

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 711

Short Title: NC Farm Act of 2018. (Public)

Sponsors: Senators B. Jackson, Cook, Sanderson (Primary Sponsors); McInnis and Woodard.

Referred to: Rules and Operations of the Senate

May 17, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE AGRICULTURAL LAWS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 44 of Chapter 106 of the General Statutes reads as rewritten:
5 "Article 44.

6 "Unfair Practices by Handlers of Fruits and Vegetables.

7 **"§ 106-496. Protection against unfair trade practices.**

8 The Board of Agriculture is hereby authorized to ~~make adopt~~ such rules and regulations as it
9 deems necessary to protect producers of fruits and vegetables from loss caused by financial
10 irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial
11 liability for the purchase or production of fruits and vegetables. ~~A "handler," as used herein, is a~~
12 ~~person, firm, corporation or other legal entity or his agent or employee who enters into a written~~
13 ~~contract for the purchase from or production by a producer of fruits and vegetables.~~

14 **"§ 106-496.1. Definitions.**

15 For the purposes of this Article, the following definitions apply:

- 16 (1) "Certificate of deposit" means a certificate of deposit at any recognized
17 financial institution doing business in the United States.
18 (2) "Commissioner" means the North Carolina Commissioner of Agriculture.
19 (3) "Consignment" means any transfer of fruits and vegetables by the seller to the
20 custody of another person who acts as the agent for the seller for the purpose
21 of selling such fruits and vegetables.
22 (4) "Department" means the North Carolina Department of Agriculture and
23 Consumer Services.
24 (5) "Handler" means any person in the business of buying, receiving, selling,
25 exchanging, negotiating, processing for resale, or soliciting the sale, resale,
26 exchange, or transfer of any fruits and vegetables purchased from a producer,
27 received on consignment from a producer, or received to be handled on a net
28 return basis from a producer.
29 (6) "Net return basis" means a purchase for sale of fruits and vegetables from a
30 producer or shipper at an unfixed or unstated price at the time the fruits and
31 vegetables are shipped from the point of origin, and which shall include all
32 purchases made "at the market price," "at net worth," and on similar terms,
33 which indicate that the buyer is the final arbiter of the price to be paid.
34 (7) "Person" means a natural person, firm, corporation, or other legal entity.



- 1 (8) "Processor" means any person operating any plant in this State that freezes,
2 dehydrates, cans, or otherwise changes the physical form or characteristics of
3 fruits and vegetables.
- 4 (9) "Producer" means any person who produces fruits or vegetables, or both, in
5 North Carolina.
- 6 (10) "Restaurant" means a facility that prepares and sells food directly to
7 consumers for immediate consumption. The term "restaurant" does not
8 include facilities that provide food to interstate conveyances, central kitchens,
9 and other similar facilities that do not prepare and serve food directly to
10 consumers.
- 11 (11) "Retail establishment" means an establishment that sells fruits and vegetables
12 directly to consumers as its primary function. A retail establishment's primary
13 function is to sell fruits and vegetables directly to consumers if the annual
14 monetary value of sales of fruits and vegetables directly to consumers exceeds
15 the annual monetary value of sales of fruits and vegetables to all other buyers.
16 The term "consumers" does not include businesses.

17 **"§ 106-497. Permits-Annual license required.**

18 ~~A handler of fruits and vegetables shall not enter into a written contract with a producer until~~
19 ~~he obtains a written permit from the Commissioner of Agriculture. The Board of Agriculture may~~
20 ~~prescribe by regulation the form of the application for a permit, the information to be furnished~~
21 ~~to the Commissioner by the applicant for a permit and the date for filing the application. A permit~~
22 ~~shall not be issued until the applicant files on or before the date set by the Board a written request~~
23 ~~with the Commissioner and files with the request two copies of the applicant's proposed contract.~~
24 ~~A penalty of twenty five dollars (\$25.00) shall be paid by the applicant if the application is filed~~
25 ~~after the date established by the Board and no permit shall be issued until such penalty is paid.~~
26 ~~Any penalties collected by the Commissioner shall be used to help defray the costs of~~
27 ~~administering Article 44 of Chapter 106.~~

28 ~~This Article shall not apply to transactions by a handler with a producer on a cash basis.~~
29 ~~"Cash" as used herein shall include bank bills, checks drawn on banks and bank notes.~~

30 ~~It shall be unlawful for any handler of fruits and vegetables who acts within the scope of this~~
31 ~~Article to engage in business as a handler without an annual license issued by the Commissioner.~~

32 **"§ 106-497.1. Application for annual license.**

33 (a) Every handler of fruits and vegetables desiring to transact business in this State shall
34 file an application for an annual license with the Commissioner.

