

ASSEMBLY, No. 475

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman VANDERVALK

1 AN ACT concerning the liability of certain persons for activities on
2 agricultural or horticultural lands and supplementing chapter 42A
3 of Title 2A of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. As used in this act, "agricultural or horticultural land" means
9 land devoted to the production for sale of plants, crops, or other
10 related commodities, including bees and apiary products, orchards,
11 nurseries, and trees and forest products.

12

13 2. a. A person who is invited onto agricultural or horticultural land
14 by the owner, lessee, or occupant of that land , or by any employee or
15 agent thereof, for the purpose of picking or taking agricultural or
16 horticultural products shall be considered a licensee for the purpose of
17 determining the duty owed by the owner, lessee, occupant , agent, or
18 employee to that person.

19

20 b. An owner, lessee, or occupant of agricultural or horticultural
21 land , or an agent or employee thereof, who acts in conformance with
22 a standard of reasonable care, as prescribed pursuant to section 3 of
23 P.L. , c. (C.)(now before the Legislature as this bill), shall be
24 presumed to have acted reasonably with respect to any person invited
25 onto the land for the purpose of picking or taking agricultural or
26 horticultural products in any civil action for damages related to that
27 person's activities on the land.

28

29 c. The owner, lessee, or occupant of agricultural or horticultural
30 land , or an agent or employee thereof, who invites persons onto the
31 land for the purpose of picking or taking agricultural or horticultural
32 products shall:

33

34 (1) clearly mark off the area wherein the persons on the land may
engage in the activity of picking or taking agricultural or horticultural
products. A person who enters land outside this area shall be
considered a trespasser for the purposes of determining the duty owed

1 by the owner, lessee, occupant, agent or employee to that person;
2 and

3 (2) post signs at the point of arrival explaining the area at which
4 the activities may be conducted, the rules of conduct, and the
5 limitations on liability provided for in this section.

6
7 3. The State Board of Agriculture shall adopt regulations that shall
8 prescribe those actions, based upon a standard of reasonable care, that
9 an owner, lessee, or occupant of agricultural or horticultural lands, or
10 an agent or employee thereof, shall take with respect to ensuring the
11 safety of persons invited onto those lands for the purpose of picking
12 or taking agricultural or horticultural products.

13
14 4. This act shall take effect immediately and shall apply only to any
15 cause of action that arises after the effective date of this act.

16

17

18 STATEMENT

19

20 This bill would provide limited immunity for farmers from civil
21 lawsuits brought by persons who enter agricultural or horticultural
22 lands to pick their own fruit or other agricultural or horticultural
23 products such as Christmas trees. Although "pick your own"
24 operations save farmers labor costs, allow farmers to realize a better
25 price, and afford people an attractive recreational opportunity, a rash
26 of frivolous lawsuits has threatened the viability of this practice. This
27 bill seeks to eliminate these frivolous lawsuits by limiting the duty of
28 care owed by a farmer.

29 Specifically, the bill provides that a person entering agricultural
30 land would be considered a licensee, and not an invitee, thus limiting
31 the duty a farmer owes that person to keep the property safe for that
32 activity. The bill requires the State Agriculture Board to develop
33 regulations that will define what actions a farmer shall take in order to
34 meet the reasonable standard of care he owes to the persons invited
35 onto his land. If that standard of reasonable care as enumerated in the
36 regulations is met, the farmer will be presumed to have acted
37 reasonably.

38 However, if the farmer acts willfully, maliciously, or with gross
39 negligence, any limitations on liability will not apply.

40 The bill also provides that the area in which the "pick your own"
41 activity is to take place is to be clearly marked. Any person entering
42 lands outside that marked area will be considered a trespasser for the
43 purposes of determining a farmer's liability to that person. The farmer
44 is also required to post signs informing persons of the conduct
45 expected and the limitations on liability provided in this bill.

1 The limitations on liability in this bill are prospective only and do
2 not apply to causes of action arising prior to the bill's effective date.

3

4

5

6

7 Provides limited civil liability immunity to farmers for "pick your own"
8 operations.