

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 347 Exemptions from Products Liability Actions

**SPONSOR(S):** Civil Justice Subcommittee, Truenow

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 5 N	Mawn	Jones
2) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Courts System is composed of the Supreme Court, six district courts of appeal, 20 circuit courts, and 67 county courts. Florida law provides the mechanisms by which a person becomes subject to the jurisdiction of such courts, which include:

- 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 tort 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:
  - The defendant was engaged in solicitation or service activities within this state; or
  - 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.

A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the Florida Department of Agriculture ("Department"), by rule, declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The Florida Pesticide Law, set out in Part I of Ch. 487, F.S. and enforced by the Department, regulates the distribution, sale, and use of pesticides in this state to protect people and the environment from the adverse effects of pesticides. Such regulations include pesticide registration requirements, a list of prohibited activities, and licensing and other requirements for various persons involved in pesticide manufacturing, distribution, sale, or application. Such persons are also generally subject to suit in a products liability action, meaning a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product.

HB 347 amends s. 487.081, F.S., to provide that a products liability action, including an action for failure to warn, may not be brought or maintained against any pesticide distributor, dealer, or applicator unless:

- Such person 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;
- Such person 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;
- Such person 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 Florida courts.

The bill may have an indeterminate fiscal impact on state and local governments. The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0347a.CJS

DATE: 2/1/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Florida Courts System

The Florida Courts System is composed of the Supreme Court, six district courts of appeal, 20 circuit courts, and 67 county courts.<sup>1</sup> Florida law provides the mechanisms by which a person becomes subject to the jurisdiction of such courts. Specifically, s. 48.193, F.S., provides that a person, whether or not a citizen or resident of Florida, who personally or through an agent does any of the acts enumerated below thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the state courts for any cause of action arising from any of the following acts:

- 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 tort<sup>2</sup> within this state.
- Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- Contracting to insure a person, property, or risk located within this state at the time of contracting.
- With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not.
- 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:
  - The defendant was engaged in solicitation or service activities within this state; or
  - 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.
- With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
- Entering into a contract containing provisions subjecting the parties to the contract to the jurisdiction of this state.

##### Products Liability

A “products liability action” is a civil action based upon a theory of strict liability,<sup>3</sup> negligence,<sup>4</sup> breach of warranty,<sup>5</sup> nuisance,<sup>6</sup> or similar theories for damages caused by the manufacture, construction, design,

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<sup>1</sup> Office of the State Courts Administrator, *Florida Courts*, <https://www.flcourts.gov/Florida-Courts> (last visited Feb. 1, 2024).

<sup>2</sup> A tort is a wrong committed by one person against another for which the law provides a civil remedy. Torts may be intentional, such as battery, or unintentional, such as negligence. Legal Information Institute, *Tort*, <https://www.law.cornell.edu/wex/tort> (last visited Feb. 1, 2024).

<sup>3</sup> “Strict liability” exists when a defendant is liable for committing an action, regardless of what his or her intent or mental state was when committing the action. In the products liability context, strict liability applies when a defective product for which an appropriate defendant holds responsibility causes injury to an appropriate plaintiff. Legal Information Institute, *Strict Liability*, [https://www.law.cornell.edu/wex/strict\\_liability](https://www.law.cornell.edu/wex/strict_liability) (last visited Feb. 1, 2024).

<sup>4</sup> “Negligence” is the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. The elements required to prove negligence are duty, breach, causation, and damages. Legal Information Institute, *Negligence*, <https://www.law.cornell.edu/wex/negligence> (last visited Feb. 1, 2024).

formulation, installation, preparation, or assembly of a product or the failure to warn that the product is potentially dangerous.<sup>7</sup> However, it is the substance of an action, not the conclusory terms used by a party, that determines whether an action is a products liability action.<sup>8</sup>

Products liability laws are based on the premise that companies have a duty to protect consumers from potential hazards caused by their products.<sup>9</sup> Generally, a product must meet the ordinary expectations of a consumer; when a product has an unexpected defect or danger, the product cannot be said to meet those expectations.<sup>10</sup> However, Florida courts have held that:

- A manufacturer has no duty to design the safest possible product;
- A manufacturer cannot be held liable for the misuse of a product;
- There is no duty to warn of an obvious danger or a danger about which the user is aware;
- A legally sufficient warning does not need to prevent a user from misusing a product; and
- A product manufacturer, distributor or seller does not owe a duty to a third party who is injured as a result of a buyer's use of a product for unintended purposes.<sup>11</sup>

