

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 711
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Finance Committee Substitute Adopted 6/5/18
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Short Title: NC Farm Act of 2018.

(Public)

Sponsors:

Referred to:

May 17, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE AGRICULTURAL LAWS.

3 Whereas, frivolous nuisance lawsuits threaten the very existence of farming in North
4 Carolina; and

5 Whereas, in response to the long-standing threat to agriculture, in 1979 the General
6 Assembly enacted the State's first effort to statutorily protect the ability of farms and forestry
7 operations to continue to operate as surrounding development encroached; and

8 Whereas, following the 1979 enactment, at least three succeeding General Assemblies
9 in 1992, 2013, and 2017 tried to perfect a statutory framework that broadly fosters a cooperative
10 relationship between farms and forestry operations and their neighbors across North Carolina;
11 and

12 Whereas, recently a federal trial court incorrectly and narrowly interpreted the North
13 Carolina Right to Farm Act in a way that contradicts the intent of the General Assembly and
14 effectively renders the Act toothless in offering meaningful protection to long-established North
15 Carolina farms and forestry operations; and

16 Whereas, regrettably, the General Assembly is again forced to make plain its intent
17 that existing farms and forestry operations in North Carolina that are operating in good faith be
18 shielded from nuisance lawsuits filed long after the operations become established; Now,
19 therefore,

20 The General Assembly of North Carolina enacts:

21
22 **FRUIT AND VEGETABLE HANDLERS REGISTRATION ACT**

23 **SECTION 1.(a)** Article 44 of Chapter 106 of the General Statutes is repealed.

24 **SECTION 1.(b)** Chapter 106 of the General Statutes is amended by adding a new
25 Article to read:

26 "Article 44A.

27 "Fruit and Vegetable Handlers Registration Act.

28 **"§ 106-501.1. Definitions.**

29 The following definitions shall apply when used under this Article:

30 (1) "Commissioner" means the Commissioner of Agriculture of the State of North
31 Carolina.



- 1 (2) "Consignment" means any transfer of fruits and vegetables by a seller to the
2 custody of another person who acts as the agent for the seller for the purpose
3 of selling such fruits and vegetables.
- 4 (3) "Department" means the Department of Agriculture and Consumer Services.
- 5 (4) "Farmer" means any person who produces fruits or vegetables or both.
- 6 (5) "Handler" means any person in the business of buying, receiving, selling,
7 exchanging, negotiating, processing for resale, or soliciting the sale, resale,
8 exchange, or transfer of any fruits and vegetables purchased from a North
9 Carolina farmer, received on consignment from a North Carolina farmer, or
10 received to be handled on net return basis from a North Carolina farmer.
- 11 (6) "Net return basis" means a purchase for sale of fruits and vegetables from a
12 farmer or shipper at an unfixed or unstated price at the time the fruits and
13 vegetables are shipped from the point of origin, and it shall include all
14 purchases made "at the market price," "at net worth," and on similar terms,
15 which indicate that the buyer is the final arbiter of the price to be paid.
- 16 (7) "Processing" means any act or operation that freezes, dehydrates, cans, or
17 otherwise changes the physical form or characteristic of fruits and vegetables.

18 **§ 106-501.2. Registration required.**

19 (a) Prior to conducting business in North Carolina, a handler shall register with the
20 Department, free of cost, by providing to the Department the following information:

- 21 (1) The handler's name.
- 22 (2) The handler's principal place of business.
- 23 (3) The type of fruits and vegetables handled by the handler.
- 24 (4) The annual volume, in dollar amount, of fruits and vegetables handled by the
25 handler in North Carolina.

26 (b) A handler shall update the Department within 60 calendar days of any change in
27 information required under subdivision (a)(1), (a)(2), or (a)(3) of this section.

28 (c) A handler shall update the Department of the annual volume required under
29 subdivision (a)(4) of this section by February 1st of each year.

30 (d) Information collected under this Article shall be held confidential by the Department
31 and not subject to public records disclosure.

32 **§ 106-501.3. Exemptions to registration.**

33 This Article shall not apply to:

- 34 (1) A farmer or group of farmers in the sale of fruits and vegetables produced by
35 the farmer or group of farmers.
- 36 (2) A handler who pays at the time of purchase with United States cash currency
37 or a cash equivalent, such as a money order, cashier's check, wire transfer,
38 electronic funds transfer, or PIN-based debit transaction, or a credit card.
- 39 (3) A restaurant.
- 40 (4) A retailer that sells fruits and vegetables to end-use consumers through retail
41 establishments or food stands operated by the company, its affiliates, or
42 subsidiaries.

