

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

592-02135-21

202188c2

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

26  
27       WHEREAS, all 50 U.S. states have enacted "Right to Farm"  
28      laws that protect farmers and ranchers from nuisance lawsuits  
29      filed by individuals who move into a rural area where normal

592-02135-21

202188c2

30 farming operations exist and then use legal actions to stop or  
31 interfere with ongoing farming operations, and

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

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

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

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

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

57 WHEREAS, it is timely and prudent to modernize the Florida  
58 Right to Farm Act by clarifying definitions, standing, and

592-02135-21

202188c2

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

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

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

69 823.14 Florida Right to Farm Act.—

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

592-02135-21

202188c2

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

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

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

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

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

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

592-02135-21

202188c2

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

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

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

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

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

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

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

142 (b) No farm operation shall become a public or private  
143 nuisance as a result of a change in ownership, a change in the  
144 type of farm product being produced, a change in conditions in  
145 or around the locality of the farm, or a change brought about to

592-02135-21

202188c2

146 comply with best management practices adopted by local, state,  
147 or federal agencies if such farm has been in operation for 1  
148 year or more since its established date of operation and if it  
149 was not a nuisance at the time of its established date of  
150 operation.

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

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

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

169 (8) PUNITIVE DAMAGES.—A plaintiff may not recover punitive  
170 damages in a private nuisance action against a farm unless:

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

592-02135-21

202188c2

175 (b) The conviction or enforcement action occurred within 3  
176 years of the first act forming the basis of the nuisance action.

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

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

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

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

189 (a) "Farm" has the same meaning as provided in s.  
190 823.14(3)(b) ~~s. 823.14(3)(a)~~.

191 (b) "Farm operation" has the same meaning as provided in s.  
192 823.14(3)(c) ~~s. 823.14(3)(b)~~.

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

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

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

592-02135-21

202188c2

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

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

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

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

223 (d) Meeting the following weight limitations:

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

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

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

230 Section 4. Paragraph (b) of subsection (16) of section  
231 633.202, Florida Statutes, is amended to read:

232 633.202 Florida Fire Prevention Code.-



592-02135-21

202188c2

- 233 (16)
- 234 (b) Notwithstanding any other provision of law:
- 235 1. A nonresidential farm building in which the occupancy is
- 236 limited by the property owner to no more than 35 persons is
- 237 exempt from the Florida Fire Prevention Code, including the
- 238 national codes and Life Safety Code incorporated by reference.
- 239 2. An agricultural pole barn is exempt from the Florida
- 240 Fire Prevention Code, including the national codes and the Life
- 241 Safety Code incorporated by reference.
- 242 3. Except for an agricultural pole barn, a structure on a
- 243 farm, as defined in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~, which is
- 244 used by an owner for agritourism activity, as defined in s.
- 245 570.86, for which the owner receives consideration must be
- 246 classified in one of the following classes:
- 247 a. Class 1: A nonresidential farm building that is used by
- 248 the owner 12 or fewer times per year for agritourism activity
- 249 with up to 100 persons occupying the structure at one time. A
- 250 structure in this class is subject to annual inspection for
- 251 classification by the local authority having jurisdiction. This
- 252 class is not subject to the Florida Fire Prevention Code but is
- 253 subject to rules adopted by the State Fire Marshal pursuant to
- 254 this section.
- 255 b. Class 2: A nonresidential farm building that is used by
- 256 the owner for agritourism activity with up to 300 persons
- 257 occupying the structure at one time. A structure in this class
- 258 is subject to annual inspection for classification by the local
- 259 authority having jurisdiction. This class is not subject to the
- 260 Florida Fire Prevention Code but is subject to rules adopted by
- 261 the State Fire Marshal pursuant to this section.

592-02135-21

202188c2

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

268 Section 5. Paragraph (g) of subsection (1) of section  
269 812.015, Florida Statutes, is amended to read:

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

274 (1) As used in this section:

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

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

285 163.3162 Agricultural Lands and Practices.—

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

287 (b) "Farm operation" has the same meaning as provided in s.  
288 823.14.

289 Section 7. For the purpose of incorporating the amendments  
290 made by this act to section 823.14, Florida Statutes, in a

592-02135-21

202188c2

291 reference thereto, paragraph (b) of subsection (3) of section  
292 163.3163, Florida Statutes, is reenacted to read:

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

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

296 (b) "Farm operation" has the same meaning as defined in s.  
297 823.14.

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

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

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

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

311 570.86 Definitions.—As used in ss. 570.85-570.89, the term:

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

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