

1 A bill to be entitled
2 An act relating to farming operations; amending s.
3 823.14, F.S.; revising legislative findings; defining
4 the term "agritourism activity"; revising the
5 definition of the term "established date of
6 operation"; revising the definition of the term "farm
7 operation"; prohibiting farms from being held liable
8 for certain claims for tort liability except under
9 certain circumstances; providing a burden of proof;
10 prohibiting nuisance actions from being filed against
11 farm operations unless specified conditions are met;
12 providing requirements for and limitations on damages;
13 providing that plaintiffs who bring nuisance actions
14 against farm operations are liable for certain costs
15 and expenses under certain conditions; amending ss.
16 193.4517, 316.5501, 633.202, and 812.015, F.S.;
17 conforming cross-references; reenacting ss.
18 163.3162(2)(b), 163.3163(3)(b), 403.9337(4), and
19 570.86(4), F.S., relating to agricultural lands and
20 practices, applications for development permits and
21 disclosure and acknowledgment of contiguous
22 sustainable agricultural land, Model Ordinance for
23 Florida-Friendly Fertilizer Use on Urban Landscapes,
24 and definitions relating to agritourism, respectively,
25 to incorporate the amendments made by this act to s.

26 | 823.14, F.S., in references thereto; providing an
27 | effective date.

28 |
29 | WHEREAS, all 50 U.S. states have enacted "Right to Farm"
30 | laws that protect farmers and ranchers from nuisance lawsuits
31 | filed by individuals who move into a rural area where normal
32 | farming operations exist and then use legal actions to stop or
33 | interfere with ongoing farming operations, and

34 | WHEREAS, Florida's Right to Farm legislation was enacted in
35 | 1979 to protect agricultural operations from these types of
36 | actions and is in need of updating, and

37 | WHEREAS, as our state continues to experience unprecedented
38 | growth and as residential development continues to encroach upon
39 | our rural areas, there is a possibility for increased complaints
40 | regarding farming practices approved by the Department of
41 | Environmental Protection and the Department of Agriculture and
42 | Consumer Services, such as harvesting, transporting crops, and
43 | conducting controlled burning, despite the use of best
44 | management practices, and

45 | WHEREAS, because of the COVID-19 pandemic, there is an
46 | increasing exodus from more densely populated areas from both
47 | within and outside this state into our rural communities,
48 | potentially creating conflicts with existing legal farming
49 | activities and their complementary agritourism activities, and

50 | WHEREAS, there is a longstanding tradition of using

51 agritourism activities, such as hayrides, corn mazes, winery
 52 tours, and farm festivals, to supplement income received from
 53 growing crops and raising farm animals, and

54 WHEREAS, ensuring the potential for revenues from
 55 agritourism activities is necessary to preserve farms and the
 56 rural character of many areas in the face of rising costs and
 57 foreign competition and the many uncertainties associated with
 58 growing crops and raising farm animals, and

59 WHEREAS, it is timely and prudent to modernize the Florida
 60 Right to Farm Act by clarifying definitions, standing, and
 61 procedures in order to ensure that the original intent of
 62 Florida's Right to Farm law is preserved and a viable
 63 agricultural industry in this state can continue, NOW,
 64 THEREFORE,

65

66 Be It Enacted by the Legislature of the State of Florida:

67

68 Section 1. Subsections (2), (3), and (4) of section
 69 823.14, Florida Statutes, are amended, and subsections (7), (8),
 70 and (9) are added to that section, to read:

71 823.14 Florida Right to Farm Act.—

72 (2) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature
 73 finds that agricultural production is a major contributor to the
 74 economy of the state; that agricultural lands constitute unique
 75 and irreplaceable resources of statewide importance; that the

76 | continuation of agricultural activities preserves the landscape
77 | and environmental resources of the state, contributes to the
78 | increase of tourism, including agritourism, and furthers the
79 | economic self-sufficiency of the people of the state; and that
80 | the encouragement, development, improvement, and preservation of
81 | agriculture will result in a general benefit to the health and
82 | welfare of the people of the state. The Legislature further
83 | finds that agricultural activities conducted on farm land in
84 | urbanizing areas are potentially subject to lawsuits based on
85 | the theory of nuisance and that these suits encourage and even
86 | force the premature removal of the farm land from agricultural
87 | use. It is the purpose of this act to protect reasonable
88 | agricultural and complementary agritourism activities conducted
89 | on farm land from nuisance suits and other similar lawsuits.

