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SENATE BILL DRS35325-RIz-32* (01/14)

Short Title: DACS Enforcement Authority/Bedding. (Public)

Sponsors: Senators B. Jackson, Brock, and Cook (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ENFORCEMENT AUTHORITY ASSOCIATED WITH THE PROGRAM GOVERNING BEDDING IMPROPERLY MADE, SANITIZED, OR TAGGED, AS RECOMMENDED BY THE AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 106 of the General Statutes is amended by adding five new sections to read:

"§ 106-65.105A. Detention or embargo of product or item suspected of being adulterated or misbranded.

(a) If an authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe that any bedding, secondhand bedding, material, or other item regulated under this Article is unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or is otherwise in violation of the requirements of this Article, the agent may affix to the item a tag or other appropriate marking giving notice that the item has been detained or embargoed with information identifying the violation(s). It shall be a violation of this Article for any person to remove or alter a tag authorized by this subsection, or to remove or dispose of a detained or embargoed item by sale or otherwise, without such permission, and the tag or marking shall include a warning to that effect.

(b) When an item is detained or embargoed under subsection (a) of this section, an authorized agent of the Department of Agriculture and Consumer Services may petition a judge of the district or superior court in whose jurisdiction the item is detained or embargoed for an order for condemnation of the item. When an authorized agent has found that an item detained or embargoed is not unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or otherwise in violation of the requirements of this Article, the agent shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed item is unsanitary, mislabeled, or contains toxic materials, the item shall, after entry of the decree, be destroyed at the expense of the item's claimant, under the supervision of an authorized agent of the Department of Agriculture and Consumer Services; and all court costs and fees, storage, and other proper expenses shall be taxed against the claimant of the item or the claimant's agent; provided, that when the unsanitary condition, mislabeling, safety concerns, or other violation can be corrected by proper labeling or processing of the item, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the item shall be properly labeled or processed, has been executed, may by order direct that the item be delivered to the item's claimant for proper labeling or processing under the supervision of an agent of the Department of



1 Agriculture and Consumer Services. The expense of the Department's supervision shall be paid by
2 the claimant. The amount of any bond paid shall be returned to the claimant of the item on
3 representation to the court by the Department of Agriculture and Consumer Services that the item
4 is no longer in violation of this Article and that the expenses of the Department's supervision have
5 been paid.

6 **"§ 106-65.105B. Injunctions restraining violations.**

7 In addition to any other remedies provided by this Article, the Commissioner is authorized to
8 apply to the superior court for, and the court shall have jurisdiction upon hearing and for cause
9 shown to grant, a temporary or permanent injunction restraining any person from violating any
10 provision of this Article or any rule promulgated thereunder, irrespective of whether or not there
11 exists an adequate remedy at law.

12 **"§ 106-65.105C. Civil penalties.**

13 (a) The Commissioner may assess a civil penalty of not more than two thousand five
14 hundred dollars (\$2,500) per violation against any person, firm, or corporation that violates or
15 directly causes a violation of any provision of this Article, rule promulgated thereunder, or lawful
16 order of the Commissioner. In addition, if any person continues to violate or further violates any
17 provision of this Article after written notice from the Commissioner, the Commissioner may
18 determine that each day during which the violation continued or is repeated constitutes a separate
19 violation subject to additional civil penalties. In determining the amount of the penalty, the
20 Commissioner shall consider the degree and extent of harm caused or potentially caused by the
21 violation.

22 (b) Prior to assessing a civil penalty, the Commissioner shall give the person written notice
23 of the violation and a reasonable period of time in which to correct the violation. However, the
24 Commissioner shall not be required to give a person time to correct a violation before assessing a
25 penalty if the Commissioner determines the violation has the potential to cause future physical
26 injury or illness.

27 (c) The Commissioner may consider the training and management practices implemented
28 by the person, firm, or corporation for the purpose of complying with this Article as a mitigating
29 factor when determining the amount of the civil penalty.

30 (d) The Commissioner shall remit the clear proceeds of civil penalties assessed pursuant to
31 this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

32 **"§ 106-65.105D. Violation a misdemeanor.**

33 (a) Except as otherwise provided, any person, firm, or corporation that violates any of the
34 provisions of this Article, or any of the rules, regulations, or standards promulgated hereunder,
35 shall be deemed guilty of a Class 2 misdemeanor.

36 (b) Any person, firm, or corporation that provides the Commission or a duly authorized
37 agent of the Commissioner with false or misleading information in relation to a license application
38 or renewal, inspection, or investigation authorized by this Article shall be deemed guilty of a Class
39 2 misdemeanor.

40 (c) Any person, firm, or corporation that alters or removes a tag indicating that an item has
41 been detained or embargoed under G.S. 106-65.105A(a) without first receiving permission from
42 the court or a duly authorized agent under this Article shall be deemed guilty of a Class 2
43 misdemeanor.

44 (d) Any person, firm, or corporation that removes or disposes of any item detained or
45 embargoed under G.S. 106-65.105A(a) without first receiving permission from the court or a duly
46 authorized agent under this Article shall be deemed guilty of a Class 2 misdemeanor.

47 (e) Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes
48 with any person while engaged in or on account of the performance of the person's official duties
49 under this Article shall be guilty of a Class 2 misdemeanor. For the purposes of this subsection,
50 "impede," "oppose," "intimidate," or "interfere" shall include the use of profane and indecent
51 language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector.

1 Whoever, in the commission of any such acts, uses a deadly weapon shall be guilty of a Class 1
2 misdemeanor.

3 (f) If any person continues to violate or further violates any provision of this Article after
4 written notice from the Commissioner, the court may determine that each day during which the
5 violation continued or is repeated constitutes a separate violation.

6 **"§ 106-65.105E. Report of minor violations in discretion of Commissioner.**

7 Nothing in this Article shall be construed to require the Commissioner to initiate, or attempt to
8 initiate, any criminal or administrative proceedings under this Article for minor violations of this
9 Article whenever the Commissioner believes that the public interest will be adequately served in
10 the circumstances by a suitable written notice or warning."

11 **SECTION 2.** This act becomes effective December 1, 2016, and applies to offenses
12 committed on or after that date.