

**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 1536

INTRODUCER: Senator Perry and others

SUBJECT: Agricultural Practices

DATE: March 20, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	<b>Pre-meeting</b>
2.			AFT	
3.			AP	

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**I. Summary:**

SB 1536 addresses issues related to agricultural practices. The bill:

- Exempts prescription and nonprescription animal health products used to treat poultry or livestock from state sales and use tax;
- Revises eligibility for an agricultural restricted license plate by removing the 150 mile radius of the vehicle's home address restriction, and instead, allowing the vehicle to operate statewide;
- Eliminates the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the Environmental Protection Agency has established a food tolerance limit;
- Effective October 1, 2017, authorizes the use of international orange paint markings on trees or posts, to indicate "posted lands" where trespassing would be prohibited; and
- Revises the term "farm product," in the Right to Farm Act by removing "animal or insect" useful to humans and by including in the definition livestock, poultry, aquatic plants and animals cultivated using aquaculture, and bees.

The Revenue Estimating Conference has not yet estimated the impacts of the bill.

**II. Present Situation:**

Chapter 212, F.S., contains the statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A six percent sales and use tax is levied on sales or rentals of

most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> storage,<sup>3</sup> rentals of transient accommodations,<sup>4</sup> rentals of commercial real estate,<sup>5</sup> and a limited number of services. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>6</sup> The Florida Department of Revenue is responsible for administering, collecting, and enforcing all sales and use taxes.

Current law exempts specified items for agricultural use and certain nets from the sales and use tax.<sup>7</sup> These items include the following:

- Nets designed and used exclusively by commercial fisheries;
- Disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock;
- Portable containers or movable receptacles in which portable containers are placed, used for processing farm products;
- Field and garden seeds, including flower seeds;
- Nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock;
- Seeds, seedlings, cuttings, and plants used to produce food for human consumption;
- Cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm;
- Stakes used by a farmer to support plants during agricultural production;
- Generators used on poultry farms; and
- Liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.<sup>8</sup>

These exemptions are not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein.<sup>9</sup>

### **Agricultural Restricted License Plate**

Current law provides a restricted license plate for an eligible truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw, unprocessed, or non-manufactured agricultural or horticultural products, within a 150-mile radius of its home address.<sup>10</sup> Below are the fees for the license plates:

- \$87.75 flat, if the vehicle's declared gross vehicle weight is less than 44,000 pounds.
- \$324 flat, if the vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to:

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<sup>1</sup> s. 212.05, F.S.

<sup>2</sup> s. 212.04, F.S.

<sup>3</sup> s. 212.06, F.S.

<sup>4</sup> s. 212.03, F.S.

<sup>5</sup> s. 212.031, F.S.

<sup>6</sup> s. 212.06(3)(a), F.S.

<sup>7</sup> s. 212.08(5)(a), F.S.

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

<sup>9</sup> s. *Id.*

<sup>10</sup> s. 320.08(4)(n), F.S.

- The point of primary manufacture;
- The point of assembling the same; or
- A shipping point by rail, water, or motor transportation company.<sup>11</sup>

### **Pesticide Registration**

Currently, pesticide registrants are required to pay a supplemental biennial registration fee for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit. The supplemental fee is \$630 per brand of pesticide that is subject to the fee per two-year period. This fee is deposited into the General Inspection Trust Fund and is used by the department for pesticide residue testing for food safety.<sup>12</sup>

### **Posted Land**

Current law governing burglary and trespass<sup>13</sup> specifies two options for providing “no trespassing” notice upon “posted land.” Generally, these options allow the owner to post no trespassing signs, or stenciled orange paint marks on trees or posts. Specifically, the law defines “posted land” as land upon which:

- Clearly noticeable signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than two-inches in height, the words “no trespassing” and in addition thereto the name of the owner, lessee, or occupant of the land; or
- Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:
  - Painted in an international orange color and displaying the stenciled words “No Trespassing” in letters no less than two-inches high and one-inch wide either vertically or horizontally;
  - Placed so that the bottom of the painted notice is not less than three-feet from the ground or more than five-feet from the ground; and
  - Placed at locations that are readily visible to any person approaching the property and no more than 500-feet apart on agricultural land.

