

CHAPTER 2021-7

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 88

An act relating to farming operations; amending s. 823.14, F.S.; revising legislative findings; defining and redefining terms; prohibiting farms from being held liable for nuisance except under certain circumstances; providing a burden of proof; prohibiting nuisance actions from being filed against farm operations unless specified conditions are met; providing requirements for and limitations on damages; providing that plaintiffs who bring nuisance actions against farm operations are liable for certain costs and expenses under certain conditions; amending ss. 193.4517, 316.5501, 633.202, and 812.015, F.S.; conforming cross-references; re-enacting ss. 163.3162(2)(b), 163.3163(3)(b), 403.9337(4), and 570.86(4), F.S., relating to agricultural lands and practices, applications for development permits and disclosure and acknowledgment of contiguous sustainable agricultural land, Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, and definitions relating to agritourism, respectively, to incorporate the amendments made by this act to s. 823.14, F.S., in references thereto; providing an effective date.

WHEREAS, all 50 U.S. states have enacted “Right to Farm” laws that protect farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist and then use legal actions to stop or interfere with ongoing farming operations, and

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

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

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

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

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

WHEREAS, it is timely and prudent to modernize the Florida Right to Farm Act by clarifying definitions, standing, and procedures in order to ensure that the original intent of Florida's Right to Farm law is preserved and a viable agricultural industry in this state can continue, NOW, THEREFORE,

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

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

823.14 Florida Right to Farm Act.—

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

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

(a) “Agritourism activity” has the same meaning as provided in s. 570.86.

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

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

dust, fumes, and particle emissions and fumes; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; agritourism activities; and the employment and use of labor.

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

~~(e)~~(d) “Established date of operation” means the date the farm operation commenced. For an agritourism activity, the term “established date of operation” means the date the specific agritourism activity commenced. If the farm operation is subsequently expanded within the original boundaries of the farm land, the established date of operation of the expansion shall also be considered as the date the original farm operation commenced. If the land boundaries of the farm are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent established date of operation. The expanded operation shall not divest the farm operation of a previous established date of operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) “Farm” has the same meaning as provided in s. 823.14(3)(b) ~~s. 823.14(3)(a)~~.

(b) “Farm operation” has the same meaning as provided in s. 823.14(3)(c) ~~s. 823.14(3)(b)~~.

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

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

(1) By no later than January 1, 2020, the Department of Transportation in conjunction with the Department of Highway Safety and Motor Vehicles shall develop a permitting program that, notwithstanding any other provision of law except conflicting federal law and applicable provisions of s. 316.550, prescribes the operation of any combination of truck tractor, semitrailer, and trailer combination coupled together so as to operate as a single unit in which the semitrailer and the trailer unit may each be up to 48 feet in length, but not less than 28 feet in length, if such truck tractor, semitrailer, and trailer combination is:

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

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

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

(d) Meeting the following weight limitations:

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

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

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

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

633.202 Florida Fire Prevention Code.—

(16)

(b) Notwithstanding any other provision of law:

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

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

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

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

b. Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

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

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

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

(1) As used in this section:

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

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

163.3162 Agricultural Lands and Practices.—

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

(b) “Farm operation” has the same meaning as provided in s. 823.14.

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

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

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

(b) “Farm operation” has the same meaning as defined in s. 823.14.

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

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

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

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

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

(4) “Farm operation” has the same meaning as in s. 823.14.

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

Approved by the Governor April 29, 2021.

Filed in Office Secretary of State April 29, 2021.