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## FOOD, DRUGS AND COSMETICS Inspection Warrants: Provide for Practices, Procedures, and Requirements

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## FOOD, DRUGS AND COSMETICS

### *Inspection Warrants: Provide for Practices, Procedures, and Requirements*

CODE SECTIONS:	O.C.G.A. §§ 2-2-11 (new), 26-2-112 (new)
BILL NUMBERS:	SB 116, SB 117
ACT NUMBERS:	412, 396
SUMMARY:	The Acts provide for the issuance, execution, and return of inspection warrants and for the practices, procedures, and requirements associated with these warrants. The Acts provide time limits and penalties, identify those inspections not requiring a warrant, make changes in certain exemptions in meat inspection, and specify additional powers for the Commissioner of Agriculture.
EFFECTIVE DATES:	SB 116 became effective on April 3, 1989. SB 117 became effective on July 1, 1989.

### *History*

SB 116 was introduced to satisfy the Georgia Department of Agriculture's need for a comprehensive procedure for issuing inspection warrants.<sup>1</sup> Inspection warrants are required to comply with due process requirements for on-site inspections of a landowner's property.<sup>2</sup> The Department of Agriculture often requires agricultural inspections to determine whether a party is in compliance with Department regulations. The Department was concerned about the lack of an application procedure through which the Department could ask a judicial officer to issue a warrant for the inspection of certain premises.<sup>3</sup> SB 116 was also intended to codify procedures for dealing with landowners who refused to allow inspection of their premises.<sup>4</sup> The bill, therefore, contains provisions making refusal to allow inspection pursuant to an inspection warrant unlawful.<sup>5</sup>

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1. Telephone interview with Senator J. Nathan Deal, Senate District No. 49 (Mar. 31, 1989) [hereinafter Deal Interview].

2. *Id.*

3. *Id.*

4. *Id.*

5. O.C.G.A. § 2-2-11(5) (Supp. 1989).

SB 117 also addressed concerns with the inspection process. Under prior law, certain landowners could exempt their products from inspection and circumvent the Georgia Meat Inspections Act (GMIA).<sup>6</sup> The GMIA states that it is "essential to the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged."<sup>7</sup> The Department of Agriculture was concerned that a landowner could claim an exemption and keep the Department from determining by inspection whether the landowner was eligible for the exemption.<sup>8</sup> SB 117 addresses this problem by allowing the Department to enter exempted premises under certain circumstances.<sup>9</sup>

### SB 116

The Act adds section 2-2-11 to the existing section relating to the Department of Agriculture.<sup>10</sup> The Act codifies the procedure to be employed whenever the laws of the United States or Georgia call for the issuance of an inspection warrant.<sup>11</sup>

Section 2-2-11(1) provides that the Commissioner of Agriculture or his representative must apply for an inspection warrant from a person qualifying as a judicial officer within the meaning of section 17-5-21.<sup>12</sup> The Act defines an inspection warrant as a written order that is signed by a judicial officer and directed to one who is authorized to make inspections for the Commissioner of Agriculture commanding him or her to make any inspection required or authorized by any law administered by the Commissioner or the Department of Agriculture.<sup>13</sup> Nothing in the Act is to be construed to require a warrant in any situation where a valid warrantless inspection may be made pursuant to Georgia or federal law, or to a valid permit issued under the laws administered by the Department of Agriculture.<sup>14</sup> The provisions of SB 116 often closely track the language employed under Georgia law for the issuance of search warrants.<sup>15</sup>

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6. See 1969 Ga. Laws 1028 (formerly found at O.C.G.A. § 26-2-112 (1982)).

7. O.C.G.A. § 26-2-61 (1982).

8. Deal Interview, *supra* note 1.

9. O.C.G.A. § 26-2-112(a), (c) (Supp. 1989).

10. See O.C.G.A. § 2-2-11 (Supp. 1989).

11. *Id.*

12. O.C.G.A. § 2-2-11(1) (Supp. 1989). Section 17-5-21 provides that a "judicial officer" refers to "any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws . . ." O.C.G.A. § 17-5-21 (Supp. 1989). The judicial officer receiving the application for the warrant must sit in the county in which the search is to be conducted. 1969 Op. Att'y Gen. 172.