35 (b) The Board of Agriculture may prescribe by rule the form of the application, the
36 information to be furnished to the Commissioner by the applicant for an annual license, and the
37 date for filing the application.

38 (c) An applicant for an annual license shall pay an initial or renewal license fee, as set by
39 rule by the Board of Agriculture but not to exceed five hundred dollars (\$500.00), with each
40 application. The applicant shall pay an administrative late fee, as set by rule by the Board of
41 Agriculture but not to exceed two hundred fifty dollars (\$250.00), if the application is filed after
42 the date established by the Board of Agriculture and the Commissioner shall not issue the license
43 until the penalty is paid. Any fees collected by the Commissioner shall be used to help defray the
44 costs of administering this Article.

45 **"§ 106-497.2. Denial, suspension, or revocation of license.**

46 The Commissioner may decline to grant a license or may suspend or revoke a license already
47 granted if the Commissioner is satisfied that the applicant or licensee has:

- 48 (1) Suffered a money judgment which that person cannot satisfy or is otherwise
49 insolvent or financially irresponsible.
- 50 (2) Made false charges for handling or services rendered.
- 51 (3) Failed to promptly and properly account and pay any producer.

- (4) Made any false statement or statements as to the condition, quality, or quantity of goods received or held for sale when that person could have ascertained the true condition, quality, or quantity by reasonable inspection.
- (5) Made any false or misleading statement or statements as to market conditions or service rendered.
- (6) As a handler, hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying, selling, or the handling of payments for fruits and vegetables.
- (7) As a handler, failed either to file the required surety bond or certificate of deposit or to keep such surety bond or certificate of deposit in force.
- (8) Provided false or misleading information in the person's application for license.
- (9) Failed to comply with the terms of this Article or any rules adopted by the Board of Agriculture.

§ 106-498. Bond-Surety bond or certificate of deposit required.

~~No permit shall be issued to a handler until such handler has furnished the Commissioner of Agriculture a bond satisfactory to the Commissioner in an amount of not less than ten thousand dollars (\$10,000). The Commissioner may require a new bond or he may require the amount of any bond to be increased if he finds it necessary for the protection of the producer. Such bond shall be payable to the State and shall be conditioned upon the fulfilling of all financial obligations incurred by the handler with all producers with whom the handler contracts. Any producer alleging any injury by the fraud, deceit, willful injury or failure to comply with the terms of any written contract by a handler may bring suit on the bond against the principal and his surety in any court of competent jurisdiction and may recover the damages found to be caused by such acts complained of.~~

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this State and approved by the Commissioner or a certificate of deposit approved by the Commissioner. No certificate of deposit may be accepted unless the issuing institution is properly insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The surety bond or certificate of deposit to secure the faithful performance of that person's obligations as a handler shall be based on the maximum amount of gross business the applicant did in any month in this State during the preceding licensing year, or an estimate for the upcoming licensing year if the applicant did not engage in business as a handler in this State during the preceding year, and in accordance with the following schedule:

<u>Maximum Monthly Gross Business</u>	<u>Bond or Deposit Required</u>
<u>Up to \$25,000</u>	<u>\$25,000</u>
<u>\$25,001 to \$50,000</u>	<u>\$50,000</u>
<u>\$50,001 to \$75,000</u>	<u>\$75,000</u>
<u>\$75,001 to \$100,000</u>	<u>\$100,000</u>
<u>\$100,001 to \$125,000</u>	<u>\$125,000</u>
<u>\$125,001 to \$150,000</u>	<u>\$150,000</u>
<u>\$150,001 to \$175,000</u>	<u>\$175,000</u>
<u>\$175,001 to \$200,000</u>	<u>\$200,000</u>
<u>\$200,001 to \$225,000</u>	<u>\$225,000</u>
<u>\$225,001 or More</u>	<u>\$250,000</u>

(c) Surety bonds and certificates of deposit shall have such surety or sureties, or financial institution or financial institutions, subject to service of process in suits on the surety bond or certificate of deposit within this State and shall contain such terms and conditions as the Commissioner may prescribe to carry out the purposes of this Article.

