

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

1

SENATE BILL 1495*

Short Title: Enhance Embargo Auth/Protect Food Supply. (Public)

Sponsors: Senators Nesbitt, Malone; Albertson, Apodaca, Atwater, Bland, Boseman, Brown, Dorsett, Hartsell, Holloman, Jenkins, Lucas, Presnell, Shaw, and Snow.

Referred to: Rules and Operations of the Senate.

May 18, 2006

A BILL TO BE ENTITLED

1 AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF
2 ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH
3 DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO
4 PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.
5

6 The General Assembly of North Carolina enacts:

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

8 **"§ 130A-21. Embargo.**

9 (a) In addition to the authority of the Commissioner of Agriculture pursuant to
10 G.S. 106-25, The the Secretary of Environment and Natural Resources and or a local
11 health director has authority to exercise embargo authority concerning food or drink
12 pursuant to G.S. 106-125(a), (b) and (c) when delegated the authority by the
13 Commissioner of Agriculture, the food or drink is in an establishment that is subject to
14 regulation by the Department of Environment and Natural Resources pursuant to this
15 Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however,
16 no such action shall be taken in any establishment or part of an establishment that is
17 under inspection or otherwise regulated by the Department of Agriculture and
18 Consumer Services or the United States Department of Agriculture other than the part
19 of the establishment that is subject to regulation by the Department of Environment and
20 Natural Resources pursuant to this Chapter. Any action under this section shall only be
21 taken by, or after consultation with, Department of Environment and Natural Resources
22 regional environmental health specialists, or their superiors, in programs regulating
23 food and drink pursuant to this Chapter. Authority under this section shall not be
24 delegated to individual environmental health specialists in local health departments
25 otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When
26 such action is taken, the Department of Environment and Natural Resources or the local
27 health director shall immediately notify the Department of Agriculture and Consumer

1 Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125
2 shall be carried out by the Secretary of the Department of Environment and Natural
3 Resources or the local health director and shall not be required to be carried out by the
4 Department of Agriculture and Consumer Services. It shall be unlawful for any person
5 to remove or dispose of the food or drink by sale or otherwise without the permission of
6 a Department of Environment and Natural Resources Regional Environmental Health
7 Specialist or a duly authorized agent of the Department of Agriculture and Consumer
8 Services, or by the court in accordance with the provisions of G.S. 106-125.

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

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

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

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

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

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

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

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

19 **"§ 130A-481. Food defense.**

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

25 **SECTION 3.** This act is effective when it becomes law.