

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1714

Short Title: Citrus Fruit Inspection and Tax.

(Public)

Sponsors: Senators Sands; Albertson, Jordan, Kerr, and Parnell.

Referred to: Agriculture, Marine Resources, and Wildlife.

June 13, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR STANDARDIZATION OF CITRUS FRUIT THROUGH
3 INSPECTION AND TO LEVY AN EXCISE TAX ON CITRUS FRUIT AT THE
4 RATE OF TWO CENTS PER FRUIT.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 106 of the General Statutes is amended by adding a new
7 Article to read:

8 **"ARTICLE 67.**

9 **"CITRUS FRUIT STANDARDIZATION ACT.**

10 **"§ 106-800. Title.**

11 This Article shall be known as the 'Citrus Fruit Standardization Act'.

12 **"§ 106-801. Findings and purpose.**

13 The sale of quality citrus fruit in this State is in the public interest. It is the policy
14 and purpose of this Article to develop uniform grades and standards for citrus fruit, to
15 provide for inspections of citrus fruit to protect the citizens of this State from
16 substandard citrus fruit, and to ensure that inferior produce does not compete with
17 quality produce.

18 **"§ 106-802. Definitions.**

19 As used in this Article:

20 (1) 'Board' means the Board of Agriculture.

21 (2) 'Bulk' means citrus fruit that is not contained in a box, carton, crate, or
22 lug but may be contained in a bin or a similar container and is set apart
23 from citrus fruit that is packaged in containers authorized pursuant to
24 this Article or rules adopted pursuant to this Article.

- 1 (3) 'By-products' means a product from citrus fruit commercially
2 processed or manufactured for resale.
- 3 (4) 'Citrus' or 'citrus fruit' means the fruit of an orange, lemon, lime,
4 grapefruit, tangerine, kumquat, or other edible fruit of a plant
5 belonging to the genus **Citrus**.
- 6 (5) 'Commissioner' means the Commissioner of Agriculture or the
7 Commissioner's designee, including inspectors under the supervision
8 of the Commissioner or Department.
- 9 (6) 'Containers' or 'packages' means a container used for packing,
10 shipping, or selling citrus fruit.
- 11 (7) 'Department' means the North Carolina Department of Agriculture.
- 12 (8) 'Lot' means a unit of identical or similar items that are grouped or
13 consolidated in one or more containers for packaging or transporting
14 or a cluster of identical or similar items that are included in the same
15 shipping order, bill of lading, or other itemized transport order.
- 16 (9) 'Packer' means a person, other than a producer, shipper, or dealer,
17 engaged in the business of packing citrus fruit.
- 18 (10) 'Person' includes an individual, firm, association, partnership, trust, or
19 corporation.
- 20 (11) 'Shipper' means a person who ships, transports, sells, or markets citrus
21 fruit, including citrus fruit imported into the State, under the person's
22 registered trademark or label or a person who first markets the citrus
23 fruit on behalf of the producer.

24 **"§ 106-803. Rule making.**

25 To protect against the production and importation of substandard and inferior citrus
26 fruit, the Board of Agriculture shall adopt rules related to:

- 27 (1) Standards and grades for citrus fruit sold in this State. In establishing
28 the specific standards, the Board shall consider factors that apply to the
29 product, including maturity, color, shape, size, firmness, freedom from
30 decay, diseases, mechanical and plant pest injury, and any other factors
31 that indicate quality and condition.
- 32 (2) The size, dimensions, labeling, and markings of containers that are to
33 be used to pack citrus fruit and the packing arrangements of the
34 commodity in the container.
- 35 (3) A permit system for experimental containers, experimental products,
36 and experimental packs including an application, permit number,
37 quantity allowed by the permit, duration of the permit, and record
38 keeping and renewal provisions.
- 39 (4) Sampling rules for lots and containers of citrus fruit to reasonably
40 produce a fair representation of the entire lot or container sampled.
- 41 (5) The time period allowed to recondition citrus fruit pursuant to G.S.
42 106-804.

1 (6) An appropriate inspection fee to be paid to the Department of
2 Agriculture to be used solely for the purpose of administering the
3 provisions of this Article.

4 (7) Instruction and training of inspectors related to the inspection of citrus
5 fruit and the method of determining the maturity and condition of the
6 citrus fruit, as provided by rules adopted by the Board.

