

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1480

SPONSOR: Criminal Justice Committee and Senator Alexander

SUBJECT: Breaking or Injuring Fences

DATE: March 25, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AG</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1480 creates a third degree felony offense where a person willfully and maliciously breaks down, cuts, injures or creates a gap or opening in a fence which is used to contain animals at the time of the offense. It adds an additional element to the current misdemeanor offense of breaking or injuring fences – if the fence is used to contain animals at the time of the offense, the potential penalty becomes greater.

This CS substantially amends the following section of the Florida Statutes: 810.115.

II. Present Situation:

Section 810.115, F.S., provides for a first degree misdemeanor where an offender “willfully and maliciously breaks down, mars, injures, defaces, cuts, or otherwise creates or causes to be created an opening, gap, interruption, or break in any fence, or any part thereof, belonging to or enclosing land not his or her own.” The same penalties apply where the offender “causes” the damage. The court may require “full compensation to the owner of the fence for any and all damages or losses resulting directly or indirectly from the act or commission.”

Section 810.09, F.S., punishes as a first degree misdemeanor trespass upon fenced, cultivated or posted land. Section 810.011, F.S., sets forth the following definitions:

- “Posted land” is that land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land. The signs must have a particular size lettering, be posted in a noticeable place, and contain certain information.

- “Cultivated land” is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard grove, pasture, or trees or is fallow land as part of a crop rotation.
- “Fenced land” is that land which has been enclosed by a fence of substantial construction which stands at least three feet in height. The fence may be constructed of rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material.

Section 810.09(2)(b), F.S., also provides that where a trespasser willfully opens any fence or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom, the trespasser commits a first degree misdemeanor.

Third degree felony trespass offenses currently include:

- armed trespass, s. 810.09(2)(c), F.S.
- trespass on a legally posted construction site, s. 810.09(2)(d), F.S.
- trespass on legally posted commercial horticultural property, s. 810.09(2)(e), F.S.
- trespass on a legally posted agricultural site for testing and research purposes, s. 810.09(2)(f), F.S.
- armed trespass on school property, s. 810.095, F.S. and
- shooting across private land without authorization, s. 810.09(2)(g), F.S.

III. Effect of Proposed Changes:

The CS amends current law to provide for a third degree felony offense where a person commits the misdemeanor offense of willfully or maliciously breaking or injuring a fence *if the fence is used to contain animals at the time*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None anticipated. Although the Criminal Justice Impact Conference has not considered the potential fiscal impact of the CS, it is not likely to be significant. The new crime is not given a specific ranking in the Criminal Punishment Code and therefore is not likely to result in a prison sentence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.