## Pesticides

### *Federal Pesticide Regulation*

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") regulates pesticide distribution, sale, and use in the United States.<sup>12</sup> Under FIFRA, all pesticides distributed or sold in the United States must be registered with the Environmental Protection Agency ("EPA"), and the EPA may not register a pesticide before the applicant shows, among other things, that using the pesticide in accordance with its specifications "will not generally cause unreasonable adverse effects on the environment."<sup>13</sup> FIFRA defines "unreasonable adverse effects on the environment" to mean:

- Any unreasonable risk to man or the environment, accounting for the economic, social, and environmental costs and benefits of the pesticide's use; or
- A human dietary risk from residues that result from the pesticide's use in or on any food inconsistent with standards set by the Federal Food, Drug, and Cosmetic Act ("FFDCA").<sup>14</sup>

Under FIFRA, the states generally have the primary authority for compliance monitoring and acting against illegal pesticide use through state-enacted monitoring programs and the imposition of state-enacted civil or criminal penalties.<sup>15</sup> However, the EPA may also bring civil or criminal enforcement actions under applicable federal law in certain circumstances.<sup>16</sup>

The FFDCA, in turn, authorizes the EPA to set tolerances, or maximum residue limits, for pesticide residue on foods.<sup>17</sup> In setting tolerances, the EPA must find that a tolerance is "safe," meaning that there is a "reasonable certainty that no harm will result from aggregate exposure to the pesticide

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<sup>5</sup> "Breach of warranty" is the violation of an express or implied contract of warranty, and thus it is a breach of contract. Essentially, it occurs when the warrantor fails to provide the assurances warranted. Legal Information Institute, *Breach of Warranty*, [https://www.law.cornell.edu/wex/breach\\_of\\_warranty](https://www.law.cornell.edu/wex/breach_of_warranty) (last visited Feb. 1, 2024).

<sup>6</sup> "Nuisance" means actions within a person's control that interfere with the rights of others. Examples include creating loud noises or letting water run onto another person's property. Courts look broadly to evaluate whether an action by a party constitutes a nuisance and, in doing so, consider whether the action unreasonably interferes with the health, safety, and comfort of the affected parties. The length of the action, degree of unreasonableness, and whether there is a law or regulation prohibiting the action are influential. Legal Information Institute, *Nuisance*, <https://www.law.cornell.edu/wex/nuisance> (last visited Feb. 1, 2024).

<sup>7</sup> The statute of limitations for a products liability action depends on the specific theory alleged. For example, the statute of limitations for a negligence action is two years, while the statute of limitations for a breach of warranty action is four years. Ss. 95.11 and 768.81(1)(d), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> The Florida Bar, *Product Liability*, <https://www.floridabar.org/practice-areas/product-liability/> (last visited Feb. 1, 2024).

<sup>10</sup> *Id.*

<sup>11</sup> *Michael Grieco v. Daiho Sangyo., Inc.*, 344 So. 3d 11 (Fla. 4th DCA 2022).

<sup>12</sup> 7 U.S.C. s. 136, *et seq.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; The Federal Food, Drug, and Cosmetic Act is codified at 21 U.S.C. s. 301, *et seq.*

<sup>15</sup> 7 U.S.C. s. 136, *et seq.*; EPA, *Basic Information on Enforcement*, <https://www.epa.gov/enforcement/basic-information-enforcement> (last visited Feb. 1, 2024).

<sup>16</sup> *Id.*

<sup>17</sup> 21 U.S.C. s. 301, *et seq.*

residue.”<sup>18</sup> Where there is no such established tolerance for a given pesticide, a food containing such pesticide’s residue is subject to seizure by the federal government.<sup>19</sup> However, once a tolerance for a given pesticide is established, a residue level exceeding such tolerance triggers the possibility of federal and state enforcement actions.<sup>20</sup>

### *The Florida Pesticide Law*

A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the Florida Department of Agriculture (“Department”), by rule, declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.<sup>21</sup> The Florida Pesticide Law, set out in Part I of Ch. 487, F.S., and enforced by Department, regulates the distribution, sale, and use of pesticides in this state to protect people and the environment from the adverse effects of pesticides.<sup>22</sup> Such regulations exist in addition to applicable federal regulations and include pesticide registration requirements, a list of prohibited activities, and licensing and other requirements for various persons involved in pesticide manufacturing, distribution, sale, or application.

