

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 366
Committee Substitute Favorable 4/3/13
Senate Judiciary II Committee Substitute Adopted 6/23/14

Short Title: NC Farm Act of 2014.

(Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE; (2) CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER; (3) STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM; (4) CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS; (5) AMEND THE CHAIRMANSHIP OF THE AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION; (6) ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; (7) CLASSIFY TRESPASSING ON AN AGRICULTURAL FACILITY AS A FIRST DEGREE TRESPASS; (8) REQUIRE WRITTEN CONSENT TO OPERATE AN ALL TERRAIN VEHICLE ON PROPERTY OWNED BY ANOTHER; AND (9) ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES.

The General Assembly of North Carolina enacts:

MAINTAIN CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE

SECTION 1.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ 143-215.9D. Agricultural operation investigations confidential.

Complaints of violations of this Article relating to an agricultural operation and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Department from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis



1 in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same
2 extent that it is confidential in the possession of the providing agency or organization.

3 **"§ 143-215.9E. Initial consideration of complaint.**

4 (a) When a complaint alleging a violation of this Article is filed with the Department,
5 the Department may, at its sole discretion, request additional information to be provided by the
6 complainant within a specified period of time of no less than seven business days.

7 (b) The Department may decline to accept or further investigate a complaint about an
8 agricultural operation if, after an initial assessment of the complaint, the Department finds
9 reasonable grounds to believe that the complaint is frivolous or was filed in bad faith."

10 **SECTION 1.(b)** The Department of Environment and Natural Resources shall
11 adopt rules developing a system for receiving, investigating, and responding to environmental
12 complaints about agricultural operations, in accordance with Article 2A of Chapter 150B of the
13 General Statutes, the Administrative Procedure Act.

14
15 **CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT**
16 **ORDINANCES RELATED TO FERTILIZER**

17 **SECTION 2.** Article 56 of Chapter 106 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 106-678. Authority to regulate fertilizers.**

20 No county, city, or other political subdivision of the State shall adopt or continue in effect
21 any ordinance or resolution regulating the use, sale, distribution, storage, transportation,
22 disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in
23 this section shall prohibit a county, city, or other political subdivision of the State from
24 exercising its planning and zoning authority under Article 19 of Chapter 160A of the General
25 Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire
26 prevention or inspection authority. Nothing in this section shall limit the authority of the
27 Department of Environment and Natural Resources or the Environmental Management
28 Commission to enforce water quality standards. Nothing in this section shall prohibit a county,
29 city, or other political subdivision of the State from adopting ordinances regulating fertilizers to
30 protect water quality, provided that the ordinances have been approved by the Environmental
31 Management Commission or the Department of Environment and Natural Resources as part of
32 a local plan or National Pollutant Discharge Elimination System permit application and do not
33 exceed the State's minimum requirements to protect water quality as established by the
34 Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the
35 General Statutes. Nothing in this section shall prohibit a county or city from exercising its
36 authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to
37 G.S. 153A-128 or G.S. 160A-183."

38
39 **STUDY PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE**
40 **NORTH AMERICAN STANDARD INSPECTION PROGRAM**

41 **SECTION 3.** The Department of Public Safety shall study the State's participation
42 in the Commercial Vehicle Safety Alliance North American Standard Inspection Program for
43 roadside commercial vehicle safety inspections. The study shall include (i) a history of when
44 North Carolina joined the program; (ii) an explanation of how the program is currently being
45 implemented; (iii) data on how many safety inspection decals are issued annually; and (iv) a
46 geographic analysis of where safety inspection decals are issued within the State. The
47 Department shall report the results of its study to the Agriculture and Forestry Awareness Study
48 Commission on or before November 1, 2014.

49
50 **CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING**
51 **SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF**

1 **APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF**
2 **SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL**
3 **PRODUCTS**

4 **SECTION 4.** G.S. 20-381 is amended by adding a new subsection to read:

5 **"§ 20-381. Specific powers and duties of Department of Public Safety applicable to motor**
6 **carriers; agricultural exemption.**

7 ...