90 | (3) DEFINITIONS.—As used in this section:

91 | (a) "Agritourism activity" has the same meaning as
92 | provided in s. 570.86.

93 | (b)-(d) "Established date of operation" means the date the
94 | farm operation commenced. For an agritourism activity, the term
95 | "established date of operation" means the date the specific
96 | agritourism activity commenced. If the farm operation is
97 | subsequently expanded within the original boundaries of the farm
98 | land, the established date of operation of the expansion shall
99 | also be considered as the date the original farm operation
100 | commenced. If the land boundaries of the farm are subsequently

101 expanded, the established date of operation for each expansion
102 is deemed to be a separate and independent established date of
103 operation. The expanded operation shall not divest the farm
104 operation of a previous established date of operation.

105 (c)~~(a)~~ "Farm" means the land, buildings, support
106 facilities, machinery, and other appurtenances used in the
107 production of farm or aquaculture products.

108 (d)~~(b)~~ "Farm operation" means all conditions or activities
109 by the owner, lessee, agent, independent contractor, and
110 supplier which occur on a farm in connection with the production
111 of farm, honeybee, or apiculture products or in connection with
112 complementary agritourism activities. These conditions and
113 activities include, but are ~~and includes, but is~~ not limited to,
114 the marketing of produce at roadside stands or farm markets; the
115 operation of machinery and irrigation pumps; the generation of
116 noise, odors, dust, fumes, and particle emissions ~~and fumes~~;
117 ground or aerial seeding and spraying; the placement and
118 operation of an apiary; the application of chemical fertilizers,
119 conditioners, insecticides, pesticides, and herbicides;
120 agritourism activities; and the employment and use of labor.

121 (e)~~(e)~~ "Farm product" means any plant, as defined in s.
122 581.011, or animal or insect useful to humans and includes, but
123 is not limited to, any product derived therefrom.

124 (4) FARM OPERATIONS; NUISANCE ~~FARM OPERATION NOT TO BE OR~~
125 ~~BECOME A NUISANCE.~~—

126 (a) No farm operation which has been in operation for 1
127 year or more since its established date of operation and which
128 was not a nuisance at the time of its established date of
129 operation shall be a public or private nuisance if the farm
130 operation conforms to generally accepted agricultural and
131 management practices, except that the following conditions shall
132 constitute evidence of a nuisance:

133 1. The presence of untreated or improperly treated human
134 waste, garbage, offal, dead animals, dangerous waste materials,
135 or gases which are harmful to human or animal life.

136 2. The presence of improperly built or improperly
137 maintained septic tanks, water closets, or privies.

138 3. The keeping of diseased animals which are dangerous to
139 human health, unless such animals are kept in accordance with a
140 current state or federal disease control program.

141 4. The presence of unsanitary places where animals are
142 slaughtered, which may give rise to diseases which are harmful
143 to human or animal life.

144 (b) No farm operation shall become a public or private
145 nuisance as a result of a change in ownership, a change in the
146 type of farm product being produced, a change in conditions in
147 or around the locality of the farm, or a change brought about to
148 comply with best management practices adopted by local, state,
149 or federal agencies if such farm has been in operation for 1
150 year or more since its established date of operation and if it

151 was not a nuisance at the time of its established date of
152 operation.

153 (c) A farm may not be held liable for a claim involving
154 public or private nuisance, negligence, trespass, personal
155 injury, strict liability, or other tort based on a farm
156 operation that is alleged to cause harm outside of the farm
157 unless the plaintiff proves by clear and convincing evidence
158 that the claim arises out of conduct that did not comply with
159 state and federal environmental laws, regulations, or best
160 management practices.

161 (d) A nuisance action may not be filed against a farm
162 operation unless the real property affected by the conditions
163 alleged to be a nuisance is located within one-half mile of the
164 source of the activity or structure alleged to be a nuisance.

