

By Senator Brodeur

9-00357E-21

202188__

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

27
28 WHEREAS, all 50 U.S. states have enacted "Right to Farm"
29 laws that protect farmers and ranchers from nuisance lawsuits

9-00357E-21

202188__

30 filed by individuals who move into a rural area where normal
31 farming operations exist and then use legal actions to stop or
32 interfere with ongoing farming operations, and

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

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

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

49 WHEREAS, there is a longstanding tradition of using
50 agritourism activities, such as hayrides, corn mazes, winery
51 tours, and farm festivals, to supplement income received from
52 growing crops and raising farm animals, and

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

58 WHEREAS, it is timely and prudent to modernize the Florida

9-00357E-21

202188__

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

64

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

66

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

70 823.14 Florida Right to Farm Act.—

71 (2) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds
72 that agricultural production is a major contributor to the
73 economy of the state; that agricultural lands constitute unique
74 and irreplaceable resources of statewide importance; that the
75 continuation of agricultural activities preserves the landscape
76 and environmental resources of the state, contributes to the
77 increase of tourism, including agritourism, and furthers the
78 economic self-sufficiency of the people of the state; and that
79 the encouragement, development, improvement, and preservation of
80 agriculture will result in a general benefit to the health and
81 welfare of the people of the state. The Legislature further
82 finds that agricultural activities conducted on farm land in
83 urbanizing areas are potentially subject to lawsuits based on
84 the theory of nuisance and that these suits encourage and even
85 force the premature removal of the farm land from agricultural
86 use. It is the purpose of this act to protect reasonable
87 agricultural and complementary agritourism activities conducted

9-00357E-21

202188__

88 on farm land from nuisance suits and other similar lawsuits.

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

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

92 (b) "Farm" means the land, buildings, support facilities,
93 machinery, and other appurtenances used in the production of
94 farm or aquaculture products.

95 (c) ~~(b)~~ "Farm operation" means all conditions or activities
96 by the owner, lessee, agent, independent contractor, and
97 supplier which occur on a farm in connection with the production
98 of farm, honeybee, or apiculture products or in connection with
99 complementary agritourism activities. These conditions and
100 activities include, but are ~~and includes, but is~~ not limited to,
101 the marketing of produce at roadside stands or farm markets; the
102 operation of machinery and irrigation pumps; the generation of
103 noise, odors, dust, fumes, and particle emissions ~~and fumes~~;
104 ground or aerial seeding and spraying; the placement and
105 operation of an apiary; the application of chemical fertilizers,
106 conditioners, insecticides, pesticides, and herbicides;
107 agritourism activities; and the employment and use of labor.

108 (d) ~~(e)~~ "Farm product" means any plant, as defined in s.
109 581.011, or animal or insect useful to humans and includes, but
110 is not limited to, any product derived therefrom.

111 (e) ~~(d)~~ "Established date of operation" means the date the
112 farm operation commenced. If the farm operation is subsequently
113 expanded within the original boundaries of the farm land, the
114 established date of operation of the expansion shall also be
115 considered as the date the original farm operation commenced. If
116 the land boundaries of the farm are subsequently expanded, the

9-00357E-21

202188__

117 established date of operation for each expansion is deemed to be
118 a separate and independent established date of operation. The
119 expanded operation shall not divest the farm operation of a
120 previous established date of operation.

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

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

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

133 2. The presence of improperly built or improperly
134 maintained septic tanks, water closets, or privies.

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

138 4. The presence of unsanitary places where animals are
139 slaughtered, which may give rise to diseases which are harmful
140 to human or animal life.

141 (b) No farm operation shall become a public or private
142 nuisance as a result of a change in ownership, a change in the
143 type of farm product being produced, a change in conditions in
144 or around the locality of the farm, or a change brought about to
145 comply with best management practices adopted by local, state,

9-00357E-21

202188__

146 or federal agencies if such farm has been in operation for 1
147 year or more since its established date of operation and if it
148 was not a nuisance at the time of its established date of
149 operation.

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

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

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

168 (8) PUNITIVE DAMAGES.—When the alleged nuisance emanated
169 from a farm operation that has not been subject to a criminal
170 conviction or to a civil enforcement action taken by a state or
171 federal environmental regulatory agency pursuant to a notice of
172 violation, a plaintiff may not recover punitive damages for a
173 private nuisance action for the conduct alleged to be the source
174 of the nuisance within the 3 years before the first act on which

9-00357E-21

202188__

175 the nuisance action is based.