8 (c) For purposes of 49 C.F.R. § 395.1(k) and any other federal law or regulation
9 relating to hours-of-service rules for drivers engaged in the transportation of agricultural
10 commodities and farm supplies for agricultural purposes, the terms "planting and harvesting
11 season" and "planting and harvesting period" refer to the period from January 1 through
12 December 31 of each year."

13
14 **AMEND CHAIRMANSHIP OF AGRICULTURE AND FORESTRY AWARENESS**
15 **STUDY COMMISSION**

16 **SECTION 5.** G.S. 120-150 reads as rewritten:

17 **"§ 120-150. Creation; appointment of members.**

18 There is created an Agriculture and Forestry Awareness Study Commission. Members of
19 the Commission shall be citizens of North Carolina who are interested in the vitality of the
20 agriculture and forestry sectors of the State's economy. Members shall be as follows:

- 21 (1) Three appointed by the Governor.
- 22 (2) Three appointed by the President Pro Tempore of the Senate.
- 23 (3) Three appointed by the Speaker of the ~~House~~ House of Representatives.
- 24 (4) ~~The chairs of the House Agriculture Committee.~~ Two members of the House
25 of Representatives appointed by the Speaker of the House of
26 Representatives.
- 27 (5) ~~The chairs of the Senate Committee on Agriculture, Environment, and~~
28 ~~Natural Resources.~~ Two members of the Senate appointed by the President
29 Pro Tempore of the Senate.
- 30 (6) The Commissioner of Agriculture or the Commissioner's designee.
- 31 (7) A member of the Board of Agriculture designated by the chair of the Board
32 of Agriculture.
- 33 (8) The President of the North Carolina Farm Bureau Federation, Inc., or the
34 President's designee.
- 35 (9) The President of the North Carolina State Grange or the President's designee.
- 36 (10) The Secretary of Environment and Natural Resources or the Secretary's
37 designee.
- 38 (11) The President of the North Carolina Forestry Association, Inc., or the
39 President's designee.

40 Members shall be appointed for two-year terms beginning October 1 of each odd-numbered
41 year. ~~The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee~~
42 ~~on Agriculture, Environment, and Natural Resources shall serve as cochairs.~~ The President Pro
43 Tempore of the Senate and the Speaker of the House of Representatives shall each designate
44 two members to serve as cochairs of the Commission."

45
46 **ALLOW COMMISSIONER OF AGRICULTURE TO APPOINT LAW**
47 **ENFORCEMENT OFFICERS TO CARRY OUT LAW ENFORCEMENT**
48 **RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE**

49 **SECTION 6.** G.S. 106-900 reads as rewritten:

50 **"§ 106-900. Powers of ~~forest~~ Department of Agriculture and Consumer Services**
51 **law-enforcement officers.**

1 The Commissioner is authorized to appoint as many ~~forest~~ Department of Agriculture and
 2 Consumer Services law-enforcement officers as he or she deems necessary to ~~carry out the~~
 3 ~~forest law enforcement responsibilities of the Department~~ investigate and enforce any violation
 4 of the laws within the authority of the Department or which occur on Department property.
 5 Such officers shall meet the requirements of Chapter 17C of the General Statutes and shall take
 6 the oath of office prescribed by Article VI, Section 7 of the North Carolina Constitution. ~~Forest~~
 7 ~~law enforcement officers shall~~ Of these officers, the Commissioner may designate certain
 8 officers to also have all the powers and the duties of a forest ranger enumerated in
 9 G.S. 106-898 and ~~G.S. 106-899.~~ G.S. 106-899 and the power to enforce the forest laws. ~~Forest~~
 10 ~~law enforcement officers shall, in addition to their other duties, have the powers of peace~~
 11 ~~officers to enforce the forest laws.~~ Any forest A Department law-enforcement officer may
 12 arrest, without warrant, any person or persons committing any crime in ~~his~~ the officer's
 13 presence or ~~whom~~ who such officer has probable cause for believing has committed a crime in
 14 ~~his~~ the officer's presence and bring such person or persons forthwith before a district court or
 15 other officer having jurisdiction. ~~Forest~~ Department law-enforcement officers shall also have
 16 authority to obtain and serve warrants including warrants for violation of any duly promulgated
 17 rule of the Department.

