

2021 Handbook of Florida Water Regulation: Florida Right-to-Farm Act¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations. This handbook is provided as an educational text for those interested in water use and water resource issues in Florida.

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FRTFA Overview

The Florida state government recognizes that agriculture is a major contributor to the Florida economy, as lands under cultivation constitute irreplaceable resources and preserve the landscape and environmental resources of Florida, especially when compared with urban landscapes. Also recognizing that farming in urbanizing areas are potentially subject to nuisance lawsuits, which can force the premature removal of farmland from agricultural use, the Florida Legislature passed the Florida Right-to-Farm Act (FRTFA) to protect reasonable farm operations from nuisance lawsuits.

How does FRTFA restrict nuisance lawsuits?

FRTFA [Florida Statutes, Section 823.14] restricts nuisance lawsuits against farmers by providing that farm operations that (a) have been in operation for one year or more, (b) were not nuisances when they were established, and (c)

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conform to generally accepted agricultural and management practices, are not a public or private nuisance.

The provisions of FRTFA are not affected by change of ownership, changes in the farm product(s) being produced, changes in the conditions in or around the locality of the farm, or those changes brought by compliance with the best management practices (BMPs) adopted by local, state, or federal agencies.

In addition, FRTFA provides that local governments may not adopt any rules or ordinances that restrict or limit a *bona fide* farming activity (i.e., farming activity undertaken for a good faith commercial use) conducted on agricultural lands in accordance with implemented BMPs.

Expansion of farm operations within the original boundaries of the farm, and expansion of the farm's land boundaries do not strip the farm operation of its previous established date of operation.

What does FRTFA require and prohibit?

To be protected from nuisance lawsuits, FRTFA requires that farm operations be reasonable. A farm reasonably operates when it conforms to the generally accepted agricultural and management practices. However, FRTFA does not extend protection to farming operations in which the following are found:

- Untreated or improperly treated human waste, garbage, dead animals, dangerous waste materials, or gases that are hazardous to human or animal life,
- Improperly built or maintained septic tanks, indoor or outdoor toilets, or showers,
- Unsanitary conditions in places where animals are slaughtered, which may give rise to diseases that are harmful to humans or animals, or
- Keeping of diseased animals that are dangerous to human health unless they are kept in accordance with a state or federal disease control program.

FRTFA also prohibits an existing farm operation from changing to a more excessive farm operation with regard to noise, odor, dust, or fumes where the farm operation is adjacent to an established residence or business.

Furthermore, FRTFA does not give the farmer license to violate the principles of negligence or nuisance law, or to pollute the environment. Contaminating water wells or

misapplying pesticides (pesticide drift onto neighboring properties) will still open the farmer up to a potential lawsuit.

Nonpoint source pollution (runoff) from farms can cause bacteria, nutrients (e.g., phosphorus), and other substances to enter and contaminate surface waters. Groundwater can also be contaminated by seepage from farms. This can lead to violations, liability, and penalties under several of the acts and programs discussed in this handbook unless the appropriate measures are taken to reduce the amount of contaminants that enter the water, such as storing and managing facility wastewater and runoff with an appropriate waste management system.

For more information regarding the rights of farmers under FRTFA and other acts, contact the Florida Department of Agriculture and Consumer Services (FDACS).

Sources

Chapter 823, Florida Statutes, Section 823.14

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