43 **§ 106-501.4. Authority of the Board of Agriculture.**

44 The Board of Agriculture may adopt rules to implement this Article.

45 **§ 106-501.5. Civil penalties.**

46 (a) The Commissioner may assess a civil penalty of not more than one hundred dollars
47 (\$100.00) per violation against any person or business entity who violates a provision of this
48 Article or any rule adopted thereunder. In determining the amount of the penalty, the
49 Commissioner shall consider the degree and extent of harm caused by the violation. The clear
50 proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty
51 and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 (b) Civil penalties for failure to register or provide updated information under this Article
 2 shall only be issued after a 15-calendar-day notice has been provided to the handler and the
 3 handler fails to remedy the deficiency within the 15 days.

4 **"§ 106-501.6. Injunctions.**

5 In addition to the remedies provided in this Article and notwithstanding the existence of any
 6 adequate remedy at law, the Commissioner is authorized to apply to any court of competent
 7 jurisdiction, and such court shall have jurisdiction upon hearing and for cause shown to grant,
 8 for a temporary or permanent injunction, or both, restraining any person from violating or
 9 continuing to violate any of the provisions of this Article or any rule promulgated thereunder.
 10 Such injunction shall be issued without bond."

11 **SECTION 1.(c)** This section becomes effective January 1, 2019, and applies to
 12 handlers conducting business in the State on or after that date.

13
 14 **DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**
 15 **CONFIDENTIALITY CHANGE**

16 **SECTION 2.** G.S. 106-24.1 reads as rewritten:

17 **"§ 106-24.1. Confidentiality of information collected and published.**

18 All information published by the Department of Agriculture and Consumer Services pursuant
 19 to this Part shall be classified so as to prevent the identification of information received from
 20 individual farm operators. All information generated by any federal agency received pursuant to
 21 this ~~Part~~ Chapter that is confidential under federal law shall be held confidential by the
 22 Department and its ~~employees~~ employees, unless confidentiality is waived by the federal agency.
 23 All information collected by the Department from farm owners or animal owners, including, but
 24 not limited to, certificates of veterinary inspection, animal medical records, laboratory reports
 25 received or generated from samples submitted for analysis, or other records that may be used to
 26 identify a person or private business entity subject to regulation by the Department shall not be
 27 disclosed without the permission of the owner unless the State Veterinarian determines that
 28 disclosure is necessary to prevent the spread of an animal disease or to protect the public health,
 29 or the disclosure is necessary in the implementation of these animal health programs."
 30

31 **EXEMPT GOT TO BE NC AGRICULTURE MERCHANDISE FROM UMSTEAD ACT**

32 **SECTION 3.** G.S. 66-58 reads as rewritten:

33 **"§ 66-58. Sale of merchandise or services by governmental units.**

34 (a) Except as may be provided in this section, it shall be unlawful for any unit, department
 35 or agency of the State government, or any division or subdivision of the unit, department or
 36 agency, or any individual employee or employees of the unit, department or agency in his, or her,
 37 or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of
 38 goods, wares or merchandise in competition with citizens of the State, or to engage in the
 39 operation of restaurants, cafeterias or other eating places in any building owned by or leased in
 40 the name of the State, or to maintain service establishments for the rendering of services to the
 41 public ordinarily and customarily rendered by private enterprises, or to provide transportation
 42 services, or to contract with any person, firm or corporation for the operation or rendering of the
 43 businesses or services on behalf of the unit, department or agency, or to purchase for or sell to
 44 any person, firm or corporation any article of merchandise in competition with private enterprise.
 45 The leasing or subleasing of space in any building owned, leased or operated by any unit,
 46 department or agency or division or subdivision thereof of the State for the purpose of operating
 47 or rendering of any of the businesses or services herein referred to is hereby prohibited.

48 (b) The provisions of subsection (a) of this section shall not apply to:

49 ...

50 (13b) The Department of Agriculture and Consumer Services with regard to its
 51 lessees at farmers' markets operated by the Department.

- 1 (13c) The Western North Carolina Agricultural Center.
 2 (13d) Agricultural centers or livestock facilities operated by the Department of
 3 Agriculture and Consumer Services.
 4 (13e) The Department of Agriculture and Consumer Services with regard to its Got
 5 to Be NC Agriculture promotion.
 6"

7
 8 **ALLOW DISTRIBUTION OF VERIFIED PROPAGULES BY INDUSTRIAL HEMP**
 9 **COMMISSION**

10 **SECTION 4.** G.S. 106-568.51 reads as rewritten:

11 **"§ 106-568.51. Definitions.**

12 The following definitions apply in this Article:

- 13 (1) ~~Certified seed. — Industrial hemp seed that has been certified as having a~~
 14 ~~delta-9 tetrahydrocannabinol concentration less than that adopted by federal~~
 15 ~~law in the Controlled Substances Act, 21 U.S.C. § 801 et seq.~~
 16 (2) Commercial use. — The use of industrial hemp as a raw ingredient in the
 17 production of hemp products.
 18 (3) Commission. — The North Carolina Industrial Hemp Commission created by
 19 this Article.
 20 (4) Department. — The North Carolina Department of Agriculture.
 21 (5) Grower. — Any person licensed to grow industrial hemp by the Commission
 22 pursuant to this Article.
 23 (6) Hemp products. — All products made from industrial hemp, including, but not
 24 limited to, cloth, cordage, fiber, food, fuel, paint, paper, particleboard,
 25 plastics, seed, seed meal and seed oil for consumption, and ~~certified~~
 26 ~~seed~~ verified propagules for cultivation if the seeds originate from industrial
 27 hemp varieties.
 28 (7) Industrial hemp. — All parts and varieties of the plant *Cannabis sativa* (L.),
 29 cultivated or possessed by a grower licensed by the Commission, whether
 30 growing or not, that contain a delta-9 tetrahydrocannabinol concentration of
 31 not more than three-tenths of one percent (0.3%) on a dry weight basis.
 32 (7a) Industrial hemp research program. — The research program established
 33 pursuant to G.S. 106-568.53(1).
 34 (7b) State land grant university. — North Carolina State University and North
 35 Carolina A&T State University.
 36 (8) Tetrahydrocannabinol or THC. — The natural or synthetic equivalents of the
 37 substances contained in the plant, or in the resinous extractives of, cannabis,
 38 or any synthetic substances, compounds, salts, or derivatives of the plant or
 39 chemicals and their isomers with similar chemical structure and
 40 pharmacological activity.
 41 (9) Verified propagule. — A seed or clone from an industrial hemp plant from
 42 which THC concentration samples have been tested by a qualified laboratory
 43 and confirmed as having a delta-9 tetrahydrocannabinol concentration less
 44 than that adopted by federal law in the Controlled Substances Act, 21 U.S.C.
 45 § 801, et seq."

46
 47 **TECHNICAL CORRECTIONS TO FORESTRY STATUTES**

48 **SECTION 5.(a)** G.S. 106-980(b) reads as rewritten:

49 "(b) Three or more persons, who associate themselves by an agreement in writing for the
 50 purpose, may become a private limited dividend corporation to finance and carry out projects for
 51 the protection and development of forests and for such other related purposes as the ~~Secretary~~

1 Commissioner shall approve, subject to all the duties, restrictions and liabilities, and possessing
2 all the rights, powers, and privileges, of corporations organized under the general corporation
3 laws of the State of North Carolina, except where such provisions are in conflict with this
4 Article."

5 **SECTION 5.(b)** G.S. 106-981 reads as rewritten:

6 "**§ 106-981. Manner of organizing.**

7 A corporation formed under this Article shall be organized and incorporated in the manner
8 provided for organization of corporations under the general corporation laws of the State of North
9 Carolina, except where such provisions are in conflict with this Article. The certificate of
10 organization of any such corporation shall contain a statement that it is organized under the
11 provisions of this Article and that it consents to be and shall be at all times subject to the rules
12 and supervision of the ~~Secretary, Commissioner~~, and shall set forth as or among its purposes the
13 protection and development of forests and the purchase, acquisition, sale, conveyance and other
14 dealing in the same and the products therefrom, subject to the rules from time to time imposed
15 by the ~~Secretary, Commissioner~~."

16 **SECTION 5.(c)** G.S. 106-982 reads as rewritten:

17 "**§ 106-982. Directors.**

18 There shall not be less than three directors, one of whom shall always be a person designated
19 by the ~~Secretary, Commissioner~~, which one need not be a stockholder."

20 **SECTION 5.(d)** G.S. 106-1003 reads as rewritten:

21 "**§ 106-1003. Deposit of receipts with State treasury.**

22 All moneys paid to the ~~Secretary, Commissioner~~ for services rendered under the provisions
23 of this Article shall be deposited into the State treasury to the credit of the Department."

24 **SECTION 5.(e)** G.S. 106-1012(2) reads as rewritten:

25 "(2) "Approved practices" mean those silvicultural practices approved by the
26 ~~Secretary, Commissioner~~ for the purpose of commercially growing timber
27 through the establishment of forest stands, of insuring the proper regeneration
28 of forest stands to commercial production levels following the harvest of
29 mature timber, or of insuring maximum growth potential of forest stands to
30 commercial production levels. Such practices shall include those required to
31 accomplish site preparation, natural and artificial forestation, noncommercial
32 removal of residual stands for silvicultural purposes, cultivation of established
33 young growth of desirable trees for silvicultural purposes, and improvement
34 of immature forest stands for silvicultural purposes. In each case, approved
35 practices will be determined by the needs of the individual forest stand. These
36 practices shall include existing practices and such practices as are developed
37 in the future to insure both maximum forest productivity and environmental
38 protection."

