

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 2200*
Committee Substitute Favorable 6/20/06

Short Title: Enhance Embargo Auth/Protect Food Supply.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, The the Secretary of Environment and Natural Resources and or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when delegated the authority by the Commissioner of Agriculture. the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the

1 Secretary of the Department of Environment and Natural Resources or the local health
2 director and shall not be required to be carried out by the Department of Agriculture and
3 Consumer Services. It shall be unlawful for any person to remove or dispose of the food
4 or drink by sale or otherwise without the permission of a Department of Environment
5 and Natural Resources regional environmental health specialist or a duly authorized
6 agent of the Department of Agriculture and Consumer Services, or by the court in
7 accordance with the provisions of G.S. 106-125.

8 (b) If the Secretary of Environment and Natural Resources or a local health
9 director has probable cause to believe that any milk designated as Grade "A" milk is
10 misbranded or does not satisfy the milk sanitation rules adopted pursuant to
11 G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health
12 director may detain or embargo the milk by affixing a tag to it and warning all persons
13 not to remove or dispose of the milk until permission for removal or disposal is given by
14 the official by whom the milk was detained or embargoed or by the court. It shall be
15 unlawful for any person to remove or dispose of the detained or embargoed milk
16 without that permission.

17 The official by whom the milk was detained or embargoed shall petition a judge of
18 the district or superior court in whose jurisdiction the milk is detained or embargoed for
19 an order for condemnation of the article. If the court finds that the milk is misbranded or
20 that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275,
21 either the milk shall be destroyed under the supervision of the petitioner or the petitioner
22 shall ensure that the milk will not be used for human consumption as Grade "A" milk.
23 All court costs and fees, storage, expenses of carrying out the court's order and other
24 expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling
25 or processing, can be properly branded and will satisfy the milk sanitation rules adopted
26 pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses
27 and after the claimant posts an adequate bond, may order that the milk be delivered to
28 the claimant for proper labelling and processing under the supervision of the petitioner.
29 The bond shall be returned to the claimant after the petitioner represents to the court
30 either that the milk is no longer mislabelled or in violation of the milk sanitation rules
31 adopted pursuant to G.S. 130A-275, or that the milk will not be used for human
32 consumption, and that in either case the expenses of supervision have been paid.

33 (c) If the Secretary of Environment and Natural Resources or a local health
34 director has probable cause to believe that any scallops, shellfish or crustacea is
35 adulterated or misbranded, the Secretary of Environment and Natural Resources or a
36 local health director may detain or embargo the article by affixing a tag to it and
37 warning all persons not to remove or dispose of the article until permission for removal
38 or disposal is given by the official by whom it was detained or embargoed or by the
39 court. It shall be unlawful for any person to remove or dispose of the detained or
40 embargoed article without that permission.

41 The official by whom the scallops, shellfish or crustacea was detained or embargoed
42 shall petition a judge of the district or superior court in whose jurisdiction the article is
43 detained or embargoed for an order for condemnation of the article. If the court finds
44 that the article is adulterated or misbranded, that article shall be destroyed under the

1 supervision of the petitioner. All court costs and fees, storage and other expense shall be
2 taxed against the claimant of the article. If, the article, by proper labelling can be
3 properly branded, the court, after the payment of all costs, fees, expenses, and an
4 adequate bond, may order that the article be delivered to the claimant for proper
5 labelling under the supervision of the petitioner. The bond shall be returned to the
6 claimant after the petitioner represents to the court that the article is no longer
7 mislabelled and that the expenses of supervision have been paid.

8 (d) Nothing in this section is intended to limit the embargo authority of the
9 Department of Agriculture and Consumer Services. The Department of Environment
10 and Natural Resources and the Department of Agriculture and Consumer Services are
11 authorized to enter agreements respecting the duties and responsibilities of each agency
12 in the exercise of their embargo authority.

13 (e) For the purpose of this section, a food or drink is adulterated if the food or
14 drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is
15 deemed misbranded under G.S. 106-130."

16 **SECTION 2.** Article 22 of Chapter 130A of the General Statutes is amended
17 by adding a new section to read:

18 "**§ 130A-481. Food defense.**

19 The Department of Agriculture and Consumer Services, Department of Environment
20 and Natural Resources, and Department of Health and Human Services shall jointly
21 develop a plan to protect the food supply from intentional contamination. The plan shall
22 address protection of the food supply from production to consumption, including, but
23 not limited to, the protection of plants, crops, and livestock."

24 **SECTION 3.** Section 2 of this act is effective when it becomes law. The
25 remainder of this act becomes effective December 1, 2006, and applies to offenses
26 committed on or after that date.