1 (d) Whenever the Commissioner determines that a previously approved surety bond or
2 certificate of deposit has for any reason become insufficient, the Commissioner may require in
3 writing an additional surety bond or certificate of deposit to be given, conforming to the
4 requirements of this Article. Unless the additional surety bond or certificate of deposit is given
5 within the time stated in the Commissioner's demand, or if the surety bond or certificate of deposit
6 of a handler is canceled, the person's license shall be immediately revoked without notice or
7 hearing.

8 **"§ 106-498.1. Action on surety bond or certificate of deposit by producer injured.**

9 Any producer claiming to be injured by nonpayment, noncompliance with the terms of a
10 contract, fraud, deceit, negligence, or other misconduct of a handler may sue the handler and his
11 or her sureties upon the surety bond or certificate of deposit in that producer's name in any court
12 of competent jurisdiction to recover the damages that person may have sustained by such breach
13 without any assignment thereof by the Department or the State.

14 **"§ 106-498.2. Inspection of spoiled, damaged, unmarketable, or unsatisfactory produce**
15 **before sale.**

16 Whenever fruits and vegetables are shipped to or received by a handler for handling,
17 purchase, or sale in this State, and the handler finds such produce to be in a spoiled, damaged,
18 unmarketable, or unsatisfactory condition, the Department may provide inspection services and
19 execute and deliver a certificate stating the day and the time and place of such inspection and the
20 condition of such produce and mail or deliver a copy of such certificate to both the handler and
21 producer. The Department may charge and collect fees in accordance with the United States
22 Department of Agriculture laws and rules and the Department's cooperative grading service
23 agreement with the United States Department of Agriculture.

24 ~~**"§ 106-499. Contracts between handlers and producers; approval of Commissioner.**~~

25 ~~All contracts filed with the Commissioner by an applicant shall be approved by the~~
26 ~~Commissioner before a permit is issued. The Commissioner may withhold his approval in his~~
27 ~~discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the~~
28 ~~contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears~~
29 ~~to him that the contract in question might defeat the purpose of this Article.~~

30 **"§ 106-500. Additional powers of Commissioner to enforce Article.**

31 (a) ~~In order to enforce this Article, the Commissioner of Agriculture, Commissioner,~~ upon
32 ~~his~~ the Commissioner's own motion or upon the verified complaint of any producer, shall have
33 the following additional powers:

- 34 (1) ~~To inspect or investigate transactions for the sale or delivery of fruits and~~
35 ~~vegetables to persons acting as handlers; to require verified reports and~~
36 ~~accounts of all authorized handlers; to examine books, accounts, memoranda,~~
37 ~~equipment, warehouses, storage, transportation and other facilities, fruits and~~
38 ~~vegetables and other articles connected with the business of the handlers; to~~
39 ~~inquire into failure or refusal of any handlers to accept produce under his~~
40 ~~contracts and to pay for it as agreed; agreed.~~
41 (2) ~~To hold hearings after due notice to interested parties and opportunity to all to~~
42 ~~be heard; to administer oaths, take testimony and issue subpoenas; to require~~
43 ~~witnesses to bring with them relevant books, papers, and other evidence; to~~
44 ~~compel testimony; to make written findings of fact and on the basis of these~~
45 ~~findings to issue orders in controversies before him, and to revoke the permits~~
46 ~~of persons disobeying the terms of this Article or of rules, regulations, and~~
47 ~~orders made by the Board or the Commissioner. Any party disobeying any~~
48 ~~order or subpoena of the Commissioner shall be guilty of contempt, and shall~~
49 ~~be certified to the superior court for punishment. Any party may appeal to the~~
50 ~~superior court from any final order of the Commissioner;~~ To suspend or revoke

1 the licenses of persons disobeying the terms of this Article or of rules adopted
2 by the Board of Agriculture.

