



# HOUSE BILL 467: Agriculture and Forestry Nuisance Remedies.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	July 27, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Jennifer McGinnis Staff Attorney
<b>Analysis of:</b>	S.L. 2017-11		

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**OVERVIEW:** *S.L. 2017-11 limits the amount of compensatory damages that may be awarded in a private nuisance action against an agricultural or forestry operation to the fair market value or fair rental value of the plaintiff's property.*

*This act became effective May 11, 2017, and applies to causes of action commenced or brought on or after that date.*

**BACKGROUND:** Nuisance law in North Carolina is governed by the common law. Private nuisance is defined as any unreasonable invasion of a person's interest in the private use and enjoyment of his or her land by any type of liability-forming conduct. Determining whether an interference is unreasonable is largely fact-specific and determined by the circumstances in each case.<sup>1</sup>

G.S. 106-701 provides a "come-to-the-nuisance" defense against nuisance lawsuits for agricultural and forestry operations that have been in operation for more than one year. However, the operation can become a nuisance if operated negligently/improperly or if the operation has had a fundamental change.

An agricultural operation is: "any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products."<sup>2</sup> A forestry operation includes "those activities involved in the growing, managing, and harvesting of trees."<sup>3</sup>

**BILL ANALYSIS:** S.L. 2017-11 provides that in a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation, the compensatory damages that may be awarded to the plaintiff are:

- If the nuisance is a permanent nuisance, the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.
- If the nuisance is a temporary nuisance, the diminution in the fair rental value of the plaintiff's property caused by the nuisance.

Additionally, the act provides that if a plaintiff or a plaintiff's successor in interest brings a subsequent action against an agricultural or forestry operation, including a different defendant than in the plaintiff's initial action, the combined recovery from all nuisance actions may not exceed the fair market value of the plaintiff's property.

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<sup>1</sup> *Pake v. Morris*, 230 N.C. 424, 53 S.E.2d 300 (1949).

<sup>2</sup> G.S. 106-701(b)

<sup>3</sup> G.S. 106-701(b1)

Karen Cochrane-Brown  
Director



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The limitations on compensatory damages established by the act: (i) also apply to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation; but, (ii) do not apply to any cause of action brought against an agricultural or forestry operation for negligence, trespass, personal injury, strict liability, or other cause of action for tort liability other than nuisance.

The act explicitly provides that injunctive relief or punitive damages are not prohibited.

**EFFECTIVE DATE:** This act became effective May 11, 2017, and applies to causes of action commenced or brought on or after that date.

*Chris Saunders and Brad Krehely, staff attorneys, contributed substantially to this summary.*