



## Legislative Report: 2.19.21

*Provided by Jim Spratt, Magnolia Strategies LLC*

The state legislature has wrapped up its final week of committee meetings before the start of the 2021 regular session. On Monday, the Senate Environmental and Natural Resources Committee heard SB 88, "Right to Farm," by Senator Jason Brodeur. This legislation is a high priority for the Association as well as for other major agricultural groups in Florida. As currently drafted, the bill brings agritourism activities under the umbrella of protections provided by the state's existing Right to Farm Act. In addition, it expands the protections from lawsuits beyond nuisance to also include negligence, trespass, personal injury, strict liability, or other torts, provided the farm activity complies with state and federal laws, regulations or best management practices. The legislation also clarifies that fumes and particulate matter are by-products of farm activities and are clearly protected under the Right to Farm Act. Lastly, the bill puts significant guards in place to limit compensatory damages which may be sought in a legal suit and raises the evidentiary bar to a standard of clear and convincing evidence. SB 88 passed through the Senate Committee with a 4-1 vote.

Also on Monday, the Senate Commerce and Tourism Committee passed SB 374 by Senator Jennifer Bradley. This bill creates the "Agricultural Equipment Fair Repair Act," requiring original equipment manufacturers of agricultural equipment to provide certain manufacturing, diagnostic, and repair information to independent repair providers and owners. Original equipment manufacturers are prohibited from excluding certain information concerning security-related functions from the material made available to an owner or independent repair provider. Additionally, a civil penalty may be collected from any original equipment manufacturer found to be in violation of the bill's provisions. The bill does not apply to motor vehicle manufacturers or motor vehicle dealers. The Association supports the concept of our members' right to repair their equipment, yet we also recognize that this issue is very complicated. We are still working with manufactures and dealers to fully understand what diagnostic tools and equipment are currently available. We remain committed to working with the Senate and House sponsors as well as other agricultural groups and stakeholders as this issue progresses through the legislative process.

On Wednesday, the House Judiciary Committee passed HB 7, "Civil Liability for Damages Relating to COVID-19" by Representative Lawrence McClure. In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders directing Floridians to stay at home, with exceptions for essential services and activities. While some of the executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020. As COVID-19 spread across the world, the United States, and Florida, information about the virus evolved at a rapid pace. Official guidance came from multiple sources and sometimes changed on a daily basis. Business owners, schools, government leaders, religious organizations, and other entities scrambled to make the best decisions possible based on their knowledge at the time. CS/HB 7 provides several COVID-19-related liability protections for businesses, educational institutions, government entities, religious organizations, and other entities. Under the bill, a covered entity that makes a good faith effort to substantially comply with applicable COVID-19 guidance is immune from civil liability from a COVID-19-related civil action.

The bill also provides that for any COVID-19-related civil action against a covered entity, a plaintiff must:

- Plead his or her complaint with particularity;
- Submit, at the time of filing suit, a physician's affidavit confirming the physician's belief that the plaintiff's COVID-19-related injury occurred because of the defendant's conduct; and
- Prove, by clear and convincing evidence, that the defendant was at least grossly negligent.

The Legislature will not be in Tallahassee next week but will return on Monday, March 1. The session will convene the next morning. We fully expect the 60-day session to be full of surprises and to continue to be challenging as access to the Capitol remains limited. As session gets into full swing, we expect to see quite a few bill or interest to the industry. We will update the membership as those good and bad ideas are discussed.