7 **"§ 106-804. Inspection powers and enforcement procedures; warning notice;**
8 **disposal notice; civil penalty.**

9 (a) Inspectors, under the authority of the Commissioner, may enter a facility
10 during operating hours or a commercial vehicle in this State where fresh citrus fruit is
11 produced, stored, packed, or delivered for shipment, is transported or is offered for sale,
12 and inspect representative samples of the fresh citrus fruit and containers in order to
13 determine compliance with this Article and rules adopted pursuant to this Article.

14 (b) If all or part of a lot, including containers, fails to comply with this Article or
15 rules adopted pursuant to this Article, the Commissioner may affix a warning notice to
16 all or part of the lot stating the reason why it is held. No person, other than an inspector
17 or the Commissioner, may detach, alter, or destroy the affixed warning notice except by
18 a court order.

19 (c) The inspector shall issue a notice of noncompliance to the person in
20 possession of the lot or part of the lot that states:

21 (1) A description of the lot or part of the lot.

22 (2) The specific section of law on which the noncompliance is alleged.

23 (3) The place where the lot or part of the lot is held.

24 (4) The specific method of inspection, including the sample size.

25 (5) The defect that caused the violation.

26 (6) The percentage of defective produce in the sample.

27 (7) The lot or part of the lot is subject to disposal if it is not reconditioned
28 and brought into compliance within the time prescribed according to
29 rules adopted pursuant to this Article.

30 (d) If the person who is served with the notice of noncompliance does not own
31 the lot, the person shall notify the Commissioner in writing of the name and address of
32 the owner. If the person knowingly conceals the name or address of the owner, the
33 person is liable for loss that the owner sustains.

34 (e) If the lot is reconditioned and brought into compliance within the prescribed
35 time period and the lot otherwise complies with this Article and rules adopted pursuant
36 to this Article, the Commissioner shall remove the warning notice, issue a notice of
37 compliance to the person in possession, and release the lot for sale.

38 (f) If the owner does not recondition and bring the lot into compliance within the
39 prescribed time period, the Commissioner, after receiving the written consent of the
40 owner, may divert the lot, or part of the lot, to other lawful purposes or destroy the lot or
41 part of the lot.

42 (g) If the owner refuses to give consent to the Commissioner to divert or destroy
43 the lot, or part of the lot, and the owner does not recondition and bring the lot into
44 compliance within the prescribed time period, the Commissioner may attach a disposal

1 notice to the lot or part of the lot that violates this Article or rules adopted pursuant to
2 this Article and deliver a copy of the disposal notice to the owner. The disposal notice
3 requires the owner to properly dispose of the lot or part of the lot by:

4 (1) Diverting it to another lawful purpose, such as contributing it to a
5 nonprofit charitable organization.

6 (2) Selling it, other than in regular channels of trade, such as for
7 processing.

8 (3) Destroying it.

9 (h) A person who violates the terms of a disposal notice is subject to a civil
10 penalty of at least twenty-five dollars (\$25.00) for each carton but not more than one
11 thousand dollars (\$1,000).

12 **"§ 106-805. Inspection fees.**

13 For the purpose of defraying the cost of administering the provisions of this Article,
14 all producers and shippers of citrus fruit shall pay an annual inspection fee to the
15 Department. The Board shall adopt rules related to the inspection fee.

16 **"§ 106-806. Appeals from inspection.**

17 (a) If the owner, or the owner's agent, of all or part of a lot disagrees with the
18 decision of the inspector as to whether the lot or part of the lot conforms to the
19 standards adopted pursuant to this Article, the owner or agent may request that the
20 Commissioner review the testing procedures used by the inspector. When reviewing the
21 procedures, the Commissioner shall consider the accuracy of the test instruments, the
22 inspection methods, including the sample size, the defect determination, the percentage
23 of the defective product, and any other relevant information.

24 (b) The Commissioner shall conduct the review within eight hours of the request.

25 (c) If the Commissioner determines that the inspector used improper testing
26 procedures, a new inspection shall be ordered of the lot or part of the lot within four
27 hours after completing the review in order to determine compliance. The determination
28 of the Commissioner is a final agency decision.

29 (d) The person who requests the review shall pay a fee of twenty-five dollars
30 (\$25.00) for the review to the Commissioner to be deposited in the Department of
31 Agriculture general fund to be used to defray the cost of the review.

32 **"§ 106-807. Interstate shipments; requirements; out-of-state inspection**
33 **certificates; irregular containers.**

34 (a) It is unlawful for a person, firm, company, organization, or corporation to
35 import from another state for sale, to transport for delivery or to deliver for sale, or to
36 sell within this State a load or lot of citrus fruit unless it conforms to the grades and
37 standards of maturity, condition, and pack established pursuant to this Article and rules
38 adopted pursuant to this Article.

