



# SENATE BILL 315: North Carolina Farm Act of 2019.

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

2019-2020 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 11, 2019
<b>Introduced by:</b>	Sens. B. Jackson, Sanderson, Johnson	<b>Prepared by:</b>	Chris Saunders
<b>Analysis of:</b>	Second Edition		Staff Attorney

**OVERVIEW:** Senate Bill 315 would make various changes to laws concerning agriculture in the State.

## CURRENT LAW AND BILL ANALYSIS:

### IMPLEMENT A STATE HEMP PROGRAM IN ACCORDANCE WITH SECTION 10113 OF THE FEDERAL AGRICULTURE IMPROVEMENT ACT OF 2018, TO BE ADMINISTERED BY THE NORTH CAROLINA HEMP COMMISSION UNTIL JULY 1, 2021

Since 2015, as authorized by the federal Agricultural Act of 2014, the North Carolina Industrial Hemp Commission ("Industrial Hemp Commission") has administered a pilot program to cultivate industrial hemp having a delta-9 tetrahydrocannabinol (THC) concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis in the State for research purposes. The federal Agriculture Improvement Act of 2018 (P.L. 115-334), also known as the federal Farm Bill of 2018, removed hemp from the federal Controlled Substances Act and generally authorized the production of hemp meeting the same standard for THC, subject to a State plan or a plan established by the United States Department of Agriculture (USDA).

**Sections 1 through 7** would establish a State program for the cultivation and handling of hemp by amending the powers and duties of the Industrial Hemp Commission and the tax and criminal treatment of hemp in several ways:

- **Section 1** would rename the Industrial Hemp Commission as the North Carolina Hemp Commission ("Hemp Commission"). The Commission would expire July 1, 2021, and the authority to administer the hemp program would then transfer to the Department of Agriculture and Consumer Services (DACCS). The changes to the sections in the Hemp Commission Article would do the following:
  - **G.S. 106-568.50** would amend the legislative findings and purpose of the Hemp Commission.
  - **G.S. 106-568.51** would amend the definitions related to hemp.
  - **G.S. 106-568.52** would sunset the Hemp Commission on July 1, 2021.

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- **G.S. 106-568.53** would eliminate the powers and duties of the Hemp Commission related to research purposes and direct the Hemp Commission to adopt rules to carry out the State program, including prescribing sampling and testing procedures to ensure that hemp cultivated or handled in the program does not exceed 0.3% THC, and establishing a schedule of nonrefundable fees for administering the program.
- **G.S. 106-568.53A** would set out several standards for licensees to participate in the State hemp program:
  - No person would be allowed to cultivate or handle hemp without a license issued by the Hemp Commission.
  - In order to receive a cultivation license, a person would be required to be a qualifying farmer or conditional qualifying farmer for purposes of the sales tax exemption for farmers.
  - An applicant for a license from the Hemp Commission would be required to submit to and pay for an annual criminal background check.
  - A licensee would be required to provide to the Hemp Commission the legal description and global positioning coordinates of the licensee's fields or greenhouses, as well as written consent allowing law enforcement to enter all premises where hemp is cultivated and stored to conduct inspections or ensure compliance with the State program.
  - A person convicted of a felony relating to a controlled substance under State or federal law would be ineligible to obtain a hemp license for ten years following the date of the conviction.
  - A person who materially falsifies any information in an application for a license from the Hemp Commission would be permanently ineligible to obtain a license.
  - A license issued by the previously existing Industrial Hemp Commission would be valid for the term of the license. A person with a license from the Industrial Hemp Commission who wishes to modify the license would be required to obtain a new license from the Hemp Commission.
- **G.S. 106-568.54**, requiring the Industrial Hemp Commission to raise private funds before beginning its operations, is no longer relevant and would be repealed.
- **G.S. 106-568.55**, setting out authorized research purposes for the cultivation of hemp, is no longer required by federal law and would be repealed.
- **G.S. 106-568.55A** would establish a \$250,000 bonding requirement for hemp handling licensees.
- **G.S. 106-568.55B** would make the penalty for negligent violation of the State hemp program compliance with a corrective action plan, as required by the federal Farm Bill of 2018. However, a person who has three negligent violations in a five year period would be ineligible to obtain a hemp license for five years beginning on the date of the third violation.
- **G.S. 106-568.56** would maintain the civil penalties related to hemp set forth in current law.
- **G.S. 106-568.57** would maintain the criminal penalties related to hemp set forth in current law.