165 (7) COMPENSATORY DAMAGES.—When the alleged nuisance
166 emanated from a farm operation, the compensatory damages that
167 may be awarded to a plaintiff for a private nuisance action must
168 be measured by the reduction in the fair market value of the
169 plaintiff's property caused by the nuisance but may not exceed
170 the fair market value of the property.

171 (8) PUNITIVE DAMAGES.—A plaintiff may not recover punitive
172 damages in a private nuisance action against a farm unless:

173 (a) The alleged nuisance is based on substantially the
174 same conduct that resulted in a criminal conviction or a civil
175 enforcement action by a state or federal environmental

176 regulatory agency; and

177 (b) The conviction or enforcement action occurred within 3
 178 years of the first act forming the basis of the nuisance action.

179 (9) NUISANCE ACTIONS BASED ON EXISTING FARM OPERATIONS.—A
 180 plaintiff who fails to prevail in a nuisance action based on a
 181 farm operation that has been in existence for 1 year or more
 182 before the date that the action was instituted and that conforms
 183 with generally accepted agricultural and management practices or
 184 state and federal environmental laws is liable to the farm for
 185 all costs and expenses incurred in defense of the action.

186 Section 2. Paragraphs (a) and (b) of subsection (1) of
 187 section 193.4517, Florida Statutes, are amended to read:

188 193.4517 Assessment of agricultural equipment rendered
 189 unable to be used due to Hurricane Michael.—

190 (1) As used in this section, the term:

191 (a) "Farm" has the same meaning as provided in s.
 192 823.14(3)(b) ~~s. 823.14(3)(a)~~.

193 (b) "Farm operation" has the same meaning as provided in
 194 s. 823.14(3)(c) ~~s. 823.14(3)(b)~~.

195 Section 3. Subsection (1) of section 316.5501, Florida
 196 Statutes, is amended to read:

197 316.5501 Permitting program for combination truck tractor,
 198 semitrailer, and trailer combination coupled as a single unit
 199 subject to certain requirements.—

200 (1) By no later than January 1, 2020, the Department of

201 Transportation in conjunction with the Department of Highway
202 Safety and Motor Vehicles shall develop a permitting program
203 that, notwithstanding any other provision of law except
204 conflicting federal law and applicable provisions of s. 316.550,
205 prescribes the operation of any combination of truck tractor,
206 semitrailer, and trailer combination coupled together so as to
207 operate as a single unit in which the semitrailer and the
208 trailer unit may each be up to 48 feet in length, but not less
209 than 28 feet in length, if such truck tractor, semitrailer, and
210 trailer combination is:

211 (a) Being used for the primary purpose of transporting
212 farm products as defined in s. 823.14(3)(d) ~~s. 823.14(3)(c)~~ on a
213 prescribed route within the boundary of the Everglades
214 Agricultural Area as described in s. 373.4592(15);

215 (b) Traveling on a prescribed route that has been
216 submitted to and approved by the Department of Transportation
217 for public safety purposes having taken into account, at a
218 minimum, the point of origin, destination, traffic and
219 pedestrian volume on the route, turning radius at intersections
220 along the route, and potential for damage to roadways or bridges
221 on the route;

222 (c) Operating only on state or local roadways within a
223 radius of 60 miles from where such truck tractor, semitrailer,
224 and trailer combination was loaded; however, travel is not
225 authorized on the Interstate Highway System; and

226 (d) Meeting the following weight limitations:

227 1. The maximum gross weight of the truck tractor and the

228 first trailer shall not exceed 88,000 pounds.

229 2. The maximum gross weight of the dolly and second

230 trailer shall not exceed 67,000 pounds.

231 3. The maximum overall gross weight of the truck tractor-

232 semitrailer-trailer combination shall not exceed 155,000 pounds.

233 Section 4. Paragraph (b) of subsection (16) of section

234 633.202, Florida Statutes, is amended to read:

235 633.202 Florida Fire Prevention Code.—

236 (16)

237 (b) Notwithstanding any other provision of law:

238 1. A nonresidential farm building in which the occupancy

239 is limited by the property owner to no more than 35 persons is

240 exempt from the Florida Fire Prevention Code, including the

241 national codes and Life Safety Code incorporated by reference.

