

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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SENATE BILL 509

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/23/13

Short Title: NC Agriculture and Forestry Act.

(Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE AWARD OF COSTS AND ATTORNEYS' FEES TO A PREVAILING DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.

(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 thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances when all of the following conditions are met:

- (1) There has been a changed condition in or about the locality of the operation.
(2) The operation has been in operation for more than one year.
(3) The operation was not a nuisance at the time the operation began.
(4) There have been no fundamental changes to the operation.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

- (1) A change in ownership or size.
(2) Nonpermanent cessation or interruption of farming.
(3) Participation in any government-sponsored agricultural program.
(4) Employment of new technology.
(5) A change in the type of agricultural or forestry product produced.

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

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

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of trees, but not sawmill operations.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on



1 account of any pollution of, or change in condition of, the waters of any stream or on the
2 account of any overflow of lands of any such person, firm, or corporation.

3 (d) Any and all ordinances of any unit of local government now in effect or hereafter
4 adopted that would make the operation of any such agricultural or forestry operation or its
5 appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance
6 set forth in this section are and shall be null and void; provided, however, that the provisions of
7 this subsection shall not apply whenever a nuisance results from the negligent or improper
8 operation of any such agricultural or forestry operation or any of its appurtenances. Provided
9 further, that the provisions shall not apply whenever a nuisance results from an agricultural or
10 forestry operation located within the corporate limits of any city at the time of enactment
11 hereof.

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

15 (f) In any civil action in which an agricultural or forestry operation is alleged to be a
16 nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses
17 determined by the court to have been reasonably incurred in the defense of the nuisance action,
18 including a reasonable amount for attorneys' fees."

19 **SECTION 2.** This act becomes effective July 1, 2013, and applies to causes of
20 action arising on or after that date.