

# ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 711

ADOPTED

A4  
4

S711-ATQ-14 [v.4]

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

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Amends Title [NO]  
Third Edition

Date June 11, 2018

Senator B. Jackson

1 moves to amend the bill on page 1, lines 2 and 3, by inserting between those lines:

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

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

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

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

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

and on page 6, line 50, through page 8, line 13, by rewriting the lines to read:

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

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

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

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



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- 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 agricultural or forestry operation. When the  
5                   operation consists of multiple parcels, the one half-mile radius shall be  
6                   measured from the parcel that is the alleged source of the nuisance.
- 7           (3)    The action is filed within one year of the establishment of the agricultural or  
8                   forestry operation or within one year of the operation undergoing a  
9                   fundamental change.
- 10       (a1)    ~~The provisions of subsection (a) of this section shall not apply when the plaintiff~~  
11       ~~demonstrates that the agricultural or forestry operation has undergone a fundamental change. A~~  
12       For the purposes of subsection (a) of this section, a fundamental change to the operation does not  
13       include any of the following:
- 14           (1)    A change in ownership or size.
- 15           (2)    An interruption of farming for a period of no more than three years.
- 16           (3)    Participation in a government-sponsored agricultural program.
- 17           (4)    Employment of new technology.
- 18           (5)    A change in the type of agricultural or forestry product produced.
- 19       ~~(a2) — The provisions of subsection (a) of this section shall not apply whenever a nuisance~~  
20       ~~results from the negligent or improper operation of any agricultural or forestry operation or its~~  
21       ~~appurtenances.~~
- 22       (b)    For the purposes of this Article, "agricultural operation" includes, without limitation,  
23       any facility for the production for commercial purposes of crops, livestock, poultry, livestock  
24       products, or poultry products.
- 25       (b1)   For the purposes of this Article, "forestry operation" shall mean those activities  
26       involved in the growing, managing, and harvesting of trees.
- 27       (c)    The provisions of subsection (a) shall not affect or defeat the right of any person, firm,  
28       or corporation to recover damages for any injuries or damages sustained by him on account of  
29       any pollution of, or change in condition of, the waters of any stream or on the account of any  
30       overflow of lands of any such person, firm, or corporation.
- 31       (d)    Any and all ordinances of any unit of local government now in effect or hereafter  
32       adopted that would make the operation of any such agricultural or forestry operation or its  
33       appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance  
34       set forth in this section are and shall be null and void; ~~provided, however, that the provisions of~~  
35       ~~this subsection shall not apply whenever a nuisance results from the negligent or improper~~  
36       ~~operation of any such agricultural or forestry operation or any of its appurtenances. Provided~~  
37       ~~further, void. Provided, however, that the provisions shall not apply whenever a nuisance results~~  
38       from an agricultural or forestry operation located within the corporate limits of any city at the  
39       time of enactment hereof.
- 40       (e)    This section shall not be construed to invalidate any contracts heretofore made but  
41       insofar as contracts are concerned, it is only applicable to contracts and agreements to be made  
42       in the future.

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

3 (1) The agricultural or forestry operation when the court finds the operation was  
4 not a nuisance and the nuisance action was frivolous or malicious; or

5 (2) The plaintiff when the court finds the agricultural or forestry operation was a  
6 nuisance and the operation asserted an affirmative defense in the nuisance  
7 action that was frivolous and malicious."

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

9 "**§ 106-702. Limitations on private nuisance actions against agricultural and forestry**  
10 **operations.**

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

14 (1) If the nuisance is a permanent nuisance, compensatory damages shall be  
15 measured by the reduction in the fair market value of the plaintiff's property  
16 caused by the nuisance, but not to exceed the fair market value of the property.

17 (2) If the nuisance is a temporary nuisance, compensatory damages shall be  
18 limited to the diminution of the fair rental value of the plaintiff's property  
19 caused by the nuisance.

20 (a1) A plaintiff may not recover punitive damages for a private nuisance action where the  
21 alleged nuisance emanated from an agricultural or forestry operation that has not been subject to  
22 a criminal conviction or a civil enforcement action taken pursuant to a notice of violation for the  
23 conduct alleged to be the source of the nuisance within the three years prior to the first act on  
24 which the nuisance action is based.

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

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

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

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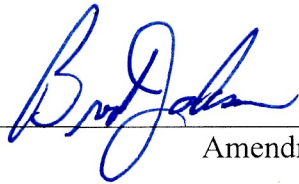
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SIGNED



Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

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35-11

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_

*Sarah Holland*  
*June 11, 2018*

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and vote information, is available in the  
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