Under the Florida Pesticide Law:

- “Certified applicator” means any individual who has been recognized by the Department as a competent pesticide applicator and, thus, is eligible to apply for licensure in one or more of the designated applicator license types and categories.<sup>23</sup>
- “Commercial applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of any restricted-use pesticide<sup>24</sup> for any purpose on any property other than as provided by the definitions of “private applicator,” “product specific applicator,” or “public applicator,” whether or not the individual is a private applicator with respect to some uses.<sup>25</sup>
- “Dealer” means any person, other than the manufacturer or distributor, who offers for sale, sells,<sup>26</sup> barter, or otherwise supplies pesticides to the ultimate user or consumer.<sup>27</sup>
- “Distributor” means any person who offers for sale, holds for sale, sells, barter, or supplies pesticides in this state.<sup>28</sup>
- “Licensed applicator” means an individual who has reached the age of majority and is authorized by license from the Department to use or supervise the use of any restricted-use pesticide covered by the license.<sup>29</sup>
- “Manufacturer” means a person engaged in the business of importing, producing, preparing, mixing, formulating, or reformulating pesticides for the purpose of distribution.<sup>30</sup>
- “Private applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of any restricted-use pesticide for purposes of

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> “Plant regulator” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof; but does not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. “Defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. “Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues. S. 487.021 (19), (21), (49), and (51), F.S.

<sup>22</sup> Ss. 487.011 and 487.012, F.S.

<sup>23</sup> S. 487.021(15), F.S.

<sup>24</sup> “Restricted-use pesticide” means a pesticide which, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of the United States Environmental Protection Agency. S. 487.021(58), F.S.

<sup>25</sup> S. 487.021(16), F.S.

<sup>26</sup> Under the Florida Pesticide Law, “sell” or “sale” includes exchanges. S. 487.021(59), F.S.

<sup>27</sup> S. 487.021(17), F.S.

<sup>28</sup> S. 487.021(24), F.S.

<sup>29</sup> S. 487.021(41), F.S.

<sup>30</sup> S. 487.021(42), F.S.

producing any agricultural commodity on property owned or rented by his or her employer, or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person.<sup>31</sup>

- “Public applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of restricted-use pesticides as an employee of a state agency, municipal corporation, or other governmental agency.<sup>32</sup>
- “Product specified applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of a particular restricted-use pesticide product that is identified on the license by the United States Environmental Protection Agency registration number, as well as any Florida-specific registration number and any specific identifying information as deemed appropriate for non-federally registered products with a specified exemption, provided that such pesticides are used for a specified purpose.<sup>33</sup>

In addition to facing penalties under the Florida Pesticide Law and applicable federal regulations, pesticide distributors, dealers, applicators, and manufacturers are subject to suit in state court for a products liability action where the state courts have jurisdiction over such persons.

### **Effect of Proposed Changes**

HB 347 amends s. 487.081, F.S., to specify that a products liability action, including for failure to warn, may not be brought or maintained against any pesticide distributor, dealer, or applicator unless:

- Such person 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;
- Such person altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recover of damages is sought;
- Such person handled, used, or applied the product in a manner inconsistent with the product label and 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 Florida courts.

The bill provides an effective date of July 1, 2024.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 487.081, F.S., relating to exemptions.

**Section 2:** Provides an effective date of July 1, 2024.

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<sup>31</sup> S. 487.021(52), F.S.

<sup>32</sup> S. 487.021(55), F.S.

<sup>33</sup> S. 487.021(56), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on the state court system to the extent that it reduces products liability actions brought or maintained in the state. The bill may also have a positive fiscal impact on state government to the extent that any state actor applies pesticides but cannot be named as a defendant in a products liability lawsuit related to such use.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive fiscal impact on local governments to the extent that any local government actor applies pesticides but cannot be named as a defendant in a products liability lawsuit related to such use.

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

The bill may have a positive economic impact on pesticide distributors, dealers, or applicators to the extent that they are ineligible to be named as defendants in a products liability action and are thereby spared litigation costs and the payment of damages.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not Applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

