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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-182, Laws of Florida

**HOUSE OF REPRESENTATIVES
AGRICULTURE & CONSUMER AFFAIRS
FINAL ANALYSIS**

BILL #: CS/CS/HB 719

RELATING TO: Damage or Destruction of Agricultural Products

SPONSOR(S): Council for Competitive Commerce; Committee on Agriculture & Consumer Affairs;
Representatives Stansel & others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (3) CRIME PREVENTION, CORRECTIONS, AND SAFETY YEAS 6 NAYS 0
 - (4) COUNCIL ON COMPETITIVE COMMERCE YEAS 11 NAYS 0
 - (5)
-

I. SUMMARY:

A civil cause of action is afforded to growers of agricultural products against any person who willfully destroys those products. A grower may recover damages equal to double the amount of the value of the product, including the cost of any experimental product replication, as well as compensatory and punitive damages. The prevailing party in any action brought under these provisions is entitled to reasonable attorney's fees and court costs.

A new felony of the third degree is created for trespassing upon agricultural sites that are legally posted and identified as being used for research and testing purposes.

The council substitute incorporates the "strike-everything" amendment by the Committee on Judicial Oversight. These clarifying changes are described in section IV; no further changes were made.

The effective date of this legislation is October 1, 2001.

This legislation has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In the past two to three years, there has been an increase in domestic terrorism by groups of citizens who vandalize or destroy property to further their causes. Such groups of environmental extremists have been labeled "eco-terrorists." Eco-terrorists often target the biotechnology industry, which is especially disturbing to the agricultural community. Because of the significant investment in agricultural research made by universities and technology companies, they have become prime targets for the destructive activities of these eco-terrorists.¹

Since 1998, various groups of eco-terrorists have damaged or destroyed numerous private and government properties throughout the United States where the groups believed genetic engineering research was being conducted.² One eco-terrorist group alone is estimated to have caused more than \$37 million worth of property damage over a four-year period.³ Not only is there a loss of tangible property and crops when these attacks occur, but also the greater loss is the value of the research being conducted.⁴

As of March 16, 2001, two states, California and Virginia, had passed anti-crop destruction legislation that allows a grower or producer to recover the cost of both the lost agricultural products and the research investment. Similar legislation has been introduced in sixteen other states.⁵ Florida presently has no such law.

Section 810.09, F.S., provides that if a trespasser willfully exposes crops to destruction, the offender commits a misdemeanor of the first degree. Presently, the following trespasses are a felony of the third degree:

- If the property trespassed is a construction site that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."⁶

¹ Kansas Senator Steve Morris,, "Fighting the Wrong Fight", State Government News, February 2001.

² The eco-terrorists often mistakenly destroy crops that are not the result of bioengineering. The attacks also cause significant economic damage and disrupt other types of research.

³ From webpage: www.cbsnews.com "FBI Tracks Ecoterrorists"

⁴ Kansas Senator Steve Morris, "Fighting the Wrong Fight", State Government News, February 2001.

⁵ Information from Council of State Governments. The states with pending legislation include: Arizona, Arkansas, Florida, Hawaii, Iowa, Idaho, Kansas, Missouri, Montana, Nebraska, North Carolina, Oregon, Washington, West Virginia.

⁶ Section 810.09(2)(d), F.S.

- if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."⁷

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 719 creates a civil cause of action by a grower or producer of agricultural products against a person who willfully and knowingly destroys agricultural products belonging to the grower or producer. The bill creates a new section 604.60, F.S., which provides that any private, public, or commercial agricultural grower or producer who grows or produces any agricultural product for personal, research, or commercial purposes or for testing or research purposes in a product development program conducted in conjunction or coordination with a private research facility, a university, or any federal, state, or local government agency who suffers damages as a result of another person's willful and knowing damage or destruction of any such agricultural product has a cause of action for damages.

Damages awarded under the new cause of action include an amount equal to double the amount of the value of the product damaged or destroyed, including the cost of any experimental product replication. The court may also award compensatory and punitive damages. However, the total damages awarded is limited to twice the market value of the product prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement, and product development costs directly related to the product that has been damaged or destroyed. The prevailing party is entitled to court costs and reasonable attorney's fees.

CS/CS/HB 719 also creates section 810.09(f), F.S., which provides that a trespasser commits a felony of the third degree if the property trespassed upon is an agricultural site for testing or research purposes and that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a fine not to exceed \$5000.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 604.60, F.S., allowing any private or commercial agricultural grower or producer who grows or produces any agricultural product (as defined in s. 468.382(7), F.S.) for personal, research or commercial purposes or for testing or research purposes in a product development program conducted in conjunction or coordination with a private research facility, a university, or any governmental agency who suffers damage as a result of another person's willful and knowing damage or destruction of such agricultural products to bring an action for damages for twice the value of the crop damaged or destroyed, as well as the cost of any experimental product replication; providing considerations and limits for awards of damages; and, providing for court costs and attorney's fees for the prevailing party.

Section 2: Amends s. 810.09, F.S., providing a third degree felony for offender trespassing on agricultural sites legally posted and identified as being used for research and testing purposes.

Section 3: Reenacts sections 260.0125 and 810.011, F.S., in order to incorporate into those existing sections of law the new trespass penalty created by this bill in 810.09, F.S. Respectively,

⁷ Section 810.09(2)(e), F.S.

the reenacted statutes limit liability in certain trespass instances and exempt notice posting requirements in certain instances.

Section 4: Provides the bill will take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Grower and producers of agricultural products will financially benefit from being able to recover an amount closer to their true economic loss if their crops or other agricultural products are willfully destroyed. Additionally, the increased availability of damages and the deterrence effect of the felony trespass penalty may prevent the willful destruction of crops and other agricultural products.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

CS/HB 719 does not define "agricultural products" for purposes of new section 604.60, F.S.

New section 810.09(f), F.S., provides that the offender commits a felony if the property trespassed upon is an agricultural site for testing or research purposes "as described in s. 604.60." Since s. 604.60 describes a civil cause of action, rather than "an agricultural site," the purpose of the reference to s. 604.60 is unclear.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 14, 2001, the Committee on Agriculture and Consumer Affairs adopted one amendment and moved to make HB 719 a committee substitute. The amendment expanded the language to encompass agricultural products rather than just field crops. It also included the cost of any experimental product replication in damages to be recouped.

On March 29, 2001, the Committee on Judicial Oversight adopted a strike everything amendment that is traveling with the bill. The amendment makes specific that "agricultural products" include all aspects of agriculture as defined by s. 468.382(7), F.S. Additionally, the amendment clarifies that a successful plaintiff is entitled to damages of twice the "cost of any product replication" as well as the other damages described in the bill. The amendment also removes the phrase "as described in s. 604.60" from new section 810.09(f), F.S. These changes address the issues raised in V.C. OTHER COMMENTS of this analysis.

On April 5, 2001, the Council for Competitive Commerce adopted a council substitute that incorporated the "strike-everything" amendment adopted by the Committee on Judicial Oversight. No further changes were made.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Debbi Kaiser

Staff Director:

Susan D. Reese

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AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Lynne Overton

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AS FURTHER REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS, AND SAFETY:

Prepared by:

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AS FURTHER REVISED BY THE COUNCIL ON COMPETITIVE COMMERCE:

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