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- **G.S. 106-568.58** would clarify no license is required to possess, handle, transport, or sell hemp products except as required by G.S. 106-139, which would be enacted by Section 12 of the bill. Smokable hemp is explicitly excluded from the definition of "hemp product."
- **G.S. 106-568.59** would establish the North Carolina Hemp Program Fund in DACS to be used by DACS and the Commission for the costs of personnel, program administration, testing, and any other costs incurred in administering the hemp program.
- **Section 2.(a)** would exempt hemp, hemp products, hemp extracts, and smokable hemp from the definition of "marijuana" in the State Controlled Substances Act.
- **Section 2.(b)** would exempt THC found in hemp, hemp products, hemp extracts, and smokable hemp from being Schedule VI controlled substances in the State Controlled Substances Act.
- **Section 2.(c)** would provide that the penalty for manufacturing, selling, delivering, or possessing a Schedule VI controlled substance (marijuana) would be compliance with a corrective action plan issued by the Hemp Commission for a first or second offense, provide that the person has a valid license from the Hemp Commission and the person did not willfully, knowingly, or intentionally cause the controlled substance to exceed a delta-9 THC concentration of three-tenths percent (0.3%) on a dry weight basis.
- **Section 3** would establish an exemption to the unauthorized substances tax for hemp, hemp products, and hemp extracts, when those items are lawfully possessed in accordance with the State hemp program.
- **Section 4** would direct the Commissioner of Agriculture, in consultation with the Governor and the Attorney General, to submit a State plan for regulation of hemp production to USDA for approval, as provided by the federal Farm Bill of 2018.
- **Section 5** would amend the sunset of the existing Industrial Hemp Commission to make it sunset on December 1, 2019.
- **Section 6** would direct the Hemp Commission to adopt temporary rules, and would make the temporary rules remain in effect until permanent rules that replace the temporary rules become effective.
- **Section 7** would provide the effective date for these sections. Sections 1 and 2 of this act would become effective on the later of December 1, 2019 or 30 days after the effective date of regulations adopted by the United States Department of Agriculture pursuant to Section 297D of the federal Farm Bill of 2018. G.S. 106-568.57 as amended by Section 1 of this act applies to offenses committed on or after that date. Section 3 of this act would be effective for taxes imposed for taxable years beginning on or after July 1, 2019. Sections 4, 5, 6, and 7 of this act would be effective when they become law. Sections 1, 2, and 3 of this act would expire July 1, 2021.

## **TRANSFER HEMP PROGRAM AUTHORITY TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES ON JULY 1, 2021**

**Sections 8 through 11** would transfer the authority to administer the hemp program from the North Carolina Hemp Commission to DACS after the Commission expires on July 1, 2021, and make conforming changes.

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## **DIRECT DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO REGULATE CANNABINOID RELATED COMPOUNDS**

**Section 12.(a)** would define "cannabinoid related compounds" for purposes of allowing the Board of Agriculture to regulate those compounds.

**Section 12.(b)** would allow the Board of Agriculture to adopt rules to establish good manufacturing practices for manufacturing, packaging, labeling, or holding operations for cannabinoid related compounds derived from hemp. This section would also prohibit the manufacture or sale of cannabinoid related compounds without a valid license issued by the Commissioner of Agriculture. The Board would be directed to develop a schedule of license fees, including fees for out-of-State and online retailers. Fees collected pursuant to this subsection would be used by the Department to cover all reasonable costs of administering the licensing program.

This section would become effective January 1, 2020, and would expire July 1, 2021.

**Section 12.(c)** would, effective July 1, 2021, reenact the provisions of Section 12.(b) with conforming changes to account for the State hemp program being transferred to DACS on that date.

**Section 12.(d)** would direct the Board of Agriculture to adopt temporary rules to implement this section no later than November 1, 2019.

