

THE FLORIDA SENATE
2021 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/SB 88 — Farming Operations

by Rules Committee; Environment and Natural Resources Committee; Judiciary Committee; and Senators Brodeur, Baxley, Albritton, and Perry

The bill (Chapter 2021-7, L.O.F.) amends the Florida Right to Farm Act. The general purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance lawsuits. The bill provides stronger liability protections to farms that comply with best management practices and environmental regulations.

The definition of “farm operations” is expanded to add “agritourism” activities to the list of farm operations that receive limited legal protections from nuisance suits and other similar civil actions. The definition is further revised to include the generation of “particle emissions” to the list of conditions or activities that constitute farm operations.

The bill defines “established date of operation” for an agritourism activity as the date the specific agritourism activity commenced, providing for a separate established date of operation for an agritourism activity than for the farm operation.

The bill defines “nuisance” to mean any interference with the reasonable use and enjoyment of land, including, but not limited to, noise, smoke, odors, dust, fumes, particle emissions, or vibration. The term also includes all legal claims that meet the requirements of the definition of nuisance, regardless of whether a plaintiff designates those claims as brought in an action for nuisance, negligence, trespass, personal injury, strict liability, or some other tort.

The burden of proof that a plaintiff must meet in a nuisance action is raised to the clear and convincing evidence standard if the claim is based upon allegations that the defendant’s conduct did not comply with state or federal environmental laws, regulations, or best management practices.

The bill limits those who may bring a nuisance action against a farm operation to people whose real property that is alleged to be damaged is located within one-half mile of the alleged source of the nuisance.

The bill limits compensatory damages in a private nuisance action to the reduction in the fair market value of the plaintiff’s property, which may not exceed the fair market value of the property.

The bill prohibits a plaintiff from recovering punitive damages for a farm operation in a nuisance action unless the alleged nuisance is based on substantially the same conduct that was subject to a civil enforcement judgment or criminal conviction and the conviction or judgment occurred within 3 years of the first action that formed the basis of the nuisance action.

A losing plaintiff is liable for a farm’s litigation costs and expenses incurred defending a nuisance action if the farm operation has been in existence for 1 year or more before the legal

action was instituted and the farm operation conforms to generally accepted agricultural and management practices or government environmental laws.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 37-1; House 110-7