, not statutory law. There are two forms of product liability--negligence and strict liability.

Product liability negligence is the failure to use reasonable care, which is the care that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would use under like circumstances. Negligence is doing something that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would not do under like circumstances or failing to do something that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would do under like circumstances.⁴ Reasonable care requires that a designer, manufacturer, seller, importer, distributor, or supplier give appropriate warnings about particular risks of the product which the designer, manufacturer, seller, importer, distributor, or supplier knew or should have known are involved in the reasonably foreseeable use of the product.⁵

“A strict product liability action requires the plaintiff to prove that (1) a product (2) produced by a manufacturer (3) was defective or created an unreasonably dangerous condition (4) that proximately caused (5) injury.”⁶ A product is defective because of a manufacturing defect if it is in a condition unreasonably dangerous to the user or to a person in the vicinity of the product and the product is expected to and does reach the user or consumer without substantial change affecting that condition. A product is unreasonably dangerous because of a manufacturing defect if it is different from its intended design and fails to perform as safely as the intended design would have performed.

A product is defective because of a design defect if it is in a condition unreasonably dangerous to the user or to a person in the vicinity of the product and the product is expected to and does reach the user without substantial change affecting that condition. A product is unreasonably dangerous because of its design if the product fails to perform as safely as an ordinary consumer would expect when used as intended or when used in a manner reasonably foreseeable by the manufacturer, or if the risk of danger in the design outweighs the benefits.⁷ A product is defective when the foreseeable risks of harm from the product could have been reduced or

² *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 450 (2005).

³ Section 487.012, F.S.

⁴ Fla.Std. Jury Instruction 403.9.

⁵ Fla.Std. Jury Instruction 403.10.

⁶ *Hernandez v. Altec Env't Prod., LLC*, 903 F. Supp. 2d 1350, 1357 (S.D. Fla. 2012); *Tran v. Toyota Motor Corp.*, 420 F.3d 1310, 1312 (11th Cir. 2005); *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1257 (11th Cir. 2002).

⁷ Fla.Std. Jury Instruction 403.7.

avoided by providing reasonable instructions or warnings, and the failure to provide those instructions or warnings makes the product unreasonably dangerous.⁸

In most instances the manufacturer of the item that caused the injury is liable for its negligent design and/or negligent manufacturing. However, the wholesaler and/or retailer may also be found liable, and thus is commonly named as a defendant in the action. “One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to [strict] liability for harm to persons or property caused by the defect.”⁹ The wholesaler or retailer need not have taken any action that would be considered negligent, the mere act of selling the product leads to strict liability.

Jurisdiction

When a court has jurisdiction over a person or entity, the court has authority to enter orders and judgments that are binding and enforceable. Clearly, a Florida court has jurisdiction over Florida citizens and Florida-based entities. Florida law asserts jurisdiction over a broad range of individuals and entities, providing that commission of any of these acts relevant to the bill submits a person to the jurisdiction of the state:

- Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- Committing a tortious act within this state.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either: a. The defendant was engaged in solicitation or service activities within this state; or b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.¹⁰

The state’s assertion of jurisdiction exposes defendants to the state’s coercive power, and is therefore limited by the Fourteenth Amendment’s Due Process Clause.¹¹ Court opinions have differentiated between general or all-purpose jurisdiction, and specific or case-linked jurisdiction.¹² A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the state are so “continuous and systematic” as to render them essentially at home in the forum state.¹³ Specific jurisdiction, on the other hand, depends on an “affiliatio[n] between the forum and the underlying controversy,” principally, activity or an occurrence that takes place in the

⁸ Fla.Std. Jury Instruction 403.8.

⁹ Restatement (Third) of Torts: Prod. Liab. § 1 (1998). See also *West v. Caterpillar Tractor Co.*, 336 So.2d 80, 84 (Fla. 1976).

¹⁰ Section 48.193(1)(a), F.S.

¹¹ *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915 (2011); *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945) (“assertion of jurisdiction over out-of-state corporation must comply with traditional notions of fair play and substantial justice”).

¹² *Goodyear; Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 414, nn. 8, 9 (1984).

¹³ See *International Shoe*, 326 U. S., at 317.

forum state and is therefore subject to the state's regulation.¹⁴ In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction."¹⁵

III. Effect of Proposed Changes:

The bill provides that a products liability action related to pesticides, including a failure to warn, may not be brought or maintained against any agricultural employer¹⁶, or any distributor¹⁷, dealer¹⁸, or applicator¹⁹ of pesticides, unless:

- The employer, distributor, dealer, or applicator exercised substantial control over the aspect of the design, testing, manufacture, or labeling of the product that caused the alleged harm for which recovery of damages is sought;
- The employer, distributor, dealer, or applicator altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recovery of damages is sought;
- The employer, distributor, dealer, or applicator handled, used, or applied the product in a manner inconsistent with the product label and that such action or failure to warn caused the alleged harm for which recovery of damages is sought; or
- The manufacturer of the product that caused the alleged harm for which recovery of damages is sought is not subject to the jurisdiction of this state.

In effect, the bill provides that, as to pesticides, an employer, wholesaler or retailer cannot be sued under a strict liability theory of product liability law, but only under a negligence theory. However, this does not apply, and an employer, wholesaler or retailer may be liable in strict liability, if the manufacturer is not subject to the jurisdiction of this state. This bill does not impact the employer's tort immunity under the worker's compensation law.²⁰

The bill is effective July 1, 2024.

¹⁴ *Goodyear; von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) see Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEXAS L. REV. 721, 782 (1988).

¹⁵ *Id.*

¹⁶ An "agricultural employer" is defined by s. 487.2031(1), F.S., as "any person who hires or contracts for the services of workers to perform activities related to the production of agricultural plants or any person who is an owner of, or responsible for, the management or condition of an agricultural establishment that uses such workers."

¹⁷ A "distributor" is defined by s. 487.021(24), F.S., as "any person who hires or contracts for the services of workers to perform activities related to the production of agricultural plants or any person who is an owner of, or responsible for, the management or condition of an agricultural establishment that uses such workers. offers for sale, holds for sale, sells, barter, or supplies pesticides in this state." Section 487.021(24), F.S.

¹⁸ A "dealer" is defined by s. 487.021(17), F.S., as "any person, other than the manufacturer or distributor, who offers for sale, sells, barter, or otherwise supplies pesticides to the ultimate user or consumer."

¹⁹ The term "applicator" in ch. 487, F.S., is widely used but not specifically defined. It appears to apply to a number of persons licensed to apply pesticides, specifically one of the following as the context requires: "certified applicator," s. 487.021(14), F.S.; "commercial applicator," s. 487.021(16); "licensed applicator," s. 487.021(41), F.S.; "private applicator," s. 487.021(52), F.S.; "public applicator," s. 487.021(55), F.S.; or "product specific applicator," s. 487.021(56), F.S.

²⁰ Section 440.11, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may lower liability costs and expenses of retailers and wholesalers of pesticides who do not modify the products prior to retail sale, and may correspondingly increase liability costs and expenses of the manufacturers of pesticides. This may impact injured parties to the extent that responsibility for payment of damages may be limited to parties who, in some circumstances, may be less able to satisfy a judgment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 487.081 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