Except as otherwise provided, this section would be effective when it becomes law.

## **ALLOW DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO MARKET HEMP**

**Section 13** would add hemp to the list of products eligible for a marketing referendum and provide that the Hemp Commission is the entity that provides certification and approval for the purpose of conducting the referendum until its expiration on July 1, 2021. After that date, the Board of Agriculture would be the certifying entity.

## **SMOKABLE HEMP**

**Section 14.(a)** would impose a civil penalty for knowingly or intentionally manufacturing, delivering, selling, or possessing smokable hemp, except for hemp plants or parts of a hemp plant grown or handled by a licensee for processing or manufacturing into a legal hemp product. This section would become effective December 1, 2020, and would apply to offenses committed on or after that date.

**Section 14.(b)** would make it a Class 1 misdemeanor to knowingly or intentionally manufacture, deliver, sell, or possess smokable hemp, except for hemp plants or parts of a hemp plant grown or handled by a licensee for processing or manufacturing into a legal hemp product. This section would become effective December 1, 2020, and would apply to offenses committed on or after that date.

**Section 14.(c)** would require the Department of Agriculture and Consumer Services, the North Carolina Industrial Hemp Association, the North Carolina Hemp Commission, the State Bureau of Investigation, and other law enforcement agencies and district attorneys as requested by the State Bureau of Investigation to meet at least quarterly to discuss best practices for the hemp industry. The Department of Agriculture and Consumer Services would be required to report any findings and legislative recommendations from these meetings to the Agriculture and Forestry Awareness Study Commission within 30 days of each meeting. This section would be effective when it becomes law.

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**Section 14.(d)** would direct the State Bureau of Investigation to notify the Agriculture and Forestry Awareness Study Commission in writing when the United States Drug Enforcement Agency has adopted an approved immediate testing method to determine whether hemp is within the federally defined THC level for hemp. Upon receipt of this notification, the Agriculture and Forestry Awareness Study Commission would be directed to study whether the prohibition on the sale of smokable hemp should be repealed. This section would be effective when it becomes law.

## **REQUIRE UTILITY COMPANIES TO DISPOSE OF CERTAIN UNUSED EASEMENTS UNDER CERTAIN CIRCUMSTANCES**

**Section 15** would create a process by which the underlying fee owner of land encumbered by any easement acquired by a utility company, on which the utility company has not commenced construction within 20 years of the date of acquisition, may file a complaint with the Utilities Commission for an order requiring the utility company to terminate the easement in exchange for payment by the underlying fee owner of the current fair market value of the easement. If the utility company does not agree that the easement should be terminated, the utility company may request a determination from the Utilities Commission as to whether the easement is necessary or advisable for the utility company's long range needs for the provision of utilities to serve its service area, and whether termination of the easement would be contrary to the interests of the using and consuming public. If the parties cannot reach a mutually agreeable fair market value, the Commission would request the clerk of superior court in the county where the easement is located to appoint commissioners to determine the fair market value in accordance with the eminent domain valuation process.

This section would become effective October 1, 2019, and would apply to easements acquired on or after that date.

## **RIGHT-OF-WAY FOR LEFT-TURNING FARM EQUIPMENT**

**Section 16** would prohibit the passing of self-propelled farm equipment by vehicles proceeding in the same direction when the farm equipment is making a left turn or signaling that it intends to make a left turn.

This section would become effective December 1, 2019, and would apply to offenses committed on or after that date.

## **EXPAND AGRICULTURAL OUTDOOR ADVERTISING**

**Section 17** would expand outdoor advertising near highway rights-of-way for bona fide farm property by increasing the size of the sign allowed, broadening the area where the sign could be placed, allowing all bona fide farms to place signs, and allowing the sign to stand year-round.

## **AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION COCHAIR HOLDOVER**

**Section 18** would provide that a cochair of the Agriculture and Forestry Awareness Study Commission may continue to serve for so long as the cochair remains a member of the General Assembly and no successor has been appointed. A cochair of the Commission who does not seek reelection or is not

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reelected to the General Assembly would be allowed to complete a term of service on the Commission until the day on which a new General Assembly convenes.