39
40 **DIRECT DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO**
41 **ADDRESS MISLABELING OF PLANT-BASED PRODUCTS AS "MILK"**

42 **SECTION 6.(a)** It is declared to be the policy of the State of North Carolina that it
43 is necessary to take steps to assure the continued viability of dairy farming and to assure
44 consumers of an adequate, local supply of pure and wholesome milk. The dairy industry is an
45 essential agricultural activity and dairy farms, and associated suppliers, marketers, processors,
46 and retailers, are an integral component of the region's economy. The North Carolina General
47 Assembly finds that the United States Food and Drug Administration has not provided consistent
48 guidance to the Department of Agriculture and Consumer Services, dairy farms, associated
49 suppliers, marketers, processors, retailers, and consumers as to the application of the established
50 standard of identity of milk as defined in 21 C.F.R. § 131.110. The North Carolina General

1 Assembly seeks to be a national leader in the preservation of the dairy industry while balancing
2 the need to maintain interstate commerce.

3 **SECTION 6.(b)** The following definitions apply to this section:

- 4 (1) "Department" means the Department of Agriculture and Consumer Services.
- 5 (2) "FDA" means the United States Food and Drug Administration.
- 6 (3) "Milk" means the lacteal secretion, practically free from colostrum, obtained
7 by the complete milking of one or more healthy hooved mammals. Hooved
8 mammals include, but are not limited to, the members of the Order
9 Cetartiodactyla, such as: Family Bovidae (cattle, water buffalo, sheep, goats,
10 yaks, etc.), Family Camelidae (llamas, alpacas, camels, etc.), Family Cervidae
11 (deer, reindeer, moose, etc.), and Family Equidae (horses, donkeys, etc.).

12 **SECTION 6.(c)** In accordance with the established standard of identity for milk
13 defined in 21 C.F.R. § 131.110 and the Pasteurized Milk Ordinance, the Department shall
14 immediately develop an enforcement plan to enforce FDA's standard of identity for milk as
15 adopted in the North Carolina Administrative Code to prohibit the sale of plant-based products
16 mislabeled as milk.

17 **SECTION 6.(d)** No later than 90 days after the effective date of this subsection, the
18 Department shall begin to implement its enforcement plan, which shall include, but is not limited
19 to, notification of the Department's intent to embargo all mislabeled products offered for sale in
20 this State. All plant-based products displayed for sale in this State shall be labeled in accordance
21 with FDA's standard of identity for milk and the Pasteurized Milk Ordinance no later than six
22 months after the effective date of this section.

23 **SECTION 6.(e)** Subsection (d) of this section is effective upon the enactment into
24 law of a mandatory labeling requirement to prohibit the sale of plant-based products mislabeled
25 as milk that is consistent with this section by any 11 of the group of states composed of Alabama,
26 Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Oklahoma, South
27 Carolina, Tennessee, Texas, Virginia, and West Virginia. The remainder of this section is
28 effective when it becomes law.

29 **SECTION 6.(f)** Nothing in this section shall be construed to limit the Department's
30 authority to enforce its laws and regulations.

31 32 **SET QUORUM FOR AGRICULTURE AND FORESTRY AWARENESS STUDY** 33 **COMMISSION**

34 **SECTION 7.** G.S. 120-150 reads as rewritten:

35 **"§ 120-150. Creation; appointment of members.**

36 There is created an Agriculture and Forestry Awareness Study Commission. Members of the
37 Commission shall be citizens of North Carolina who are interested in the vitality of the
38 agriculture and forestry sectors of the State's economy. Members shall be as follows:

- 39 (1) Three appointed by the Governor.
- 40 (2) Three appointed by the President Pro Tempore of the Senate.
- 41 (3) Three appointed by the Speaker of the House.
- 42 (4) The chairs of the House Agriculture Committee.
- 43 (5) The chairs of the Senate Committee on Agriculture, Environment, and Natural
44 Resources.
- 45 (6) The Commissioner of Agriculture or the Commissioner's designee.
- 46 (7) A member of the Board of Agriculture designated by the chair of the Board of
47 Agriculture.
- 48 (8) The President of the North Carolina Farm Bureau Federation, Inc., or the
49 President's designee.
- 50 (9) The President of the North Carolina State Grange or the President's designee.
- 51 (10) The Secretary of Environmental Quality or the Secretary's designee.

1 (11) The President of the North Carolina Forestry Association, Inc., or the
2 President's designee.

3 Members shall be appointed for two-year terms beginning October 1 of each odd-numbered
4 year. The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee
5 on Agriculture, Environment, and Natural Resources shall serve as cochairs. The President Pro
6 Tempore of the Senate and the Speaker of the House of Representatives may each appoint an
7 additional member of the Senate and House, respectively, to serve as cochair. If appointed, these
8 cochairs shall be voting members of the Commission. A quorum of the Commission is nine
9 members."