39 (b) The Commissioner, or an inspector under the Commissioner's authority, shall
40 examine each load or lot of citrus fruit entering the State to ascertain whether the fruit
41 conforms to the established standards.

42 (c) Upon payment of the inspection fee, citrus fruit grown in states that enforce
43 grading standards equivalent to those established in this State may be permitted to enter
44 this State when accompanied by an inspection certificate issued by the State or county

1 enforcement authority in which the citrus fruits were grown disclosing that the load or
2 lot conforms to the legally established standards in that state. The certificates shall be
3 surrendered to the Commissioner.

4 (d) Citrus fruit that enters the State in carload lots shall be accompanied by an
5 inspection certificate to be given to the Commissioner by the receiver of the fruit. All
6 shipments coming into the State by truck or other conveyance shall be inspected and the
7 certificates submitted at the point of regular inspection. When transported into the State
8 by railroad, shipments shall be inspected and the certificate submitted at the point of
9 destination.

10 (e) When a motor vehicle is detained and its contents are found not to conform to
11 the standards established pursuant to this Article, the Commissioner shall refuse entry of
12 the citrus fruit into the State, but a load or lot of citrus fruit while in transit and
13 consigned to a destination not within the State shall be exempt from the requirements of
14 this section.

15 (f) Citrus fruit may be offered for sale, sold, or transported in, into, or through
16 this State in irregular containers, other than standard packages, when the irregular
17 containers are marked to clearly indicate that they are not standard packages prescribed
18 pursuant to this Article.

19 **"§ 106-808. Rejection of shipment by carriers.**

20 (a) A person may decline to ship, transport, or accept for shipment citrus fruit
21 when notified by the Commissioner that the fruit is found to be in violation of this
22 Article or rules adopted pursuant to this Article.

23 (b) The person may reserve the right in the receipt, bill of lading, or other writing
24 to reject for shipment and to return to the owner citrus fruit, which upon inspection of a
25 representative sample, found to violate this Article or rules adopted pursuant to this
26 Article.

27 **"§ 106-809. Bulk transfers.**

28 No provision of this Article shall be construed:

29 (1) To prevent a grower of citrus fruit from selling or delivering the fruit
30 unpacked and unmarked, as a part of the crop in bulk, to a packer for
31 grading, packing, or storage.

32 (2) To prevent a grower or packer from manufacturing the fruit into a by-
33 product.

34 (3) To prevent a packer or grower from selling the fruit unpacked or
35 unmarked to a person actually engaged in the operation of a
36 commercial by-products factory for the sole purpose of being used in
37 the manufacture of a by-product for resale.

38 **"§ 106-810. Criminal penalties; violation of law or rules; venue of criminal actions.**

39 A person who interferes with or attempts to interfere with the Commissioner or the
40 Commissioner's inspectors or agents, while engaged in the performance of the duties of
41 the Commissioner under this Article, or who violates a provision of this Article or a rule
42 of the Board of Agriculture adopted pursuant to this Article, shall be guilty of a Class 3
43 misdemeanor. Each day's violation shall constitute a separate offense. Criminal actions

1 arising under this Article may be prosecuted in the county in which the act or violation
2 occurred.

3 **"§ 106-811. Civil penalty; hearing.**

4 (a) A person shall be subject to a civil penalty of not more than three hundred
5 dollars (\$300.00) if the person:

6 (1) Makes a written or oral false, deceptive, or misleading representation
7 or assertion concerning the quality, size, maturity, or condition of
8 citrus fruit.

9 (2) Alters, removes, or destroys a warning notice from a lot or part of a lot
10 to which it was affixed except on written authorization of the
11 Commissioner or by court order.

12 (3) Alters a notice of noncompliance, notice of compliance, or notice of
13 disposal that is issued by the Commissioner.

14 (4) Refuses to submit a container or lot of citrus fruit governed pursuant to
15 this Article to an inspection of a representative sample or to refuse to
16 stop and permit inspection of a representative sample of a commercial
17 vehicle containing citrus fruit governed pursuant to this Article.

18 (b) A person who is charged with violating this Article or rules adopted pursuant
19 to this Article is subject to a hearing before the Board. The decision of the Board is
20 subject to judicial review as provided in G.S. 106-812.

21 (c) Civil penalties collected pursuant to this section shall be paid to the
22 Commissioner, who shall deposit them in the Department of Agriculture general fund,
23 of which the State Treasurer is custodian, to be applied to the costs of administering this
24 Article.