18 19 **ADD AGRICULTURAL FACILITIES TO FIRST DEGREE TRESPASS**

20 **SECTION 7.(a)** G.S. 14-159.12(c)(1) is amended by adding a new sub-subdivision
 21 to read:

22 **"§ 14-159.12. First degree trespass.**

23 ...

24 (c) Except as otherwise provided in subsection (d) of this section, a violation of
 25 subsection (a) of this section is a Class A1 misdemeanor if all of the following circumstances
 26 exist:

- 27 (1) The offense is committed on the premises of any of the following:
- 28 a. A facility that is owned or operated by an electric power supplier as
 - 29 defined in G.S. 62-133.8(a)(3) and that is either an electric
 - 30 generation facility, a transmission substation, a transmission
 - 31 switching station, a transmission switching structure, or a control
 - 32 center used to manage transmission operations or electrical power
 - 33 generating at multiple plant locations.
 - 34 b. Any facility used or available for use in the collection, treatment,
 - 35 testing, storing, pumping, or distribution of water for a public water
 - 36 system.
 - 37 c. Any facility, including any liquefied natural gas storage facility or
 - 38 propane air facility, that is owned or operated by a natural gas local
 - 39 distribution company, natural gas pipeline carrier operating under a
 - 40 certificate of public convenience and necessity from the Utilities
 - 41 Commission, municipal corporation operating a municipally owned
 - 42 gas distribution system, or regional natural gas district organized and
 - 43 operated pursuant to Article 28 of Chapter 160A of the General
 - 44 Statutes used for transmission, distribution, measurement, testing,
 - 45 regulating, compression, control, or storage of natural gas.
 - 46 d. Any facility used or operated for agricultural activities, as that term is
 - 47 defined in G.S. 106-581.1."

48 **SECTION 7.(b)** This section becomes effective December 1, 2014, and applies to
 49 offenses committed on or after that date.

1 **REQUIRE WRITTEN CONSENT TO OPERATE ALL TERRAIN VEHICLES ON**
2 **PRIVATE PROPERTY**

3 **SECTION 8.(a)** G.S. 14-159.3 reads as rewritten:

4 **"§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

5 (a) No person shall operate any motorized all terrain vehicle:

6 (1) On any private property not owned by the operator, without the written
7 consent of the owner; or

8 (2) Within the banks of any stream or waterway, but excluding a sound or the
9 Atlantic Ocean, the adjacent lands of which are not owned by the operator,
10 without the consent of the owner or outside the restrictions imposed by the
11 owner.

12 (a1) A landowner who gives a person written consent to operate an all terrain vehicle on
13 his or her property owes the person the same duty of care that he owes a trespasser.

14 (b) A "motorized all terrain vehicle", as used in this section, is a two or more wheeled
15 vehicle designed for recreational off-road use.

16 (c) A violation of this section shall be a Class 2 misdemeanor."

17 **SECTION 8.(b)** This section becomes effective December 1, 2014, and applies to
18 offenses committed on or after that date.

19
20 **ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES**

21 **SECTION 9.** G.S. 156-82.1 is amended by adding a new subsection to read:

22 **"§ 156-82.1. Duties and powers of the board of drainage commissioners.**

23 (a) The board of drainage commissioners shall proceed with the levying of assessments,
24 issuance of bonds and construction of canals, water retardant structures and other
25 improvements and acquisition of equipment as approved by the court in the adjudication upon
26 the final report of the board of viewers, either in the creation of the district or in subsequent
27 proceedings authorized by Article 7B.

28 (b) The commissioners shall maintain the canals, water retardant structures, and all
29 other improvements and equipment of the district.

30 (b1) No State statute or rule or local government ordinance for the establishment,
31 preservation, or maintenance of riparian buffers for the protection of water quality shall apply
32 to the construction, operation, maintenance, or repair of canals, water retardant structures, or
33 other improvements under the control and supervision of a board of drainage commissioners.

34"

35
36 **EFFECTIVE DATE**

37 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes
38 law.