

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

Senate Bill 236

(The President, *et al.*) (Administration)

Education, Health, and Environmental Affairs

Judiciary and Environmental Matters

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

This emergency Administration bill authorizes the Secretary of Agriculture, or the Secretary's designee, to apply to a judge for an administrative search warrant to make a lawful inspection to determine compliance with the laws relating to regulation and prevention of infectious and contagious livestock and poultry diseases. The bill establishes procedures for filing and executing the search warrant, requirements for the contents of the warrant, and requisite conditions for a judge to issue the warrant. The bill provides that any information obtained pursuant to the warrant must be considered confidential and may not be disclosed except to the extent it is used in an administrative or judicial proceeding.

Fiscal Summary

State Effect: This bill is procedural in nature and is not expected to directly impact governmental finances.

Local Effect: None -- see above.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: The application for a warrant by the Secretary or designee to a judge must:

- be in writing;
- be signed and sworn to by the applicant;
- particularly describe the place, structure, premises, vehicle, or records to be inspected and the purpose of the inspection; and
- be approved by the Attorney General for the legality of its content and be accompanied by a statement to that effect when filed.

A judge may issue the warrant upon a finding that the above requirements were met and:

- the applicant has sought access to the property for the purpose of making an inspection;
- the applicant made a reasonable effort to gain access but it was either denied or the applicant was unable to locate the appropriate individuals;
- the applicant is authorized or required by law to make an inspection of the property for which the warrant is sought; and
- the warrant contains specific evidence that demonstrates probable cause of an existing violation of law.

Any warrant issued must specify the place, structure, premises, vehicle, or records to be inspected, and the inspection must be limited to what is specified in the warrant. The warrant must be executed and returned to the judge who issued it within the time specified in the warrant, not to exceed 30 days. If no time is specified, the warrant must be returned within 15 days from the date of issuance. Any information obtained pursuant to the warrant must be kept confidential and may only be disclosed to the extent it is utilized in an administrative or judicial proceeding.

Current Law: To prevent the spread of contagious or infectious diseases, the Secretary of the Department of Agriculture, or his agent, has the authority to:

- visit any location in any county at any time where there is reason to believe a contagious or infectious disease may exist;
- test any animal for any contagious disease by any method;
- order every animal that has been exposed to a contagious or infectious disease to be isolated in the manner the Secretary deems necessary to prevent the spread of the disease;

- order any location where any contagious or infectious disease has existed or presently exists to be quarantined, so that no domestic animal of the same species may be removed from or brought to the quarantined premises until it is properly disinfected;
- issue any order the Secretary deems necessary or expedient to prevent the communication of any infectious or contagious disease from the quarantined area;
- issue an order requiring the destruction of any animal infected with or exposed to an infectious or contagious disease, and for the proper destruction of its hide or carcass, and any object that might carry infection or contagion;
- issue an order requiring disinfection of every building, premises, vehicle, and object which may breed or convey any infectious or contagious disease;
- destroy any building or article that is contaminated and incapable of proper disinfection;
- modify, cancel, or withdraw the terms of any order the Secretary issues pursuant to this subtitle; and
- institute a livestock patrol along the State borders to prevent any livestock affected with any contagious or infectious disease from being brought into the State contrary to the laws regulating shipment of livestock into the State.

The Secretary may order any sheriff, deputy sheriff, or other law enforcement officer of the State or of any county to provide information or assist in the execution or enforcement of any order of the department.

State officials who have authority to perform inspections in other areas relating to health or safety may apply to a judge of the District Court of Maryland for an administrative search warrant to perform a lawful inspection after the official has: (1) sought and been denied reasonable access to the premises; and (2) has had an application for a warrant pre-approved by the Attorney General. Those other areas include:

- amusement attractions;
- controlled hazardous substances;
- unregistered family day care homes;
- occupational safety and health hazards;
- high voltage lines; and
- boiler and pressure vessels, elevators, dumbwaiters, escalators, and moving walks.

Administrative search warrants are distinct from criminal search warrants, which require evidence of probable cause that a crime (misdemeanor or felony) is being committed.

Background: In an effort to prepare a legislative response to terrorism and related topics, the Governor, Speaker of the House, and President of the Senate appointed a joint task force to study the State's laws in this area and make recommendations for changes. The task force consists of three senators, three delegates, and four representatives from the Executive Branch. This is one of a package of bills recommended by the task force. Moreover, the Governor has listed homeland defense, including defenses against bio-terrorism, as one of his budget priorities for fiscal 2003.

The Department of Agriculture has not needed to obtain search warrants in the past to gain access to premises for inspection, although it has, on rare occasion, utilized police to accompany inspectors. Notwithstanding this fact, the introduction (whether accidental or intentional) of a highly contagious foreign animal or poultry disease could have a significant economic impact on the State, warranting a need for officials to be able to respond quickly and efficiently. According to the department's *Agriculture in Maryland Summary for 2000-2001*, in 2000 Maryland farms counted 235,000 cattle worth \$202 million, 58,000 hogs and pigs worth \$4.35 million, about 84,000 dairy cows producing milk worth \$181 million, 283 million broiler chickens worth \$462 million, and 440,000 turkeys worth \$6.45 million. The Department of Agriculture is working on a new State Animal Disease Emergency Management Plan to establish response protocols and procedures for containment of animal or poultry disease.

Additional Information

Prior Introductions: None.

Cross File: HB 304 (The Speaker, *et al.*) (Administration) – Judiciary and Environmental Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Agriculture, Office of the Attorney General, Department of Legislative Services

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