25 **"§ 106-812. Judicial review.**

26 A person adversely affected by an act, order, or ruling made pursuant to the
27 provisions of this Article may, within 30 days, bring an action in the Superior Court of
28 Wake County for judicial review of the act, order, or ruling according to the provisions
29 of Article 4 of Chapter 150B of the General Statutes."

30 Sec. 2. Chapter 105 of the General Statutes is amended by adding a new
31 Article to read:

32 **"ARTICLE 2E.**

33 **"CITRUS FRUIT TAX.**

34 **"§ 105-113.125. Scope of tax; administration.**

35 (a) Scope. – The tax imposed by this Article shall be collected only once on the
36 same citrus fruit. Except as permitted by Article 2 of this Chapter, a city or county may
37 not levy a privilege license tax on the sale of citrus fruits.

38 (b) Administration. – Except as provided in this section, Article 9 of this Chapter
39 applies to this Article. If a person fails or refuses to pay a tax due under this Article, a
40 penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax
41 due.

42 **"§ 105-113.126. Definitions.**

43 The following definitions apply in this Article:

44 (1) Citrus fruit. – An edible fruit of a plant belonging to the genus **Citrus**.

- 1 (2) Grower. – A person who grows citrus fruits or causes them to be
2 grown.
- 3 (3) Person. – Defined in G.S. 105-228.90.
- 4 (4) Retail dealer. – A person who sells citrus fruit to the ultimate
5 consumer of the citrus fruit.
- 6 (5) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or
7 by any means, with or without consideration.
- 8 (6) Secretary. – The Secretary of Revenue.
- 9 (7) Use. – The exercise of any right or power over citrus fruit, incident to
10 the ownership or possession of the fruit, other than making a sale of
11 the fruit in the course of engaging in a business of selling citrus fruit.
12 The term includes the keeping or retention of citrus fruit for use.
- 13 (8) Wholesale dealer. – A person who grows citrus fruit or who acquires
14 citrus fruit for sale to another wholesale dealer or to a retail dealer.

15 **"§ 105-113.127. Licenses.**

16 (a) General. – To obtain a license required by this Article, an applicant must
17 apply to the Secretary and pay the tax due for the license. A license is not transferable
18 or assignable and must be displayed at the place of business for which it is issued.

19 (b) Refund. – A refund of a license tax is allowed only when the tax was
20 collected or paid in error. No refund is allowed when a license holder surrenders a
21 license or the Secretary revokes a license.

22 (c) Duplicate or Amended License. – Upon application to the Secretary, a license
23 holder may obtain without charge one of the following:

24 (1) A duplicate license, if the license holder establishes that the original
25 license has been lost, destroyed, or defaced.

26 (2) An amended license, if the license holder establishes that the location
27 of the place of business for which the license was issued has changed.

28 A duplicate or amended license shall state that it is a duplicate or amended license, as
29 appropriate.

30 **"§ 105-113.128. Tax on citrus fruit.**

31 (a) Tax. – An excise tax is levied on citrus fruit at the rate of two cents (2¢) per
32 individual fruit. This tax does not apply to the following:

33 (1) A citrus fruit sold outside the State.

34 (2) A citrus fruit sold to the federal government.

35 (3) A sample citrus fruit distributed without charge.

36 (4) A citrus fruit that has been processed so that it does not retain its rind.

37 (b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or
38 otherwise handles citrus fruit subject to the tax imposed by this section is liable for the
39 tax imposed by this section. A wholesale dealer or retail dealer who brings into this
40 State a citrus fruit grown outside the State is the first person to handle the citrus fruit in
41 this State. A wholesale dealer or retail dealer who is the original consignee of a citrus
42 fruit that is grown outside the State and is shipped into the State is the first person to
43 handle the citrus fruit in this State.

1 (c) Secondary Liability. – A retail dealer who acquires non-tax-paid citrus fruit
2 subject to the tax imposed by this section from a wholesale dealer is liable for any tax
3 due on the citrus fruit. A retail dealer who is liable for tax under this subsection may
4 not deduct a discount from the amount of tax due when reporting the tax.

5 (d) Grower's Option. – A grower who is not a retail dealer and who ships citrus
6 fruit to either a wholesale dealer or retail dealer licensed under this Article may apply to
7 the Secretary to be relieved of paying the tax imposed by this section on the citrus fruit.
8 Once granted permission, a grower may choose not to pay the tax until otherwise
9 notified by the Secretary. To be relieved of payment of the tax imposed by this section,
10 a grower must comply with the requirements set by the Secretary.

