

By the Committee on Judiciary; and Senators Brodeur and Baxley

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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       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

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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

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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

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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

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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,

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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.—A plaintiff may not recover punitive  
169 damages in a private nuisance action against a farm unless:

170 (a) The alleged nuisance is based on substantially the same  
171 conduct that resulted in a criminal conviction or a civil  
172 enforcement action by a state or federal environmental  
173 regulatory agency; and

174 (b) The conviction or enforcement action occurred within 3

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175 years of the first act forming the basis of the nuisance action.

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

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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)



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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

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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

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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.