

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2528

4
5 By: Representatives Norton, Jackson, Ragland
6 By: Senator Laverty

For An Act To Be Entitled

10 AN ACT TO REQUIRE THAT PERSONNEL OF ARKANSAS SOIL
11 AND WATER CONSERVATION COMMISSION OBTAIN CONSENT
12 OR SEEK WARRANTS BEFORE ENTERING PRIVATE
13 PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

16 AN ACT TO PROTECT PRIVACY WITH REGARD TO
17 NUTRIENT MANAGEMENT PROGRAM ENFORCEMENT.

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19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code § 15-20-905 is amended to read as follows:
23 15-20-905. Enforcement.

24 ~~(a)(1) Agents of the Arkansas Soil and Water Conservation Commission~~
25 ~~shall have the power to enter on private property to determine compliance~~
26 ~~with this subchapter.~~

27 ~~(2)(A) If the entry is to a facility where poultry is regularly~~
28 ~~kept, entry shall not occur without prior notification of the owner.~~

29 ~~(B) Notice shall be given to the owner at least twenty-~~
30 ~~four (24) hours before entry.~~

31 ~~(3)(a)(1)~~ Documentation of biosecurity measures taken and biosecurity
32 certification received by ~~the~~ an inspection agent of the Arkansas Soil and
33 Water Conservation Commission or by a conservation district officer,
34 including a biosecurity log book, shall be available to the owner upon
35 request.

36 ~~(4)(2)~~ Upon notice of disease outbreak by the Arkansas Livestock



1 and Poultry Commission, inspection under this subchapter shall be
 2 automatically suspended until notification by the Arkansas Livestock and
 3 Poultry Commission that it is safe to resume inspections.

4 (b)(1) The Arkansas Soil and Water Conservation Commission may impose
 5 administrative penalties not to exceed five hundred dollars (\$500) per
 6 violation against the owner of a poultry feeding operation that fails to
 7 comply with the requirements of this subchapter.

8 (2) The imposition of administrative penalties shall be
 9 conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201
 10 et seq.

11 ~~(3) The Arkansas Soil and Water Conservation Commission or the~~
 12 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~
 13 ~~issue subpoenas as provided in § 15-22-208.~~

14 ~~(4)(3)~~ If the person against whom an administrative penalty has
 15 been imposed by the Arkansas Soil and Water Conservation Commission under
 16 this section fails to pay the penalty to the Arkansas Soil and Water
 17 Conservation Commission, the Arkansas Soil and Water Conservation Commission
 18 may file an action to collect the administrative penalty in the circuit court
 19 of the county in which the poultry feeding operation is located.

20
 21 SECTION 2. Arkansas Code § 15-20-1112 is amended to read as follows:
 22 15-20-1112. Enforcement. [Effective January 1, 2004.]

23 ~~(a)(1) Agents of the Arkansas Soil and Water Conservation Commission~~
 24 ~~may enter on private property to determine compliance with this subchapter.~~

25 ~~(2)(A) If the entry is to a facility where poultry is regularly~~
 26 ~~kept, entry shall not occur without prior notification of the owner.~~

27 ~~(B) Notice shall be given to the owner at least twenty-~~
 28 ~~four (24) hours before entry.~~

29 ~~(3)(a)(1)~~ Documentation of biosecurity measures taken and
 30 biosecurity certification received by ~~the~~ an inspection agent of the Arkansas
 31 Soil and Water Conservation Commission or by a conservation district officer,
 32 including a biosecurity log book, shall be available to the owner upon
 33 request.

34 ~~(4)(2)~~ Upon notice of disease outbreak by the Arkansas Livestock
 35 and Poultry Commission, inspection under this subchapter shall be
 36 automatically suspended until notification by the Arkansas Livestock and

1 Poultry Commission that it is safe to resume inspections.

2 (b) The process for the imposition of administrative penalties under §
 3 15-20-1205 shall be conducted pursuant to the Arkansas Administrative
 4 Procedure Act, § 25-15-201 et seq.

5 ~~(c) The Arkansas Soil and Water Conservation Commission and the~~
 6 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~
 7 ~~issue subpoenas as provided in § 15-22-208.~~

8
 9 SECTION 3. Arkansas Code Title 15, Chapter 20 is amended to add an
 10 additional subchapter to read as follows:

11 15-20-1201. Definitions.

