

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-80
HOUSE BILL 2200**

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

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

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

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

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

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

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

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

§ 130A-481. Food defense.

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

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

In the General Assembly read three times and ratified this the 30th day of June, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:06 p.m. this 10th day of July, 2006