13. O.C.G.A. § 2-2-11(6) (Supp. 1989).

14. O.C.G.A. § 2-2-11(7) (Supp. 1989).

15. Deal Interview, *supra* note 1. See O.C.G.A. §§ 17-5-1 to -53 (Supp. 1989).

Subsection (2) provides that “[a]n inspection warrant shall be issued only upon cause and when supported by an affidavit . . . .”<sup>16</sup> The affidavit must contain a particular description of the area to be inspected and a description of the purpose for which the inspection is to be made.<sup>17</sup> In addition, the affidavit should contain, whenever appropriate, a statement justifying failure to seek consent for inspection or explaining that consent was sought and refused.<sup>18</sup> Cause for inspection is deemed to exist if there is reason to believe that nonconformity exists on the particular premises or if “reasonable legislative or administrative standards” exist for conducting a routine or area inspection.<sup>19</sup> The language in this section closely tracks Georgia’s warrant law.<sup>20</sup>

The time limit of an inspection warrant is fourteen days unless extended by the issuing judicial officer.<sup>21</sup> The inspection must be carried out during normal business hours and must be performed in the presence of the owner or occupant of the premises unless otherwise specifically authorized by the judicial officer.<sup>22</sup> Inspection cannot be made by means of forcible entry unless expressly authorized by the judicial officer upon a showing by the Department that previous reasonable attempts to serve a warrant have been unsuccessful, or that there is a reasonable suspicion of a violation of Department-administered laws which would involve an immediate threat to health or safety.<sup>23</sup> Anyone refusing to permit such an inspection is guilty of a misdemeanor.<sup>24</sup>

### SB 117

The Act amends the Georgia Meat Inspection Act<sup>25</sup> by striking the previous section listing exemptions from required meat inspection and by adding a new section in its place.<sup>26</sup> Both sections provide for exemptions from inspection under the same specified circumstances.<sup>27</sup> Most of these exemptions are intended to exclude meat and meat products that will be used by the preparer in his or her household.<sup>28</sup>

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16. O.C.G.A. § 2-2-11(2) (Supp. 1989).

17. *Id.*

18. *Id.*

19. *Id.*

20. Deal Interview, *supra* note 1. See O.C.G.A. §§ 17-5-1 to -53 (1982 and Supp. 1989).

21. O.C.G.A. § 2-2-11(3) (Supp. 1989).

22. O.C.G.A. § 2-2-11(4) (Supp. 1989).

23. *Id.*

24. O.C.G.A. § 2-2-11(5) (Supp. 1989).

25. O.C.G.A. §§ 26-2-60 to -229 (1982 and Supp. 1989).

26. O.C.G.A. § 26-2-112 (Supp. 1989).

27. *Id.*

28. *Id.*

The new section authorizes the Commissioner or his delegate to enter the premises of an establishment that is exempted from inspection and inspect the premises to determine whether the establishment qualifies for exemption.<sup>29</sup> The inspector will also determine if the establishment is otherwise in compliance with applicable Georgia laws.<sup>30</sup>

The Act did not change a previous Code provision that exempted from inspection any establishment that slaughtered and processed 500 or fewer rabbits per year for sale.<sup>31</sup> SB 117 was amended, however, to increase to 2500 the number of rabbits which may be slaughtered in an exempt establishment.<sup>32</sup>

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29. O.C.G.A. § 26-2-112(c) (Supp. 1989).

30. *Id.*

31. 1969 Ga. Laws 1028 (formerly found at O.C.G.A. § 26-2-112(a)(3) (1982)).

32. O.C.G.A. § 26-2-112(a)(3) (Supp. 1989).