10 **AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION STUDIES**

11 **SECTION 8.(a)** The Agriculture and Forestry Awareness Study Commission shall
12 study all of the following matters:

- 13 (1) Requiring the holders of unused rights-of-way and utility easements to offer
14 the easements to the underlying property owners for fair market value.
15 (2) The advisability of excluding property enrolled in present use value taxation
16 from rural fire protection district and county service district taxes.
17

18 **SECTION 8.(b)** The Agriculture and Forestry Awareness Study Commission shall
19 complete the studies required by subsection (a) of this section and report its findings and
20 recommendations, including any legislative proposals, to the General Assembly by January 1,
21 2019.
22

23 **MANDATORY RECORD NOTICE OF PROXIMITY TO FARMLANDS**

24 **SECTION 9.** G.S. 106-741 reads as rewritten:

25 **"§ 106-741. Record notice of proximity to farmlands.**

26 (a) ~~Any county that has a computerized land records system may require that such~~All
27 counties shall require that land records include some form of notice reasonably calculated to alert
28 a person researching the title of a particular tract that such tract is located within one-half mile
29 of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or
30 within one-half mile of a voluntary agricultural district.

31 (b) In no event shall the county or any of its officers, employees, or agents be held liable
32 in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in
33 connection with the duties or obligations imposed by any ordinance adopted under subsection
34 (a).

35 (c) In no event shall any cause of action arise out of the failure of a person researching
36 the title of a particular tract to report to any person the proximity of the tract to a qualifying farm
37 or voluntary agricultural district as defined in this Article.

38 (d) In no event shall any cause of action arise out of the failure of a person licensed under
39 Chapters 93A or 93E of the General Statutes for failure to report to any person the proximity of
40 a tract to a qualifying farm or voluntary agricultural district as defined in this Article."
41

42 **AMEND NORTH CAROLINA RIGHT TO FARM LAW**

43 **SECTION 10.(a)** G.S. 106-701 reads as rewritten:

44 **"§ 106-701. ~~When agricultural and forestry operation, etc., not constituted nuisance by~~**
45 **~~changed conditions in or about the locality outside of the operation.~~Right to farm**
46 **defense; nuisance actions.**

47 (a) ~~No agricultural or forestry operation or any of its appurtenances shall be or become a~~
48 ~~nuisance, private or public, by any changed conditions in or about the locality outside of the~~
49 ~~operation after the operation has been in operation for more than one year, when such operation~~
50 ~~was not a nuisance at the time the operation began.~~No nuisance action may be filed against an
51 agricultural or forestry operation unless all of the following apply:

- 1 (1) The plaintiff is a legal possessor of the real property affected by the conditions
2 alleged to be a nuisance.
- 3 (2) The real property affected by the conditions alleged to be a nuisance is located
4 within one half-mile of the source of the activity or structure alleged to be a
5 nuisance.
- 6 (3) The action is filed within one year of the establishment of the agricultural or
7 forestry operation or within one year of the operation undergoing a
8 fundamental change.

9 (a1) ~~The provisions of subsection (a) of this section shall not apply when the plaintiff~~
10 ~~demonstrates that the agricultural or forestry operation has undergone a fundamental change. A~~
11 ~~For the purposes of subsection (a) of this section, a fundamental change to the operation does not~~
12 ~~include any of the following:~~

- 13 (1) A change in ownership or size.
14 (2) An interruption of farming for a period of no more than three years.
15 (3) Participation in a government-sponsored agricultural program.
16 (4) Employment of new technology.
17 (5) A change in the type of agricultural or forestry product produced.

18 (a2) ~~The provisions of subsection (a) of this section shall not apply whenever a nuisance~~
19 ~~results from the negligent or improper operation of any agricultural or forestry operation or its~~
20 ~~appurtenances.~~

21 (b) For the purposes of this Article, "agricultural operation" includes, without limitation,
22 any facility for the production for commercial purposes of crops, livestock, poultry, livestock
23 products, or poultry products.

24 (b1) For the purposes of this Article, "forestry operation" shall mean those activities
25 involved in the growing, managing, and harvesting of trees.

26 (c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm,
27 or corporation to recover damages for any injuries or damages sustained by him on account of
28 any pollution of, or change in condition of, the waters of any stream or on the account of any
29 overflow of lands of any such person, firm, or corporation.

30 (d) Any and all ordinances of any unit of local government now in effect or hereafter
31 adopted that would make the operation of any such agricultural or forestry operation or its
32 appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance
33 set forth in this section are and shall be null and void; ~~provided, however, that the provisions of~~
34 ~~this subsection shall not apply whenever a nuisance results from the negligent or improper~~
35 ~~operation of any such agricultural or forestry operation or any of its appurtenances. Provided~~
36 ~~further, void. Provided, however, that the provisions shall not apply whenever a nuisance results~~
37 ~~from an agricultural or forestry operation located within the corporate limits of any city at the~~
38 ~~time of enactment hereof.~~

39 (e) This section shall not be construed to invalidate any contracts heretofore made but
40 insofar as contracts are concerned, it is only applicable to contracts and agreements to be made
41 in the future.