Painted notices must be accompanied by signs that comply with s. 810.011(5)(a)1., F.S., and placed conspicuously at all places where entry to the property is normally expected or known to occur. It is not necessary to give notice by posting on any enclosed land or place not exceeding five-acres in area on which there is a dwelling house in order to obtain the benefits pertaining to trespass on enclosed lands.<sup>14</sup>

Unauthorized entry onto enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.<sup>15</sup> In most cases, trespassing is a misdemeanor, but in special cases, it can be a felony.<sup>16</sup>

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<sup>11</sup> s. 320.08(4)(n), F.S.

<sup>12</sup> s. 487.041(1), F.S.

<sup>13</sup> ch. 810, F.S.

<sup>14</sup> s. 810.011(5)(b), F.S.

<sup>15</sup> s. 810.12, F.S.

<sup>16</sup> ss. 810.08, F.S., and 810.09, F.S.

Generally, positive management of access to private lands results in benefits to landowners and others. However, it has been found that landowners incur substantial costs to physically post their property.<sup>17</sup> Physical signs deteriorate or disappear, and landowners must continually monitor their property and repost their signs if they wish to claim the protection afforded to posted property.<sup>18</sup> In addition, posted signs must be highly visible<sup>19</sup> and they require the use of nails, which can reduce the value of the landowners' trees and lumber.<sup>20</sup>

Florida law does not currently allow the use of identifying paint marks alone to legally post private property. However, many states do allow for the use of identifying paint marks as an alternative to physical signs to denote land posting. For example Alabama,<sup>21</sup> Arizona,<sup>22</sup> Arkansas,<sup>23</sup> Idaho,<sup>24</sup> Illinois,<sup>25</sup> Kansas,<sup>26</sup> Maine,<sup>27</sup> Maryland,<sup>28</sup> Missouri,<sup>29</sup> Montana,<sup>30</sup> Nevada,<sup>31</sup> North Carolina,<sup>32</sup> Oregon,<sup>33</sup> Texas,<sup>34</sup> and Utah<sup>35</sup> all have some provision within their laws allowing for identifying paint marks. Generally, each of these states authorizes the use of paint marks on trees or fence posts to designate a no trespassing area.

### **Right to Farm Act**

The Right to Farm Act<sup>36</sup> (RTFA) was enacted by the 1979 Legislature. In the RTFA, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. The Legislature found that agricultural activities in urban areas are potential grounds for lawsuits based on the theory of nuisance and that these lawsuits encourage and even force the premature removal of farm land from agricultural use.<sup>37</sup> The purpose of the RTFA is to protect reasonable agricultural activities on farm land from nuisance suits.<sup>38</sup> The act provides protections to farmers from frivolous nuisance claims<sup>39</sup> and local regulations that are duplicitous.<sup>40</sup>

<sup>17</sup> Arizona State Law Journal [45:0949] *POSTED: Notice and the Right to Exclude*, Richard M. Hynes, pages 959-960.

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

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

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

<sup>21</sup> s. 13A-7-1 Code of Alabama.

<sup>22</sup> s. 17-304, Arizona Revised Statutes.

<sup>23</sup> s. 18-11-406(a)(2) ACA.

<sup>24</sup> s. 18-7011 Idaho Statutes.

<sup>25</sup> 720 ILCS 5/21-3.

<sup>26</sup> s. 32-1013 K.S.A.

<sup>27</sup> s. 402 Maine Revised Statutes.

<sup>28</sup> s. 6-402 Code of Maryland.

<sup>29</sup> s. 569.145, Missouri Statutes.

