



SENATE BILL 711: NC Farm Act of 2018.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2017-2018 General Assembly

Committee:		Date:	June 13, 2018
Introduced by:	Sens. B. Jackson, Cook, Sanderson	Prepared by:	Chris Saunders Staff Attorney
Analysis of:	PCS to Fourth Edition S711-CSTQx-8		

OVERVIEW: *Senate Bill 711 would make various changes to laws concerning agriculture.*

The PCS referred from House Finance:

- *Amended Section 6 to require that 11 other states adopt similar policies to address mislabeling of plant-based products as "milk" before the Department is directed to implement its enforcement plan.*
- *Removed Section 13, relating to a sales tax exemption for a zoo operated by a qualifying farmer.*

CURRENT LAW AND BILL ANALYSIS:

Section 1 of the bill would repeal the North Carolina Handler's Act (Article 44 of Chapter 106 of the General Statutes) and enact the Fruit and Vegetable Handlers Registration Act. Under current law, the Handler's Act requires a handler of fruit and vegetables to obtain a permit from the Commissioner of Agriculture ("Commissioner") and furnish to the Commissioner a bond of at least \$10,000 before entering into a written contract with a producer. The Fruit and Vegetable Handlers Registration Act would require a handler, prior to conducting business in North Carolina, to register with the Department of Agriculture and Consumer Services ("Department") by providing (i) the handler's name, (ii) the handler's principal place of business, (iii) the type of fruits and vegetables handled by the handler, and (iv) the annual volume, in dollars, or fruits and vegetables handled by the handler in North Carolina. The annual volume, in dollars, of fruits and vegetables handled in the State must be updated by February 1 of each year. The Commissioner may assess a civil penalty of up to \$100 per violation of the Article or rules directed thereunder after 15 days' notice is given to the handler, and may seek an injunction for failure to comply with the Article.

This section would become effective January 1, 2019 and would apply to handlers conducting business in the State on or after that date.

Section 2 would allow the Department to release collected information relating to agriculture that is confidential under federal law if confidentiality is waived by the federal agency that requires confidentiality.

Section 3 would exempt the Department from the Umstead Act for purposes of selling merchandise related to its Got To Be NC Agriculture marketing promotion. The Umstead Act restricts the State from engaging directly or indirectly in the sale of goods or operation of businesses or services in competition with citizens of the State.

Section 4 would classify "verified propagules," which are seeds or clones from an industrial hemp plant that has been laboratory tested and confirmed to have a THC concentration that complies with federal law,

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as hemp products. This would allow distribution of clones for cultivation. Under current law, only certified seed is classified as a hemp product for purposes of cultivation.

Section 5 would make several technical corrections to the Forest Service statutes to correct references to the Secretary of the Department of Environmental Quality. These references were overlooked when the Forest Service was transferred to the Department of Agriculture and Consumer Services in 2011.

Section 6 would direct the Food and Drug Protection Division of the Department of Agriculture and Consumer Services to immediately develop an enforcement plan to enforce the United States Food and Drug Administration's standard of identity for milk and the Pasteurized Milk Ordinance, as adopted in the North Carolina Administrative Code, to prohibit the sale of plant-based products mislabeled as milk, such as soy milk and almond milk.

No later than 90 days after the enactment into law of a mandatory labeling requirement to prohibit the sale of plant-based products mislabeled as milk that is consistent with this section by any 11 of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia, the Department would be required to implement its enforcement plan, including notification of the Department's intent to embargo all mislabeled products offered for sale in the State. No later than six months after 11 of these states adopt consistent labeling requirements, plant-based products displayed for sale in this State would have to be labeled in accordance with FDA's standard of identity for milk and the Pasteurized Milk Ordinance. This would prohibit beverages derived from plants from being labeled as milk, such as "soy milk" and "almond milk."

Section 7 would establish that a quorum for the Agriculture and Forestry Awareness Study Commission is nine members.