42 (f) In a nuisance action against an agricultural or forestry operation, the court shall award
43 costs and expenses, including reasonable attorneys' fees, to:

- 44 (1) The agricultural or forestry operation when the court finds the operation was
45 not a nuisance and the nuisance action was frivolous or malicious; or
46 (2) The plaintiff when the court finds the agricultural or forestry operation was a
47 nuisance and the operation asserted an affirmative defense in the nuisance
48 action that was frivolous and malicious."

49 **SECTION 10.(b)** G.S. 106-702 reads as rewritten:

50 **"§ 106-702. Limitations on private nuisance actions against agricultural and forestry**
51 **operations.**

1 (a) The compensatory damages that may be awarded to a plaintiff for a private nuisance
2 action where the alleged nuisance emanated from an agricultural or forestry operation shall be as
3 follows:

- 4 (1) If the nuisance is a permanent nuisance, compensatory damages shall be
5 measured by the reduction in the fair market value of the plaintiff's property
6 caused by the nuisance, but not to exceed the fair market value of the property.
7 (2) If the nuisance is a temporary nuisance, compensatory damages shall be
8 limited to the diminution of the fair rental value of the plaintiff's property
9 caused by the nuisance.

10 (a1) A plaintiff may not recover punitive damages for a private nuisance action where the
11 alleged nuisance emanated from an agricultural or forestry operation that has not been subject to
12 a criminal conviction or a civil enforcement action taken by a State or federal environmental
13 regulatory agency pursuant to a notice of violation for the conduct alleged to be the source of the
14 nuisance within the three years prior to the first act on which the nuisance action is based.

15 (b) If any plaintiff or plaintiff's successor in interest brings a subsequent private nuisance
16 action against any agricultural or forestry operation, the combined recovery from all such actions
17 shall not exceed the fair market value of his or her property. This limitation applies regardless of
18 whether the subsequent action or actions were brought against a different defendant than the
19 preceding action or actions.

20 (c) This Article shall apply to any private nuisance claim brought against any party based
21 on that party's contractual or business relationship with an agricultural or forestry operation.

22 (d) This Article does not apply to any cause of action brought against an agricultural or
23 forestry operation for negligence, trespass, personal injury, strict liability, or other cause of action
24 for tort liability other than nuisance, nor does this Article prohibit or limit any request for
25 injunctive relief ~~or punitive damages that are~~ that is otherwise available.

26 **SECTION 10.(c)** This section is effective when it becomes law and applies to causes
27 of action commenced on or after that date.

28
29 **AMEND SOIL AND WATER CONSERVATION DISTRICT SUPERVISOR**
30 **CONTINUING EDUCATION REQUIREMENTS**

31 **SECTION 12.** G.S. 139-7.2 reads as rewritten:

32 **"§ 139-7.2. Training of elective and appointive district supervisors.**

33 (a) All district supervisors, whether elected or appointed, shall complete a minimum of
34 six clock hours of training annually-per term of service.

35 (b) The training shall include soil, water, and natural resources conservation and the
36 duties and responsibilities of district supervisors.

37 (c) The training may be provided by the School of Government at the University of North
38 Carolina at Chapel Hill, or other qualified sources as approved by the Soil and Water
39

40 **PROVIDE UNIFORMITY TO ASSESSMENT OF FARM MACHINERY**

41 **SECTION 14.(a)** G.S. 105-317.1 reads as rewritten:

42 **"§ 105-317.1. Appraisal of personal property; elements to be considered.**

43 (a) Appraisal Elements. – Whenever any personal property is appraised it shall be the
44 duty of the persons making appraisals to consider the following as to each item (or lot of similar
45 items):

- 46 (1) The replacement cost of the property;
47 (2) The sale price of similar property;
48 (3) The age of the property;
49 (4) The physical condition of the property;
50 (5) The productivity of the property;
51 (6) The remaining life of the property;

- 1 (7) The effect of obsolescence on the property;
2 (8) The economic utility of the property, that is, its usability and adaptability for
3 industrial, commercial, or other purposes; and
4 (9) Any other factor that may affect the value of the property.

5 (b) Business Property. – In determining the true value of taxable tangible personal
6 property held and used in connection with the mercantile, manufacturing, producing, processing,
7 or other business enterprise of any taxpayer, the persons making the appraisal shall consider any
8 information as reflected by the taxpayer's records and as reported by the taxpayer to the North
9 Carolina Department of Revenue and to the Internal Revenue Service for income tax purposes,
10 taking into account the accuracy of the taxpayer's records, the taxpayer's method of accounting,
11 and the level of trade at which the taxpayer does business.

12 (b1) Farm Equipment. – In determining the true value of taxable farm equipment, the
13 person making the appraisal may use any of the appraisal methods listed in subsection (a) of this
14 section and must consider relevant taxpayer information as required under subsection (b) of this
15 section. The Department must publish a depreciation schedule for farm equipment to assist
16 counties that use the cost approach to appraise this equipment. The Department must make the
17 schedule available electronically on its Web site. A county that uses a cost approach method to
18 appraise this equipment must use the depreciation schedule published pursuant to this subsection.