## **EXEMPT FACILITIES THAT STORE PRODUCTS FROM AGRICULTURAL OPERATIONS THAT ARE RENEWABLE ENERGY RESOURCES FROM EMC RULE**

15A NCAC 02D .1806 (Control and Prohibition of Odorous Emissions), among other things, prohibits an owner or operator of a facility subject to the rule from operating the facility without implementing management practices or installing and operating odor control equipment sufficient to prevent odorous emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary. The rule applies to all operations that may produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries, with the following specific exceptions:

- Certain processes at kraft pulp mills.
- Certain processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils.
- Motor vehicles and transportation facilities.
- On-farm animal and agricultural operations, including dry litter operations.
- Municipal wastewater treatment plants and municipal wastewater handling systems.
- Restaurants and food preparation facilities that prepare and serve food on site.
- Single family dwellings not used for commercial purposes.
- Materials odorized for safety purposes.
- Painting operations that do not require a business license.
- All temporary activities or operations.

**Section 19** would require the Environmental Management Commission (EMC) to classify facilities that store products that are (i) grown, produced, or generated on one or more agricultural operations and (ii) that are "renewable energy resources" as defined in G.S. 62-133.8(a)(8), as agricultural operations that are exempt from the requirements of 15A NCAC 02D .1806. The EMC would also be required to amend the applicable rule accordingly.

## **ADD HUNTING, FISHING, SHOOTING SPORTS, AND EQUESTRIAN ACTIVITIES TO THE DEFINITION OF AGRITOURISM, AND LIMIT REGULATION OF CATERING BY BONA FIDE FARMS**

**Sections 20.(a) and 20.(b)** would add hunting, fishing, shooting sports, and equestrian activities to the listed activities that constitute agritourism for purposes of agritourism activity liability and county zoning. For purposes of these section, properties used for shooting sports shall comply with guidelines for design and site evaluation as established by the Wildlife Resources Commission. With respect to county zoning, a vote of the full board of county commissioners would be required to determine whether a property used for shooting sports is in compliance with the guidelines adopted by the Wildlife Resources Commission.

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**Sections 20.(c) and 20.(d)** would prohibit local governments from requiring a business located on a property used for bona fide farm purposes, that provides catering services on and off-site from the bona fide farm property, to obtain a permit to provide catering services within the local government. These sections would not exempt the business from any health and safety rules adopted by a local health department, the Department of Health and Human Services, or the Commission for Public Health.

## **ENACT THE NORTH CAROLINA SWEETPOTATO ACT FOR THE PROMOTION OF NORTH CAROLINA SWEETPOTATOES**

**Section 21** would allow the Commissioner of Agriculture to register, license, and protect a trademark for the sale and promotion of North Carolina Sweetpotatoes and to collect a reasonable royalty or license fee for use of the mark. The Commissioner would be required to remit all royalties and license fees received, less any costs associated with monitoring the use of the trademark, prohibiting the unlawful or unauthorized use of the trademark, and enforcing rights in the trademark, to the North Carolina SweetPotato Commission for the promotion of North Carolina sweetpotatoes. This section would also direct the Commissioner to appoint a Sweetpotato Advisory Council to give advice on the promotion of North Carolina sweetpotatoes.

## **SOIL AND WATER CONSERVATION JOB APPROVAL AUTHORITY**

**Section 22** would allow the North Carolina Soil and Water Conservation Commission (SWCC) to grant engineering job approval authority to Soil and Water Conservation District technical staff for the planning, design, and implementation of best management practices approved by the SWCC. Under current law, job approval authority can only be granted to Soil and Water Conservation District staff by the USDA Natural Resources Conservation Service.

## **PRESENT USE VALUE NOTICE AND APPEAL CHANGES**

**Section 23** would provide that if a tax assessor determines that a property loses its eligibility for present-use value classification, the assessor must provide written notice, including the specific reason for the disqualification, to the owner. If the property owner appeals the assessor's decision and the assessor determines during the appeal process that the property has lost its eligibility for present use value classification because of an additional disqualifying event, the assessor would be required to provide written notice of the subsequent disqualification. If the assessor does not give notice of the subsequent disqualification, the property would be reinstated for any assessments occurring from the date of the assessor's decision under appeal to the date of the final decision to reinstate the property.