12 As used in this subchapter:

13 (1) "Administrative inspections" means investigation by
 14 personnel of the Arkansas Soil and Water Conservation Commission at
 15 facilities operating under the Arkansas Poultry Feeding Operations
 16 Registration Act, § 15-20-901 et seq., the Arkansas Soil Nutrient Management
 17 Planner and Applicator Certification Act, § 15-20-1001 et seq., or the
 18 Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, § 15-
 19 20-1101 et seq.;

20 (2) "Facility" means the public or private area, premises,
 21 building, or conveyance described as the subject of administrative
 22 inspection;

23 (3)(A) "Probable cause" means showing that an administrative
 24 inspection limited in scope is necessary to ensure compliance with or
 25 enforcement of laws, regulations, or orders charged to the commission under
 26 the Arkansas Poultry Feeding Operations Registration Act, § 15-20-901 et
 27 seq., the Arkansas Soil Nutrient Management Planner and Applicator
 28 Certification Act, § 15-20-1001 et seq., or the Arkansas Soil Nutrient
 29 Application and Poultry Litter Utilization Act, § 15-20-1101 et seq.

30 (B) For the purpose of conducting administrative
 31 inspections or applying for administrative warrants, probable cause shall be
 32 provided to the commission through written complaints which reasonably
 33 justify a limited and controlled administrative inspection; and

34 (4) "Regulated facility or activity" means the activity or the
 35 facility that is the location of activity under the Arkansas Poultry Feeding
 36 Operations Registration Act, § 15-20-901 et seq., the Arkansas Soil Nutrient

1 Management Planner and Applicator Certification Act, § 15-20-1001 et seq., or
2 the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, §
3 15-20-1101 et seq.

4
5 15-20-1202. Complaints.

6 (a) A person who provides information to the Arkansas Soil and Water
7 Conservation Commission concerning a possible violation of the Arkansas
8 Poultry Feeding Operations Registration Act, § 15-20-901 et seq., the
9 Arkansas Soil Nutrient Management Planner and Applicator Certification Act, §
10 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and Poultry
11 Litter Utilization Act, § 15-20-1101 et seq. shall provide:

12 (1) A written complaint to the commission; and

13 (2) His or her:

14 (A) Legal name; and

15 (B) Current mailing and physical address at which the
16 complainant may be contacted.

17 (b) The complaint shall be verified by the notarized signature of the
18 complainant.

19 (c) All complaints provided under this section shall be open to public
20 inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

21
22 15-20-1203. Administrative inspections.

23 (a)(1) If the Arkansas Soil and Water Conservation Commission receives
24 a written complaint that supports reasonable cause to believe that the
25 Arkansas Poultry Feeding Operations Registration Act, § 15-20-901 et seq.,
26 the Arkansas Soil Nutrient Management Planner and Applicator Certification
27 Act, § 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and
28 Poultry Litter Utilization Act, § 15-20-1101 et seq. is being or has been
29 violated, commission personnel may request entry onto any public or private
30 property to inspect any regulated facility or activity.

31 (2) The commission's investigation or inspection shall be:

32 (A) Limited to that necessary to confirm or deny the cause
33 that prompted the investigation or inspection; and

34 (B) Conducted during a time convenient for the owner,
35 operator, or agent in charge of the regulated facility or activity or, under
36 emergency or extraordinary circumstances, at a time necessary to observe the

1 suspected violation or unauthorized conduct.

2 (3) At the time of the inspection, except under emergency
3 circumstances, the commission shall inform the owner, operator, or agent in
4 charge of the regulated facility or activity of all information that forms
5 the basis of the probable cause.

6 (b) For the purpose of this subchapter, a rebuttable presumption
7 concerning the jurisdiction of the commission’s regulatory authority is
8 established with regard to the commission’s authority to inspect any
9 regulated facility or activity.

10
11 15-20-1204. Administrative warrants -- Exceptions.

12 (a) If consent to inspect under § 15-20-1203 is denied, the Arkansas
13 Soil and Water Conservation Commission may obtain an administrative
14 inspection warrant from a judicial officer.

15 (b) Issuance and execution of administrative inspection warrants shall
16 be as follows:

17 (1) Any judicial officer otherwise authorized to issue search
18 warrants within the officer’s jurisdiction may issue warrants, upon proper
19 oath or affirmation showing probable cause as defined in this subchapter, for
20 the purpose of conducting administrative inspections authorized under the
21 Arkansas Poultry Feeding Operations Registration Act, § 15-20-901 et seq.,
22 the Arkansas Soil Nutrient Management Planner and Applicator Certification
23 Act, § 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and
24 Poultry Litter Utilization Act, § 15-20-1101 et seq.;

25 (2)(A) A warrant shall issue only upon a written complaint as
26 described in § 15-20-1202 sworn to before the judicial officer, and
27 establishing the grounds for issuing the warrant.

