



545786

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/AD/2R

.

03/11/2021 02:38 PM

.

.

Senator Brodeur moved the following:

Senate Amendment

Delete lines 94 - 185

and insert:

by the owner, lessee, agent, independent contractor, or ~~and~~
supplier which occur on a farm in connection with the production
of farm, honeybee, or apiculture products or in connection with
complementary agritourism activities. These conditions and
activities include, but are ~~and includes, but is~~ not limited to,
the marketing of farm products ~~produce~~ at roadside stands or
farm markets; the operation of machinery and irrigation pumps;



545786

12 the generation of noise, odors, dust, fumes, and particle
13 emissions and fumes; ground or aerial seeding and spraying; the
14 placement and operation of an apiary; the application of
15 chemical fertilizers, conditioners, insecticides, pesticides,
16 and herbicides; agritourism activities; and the employment and
17 use of labor.

18 (d)-(e) "Farm product" means any plant, as defined in s.
19 581.011, or animal or insect useful to humans and includes, but
20 is not limited to, any product derived therefrom.

21 (e)-(d) "Established date of operation" means the date the
22 farm operation commenced. For an agritourism activity, the term
23 "established date of operation" means the date the specific
24 agritourism activity commenced. If the farm operation is
25 subsequently expanded within the original boundaries of the farm
26 land, the established date of operation of the expansion shall
27 also be considered as the date the original farm operation
28 commenced. If the land boundaries of the farm are subsequently
29 expanded, the established date of operation for each expansion
30 is deemed to be a separate and independent established date of
31 operation. The expanded operation shall not divest the farm
32 operation of a previous established date of operation.

33 (f) "Nuisance" means any interference with reasonable use
34 and enjoyment of land, including, but not limited to, noise,
35 smoke, odors, dust, fumes, particle emissions, or vibration. The
36 term also includes all claims that meet the requirements of this
37 definition, regardless of whether the plaintiff designates those
38 claims as brought in nuisance, negligence, trespass, personal
39 injury, strict liability, or other tort.

40 (4) FARM OPERATIONS; NUISANCE ~~FARM OPERATION NOT TO BE OR~~



545786

41 ~~BECOME A NUISANCE.~~—

42 (a) No farm operation which has been in operation for 1
43 year or more since its established date of operation and which
44 was not a nuisance at the time of its established date of
45 operation shall be a public or private nuisance if the farm
46 operation conforms to generally accepted agricultural and
47 management practices, except that the following conditions shall
48 constitute evidence of a nuisance:

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

52 2. The presence of improperly built or improperly
53 maintained septic tanks, water closets, or privies.

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

57 4. The presence of unsanitary places where animals are
58 slaughtered, which may give rise to diseases which are harmful
59 to human or animal life.

60 (b) No farm operation shall become a public or private
61 nuisance as a result of a change in ownership, a change in the
62 type of farm product being produced, a change in conditions in
63 or around the locality of the farm, or a change brought about to
64 comply with best management practices adopted by local, state,
65 or federal agencies if such farm has been in operation for 1
66 year or more since its established date of operation and if it
67 was not a nuisance at the time of its established date of
68 operation.

69 (c) A farm may not be held liable for nuisance unless the



545786

70 plaintiff proves by clear and convincing evidence that the claim
71 arises out of conduct that did not comply with state or federal
72 environmental laws, regulations, or best management practices.

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

77 (7) COMPENSATORY DAMAGES.—When the alleged nuisance
78 emanated from a farm operation, the compensatory damages that
79 may be awarded to a plaintiff for a private nuisance action must
80 be measured by the reduction in the fair market value of the
81 plaintiff's property caused by the nuisance, but may not exceed
82 the fair market value of the property.

83 (8) PUNITIVE DAMAGES.—Any punitive damages claim in a
84 nuisance action brought against a farm is subject to ss. 768.71
85 through 768.81. Additionally, a plaintiff may not recover
86 punitive damages in a nuisance action against a farm unless:

87 (a) The alleged nuisance is based on substantially the same
88 conduct that was subject to a civil enforcement judgment or
89 criminal conviction; and

90 (b) The conviction or judgment occurred within 3 years of
91 the first action forming the basis of the nuisance action.

92 (9) NUISANCE ACTIONS BASED ON EXISTING FARM OPERATIONS.—A
93 plaintiff who fails to prevail in a nuisance action based on a
94 farm operation that has been in existence for 1 year or more
95 before the date that the action was instituted and that conforms
96 with generally accepted agricultural and management practices or
97 state and federal environmental laws is liable to the farm for
98 all costs, fees, and expenses incurred in defense of the action.