<sup>30</sup> s. 45-6-201 Montana Code.

<sup>31</sup> NRS 207.200.

<sup>32</sup> S. 14-159.7 NC General Statutes.

<sup>33</sup> 2015 ORS 105.700.

<sup>34</sup> Title 7, s. 30.05, Texas Penal Code.

<sup>35</sup> 23-20-14 Utah Code.

<sup>36</sup> s. 823.14, F.S.

<sup>37</sup> s. 823.14(2), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> s. 823.14(4), F.S.

<sup>40</sup> s. 823.14(6), F.S.

The term “farm products” is defined under the act to mean any plant, as defined in s. 581.011, F.S.,<sup>41</sup> or animal useful to humans and includes, but is not limited to, any product derived therefrom. This definition of farm products is referenced as a qualifying use under the term “agricultural purposes” in the Florida Greenbelt agricultural land classification law.<sup>42</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.08, F.S., to exempt prescription and nonprescription animal health products used to treat poultry or livestock from sales, rental, use, consumption, distribution, and storage taxes.

**Section 2** amends s. 320.08, F.S., to extend the distance a tractor-trailer truck or heavy truck with a restricted agricultural license plate can travel in the state of Florida.

**Section 3** amends s. 487.041, F.S., to repeal the supplemental pesticide registration fee that registrants pay for pesticides that contain an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit. It also amends provisions in this section to conform to the bill’s changes and deletes obsolete provisions.

**Section 4** amends s. 810.011, F.S., authorize the use of international orange paint markings on trees or posts, to indicate, “posted lands” where trespassing would be prohibited. This provision would become effective October 1, 2017.

**Section 5** amends s. 823.14, F.S., to revise the term “farm product,” in the Right to Farm Act, by removing “animal or insect” useful to humans and by including in the definition livestock, poultry, aquatic plants and animals cultivated using aquaculture, and bees.

**Section 6** provides that except as otherwise expressly provided in this act, the act shall take effect July 1, 2017.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>41</sup> Plant means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by rule.

<sup>42</sup> s. 193.461(5), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet estimated the following impacts of this bill:

**Section 1** includes prescription and nonprescription animal health products used to treat poultry or livestock to the list of items in agricultural use that are exempt from the state sales and use tax.

**Section 2** removes the distance restriction on agricultural restricted license plates, thereby authorizing truck tractors or heavy trucks to travel statewide. This may cause an increase in the amount of registrations of these plates, thereby creating a positive fiscal impact on state funds. Currently, a portion of each plate fee is deposited into the General Revenue Fund. For the \$87.75 fee, \$22.75 is deposited, and for the \$324 fee, \$84 is deposited.

In addition, expanding the distance that the agricultural restricted license plates are authorized to travel may eliminate the costs associated with shipping agricultural products outside of the 150 mile radius, resulting in reduced expenditures for the agricultural industry, and a reduction in revenue for the shipping industry.

**Section 3** eliminates the supplemental pesticide fee. According to the department, this will result in an average recurring decrease in funding of \$1.9 million to the General Inspection Trust Fund. However, the loss in revenue for the department to administer pesticide testing for food safety will be offset by funding from the General Revenue Fund as a result of budgetary changes during the 2016 Legislative Session. For the 1,478 pesticide registrants, this will produce an average recurring savings of \$1,919,337.84.

**Section 5** more clearly specifies the scope of farm products that qualify a property for protection under the Right to Farm Act. This change might eliminate current agricultural zoning for some businesses. Therefore, local governments would experience an increase in their ad valorem tax base, resulting in a positive fiscal impact to local government revenues, and a correlating negative fiscal would impact affected landowners.

**B. Private Sector Impact:**

Refer to Tax/Fee Issues

**C. Government Sector Impact:**

Refer to Tax/Fee Issues

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 212.08, 320.08, 487.041, 801.011, and 823.14.

**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.

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

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