Section 8 would direct the Agriculture and Forestry Awareness Study Commission to study (i) requiring the holders of unused rights-of-way and utility easements to offer the easements to the underlying property owners for fair market value, and (ii) the advisability of excluding property enrolled in present use value taxation from rural fire protection district and county service district taxes. The Agriculture and Forestry Awareness Study Commission would be directed to complete the studies and report its findings and recommendations, including any legislative proposals, to the General Assembly by January 1, 2019.

Section 9 would direct all counties in the State to require that land records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that the tract is located within one half-mile of a poultry, swine, or dairy qualifying farm or other qualifying farm or a voluntary agricultural district, or within 600 feet of any other type of qualifying farm. Under current law, any county that has a computerized land records system may require such notice. For purposes of this section, a qualifying farm means a farm that qualifies for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district.

This section would also provide that no cause of action shall arise out of the failure of a person licensed by the North Carolina Real Estate Commission or the North Carolina Appraisal Board for failure to report to any person the proximity of a tract to a qualifying farm or voluntary agricultural district.

Section 10: Under the current right-to-farm law, no agricultural or forestry operation may be or become a nuisance by "any changed conditions in or about the locality 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." **Section 10.(a)** would provide that no nuisance action may be filed against an agricultural or forestry operation unless all of the following apply:

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- The plaintiff is a legal possessor of the real property affected by the conditions alleged to be a nuisance.
- The real property affected by the conditions alleged to be a nuisance is located within one half-mile of the agricultural or forestry operation. When the operation consists of multiple parcels, the one half-mile radius would be measured from the parcel that is the alleged source of the nuisance.
- The action is filed within one year of the establishment of the agricultural or forestry operation or within one year of the operation undergoing a fundamental change. Pursuant to current law, a fundamental change does not include any of the following:
 - A change in ownership or size.
 - An interruption of farming for a period of no more than three years.
 - Participation in a government-sponsored agricultural program.
 - Employment of new technology.
 - A change in the type of agricultural or forestry product produced.

This section would also repeal the provision allowing nuisance suits that would otherwise be barred if the nuisance results from the negligent or improper operation of an agricultural or forestry operation.

Section 10.(b) would prohibit a plaintiff from recovering punitive damages in a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation that has not been subject to a criminal conviction or a civil enforcement action taken pursuant to a notice of violation for the conduct alleged to be the source of the nuisance within the three years prior to the first act on which the nuisance action is based.

This section would be effective when it becomes law, and would apply to actions commenced on or after that date.

Section 12 would provide that appointed and elected soil and water conservation district supervisors must receive six clock hours of training on soil, water, and natural resources conservation and the duties and responsibilities of district supervisors per term in office. Under current law, district supervisors must receive six clock hours of training per year.

Section 14 would direct the Department of Revenue to publish a depreciation schedule for farm equipment and make the schedule electronically available on its website. A county appraiser would be allowed to use any of the appraisal methods provided in statute and would be required to consider relevant taxpayer information. However, if the county uses a cost approach method to appraise the equipment, the county would be required to appraise the equipment using the depreciation schedule published by the Department of Revenue.

This section would be effective for taxes imposed for taxable years beginning on or after July 1, 2019.

Section 15: Under current law, real property set apart for burial purposes, where the property is not offered for sale or rental or sale of burial rights therein, is not subject to property tax. This section would provide that the owner of the property is not required to apply for the property tax exemption for burial property. A county would be prohibited from denying the exemption to a taxpayer who lacks a survey or plat detailing the exempt property.

Section 15.1 would allow any law enforcement agency in the State to enter into intergovernmental law enforcement mutual aid agreements with out-of-state law enforcement agencies or out-of-state law enforcement officers to aid in enforcing North Carolina laws within the jurisdiction of the requesting law

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enforcement agency for maintaining security for an international equestrian event. The agreement must be in writing and must contain certain provisions addressing standards of conduct, training requirements, and reimbursement of costs and expenses. This section would also provide that any nonresident veterinarian validly licensed in another state, territory, district of the United States, or foreign country may apply to the Veterinary Board for licensure to practice veterinary medicine. The Board would be required to issue a license to practice veterinary medicine without written examination for no charge.

This section would be effective when it becomes law and expires October 1, 2018.

Section 16 contains a severability clause.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.