28 (B) If the judicial officer is satisfied that grounds for
29 the application exist or that there is probable cause to believe they exist,
30 the judicial officer shall issue a warrant identifying:

31 (i) The facility to be inspected; and

32 (ii) The purpose of the inspection;

33 (3) An administrative warrant under this subchapter shall:

34 (A) State:

35 (i) The grounds for issuance of the warrant; and

36 (ii) The name of each person whose affidavit has

1 been taken in support of the warrant;

2 (B) Be directed to a commission or conservation district
3 officer or employee;

4 (C) Command the person to whom it is directed to inspect
5 the area, premises, building, or conveyance identified for the purpose
6 specified;

7 (D) Specifically identify any documents or samples to be
8 gathered during the inspection;

9 (E) Direct that the warrant be served during a time
10 convenient for the owner, operator, or agent in charge of the regulated
11 facility or activity unless emergency or extraordinary circumstances compel
12 otherwise; and

13 (F) Designate the judicial officer to whom it shall be
14 returned;

15 (4)(A) If appropriate, the warrant may authorize the review and
16 copying of documents that may be relevant to the purpose of the inspection.

17 (B)(i) If documents must be seized for the purpose of
18 copying, the person serving the warrant shall prepare an inventory of
19 documents taken.

20 (ii) The inventory shall be made in the presence of
21 the person executing the warrant and of the person from whose possession or
22 facility the documents were taken, if present, or in the presence of at least
23 one (1) credible person other than the person executing the warrant.

24 (iii) A copy of the inventory shall be delivered to
25 the person from whom or from whose facility the documents were taken.

26 (iv) As soon as feasible under circumstances
27 preserving their authenticity, the seized documents shall be:

28 (a) Copied; and

29 (b) Returned to the person from whom the
30 documents were taken;

31 (5)(A) The warrant may authorize the taking of samples of
32 materials generated, stored, or treated at the facility, or of the water,
33 air, or soils within the facility's control or that may have been affected by
34 the facility's operations.

35 (B)(i) The person executing the warrant shall prepare an
36 inventory of all samples taken.

1 (ii) In any inspection conducted pursuant to an
 2 administrative warrant in which such samples are taken, the commission shall
 3 make split samples available to the person whose facility is being inspected;

4 (6)(A) A warrant issued under this section shall be executed and
 5 returned within ten (10) days of its date of issuance unless, upon a showing
 6 of a need for additional time, the judicial officer orders otherwise.

7 (B) The return of the warrant shall be:

8 (i) Made promptly; and

9 (ii) Accompanied by a written inventory of any
 10 documents or samples taken;

11 (7) The judicial officer who has issued a warrant shall:

12 (A) Attach to the warrant a copy of the return and all
 13 papers returnable in connection with the warrant; and

14 (B) File them with the clerk of the circuit court for the
 15 judicial district where the inspection was made; and

16 (8) A copy of the warrant and all supporting affidavits shall
 17 be:

18 (A) Provided to the person served; or

19 (B) Left at the entry of the facility inspected.

20 (c) An administrative warrant shall not be required for any
 21 inspection, including the review and copying of documents and taking of
 22 samples if:

23 (1)(A) For a regulated facility or activity, the permit,
 24 license, certification, or operational approval from the commission states
 25 that the commission may inspect the facility or activity to ensure
 26 compliance.

27 (B) If the commission has reason to believe that a
 28 violation of the Arkansas Poultry Feeding Operations Registration Act, § 15-
 29 20-901 et seq., the Arkansas Soil Nutrient Management Planner and Applicator
 30 Certification Act, § 15-20-1001 et seq., or the Arkansas Soil Nutrient
 31 Application and Poultry Litter Utilization Act, § 15-20-1101 et seq. is
 32 occurring, the basis for that belief shall be communicated to the facility
 33 owner, operator, or agent in charge at the time of the inspection;

34 (2) The owner, operator, or agent in charge of the facility
 35 consents;

36 (3) In an emergency, time or opportunity to apply for a warrant

1 is lacking;

2 (4) The situation:

3 (A) Presents imminent danger to public health and safety;

4 and

5 (B) Involves inspection of conveyances if there is
6 reasonable cause to believe that the mobility of the conveyance makes it
7 impracticable to obtain a warrant; or

8 (5) A warrant is not constitutionally required.

9 (d) This section does not prevent the inspection without a warrant of
10 books and records pursuant to an administrative subpoena issued in accordance
11 with duly adopted administrative procedures.

12
13 15-20-1205. Penalties.

14 Any willful and unjustified refusal of right of entry and inspection
15 created through a warrant issued under this subchapter for Arkansas Soil and
16 Water Conservation Commission personnel shall be subject to civil penalties
17 of up to five hundred dollars (\$500).

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