11 **"§ 105-113.129. Wholesale dealer and retail dealer must obtain license.**

12 A wholesale dealer shall obtain for each place of business a continuing citrus fruits
13 license and shall pay a tax of twenty-five dollars (\$25.00) for the license. A retail dealer
14 shall obtain for each place of business a continuing citrus fruits license and shall pay a
15 tax of ten dollars (\$10.00) for the license. A 'place of business' is a place where a
16 wholesale dealer or where a retail dealer grows citrus fruit or a wholesale dealer or a
17 retail dealer receives or stores non-tax-paid citrus fruit.

18 **"§ 105-113.130. Payment of tax.**

19 (a) Monthly Report. – Except for tax on a designated sale under subsection (b) of
20 this section, the taxes levied by this Article are payable when a report is required to be
21 filed. A report is due on a monthly basis. A monthly report covers sales and other
22 activities occurring in a calendar month and is due within 20 days after the end of the
23 month covered by the report. A report shall be filed on a form provided by the
24 Secretary and shall contain the information required by the Secretary.

25 (b) Designation of Exempt Sale. – A wholesale dealer who sells a citrus fruit to a
26 person who has notified the wholesale dealer in writing that the person intends to resell
27 the item in a transaction that is exempt from tax under G.S. 105-113.128(a)(1) or (2)
28 may, when filing a monthly report under subsection (a) of this section, designate the
29 quantity of citrus fruit sold to the person for resale. A wholesale dealer shall report a
30 designated sale on a form provided by the Secretary.

31 A wholesale dealer is not required to pay tax on a designated sale when filing a
32 monthly report. The wholesale dealer shall pay the tax due on all other sales in
33 accordance with this section. A wholesale dealer or a customer of a wholesale dealer
34 may not delay payment of the tax due on a citrus fruit by failing to pay tax on a sale that
35 is not a designated sale or by overstating the quantity of citrus fruit that will be resold in
36 a transaction exempt under G.S. 105-113.128(a)(1) or (2).

37 A person who does not sell a citrus fruit in a transaction exempt under G.S. 105-
38 113.128(a)(1) or (2) after a wholesale dealer has failed to pay the tax due on the sale of
39 the item to the person in reliance on the person's written notification of intent is liable
40 for the tax and any penalties and interest due on the designated sale. If the Secretary
41 determines that a citrus fruit reported as a designated sale is not sold as reported, the
42 Secretary shall assess the person who notified the wholesale dealer of an intention to
43 resell the item in an exempt transaction for the tax due on the sale and any applicable
44 penalties and interest. A wholesale dealer who does not pay tax on a citrus fruit in

1 reliance on a person's written notification of intent to resell the item in an exempt
2 transaction is not liable for any tax assessed on the item.

3 **"§ 105-113.131. Bond.**

4 The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in
5 an amount that adequately protects the State from loss if the dealer fails to pay taxes due
6 under this Article. A bond shall be conditioned on compliance with this Article, shall
7 be payable to the State, and shall be in the form required by the Secretary. The
8 Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale
9 dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds
10 required of dealers, and shall increase the amount of a required bond when the amount
11 of the bond furnished no longer covers the anticipated tax liability of the wholesale
12 dealer or retail dealer. The Secretary shall decrease the amount of a required bond when
13 the Secretary determines that a smaller bond amount will adequately protect the State
14 from loss.

15 **"§ 105-113.132. Discount.**

16 A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-
17 113.128(b) for the excise taxes imposed by this Article and who files a timely report
18 under G.S. 105-113.130 may deduct from the amount due with the report a discount of
19 four percent (4%). This discount covers losses due to damage to citrus fruits, expenses
20 incurred in preparing the records and reports required by this Article, and the expense of
21 furnishing a bond.

22 **"§ 105-113.133. Records of sales, inventories, and purchases to be kept.**

23 Every wholesale dealer and retail dealer shall keep accurate records of the dealer's
24 purchases, inventories, and sales of citrus fruits. These records shall be open at all times
25 for inspection by the Secretary or an authorized representative of the Secretary.

26 **"§ 105-113.134. Use of tax proceeds.**

27 The Secretary shall, on a quarterly basis, credit net proceeds of the tax levied in this
28 Article to the Department of Agriculture. The Department of Agriculture shall use these
29 funds only to retrain tobacco farmers and tobacco workers and to support the
30 diversification of North Carolina agriculture."

31 Sec. 3. This act becomes effective October 1, 1994.