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

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

185 193.4517 Assessment of agricultural equipment rendered
186 unable to be used due to Hurricane Michael.—

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

188 (a) "Farm" has the same meaning as provided in s.
189 823.14(3)(b) ~~s. 823.14(3)(a)~~.

190 (b) "Farm operation" has the same meaning as provided in s.
191 823.14(3)(c) ~~s. 823.14(3)(b)~~.

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

194 316.5501 Permitting program for combination truck tractor,
195 semitrailer, and trailer combination coupled as a single unit
196 subject to certain requirements.—

197 (1) By no later than January 1, 2020, the Department of
198 Transportation in conjunction with the Department of Highway
199 Safety and Motor Vehicles shall develop a permitting program
200 that, notwithstanding any other provision of law except
201 conflicting federal law and applicable provisions of s. 316.550,
202 prescribes the operation of any combination of truck tractor,
203 semitrailer, and trailer combination coupled together so as to

9-00357E-21

202188__

204 operate as a single unit in which the semitrailer and the
205 trailer unit may each be up to 48 feet in length, but not less
206 than 28 feet in length, if such truck tractor, semitrailer, and
207 trailer combination is:

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

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

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

222 (d) Meeting the following weight limitations:

223 1. The maximum gross weight of the truck tractor and the
224 first trailer shall not exceed 88,000 pounds.

225 2. The maximum gross weight of the dolly and second trailer
226 shall not exceed 67,000 pounds.

227 3. The maximum overall gross weight of the truck tractor-
228 semitrailer-trailer combination shall not exceed 155,000 pounds.

229 Section 4. Paragraph (b) of subsection (16) of section
230 633.202, Florida Statutes, is amended to read:

231 633.202 Florida Fire Prevention Code.—

232 (16)

9-00357E-21

202188__

233 (b) Notwithstanding any other provision of law:

234 1. A nonresidential farm building in which the occupancy is
235 limited by the property owner to no more than 35 persons is
236 exempt from the Florida Fire Prevention Code, including the
237 national codes and Life Safety Code incorporated by reference.

238 2. An agricultural pole barn is exempt from the Florida
239 Fire Prevention Code, including the national codes and the Life
240 Safety Code incorporated by reference.

241 3. Except for an agricultural pole barn, a structure on a
242 farm, as defined in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~, which is
243 used by an owner for agritourism activity, as defined in s.
244 570.86, for which the owner receives consideration must be
245 classified in one of the following classes:

246 a. Class 1: A nonresidential farm building that is used by
247 the owner 12 or fewer times per year for agritourism activity
248 with up to 100 persons occupying the structure at one time. A
249 structure in this class is subject to annual inspection for
250 classification by the local authority having jurisdiction. This
251 class is not subject to the Florida Fire Prevention Code but is
252 subject to rules adopted by the State Fire Marshal pursuant to
253 this section.

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

261 c. Class 3: A structure or facility that is used primarily

9-00357E-21

202188__

262 for housing, sheltering, or otherwise accommodating members of
263 the general public. A structure or facility in this class is
264 subject to annual inspection for classification by the local
265 authority having jurisdiction. This class is subject to the
266 Florida Fire Prevention Code.

267 Section 5. Paragraph (g) of subsection (1) of section
268 812.015, Florida Statutes, is amended to read:

269 812.015 Retail and farm theft; transit fare evasion;
270 mandatory fine; alternative punishment; detention and arrest;
271 exemption from liability for false arrest; resisting arrest;
272 penalties.—

273 (1) As used in this section:

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

280 Section 6. For the purpose of incorporating the amendments
281 made by this act to section 823.14, Florida Statutes, in a
282 reference thereto, paragraph (b) of subsection (2) of section
283 163.3162, Florida Statutes, is reenacted to read:

284 163.3162 Agricultural Lands and Practices.—

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

286 (b) "Farm operation" has the same meaning as provided in s.
287 823.14.

288 Section 7. For the purpose of incorporating the amendments
289 made by this act to section 823.14, Florida Statutes, in a
290 reference thereto, paragraph (b) of subsection (3) of section

9-00357E-21

202188__

291 163.3163, Florida Statutes, is reenacted to read:

292 163.3163 Applications for development permits; disclosure
293 and acknowledgment of contiguous sustainable agricultural land.—

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

295 (b) "Farm operation" has the same meaning as defined in s.
296 823.14.

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

301 403.9337 Model Ordinance for Florida-Friendly Fertilizer
302 Use on Urban Landscapes.—

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

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

310 570.86 Definitions.—As used in ss. 570.85-570.89, the term:

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

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