3 (3) To issue all such rules and regulations, with the approval of the Board, and to
4 appoint necessary agents and to do all other lawful things necessary to carry
5 out the purposes of this Article.

6 (4) ~~This Article will not apply to peanuts and corn grown under contract for seed~~
7 ~~purposes.~~ In addition to the remedies provided in this Article and
8 notwithstanding the existence of any adequate remedy at law, the
9 Commissioner is authorized to apply to any court of competent jurisdiction
10 and that court shall have jurisdiction upon hearing and for cause shown to
11 grant a temporary or permanent injunction, or both, restraining any person
12 from violating or continuing to violate any of the provisions of this Article or
13 any rule or regulation promulgated thereunder. The injunction shall be issued
14 without bond.

15 (b) For the purposes specified in subsection (a) of this section, the Commissioner or the
16 Commissioner's agents may examine the ledgers, books of accounts, memoranda, and other
17 documents which relate to the transaction involved, at the place or places of business of the
18 applicant or licensee, and may take testimony under oath.

19 **"§ 106-501. Violation of Article or rules made misdemeanor.**

20 Any person who violates the provisions of this Article or the rules and regulations
21 promulgated adopted thereunder shall be guilty of a Class 1 misdemeanor.

22 **"§ 106-501.1. Civil penalty.**

23 The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000)
24 per violation against any person or business entity who violates a provision of this Article or any
25 rule adopted thereunder. In determining the amount of the penalty, the Commissioner shall
26 consider the degree and extent of harm caused by the violation. The clear proceeds of civil
27 penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture
28 Fund in accordance with G.S. 115C-457.2.

29 **"§ 106-501.2. Exceptions.**

30 This Article does not apply to:

31 (1) Farmers or groups of farmers in the sale of fruits and vegetables grown by
32 themselves.

33 (2) Restaurants and retail establishments.

34 (3) A handler of fruits and vegetables who pays at the time of purchase with
35 United States cash currency or a cash equivalent, such as a money order,
36 cashier's check, wire transfer, electronic funds transfer, or PIN-based debit
37 transaction, or who pays with a credit card.

38 (4) Handlers who purchase less than one thousand dollars (\$1,000) worth of fruits
39 and vegetables from North Carolina producers or their designees during the
40 peak month of such purchases within the calendar year.

41 (5) A handler to the extent that the handler purchases fruits and vegetables from
42 a producer that is owned by the handler or if the handler is owned by the
43 producer or if both the handler and producer are owned by the same person.

44 (6) Fruits and vegetables grown under contract for seed purposes.

45 **"§ 106-501.3. Bankruptcy.**

46 Nothing in this Article shall be construed to relieve a surety company or financial institution
47 from responsibility for payment on properly established complaints against handlers involved in
48 a federal bankruptcy proceeding."

49 **SECTION 2.** G.S. 106-24.1 reads as rewritten:

50 **"§ 106-24.1. Confidentiality of information collected and published.**

1 All information published by the Department of Agriculture and Consumer Services pursuant
2 to this Part shall be classified so as to prevent the identification of information received from
3 individual farm operators. All information generated by any federal agency received pursuant to
4 this ~~Part~~ Chapter that is confidential under federal law shall be held confidential by the
5 Department and its ~~employees~~ employees, unless confidentiality is waived by the federal agency.
6 All information collected by the Department from farm owners or animal owners, including, but
7 not limited to, certificates of veterinary inspection, animal medical records, laboratory reports
8 received or generated from samples submitted for analysis, or other records that may be used to
9 identify a person or private business entity subject to regulation by the Department shall not be
10 disclosed without the permission of the owner unless the State Veterinarian determines that
11 disclosure is necessary to prevent the spread of an animal disease or to protect the public health,
12 or the disclosure is necessary in the implementation of these animal health programs."

13 **SECTION 3.** Section 1 of this act becomes effective January 1, 2019. The remainder
14 of this act is effective when it becomes law.