19 (c) Appeal Process. – A taxpayer who owns personal property taxable in the county may
20 appeal the value, situs, or taxability of the property within 30 days after the date of the initial
21 notice of value. If the assessor does not give separate written notice of the value to the taxpayer
22 at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal
23 property. The notice must contain a statement that the taxpayer may appeal the value, situs, or
24 taxability of the property within 30 days after the date of the notice. Upon receipt of a timely
25 appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the
26 opportunity to present any evidence or argument regarding the value, situs, or taxability of the
27 property. Within 30 days after the conference, the assessor must give written notice to the
28 taxpayer of the assessor's final decision. Written notice of the decision is not required if the
29 taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an
30 agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's
31 final decision to request review of that decision by the board of equalization and review or,
32 that board is not in session, by the board of county commissioners. Unless the request for review
33 is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely
34 request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be
35 followed."

36 **SECTION 14.(b)** This section is effective for taxes imposed for taxable years
37 beginning on or after July 1, 2019.

38 39 **CLARIFY CEMETERY PROPERTY TAX EXEMPTION**

40 **SECTION 15.** G.S. 105-278.2(a) reads as rewritten:

41 "(a) Real property set apart for burial purposes shall be exempted from taxation unless it
42 is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein. No
43 application is required under G.S. 105-282.1 for property exempt under this subsection. A county
44 cannot deny the exemption provided under this subsection to a taxpayer that lacks a survey or
45 plat detailing the exempt property."

46 47 **LAW ENFORCEMENT MUTUAL AID AND VETERINARIAN COMITY FOR WORLD** 48 **EQUESTRIAN GAMES**

49 **SECTION 15.1.(a)** Article 10 of Chapter 153A of the General Statutes is amended
50 by adding a new section to read:

1 "§ 153A-212.5. Mutual aid assistance by out-of-state law enforcement officers for
2 international equestrian event.

3 (a) Any law enforcement agency may request and enter into intergovernmental law
4 enforcement mutual aid agreements with out-of-state law enforcement agencies or out-of-state
5 law enforcement officers to aid in enforcing the laws of North Carolina within the jurisdiction of
6 the requesting law enforcement agency for maintaining security and safety for an international
7 equestrian event.

8 (b) Any intergovernmental law enforcement mutual aid agreement entered into under this
9 section shall be in writing and may be comprised of any of the following:

10 (1) Allowing out-of-state law enforcement officers to work temporarily with
11 officers of the requesting law enforcement agency, including in an undercover
12 capacity.

13 (2) Furnishing, lending, or exchanging supplies, equipment, facilities, personnel,
14 and services as may be needed.

15 (3) Reciprocal law enforcement mutual aid and assistance between law
16 enforcement agencies.

17 (c) Any intergovernmental law enforcement mutual aid agreement entered into under this
18 section shall address all of the following:

19 (1) Standards of conduct for the out-of-state law enforcement officers, including
20 the requesting law enforcement agencies' policies regarding the use of force.

21 (2) Training requirements, as prescribed by the requesting law enforcement
22 agency.

23 (3) Reimbursement of costs and expenses for supplies, equipment, facilities,
24 personnel, services, and similar items if furnished, lent, or exchanged as part
25 of the intergovernmental law enforcement mutual aid agreement.

26 (4) Protocols for processing claims made against or by the out-of-state law
27 enforcement officer.

28 (5) Approval of the governing body, if the law enforcement agency is a sheriff or
29 municipal police force.

30 (d) While working with the requesting law enforcement agency under the authority of
31 this section, an out-of-state law enforcement officer shall have the same jurisdiction, powers,
32 rights, privileges, and immunities, including those relating to the defense of civil actions and
33 payment of judgments, as the officers of the requesting law enforcement agency. While on duty
34 with the requesting law enforcement agency, the out-of-state law enforcement officer shall be
35 subject to the lawful operational commands of the requesting law enforcement agency.

36 (e) Notwithstanding the provisions of Chapter 17C and Chapter 17E of the General
37 Statutes, out-of-state law enforcement officers certified and sworn in the officers' home
38 jurisdiction and subject to the provisions of an intergovernmental law enforcement mutual aid
39 agreement under this section shall be deemed to have met the certification requirements of this
40 State for the purposes of being sworn as a law enforcement officer with the requesting law
41 enforcement agency.

42 (f) Notwithstanding the provisions of G.S. 128-1 and G.S. 128-1.1(c1), out-of-state law
43 enforcement officers shall be authorized to hold dual offices when one of the appointive offices
44 held is that of a out-of-state law enforcement officer and the other appointive office is that of a
45 law enforcement officer for a law enforcement agency authorized to enter into an
46 intergovernmental law enforcement mutual aid agreement under this section.

47 (g) This section in no way reduces the jurisdiction or authority of State law enforcement
48 officers.

