

CHAPTER 135
FORMERLY
HOUSE BILL NO. 157

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO THE DEPARTMENT OF AGRICULTURE AND HARNESS AND THOROUGHBRED RACING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 101, Title 3 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 101. Powers.

The Department of Agriculture may:

(1) Abate, suppress, eradicate and prevent, by such means as shall be prescribed and provided by law or by rule, order or regulation of the Department of Agriculture, the San Jose Scale, peach yellows, pear blight and all other contagious and infectious and injuriously dangerous diseases of fruit trees, plants, vegetables, cereals, horses, cattle, cultured aquatic stock and other farm animals;

(2) Devise and execute measures necessary for the development of the agricultural interests of the State;

(3) Make and adopt rules for the government of the Department of Agriculture, and may change, alter and modify the same from time to time, as the Department of Agriculture may wish, provided however, that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;

(4) Employ and discharge such inspectors, officers, employees, agents and servants as in its opinion may be necessary to carry out the provisions of this title; provided, however, that the remuneration or wages to be paid to any such inspectors, officers, employees or agents in any year shall not, together with the other expenses of the Department of Agriculture, exceed the appropriation annually made to the Department of Agriculture by the General Assembly in and for that year;

(5) Make rules for the proper government of all inspectors, officers, employees, agents and servants who may be employed by the Department of Agriculture;

(6) Collect samples of foods, dairy and other feeds, and insecticides and have them analyzed by the State Chemist, and cooperate with the United States Department of Agriculture in enforcing the laws on these subjects as prescribed by the Congress of the United States;

(7) Compel all growers of fruit to stamp or mark the baskets, boxes, packages, crates, parcels or other receptacles used by them for the shipment of any fruit or fruits with the name or names of the growers, initial or initials, or with some distinguishing device or mark which may be readily and easily read and seen on the same, and the Department of Agriculture may adopt rules and regulations to carry this into effect;

(8) Exercise authority to make rules and regulations covering the possession, control, care and maintenance of ostriches, emus or rheas domesticated and confined for commercial farming purposes; specifically excluding ostriches, emus or rheas that are kept and maintained primarily for exhibition purposes; ~~and~~

(9) Exercise authority to make rules and regulations covering the possession, control, care and maintenance of deer, elk, llamas, alpacas or any other species of the cervidae or camilid families domesticated and confined for commercial farming purposes. Members of these two families kept for exhibition purposes would not be exempt from these regulations; ~~and~~

(10) The Department of Agriculture may issue an administrative inspection warrant for the purpose of conducting an inspection of, and seizure of property at, any location within the State of Delaware where race horses are stabled or otherwise located, except those horses stabled or otherwise located at facilities licensed pursuant to 29 Del. C. § 4805(b)(13), upon proper application for an administrative warrant by the Harness Racing Commission or the Thoroughbred Racing Commission. The issuance of an administrative inspection warrant by the Secretary of Agriculture shall be for the sole purpose of determining whether a violation has occurred pursuant to chapter 100 or 101 of this title or the regulations promulgated thereunder.

a. An application for an administrative inspection warrant shall:

1. specifically identify the premises and property to be inspected and shall be limited to the stabling area where racehorses are housed, specifically the stalls, aisleways, feed room, tack room, tack trunks, and other common areas in the shedrow specified in the application. An administrative warrant shall not provide the authority to permit the inspection of dwelling areas and out buildings where racehorses are not housed;

2. specifically state the items or types of items to be seized if found;

3. specifically state the full name and address of the Delaware Harness Racing Commission or Delaware Thoroughbred Racing Commission licensee who is believed to be in violation of chapters 100 or 101 of this title or the regulations promulgated thereunder;

4. issue only upon an affidavit by an employee of the Commission applying for the administrative inspection warrant who has knowledge of the facts alleged and sworn to before the Secretary of Agriculture. The warrant shall state the specific purpose of the inspection, the basis for issuing the warrant and the name, address and telephone number of each affiant supporting the issuance of the warrant;