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

## **CHANGE NAME OF FOOD PROCESSING INNOVATION CENTER COMMITTEE**

**Section 24** would change the name of the Food Processing Innovation Center Committee, established in the 2017 Appropriations Act, to the North Carolina Food Innovation Lab Committee, to be consistent with the name of the facility at the North Carolina Research Campus in Kannapolis.

## **SOIL AND WATER CONSERVATION CONFIDENTIALITY CHANGE**

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**Section 25** would provide that all information that is collected by soil and water conservation districts from farm owners, animal owners, agricultural producers or owners of agricultural land that is confidential under federal or State law must be held confidential by the soil and water conservation districts. This would include (i) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in soil and water conservation programs, and (ii) geospatial information otherwise maintained by the district about agricultural lands or operations certain information is provided. This would not include applications for cost share assistance and associated contract documents that require the approval of the soil and water conservation district or the Soil and Water Conservation Commission.

This section would become effective October 1, 2019.

## **RIGHT TO REPAIR FARM EQUIPMENT**

**Section 26** would require farm equipment manufacturers to make diagnostic and repair documentation available to independent repair providers or farm equipment owners for no charge or in the same manner as the manufacturer makes the documentation available to its authorized repair provider, and to offer farm equipment parts for purchase to farm equipment owners and independent repair providers. The manufacturer would also be required to offer diagnostic repair tools for sale. If farm equipment is sold for the purpose of security, the equipment would be required to include documentation explaining how to reset a security-related electronic function.

This section would not require farm equipment manufacturers to divulge trade secrets, or to provide to a farm equipment owner or independent repair provider access to nondiagnostic and nonrepair documentation provided to an authorized repair provider pursuant to a contract between the manufacturer and authorized repair provider. This section also would not abrogate or modify any contract executed between an authorized repair provider and a farm equipment manufacturer, but in new contracts would void any provision in an authorized repair agreement purporting to waive or limit a farm equipment manufacturer's compliance with this section.

The Attorney General would be authorized to investigate complaints alleging violation of this section, and may bring an action to impose civil penalties and seek other relief, including equitable relief, if the Attorney General finds there has been a violation. The civil penalty may not exceed \$500 per violation. A farm equipment owner or independent repair provider may also bring an action in civil court against a manufacturer to recover not more than \$500 per violation.

This section would become effective October 1, 2019.

## **CLARIFY PERMITTING FOR CERTAIN SWINE FARM MODIFICATIONS**

**Section 27** would allow the Environmental Management Commission to issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system serving a swine farm that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the primary method of waste management if the permitting action does not result in an increase in the permitted capacity of the swine farm, as measured by the annual steady state live weight capacity of the swine farm. The system could also meet the performance standards for new animal waste management systems serving swine farms that were enacted in 2007.



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## **PREVENT GRANT FUNDING DUPLICATION**

**Section 28** would amend existing law to provide that projects that are part of the Environmental Quality Incentives Program (EQIP) are ineligible for State Water Resources Development Grant (WRDG) funding if they receive funding from the Clean Water Management Trust Fund (CWMTF), and are ineligible for CWMTF funding if they receive WRDG funding.

## **IMPROVE PERFORMANCE MANAGEMENT OF STATE GRANT FUNDS**

**Section 29** would direct DEQ and, as applicable, the CWMTF to collect and report to the General Assembly certain grant administration and grant implementation efficiency and effectiveness measures.

## **DIRECT STATE AUDITOR TO CONDUCT AUDIT OF WESTERN STREAM INITIATIVE FUNDING FOR PROJECTS MANAGED BY RESOURCE INSTITUTE**

**Section 30** would direct the the State Auditor to audit all State funds ever paid to Resource Institute for the Western Stream Initiative through the CWMTF and through WRDGs for EQIP. Based on the findings of the audit required by this section, the Director and Board of Trustees of the CWMTF and DEQ are directed to seek recoupment of any identified overpayment of State funds. The Auditor would be directed to complete the audit no later than June 1, 2020.

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