242 2. An agricultural pole barn is exempt from the Florida

243 Fire Prevention Code, including the national codes and the Life

244 Safety Code incorporated by reference.

245 3. Except for an agricultural pole barn, a structure on a

246 farm, as defined in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~, which is

247 used by an owner for agritourism activity, as defined in s.

248 570.86, for which the owner receives consideration must be

249 classified in one of the following classes:

250 a. Class 1: A nonresidential farm building that is used by

251 the owner 12 or fewer times per year for agritourism activity
252 with up to 100 persons occupying the structure at one time. A
253 structure in this class is subject to annual inspection for
254 classification by the local authority having jurisdiction. This
255 class is not subject to the Florida Fire Prevention Code but is
256 subject to rules adopted by the State Fire Marshal pursuant to
257 this section.

258 b. Class 2: A nonresidential farm building that is used by
259 the owner for agritourism activity with up to 300 persons
260 occupying the structure at one time. A structure in this class
261 is subject to annual inspection for classification by the local
262 authority having jurisdiction. This class is not subject to the
263 Florida Fire Prevention Code but is subject to rules adopted by
264 the State Fire Marshal pursuant to this section.

265 c. Class 3: A structure or facility that is used primarily
266 for housing, sheltering, or otherwise accommodating members of
267 the general public. A structure or facility in this class is
268 subject to annual inspection for classification by the local
269 authority having jurisdiction. This class is subject to the
270 Florida Fire Prevention Code.

271 Section 5. Paragraph (g) of subsection (1) of section
272 812.015, Florida Statutes, is amended to read:

273 812.015 Retail and farm theft; transit fare evasion;
274 mandatory fine; alternative punishment; detention and arrest;
275 exemption from liability for false arrest; resisting arrest;

276 penalties.—

277 (1) As used in this section:

278 (g) "Farm theft" means the unlawful taking possession of
 279 any items that are grown or produced on land owned, rented, or
 280 leased by another person. The term includes the unlawful taking
 281 possession of equipment and associated materials used to grow or
 282 produce farm products as defined in s. 823.14(3)(d) ~~s.~~
 283 ~~823.14(3)(e)~~.

284 Section 6. For the purpose of incorporating the amendments
 285 made by this act to section 823.14, Florida Statutes, in a
 286 reference thereto, paragraph (b) of subsection (2) of section
 287 163.3162, Florida Statutes, is reenacted to read:

288 163.3162 Agricultural Lands and Practices.—

289 (2) DEFINITIONS.—As used in this section, the term:

290 (b) "Farm operation" has the same meaning as provided in
 291 s. 823.14.

292 Section 7. For the purpose of incorporating the amendments
 293 made by this act to section 823.14, Florida Statutes, in a
 294 reference thereto, paragraph (b) of subsection (3) of section
 295 163.3163, Florida Statutes, is reenacted to read:

296 163.3163 Applications for development permits; disclosure
 297 and acknowledgment of contiguous sustainable agricultural land.—

298 (3) As used in this section, the term:

299 (b) "Farm operation" has the same meaning as defined in s.
 300 823.14.

301 Section 8. For the purpose of incorporating the amendments
302 made by this act to section 823.14, Florida Statutes, in a
303 reference thereto, subsection (4) of section 403.9337, Florida
304 Statutes, is reenacted to read:

305 403.9337 Model Ordinance for Florida-Friendly Fertilizer
306 Use on Urban Landscapes.—

307 (4) This section does not apply to the use of fertilizer
308 on farm operations as defined in s. 823.14 or on lands
309 classified as agricultural lands pursuant to s. 193.461.

310 Section 9. For the purpose of incorporating the amendments
311 made by this act to section 823.14, Florida Statutes, in a
312 reference thereto, subsection (4) of section 570.86, Florida
313 Statutes, is reenacted to read:

314 570.86 Definitions.—As used in ss. 570.85-570.89, the
315 term:

316 (4) "Farm operation" has the same meaning as in s. 823.14.

317 Section 10. This act shall take effect July 1, 2021.