

CHAPTER 218

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 07-1337

BY REPRESENTATIVE(S) Sonnenberg, and Curry;
also SENATOR(S) Taylor, Kester, and Isgar.

AN ACT

CONCERNING COMMODITY HANDLERS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-16-103 (4) (a) (V), Colorado Revised Statutes, is amended to read:

12-16-103. Definitions - rules. As used in this part 1, unless the context otherwise requires:

(4) (a) "Dealer" means:

(V) ~~After June 30, 1994,~~ Any person engaged in buying any farm products from the owner thereof for the commercial feeding OF LIVESTOCK THAT ARE OWNED WHOLLY OR IN PART BY ANOTHER, AT AN ANIMAL FEEDING OPERATION WITH A CAPACITY OF more than two thousand five hundred head of livestock. ~~at any one time which are owned, wholly or in part, by another~~ THE COMMISSIONER SHALL ESTABLISH RULES TO DETERMINE THE CAPACITY OF ANIMAL FEEDING OPERATIONS FOR PURPOSES OF THIS ARTICLE.

SECTION 2. 12-16-104 (4), Colorado Revised Statutes, is amended to read:

12-16-104. Application for license - rules. (4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when the commissioner is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the ~~last day of February next~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~following~~ DATE SPECIFIED BY THE COMMISSIONER BY RULE or until the license has been suspended or revoked. The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal. Any dealer, small-volume dealer, or agent shall show said license upon the request of any interested person. Each licensed dealer, small-volume dealer, or agent shall post such person's license or a copy thereof in the person's office or salesroom in plain view of the public.

SECTION 3. 12-16-105 (1) (a) (I) (A), (1) (b) (I), and (6), Colorado Revised Statutes, are amended to read:

12-16-105. License fee - renewal - repeal. (1) (a) (I) To and including June 30, 2007, for filing the application described in section 12-16-104, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the agricultural commission, which fee shall be transmitted to the state treasurer for credit to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.:

(A) Dealers; except that a dealer who signs an affidavit stating that such dealer ~~will pay~~ SHALL MAKE PAYMENT IN cash OR BY ONE OF THE OTHER MEANS SPECIFIED IN SECTION 12-16-106 (1) (f) for each transaction for farm products shall pay no application fee;

(b) On and after July 1, 2007, for filing the application described in section 12-16-104, each applicant shall pay the following fee to the commissioner, who shall transmit all such fees to the state treasurer for credit to the general fund:

(I) Dealers, fifty dollars for each year; except that a dealer who signs an affidavit stating that such dealer will ~~pay~~ MAKE PAYMENT IN cash OR BY ONE OF THE OTHER MEANS SPECIFIED IN SECTION 12-16-106 (1) (f) for each transaction for farm products shall pay no application fee;

(6) Whenever the commissioner deems it appropriate, ~~he~~ THE COMMISSIONER may require of any applicant for an initial license, any applicant for a renewal of a license, or any licensee the submission of a financial statement or AN audit, prepared by a CERTIFIED public accountant, OR ANY OTHER INFORMATION to determine whether such person is in an adequate financial position to carry ~~on~~ OUT his OR HER duties as a licensee.

SECTION 4. 12-16-106 (1) (c) and (1) (f), Colorado Revised Statutes, are amended to read:

12-16-106. Bonds and irrevocable letters of credit - exemptions. (1) (c) The bond or irrevocable letter of credit shall be conditioned upon compliance with the provisions of this part 1 and upon the faithful and honest handling of farm products in accordance with the terms of this part 1 and shall cover any and all fees due the people of the state of Colorado by ~~said~~ THE dealer ~~or transporter~~ and all costs and reasonable attorney fees incident to any suit upon ~~said~~ THE bond or irrevocable letter of credit. ~~Said~~ THE bond or irrevocable letter of credit shall be to the state in favor of every producer, dealer, small-volume dealer, or owner and, in the instance of a

bond, shall remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(f) No bond or irrevocable letter of credit shall be required of a dealer who pays for farm products in cash or with a bank-certified check, A bank cashier's check, AN IRREVOCABLE ELECTRONIC FUNDS TRANSFER, or ~~postal or western union~~ A money order at the time the dealer obtains from the owner thereof possession or control of ~~said~~ THE farm products, or of an applicant for a license or a licensee operating under a bond required by the United States to secure the performance of his OR HER obligations; except that ~~said~~ THE bond shall include all obligations pertaining to Colorado farm products, and documentary evidence shall be furnished to the commissioner that the bond required by the United States is in full force and effect.

