

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Williamson offered the following:

Amendment (with title amendment)

5 Remove lines 93-185 and insert:

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

9 (c) ~~(b)~~ "Farm operation" means all conditions or activities
 10 by the owner, lessee, agent, independent contractor, or ~~and~~
 11 supplier which occur on a farm in connection with the production
 12 of farm, honeybee, or apiculture products or in connection with
 13 complementary agritourism activities. These conditions and
 14 activities include, but are ~~and includes, but is~~ not limited to,
 15 the marketing of farm products ~~produce~~ at roadside stands or
 16 farm markets; the operation of machinery and irrigation pumps;

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17 the generation of noise, odors, dust, fumes, and particle
18 emissions ~~and fumes~~; ground or aerial seeding and spraying; the
19 placement and operation of an apiary; the application of
20 chemical fertilizers, conditioners, insecticides, pesticides,
21 and herbicides; agritourism activities; and the employment and
22 use of labor.

23 (d) ~~(e)~~ "Farm product" means any plant, as defined in s.
24 581.011, or animal or insect useful to humans and includes, but
25 is not limited to, any product derived therefrom.

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

38 (f) "Nuisance" means any interference with reasonable use
39 and enjoyment of land, including, but not limited to, noise,
40 smoke, odors, dust, fumes, particle emissions, or vibration. The
41 term also includes all claims that meet the requirements of this

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42 definition, regardless of whether the plaintiff designates those
43 claims as brought in nuisance, negligence, trespass, personal
44 injury, strict liability, or other tort.

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

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

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

57 2. The presence of improperly built or improperly
58 maintained septic tanks, water closets, or privies.

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

62 4. The presence of unsanitary places where animals are
63 slaughtered, which may give rise to diseases which are harmful
64 to human or animal life.

65 (b) No farm operation shall become a public or private
66 nuisance as a result of a change in ownership, a change in the

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67 type of farm product being produced, a change in conditions in
68 or around the locality of the farm, or a change brought about to
69 comply with best management practices adopted by local, state,
70 or federal agencies if such farm has been in operation for 1
71 year or more since its established date of operation and if it
72 was not a nuisance at the time of its established date of
73 operation.

74 (c) A farm may not be held liable for nuisance unless the
75 plaintiff proves by clear and convincing evidence that the claim
76 arises out of conduct that did not comply with state or federal
77 environmental laws, regulations, or best management practices.

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

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

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

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

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

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

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105
106 **T I T L E A M E N D M E N T**

107 Remove lines 4-9 and insert:
108 and redefining terms; prohibiting farms from being held liable
109 for nuisance except under certain circumstances; providing a
110 burden of proof;