5. direct the Commission's employee or designee thereof who is a police academy graduate to be accompanied by a Commission or State veterinarian and to inspect the premises and property so specified and to seize, if appropriate, the property specified in the warrant; and

6. direct that the warrant shall only be served and executed during normal business hours and shall be returned as completed to the Secretary of Agriculture as soon as immediately practicable. Normal business hours shall mean between 6:00 a.m. and 6:00 p.m. Monday through Sunday.

b. Proper application for an administrative inspection warrant shall be based on a reasonable articulable suspicion that: (1) "blood-doping" - the process where prohibited substances which abnormally enhance oxygenation of equine body tissue are being, or have been, carried within the body of a race horse - has occurred; or (2) a Class 1 or Class 2 drug is being, or has been, carried in the body of a race horse in violation of chapters 100 or 101 of this title or the regulations promulgated thereunder. Unauthorized possession of a hypodermic needle, syringe or injectable of any kind on the premises of a facility licensed pursuant to 29 Del. C. §4805(b)(13) shall constitute reasonable articulable suspicion that blood-doping has occurred or a Class 1 or Class 2 drug is being, or has been, carried in the body of a race horse. Reasonable articulable suspicion exists where the totality of the circumstances if corroborated, indicates that the information provided is reliable. Reliability of the information is based on the specificity of the facts alleged and the degree to which the information is corroborated by other independent evidence or information.

c. Service of an administrative inspection warrant shall only be made upon a person who has reached the age of 18 at the time the warrant was served and who has authority to accept service of the warrant by virtue of his or her relationship to the property as the owner of the premises, a family member of the owner of the premises, the lessor of the premises who is the subject of the administrative inspection warrant, the operator or manager of the premises, or any other person authorized by the owner or operator of the premises to accept service of an administrative inspection warrant.

d. The administrative inspection warrant shall be executed and returned to the Secretary of Agriculture within 5 days after being issued and must state the name and age of the person upon whom the warrant was served, the relation of the person to the property being inspected, the date and time the inspection occurred, the buildings inspected, and the specific property seized as a result of the inspection. A written inventory of any property seized as a result of the execution of the administrative inspection warrant shall accompany the return warrant and shall affirm that the inventory was made in the presence of the person executing the warrant and the person(s) from whom the property was seized.

e. No inspection authorized pursuant to this section shall be the basis for criminal prosecution.

f. An administrative inspection warrant shall not be required where a licensee who is the subject of an inspection consents to the inspection of his or her property. Consent to the inspection of the property shall only be valid where the licensee who is the subject of the inspection has been advised that he or she does not have to consent to an inspection without being presented with an administrative warrant issued by the Secretary of Agriculture.

g. In the absence of a finding that a violation under chapter 100 or 101 of this title or the regulations promulgated thereunder has occurred, any property seized pursuant to the execution of the administrative inspection warrant shall be returned to the person from whom the property was seized within 30 days from the date of execution of the warrant.

Section 2. Amend Subchapter I of Chapter 100, Title 3 of the Delaware Code by adding a new section as shown by underlining as follows:

§10016. Administrative Inspection Warrants.

Pursuant to § 101(10) of this title, the Delaware Harness Racing Commission is authorized to apply for and utilize administrative inspection warrants issued by the Secretary of Agriculture for the purpose of conducting administrative inspections and seizures of property at any location within the State of Delaware where harness racing horses are stabled or otherwise located.

Section 3. Amend Subchapter I of Chapter 101, Title 3 of the Delaware Code by adding a new section as shown by underlining as follows:

§10110. Administrative Inspection Warrants.

Pursuant to § 101(10) of this title, the Delaware Thoroughbred Racing Commission is authorized to apply for and utilize administrative inspection warrants issued by the Secretary of Agriculture for the purpose of conducting administrative inspections and seizures of property at any location within the State of Delaware where race horses are stabled or otherwise located, except those horses stabled or otherwise located at facilities licensed pursuant to 29 Del. C. §4805(b)(13).

Approved July 24, 2013