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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:
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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, or ~~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 farm products ~~produce~~ at roadside stands or
100 farm markets; the operation of machinery and irrigation pumps;
101 the generation of noise, odors, dust, fumes, and particle
102 emissions ~~and fumes~~; ground or aerial seeding and spraying; the
103 placement and operation of an apiary; the application of
104 chemical fertilizers, conditioners, insecticides, pesticides,
105 and herbicides; agritourism activities; and the employment and
106 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

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

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

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

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

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

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

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146 4. The presence of unsanitary places where animals are
147 slaughtered, which may give rise to diseases which are harmful
148 to human or animal life.

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

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

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

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

172 (8) PUNITIVE DAMAGES.—Any punitive damages claim in a
173 nuisance action brought against a farm is subject to ss. 768.71
174 through 768.81. Additionally, a plaintiff may not recover

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175 punitive damages in a nuisance action against a farm unless:

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

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

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

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

190 193.4517 Assessment of agricultural equipment rendered
191 unable to be used due to Hurricane Michael.—

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

193 (a) "Farm" has the same meaning as provided in s.
194 823.14(3)(b) ~~s. 823.14(3)(a)~~.

195 (b) "Farm operation" has the same meaning as provided in s.
196 823.14(3)(c) ~~s. 823.14(3)(b)~~.

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

199 316.5501 Permitting program for combination truck tractor,
200 semitrailer, and trailer combination coupled as a single unit
201 subject to certain requirements.—

202 (1) By no later than January 1, 2020, the Department of
203 Transportation in conjunction with the Department of Highway

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204 Safety and Motor Vehicles shall develop a permitting program
205 that, notwithstanding any other provision of law except
206 conflicting federal law and applicable provisions of s. 316.550,
207 prescribes the operation of any combination of truck tractor,
208 semitrailer, and trailer combination coupled together so as to
209 operate as a single unit in which the semitrailer and the
210 trailer unit may each be up to 48 feet in length, but not less
211 than 28 feet in length, if such truck tractor, semitrailer, and
212 trailer combination is:

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

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

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

227 (d) Meeting the following weight limitations:

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

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

232 3. The maximum overall gross weight of the truck tractor-

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233 semitrailer-trailer combination shall not exceed 155,000 pounds.

234 Section 4. Paragraph (b) of subsection (16) of section
235 633.202, Florida Statutes, is amended to read:

236 633.202 Florida Fire Prevention Code.—

237 (16)

238 (b) Notwithstanding any other provision of law:

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

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

246 3. Except for an agricultural pole barn, a structure on a
247 farm, as defined in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~, which is
248 used by an owner for agritourism activity, as defined in s.
249 570.86, for which the owner receives consideration must be
250 classified in one of the following classes:

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

259 b. Class 2: A nonresidential farm building that is used by
260 the owner for agritourism activity with up to 300 persons
261 occupying the structure at one time. A structure in this class

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262 is subject to annual inspection for classification by the local
263 authority having jurisdiction. This class is not subject to the
264 Florida Fire Prevention Code but is subject to rules adopted by
265 the State Fire Marshal pursuant to this section.

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

272 Section 5. Paragraph (g) of subsection (1) of section
273 812.015, Florida Statutes, is amended to read:

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

278 (1) As used in this section:

279 (g) "Farm theft" means the unlawful taking possession of
280 any items that are grown or produced on land owned, rented, or
281 leased by another person. The term includes the unlawful taking
282 possession of equipment and associated materials used to grow or
283 produce farm products as defined in s. 823.14(3)(d) ~~s.~~
284 ~~823.14(3)(e)~~.

285 Section 6. For the purpose of incorporating the amendments
286 made by this act to section 823.14, Florida Statutes, in a
287 reference thereto, paragraph (b) of subsection (2) of section
288 163.3162, Florida Statutes, is reenacted to read:

289 163.3162 Agricultural Lands and Practices.—

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

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291 (b) "Farm operation" has the same meaning as provided in s.
292 823.14.

293 Section 7. For the purpose of incorporating the amendments
294 made by this act to section 823.14, Florida Statutes, in a
295 reference thereto, paragraph (b) of subsection (3) of section
296 163.3163, Florida Statutes, is reenacted to read:

297 163.3163 Applications for development permits; disclosure
298 and acknowledgment of contiguous sustainable agricultural land.—

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

300 (b) "Farm operation" has the same meaning as defined in s.
301 823.14.

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

306 403.9337 Model Ordinance for Florida-Friendly Fertilizer
307 Use on Urban Landscapes.—

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

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

315 570.86 Definitions.—As used in ss. 570.85-570.89, the term:

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

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