49 (h) As used in this section, the following definitions apply:

50 (1) Law enforcement agency. – Any of the following:

- 1 a. The Highway Patrol, as established by Article 4 of Chapter 20 of the
2 General Statutes.
- 3 b. A sheriff serving a county sharing a border with another state and
4 which county is the site of an equestrian event with worldwide
5 participants.
- 6 c. A municipal police department for a municipality located, in whole or
7 part, in a county sharing a border with another state and which
8 municipality is the site of an equestrian event with worldwide
9 participants.
- 10 (2) Out-of-state law enforcement agency. – An employer which is a governmental
11 agency outside of this State that meets all of the following criteria:
- 12 a. Is assigned primary duties and responsibilities for prevention and
13 detection of crime or the general enforcement of the criminal laws of
14 the home jurisdiction or serving civil processes.
- 15 b. Has employees who possess the power of arrest by virtue of an oath
16 administered under the authority of the home jurisdiction.
- 17 (3) Out-of-state law enforcement officer. – A full-time paid employee of a
18 governmental employer who meets all of the following criteria:
- 19 a. Is actively serving in a position with assigned primary duties and
20 responsibilities for prevention and detection of crime or the general
21 enforcement of the criminal laws of the officer's home jurisdiction or
22 serving civil processes.
- 23 b. Possesses the power of arrest by virtue of an oath administered under
24 the authority of the home jurisdiction.
- 25 c. Is in good standing and has no pending civil, criminal, or departmental
26 action that would disqualify the officer if the officer were certified by
27 this State."

28 **SECTION 15.1.(b)** Article 11 of Chapter 90 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 90-187.3A. Comity for out-of-state veterinarians and international veterinarians for**
31 **international equestrian event.**

32 (a) Any nonresident veterinarian validly licensed in another state, territory, or district of
33 the United States or a foreign country may submit to the Board an application for a licensure to
34 practice veterinary medicine in this State.

35 (b) The Board shall issue, without written examination, a license to practice veterinary
36 medicine in this State to a nonresident veterinarian validly licensed in another state, territory, or
37 district of the United States or a foreign country who submits an application for licensure. The
38 Board shall not charge the fee authorized in G.S. 90-186(6)e. for the issuance of a license under
39 this section."

40 **SECTION 15.1.(c)** This section is effective when it becomes law and expires
41 October 1, 2018.

42
43 **ALLOW THE DISPENSING OF RAW MILK AND RAW MILK PRODUCTS TO**
44 **INDEPENDENT OR PARTIAL OWNERS OF LACTATING ANIMALS FOR**
45 **PERSONAL USE OR CONSUMPTION**

46 **SECTION 15.2.(a)** G.S. 106-266.35 reads as rewritten:

47 **"§ 106-266.35. Sale or dispensing of milk.**

48 (a) Except as provided in subsection (d) of this section:

49 (1) Only milk that is Grade "A" pasteurized milk may be sold or dispensed
50 directly to consumers for human consumption.

1 (2) Raw milk and raw milk products shall be sold or dispensed only to a permitted
2 milk hauler or to a processing facility at which the processing of milk is
3 permitted, graded, or regulated by a local, State, or federal agency.

4 (b) The Board of Agriculture may adopt rules to provide exceptions for dispensing raw
5 milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product
6 dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN
7 CONSUMPTION" in letters at least one-half inch in height. Any raw milk or raw milk product
8 dispensed as animal feed shall also include on its label the statement "IT IS NOT LEGAL TO
9 SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." ~~"Sale"~~This
10 labeling requirement does not apply to raw milk or raw milk products dispensed for personal use
11 or consumption to the independent or partial owner of a cow, goat, or other lactating animal.

12 (c) As used in this section, the term "sale" or "sold" shall meanmeans any transaction that
13 involves the transfer or dispensing of milk and milk products or the right to acquire milk and
14 milk products through barter or contractual arrangement or in exchange for any other form of
15 ~~compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other~~
16 ~~lactating animal or herd compensation.~~ The term "sale" or "sold" does not include the transfer or
17 ~~dispensing of raw milk or raw milk products to, or the right to acquire raw milk or raw milk~~
18 ~~products by, the independent or partial owner of a cow, goat, or other lactating animal.~~

19 (d) Nothing in this section shall prohibit the dispensing of raw milk or raw milk products
20 for personal use or consumption to, or the acquisition of raw milk or raw milk products for
21 personal use or consumption by, an independent or partial owner of a cow, goat, or other lactating
22 animal."

23 **SECTION 15.2.(b)** This section becomes effective October 1, 2018.

24 25 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

26 **SECTION 16.(a)** If any provision of this act or the application thereof to any person
27 or circumstances is held invalid, such invalidity shall not affect other provisions or applications
28 of this act which can be given effect without the invalid provision or application, and, to this end,
29 the provisions of this act are declared to be severable.

30 **SECTION 16.(b)** Except as otherwise provided, this act is effective when it becomes
31 law.