SECTION 5. 12-16-115 (1) (l), Colorado Revised Statutes, is amended to read:

12-16-115. Unlawful acts. (1) It is unlawful and a violation of this part 1 for any person to:

(l) If ~~licensed as a cash buyer~~ ACTING AS A DEALER WHO HAS SIGNED AN AFFIDAVIT IN ACCORDANCE WITH SECTION 12-16-105 (1) (a) (I), fail to ~~pay~~ MAKE PAYMENT in cash or ~~farm products~~ BY ONE OF THE OTHER MEANS SPECIFIED IN SECTION 12-16-106 (1) (f) for any transaction without first complying with the bonding requirements of section 12-16-106. Violation of this paragraph (l) shall constitute a class 1 misdemeanor.

SECTION 6. 12-16-202 (4.5) (a) (V), (8), and (8.5), the introductory portion to 12-16-202 (8.6), and 12-16-202 (8.6) (a), (15), (17), and (22), Colorado Revised Statutes, are amended to read:

12-16-202. Definitions - rules. As used in this part 2, unless the context otherwise requires:

(4.5) (a) "Commodity handler" means:

(V) ~~After June 30, 1994,~~ Any person engaged in buying any commodity from the owner thereof for the commercial feeding of LIVESTOCK THAT ARE OWNED WHOLLY OR IN PART BY ANOTHER, AT AN ANIMAL FEEDING OPERATION WITH A CAPACITY OF more than two thousand five hundred head of livestock. ~~at any one time which are owned, wholly or in part, by another~~ THE COMMISSIONER SHALL ESTABLISH RULES TO DETERMINE THE CAPACITY OF ANIMAL FEEDING OPERATIONS FOR PURPOSES OF THIS ARTICLE.

(8) "Financial statement" means a statement ~~which has been prepared by a public accountant and, at a minimum, shall consist of, but need not be limited to~~ THAT ACCURATELY PRESENTS THE FINANCIAL CONDITION OF AN APPLICANT OR LICENSEE AND THAT INCLUDES, AT A MINIMUM, a balance sheet and a statement of income. ~~The financial statement may not be audited, reviewed, compiled, or prepared by the applicant, whether an individual or a corporation or partnership. If the applicant is a corporation or partnership, the financial statement shall not be audited, reviewed, compiled, or prepared by any officer, shareholder, partner, or employee of the applicant.~~

(8.5) "Forwarded commodities" means commodities sent to a terminal warehouse and put on open storage in the name of the forwarding ~~warehouseman~~ WAREHOUSE OPERATOR.

(8.6) "Functional unit" means one or more warehouses ~~which~~ THAT constitute a single operating unit if:

(a) The same ~~warehouseman~~ WAREHOUSE OPERATOR operates each warehouse in conjunction with any other;

(15) "Processing" means the operation of canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a commodity for the purpose of ~~reselling the commodity~~ SELLING ANY OF THE RESULTING PRODUCTS.

(17) "Provisional insurance coverage" means a certificate or any other satisfactory evidence of fire and extended coverage insurance issued by an insurance company authorized to do business in this state insuring every commodity in the custody of a ~~warehouseman~~ WAREHOUSE OPERATOR, whether held for others or owned by the ~~warehouseman~~ WAREHOUSE OPERATOR, at the full local market value of each commodity.

(22) ~~"Warehouseman"~~ "WAREHOUSE OPERATOR" includes any person or existing legal entity owning, operating, or controlling any public warehouse.

SECTION 7. 12-16-203 (2), (4), and (5), Colorado Revised Statutes, are amended to read:

12-16-203. Licenses - commodity handler - agent. (2) Every person ~~intending to act~~ ACTING as a commodity handler or as an agent for a commodity handler in this state shall, EACH YEAR before ~~March 1 of each year~~ THE DATE SPECIFIED BY THE COMMISSIONER BY RULE, obtain a license from the department.

(4) ~~Each functional unit shall obtain a separate license unless the warehouses which constitute the functional unit are within twenty-five miles of the warehouseman's principal office. Any person holding a valid warehouse license on June 30, 1989, shall not be required to obtain a separate license for each functional unit; except that, if such person adds or creates a functional unit on or after July 1, 1989, he shall obtain a separate license for each additional or newly created functional unit.~~

(5) ~~Each commodity handler shall obtain a separate license for the handler's principal place of business and each of the handler's other places of business unless such other places of business are within twenty-five miles of the principal place of business and are operated under the supervision of the same management personnel using the same books and records.~~

SECTION 8. The introductory portion to 12-16-204 (1) and 12-16-204 (1) (c), Colorado Revised Statutes, are amended to read:

12-16-204. Exemptions. (1) The provisions of this part 2 that apply to

~~warehouseman~~ WAREHOUSE OPERATORS do not apply to the owner or operator of any public warehouse or other facility where the owner or operator:

(c) Keeps written evidence, as required by the department, which clearly shows that ~~he~~ THE WAREHOUSE OPERATOR maintains the commodities for one or more of the purposes set forth in paragraph (a) or (b) of this subsection (1). The department shall consider a commodity left or deposited with a ~~warehouseman~~ WAREHOUSE OPERATOR whose records do not include evidence that the commodity was left or deposited for one or more of the purposes set forth in paragraph (a) or (b) of this subsection (1) as a commodity deposited for storage and handling.

