

**By** the Committees on Rules; Environment and Natural Resources; and Judiciary; and Senators Brodeur, Baxley, Albritton, and Perry

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

25  
26       WHEREAS, all 50 U.S. states have enacted "Right to Farm"  
27      laws that protect farmers and ranchers from nuisance lawsuits  
28      filed by individuals who move into a rural area where normal  
29      farming operations exist and then use legal actions to stop or

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30 interfere with ongoing farming operations, and

31 WHEREAS, Florida's Right to Farm legislation was enacted in  
32 1979 to protect agricultural operations from these types of  
33 actions and is in need of updating, and

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

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

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

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

56 WHEREAS, it is timely and prudent to modernize the Florida  
57 Right to Farm Act by clarifying definitions, standing, and  
58 procedures in order to ensure that the original intent of

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59 Florida's Right to Farm law is preserved and a viable  
60 agricultural industry in this state can continue, NOW,  
61 THEREFORE,

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Subsections (2), (3), and (4) of section 823.14,  
66 Florida Statutes, are amended, and subsections (7), (8), and (9)  
67 are added to that section, to read:

68 823.14 Florida Right to Farm Act.—

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

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

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

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

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

106 (d) ~~(e)~~ "Farm product" means any plant, as defined in s.  
107 581.011, or animal or insect useful to humans and includes, but  
108 is not limited to, any product derived therefrom.

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

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

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

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

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

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

140 2. The presence of improperly built or improperly  
141 maintained septic tanks, water closets, or privies.

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

145 4. The presence of unsanitary places where animals are

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146 slaughtered, which may give rise to diseases which are harmful  
147 to human or animal life.

148 (b) No farm operation shall become a public or private  
149 nuisance as a result of a change in ownership, a change in the  
150 type of farm product being produced, a change in conditions in  
151 or around the locality of the farm, or a change brought about to  
152 comply with best management practices adopted by local, state,  
153 or federal agencies if such farm has been in operation for 1  
154 year or more since its established date of operation and if it  
155 was not a nuisance at the time of its established date of  
156 operation.

157 (c) A farm may not be held liable for nuisance unless the  
158 plaintiff proves by clear and convincing evidence that the claim  
159 arises out of conduct that did not comply with state or federal  
160 environmental laws, regulations, or best 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 same  
174 conduct that resulted in a criminal conviction or a civil

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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 s.  
194 823.14(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

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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 farm  
212 products as defined in s. 823.14(3)(d) ~~s. 823.14(3)(e)~~ 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 submitted  
216 to and approved by the Department of Transportation for public  
217 safety purposes having taken into account, at a minimum, the  
218 point of origin, destination, traffic and pedestrian volume on  
219 the route, turning radius at intersections along the route, and  
220 potential for damage to roadways or bridges on the route;

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

225 (d) Meeting the following weight limitations:

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

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

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

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



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233 633.202, Florida Statutes, is amended to read:

234 633.202 Florida Fire Prevention Code.—

235 (16)

236 (b) Notwithstanding any other provision of law:

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

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

244 3. Except for an agricultural pole barn, a structure on a  
245 farm, as defined in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~, which is  
246 used by an owner for agritourism activity, as defined in s.  
247 570.86, for which the owner receives consideration must be  
248 classified in one of the following classes:

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

257 b. Class 2: A nonresidential farm building that is used by  
258 the owner for agritourism activity with up to 300 persons  
259 occupying the structure at one time. A structure in this class  
260 is subject to annual inspection for classification by the local  
261 authority having jurisdiction. This class is not subject to the

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262 Florida Fire Prevention Code but is subject to rules adopted by  
263 the State Fire Marshal pursuant to this section.

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

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

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

276 (1) As used in this section:

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

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

287 163.3162 Agricultural Lands and Practices.—

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

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

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

295 163.3163 Applications for development permits; disclosure  
296 and acknowledgment of contiguous sustainable agricultural land.—

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

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

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

304 403.9337 Model Ordinance for Florida-Friendly Fertilizer  
305 Use on Urban Landscapes.—

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

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

313 570.86 Definitions.—As used in ss. 570.85–570.89, the term:

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

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