

HOUSE BILL 304
EMERGENCY BILL

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M4

2002 Regular Session
2lr0163
CF 2lr0162

By: **The Speaker (Administration) and Delegates Cole, D. Davis, Doory,
Hammen, Hubbard, McHale, McIntosh, Morhaim, Oaks, Phillips,
Turner, Vallario, and Wood**

Introduced and read first time: January 23, 2002
Assigned to: Judiciary and Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture - Infectious and Contagious Diseases - Administrative Search**
3 **Warrants**

4 FOR the purpose of authorizing the Secretary of Agriculture or the Secretary's
5 designee to apply to a certain court for an administrative search warrant;
6 specifying the information that must be contained in an application for an
7 administrative search warrant; requiring the Attorney General of Maryland to
8 approve the administrative search warrant application before filing the
9 application with the court; requiring a judge to make certain findings prior to
10 issuing the administrative warrant; specifying the information that must be
11 contained in the administrative search warrant; requiring the administrative
12 search warrant to be executed and returned within a certain time period;
13 requiring that any information obtained pursuant to an administrative search
14 warrant be confidential; making this Act an emergency measure; and generally
15 relating to infectious and contagious diseases and administrative search
16 warrants.

17 BY adding to
18 Article - Agriculture
19 Section 3-105.1
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2001 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Agriculture**

25 3-105.1.

26 (A) THE SECRETARY OR A DESIGNEE OF THE SECRETARY MAY APPLY TO A
27 JUDGE OF THE DISTRICT COURT OR A CIRCUIT COURT FOR AN ADMINISTRATIVE
28 SEARCH WARRANT TO ENTER ANY FACTORY, WAREHOUSE, VEHICLE, BUILDING,

1 ESTABLISHMENT, OR OTHER PREMISES TO CONDUCT ANY INSPECTION REQUIRED OR
2 AUTHORIZED BY LAW TO DETERMINE COMPLIANCE WITH THE PROVISIONS OF THIS
3 SUBTITLE RELATING TO THE REGULATION AND PREVENTION OF INFECTIOUS AND
4 CONTAGIOUS LIVESTOCK AND POULTRY DISEASES.

5 (B) (1) THE APPLICATION SHALL BE IN WRITING AND SIGNED AND SWORN
6 TO BY THE APPLICANT AND SHALL PARTICULARLY DESCRIBE THE PLACE,
7 STRUCTURE, PREMISES, VEHICLE, OR RECORDS TO BE INSPECTED AND THE NATURE,
8 SCOPE, AND PURPOSE OF THE INSPECTION TO BE PERFORMED BY THE APPLICANT.

9 (2) BEFORE THE FILING OF A SEARCH WARRANT APPLICATION WITH A
10 COURT, IT SHALL BE APPROVED BY THE ATTORNEY GENERAL OF MARYLAND AS TO
11 ITS LEGALITY IN BOTH FORM AND SUBSTANCE UNDER THE STANDARDS AND
12 CRITERIA OF THIS SECTION AND A STATEMENT TO THIS EFFECT SHALL BE
13 INCLUDED AS PART OF THE APPLICATION.

14 (C) A JUDGE OF A COURT REFERRED TO IN SUBSECTION (A) OF THIS SECTION
15 MAY ISSUE THE WARRANT ON FINDING THAT:

16 (1) THE APPLICANT HAS SOUGHT ACCESS TO THE PROPERTY FOR THE
17 PURPOSE OF MAKING AN INSPECTION;

18 (2) (I) AFTER REQUESTING, AT A REASONABLE TIME, THE OWNER,
19 TENANT, OR OTHER INDIVIDUAL IN CHARGE OF THE PROPERTY TO ALLOW ACCESS,
20 HAS BEEN DENIED ACCESS TO THE PROPERTY; OR

21 (II) AFTER MAKING A REASONABLE EFFORT, HAS BEEN UNABLE TO
22 LOCATE ANY OF THESE INDIVIDUALS;

23 (3) THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE MET;

24 (4) THE SECRETARY OR DESIGNEE OF THE SECRETARY IS AUTHORIZED
25 OR REQUIRED BY LAW TO MAKE AN INSPECTION OF THE PROPERTY FOR WHICH THE
26 WARRANT IS SOUGHT; AND

27 (5) PROBABLE CAUSE FOR THE ISSUANCE OF THE WARRANT HAS BEEN
28 DEMONSTRATED BY THE APPLICANT BY SPECIFIC EVIDENCE OF AN EXISTING
29 VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY RULE OR REGULATION
30 ADOPTED UNDER THIS SUBTITLE OR BY SHOWING:

31 (I) THAT A REASONABLE ADMINISTRATIVE INSPECTION PROGRAM
32 EXISTS REGARDING THE REGULATION AND PREVENTION OF INFECTIOUS AND
33 CONTAGIOUS LIVESTOCK AND POULTRY DISEASES; AND

34 (II) THAT THE PROPOSED INSPECTION COMES WITHIN THAT
35 PROGRAM.

36 (D) (1) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS
37 SECTION SHALL SPECIFY THE PLACE, STRUCTURE, PREMISES, VEHICLE, OR
38 RECORDS TO BE INSPECTED.

1 (2) THE INSPECTION CONDUCTED MAY NOT EXCEED THE LIMITS
2 SPECIFIED IN THE WARRANT.

3 (E) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS SECTION
4 AUTHORIZES THE SECRETARY OR DESIGNEE OF THE SECRETARY TO ENTER THE
5 SPECIFIED PROPERTY TO PERFORM THE INSPECTION, SAMPLING, AND OTHER
6 FUNCTIONS AUTHORIZED BY LAW TO DETERMINE COMPLIANCE WITH THE
7 PROVISIONS OF THIS SUBTITLE RELATING TO THE REGULATION AND PREVENTION
8 OF INFECTIOUS AND CONTAGIOUS LIVESTOCK AND POULTRY DISEASES.

9 (F) AN ADMINISTRATIVE SEARCH WARRANT ISSUED UNDER THIS SECTION
10 SHALL BE EXECUTED AND RETURNED TO THE JUDGE BY WHOM IT WAS ISSUED
11 WITHIN:

12 (1) THE TIME SPECIFIED IN THE WARRANT, NOT TO EXCEED 30 DAYS; OR

13 (2) IF NO TIME PERIOD IS SPECIFIED IN THE WARRANT, 15 DAYS FROM
14 THE DATE OF ITS ISSUANCE.

15 (G) ANY INFORMATION OBTAINED PURSUANT TO AN ADMINISTRATIVE
16 SEARCH WARRANT SHALL BE CONSIDERED AS CONFIDENTIAL AND MAY NOT BE
17 DISCLOSED EXCEPT TO THE EXTENT UTILIZED IN AN ADMINISTRATIVE OR JUDICIAL
18 PROCEEDING.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an
20 emergency measure, is necessary for the immediate preservation of the public health
21 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
22 members elected to each of the two Houses of the General Assembly, and shall take
23 effect from the date it is enacted.