SECTION 9. 12-16-206 (1) (b), Colorado Revised Statutes, is amended to read:

12-16-206. Licenses - requirements - rules. (1) To receive or maintain a license, each applicant or licensee shall satisfy the following requirements:

(b) The applicant or licensee shall furnish the commissioner with a financial statement that presents accurately his or her financial condition. The commissioner may promulgate rules that clearly state the information required from each applicant or licensee under this section. Any financial statement submitted to the commissioner in support of a license application made pursuant to the provisions of this part 2 shall be confidential. WHENEVER THE COMMISSIONER DEEMS IT APPROPRIATE, HE OR SHE MAY REQUIRE ANY APPLICANT FOR AN INITIAL LICENSE, ANY APPLICANT FOR A RENEWAL OF A LICENSE, OR ANY LICENSEE TO SUBMIT A FINANCIAL STATEMENT OR AN AUDIT, PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT, OR ANY OTHER INFORMATION THE COMMISSIONER DEEMS NECESSARY TO DETERMINE WHETHER SUCH PERSON IS IN AN ADEQUATE FINANCIAL POSITION TO CARRY OUT HIS OR HER DUTIES AS A LICENSEE.

SECTION 10. 12-16-207, Colorado Revised Statutes, is amended to read:

12-16-207. Bailment of commodities. (1) Acceptance of commodities for storage by a ~~warehouseman for which a negotiable warehouse receipt is issued~~ WAREHOUSE OPERATOR shall constitute a bailment and not a sale. STORED commodities ~~so stored~~ shall not be liable to seizure upon process of a court in an action against the bailee, except upon action by owners of the ~~negotiable warehouse receipts~~ STORED COMMODITIES or the commissioner to enforce the terms thereof; but, in the event of the failure or insolvency of a bailee, commodities shall be first applied exclusively to the ~~redemption~~ SETTLEMENT ON AN EQUAL BASIS OF ALL outstanding negotiable warehouse receipts AND OTHER OPEN STORAGE OBLIGATIONS for commodities so stored with the bailee. ~~In that event, commodities on hand in a particular warehouse of the bailee shall be first applied to the redemption and satisfaction of negotiable warehouse receipts and scale tickets issued by that warehouseman as the bailee.~~

(2) Forwarded commodities shall be used only to meet the storage obligation to the forwarding ~~warehouseman~~ WAREHOUSE OPERATOR.

(3) The purchase of a ~~farm product~~ COMMODITY does not constitute a bailment.

SECTION 11. 12-16-211 (2), Colorado Revised Statutes, is amended to read:

12-16-211. Obtaining negotiable warehouse receipts. (2) Negotiable warehouse receipts shall conform to the terms set forth in section 4-7-202, C.R.S. The ~~warehouseman~~ WAREHOUSE OPERATOR shall maintain a file of all VOIDED, ISSUED, AND UNUSED warehouse receipts. ~~Voided, issued, and unused.~~

SECTION 12. 12-16-212 (3) and (5), Colorado Revised Statutes, are amended to read:

12-16-212. Use of scale tickets and negotiable warehouse receipts. (3) When partial withdrawal of a commodity is made by an owner, the ~~warehouseman~~ WAREHOUSE OPERATOR shall make an appropriate notation thereof on the depositor's nonnegotiable warehouse receipt or on such other records as may be prescribed by the department. If the ~~warehouseman~~ WAREHOUSE OPERATOR has theretofore issued a negotiable warehouse receipt to the owner, ~~he~~ THE WAREHOUSE OPERATOR shall claim, cancel, and replace it with a new negotiable warehouse receipt, showing the amount of such owner's commodity remaining in the public warehouse.

(5) ACCEPTANCE OF COMMODITIES FOR STORAGE BY A WAREHOUSE OPERATOR FOR WHICH A NEGOTIABLE WAREHOUSE RECEIPT IS ISSUED SHALL CONSTITUTE A BAILMENT PROCESS AND NOT A SALE. If a ~~warehouseman~~ WAREHOUSE OPERATOR fails to claim and cancel a negotiable warehouse receipt issued on delivery for commodities stored in ~~his~~ THE WAREHOUSE OPERATOR'S public warehouse and the negotiation of which would transfer the right of possession of that commodity, ~~he~~ THE WAREHOUSE OPERATOR shall be liable, to a good faith purchaser for value, for his failure to deliver to the purchaser all the commodities specified in the receipt. This liability shall apply whether the purchaser acquired title to the negotiable warehouse receipt before, ~~or~~ on, or after the delivery of any part of the commodity by the ~~warehouseman~~ WAREHOUSE OPERATOR.

SECTION 13. 12-16-214, Colorado Revised Statutes, is amended to read:

12-16-214. Warehouse operator's liability for disposal of tainted commodities. (1) A ~~warehouseman~~ WAREHOUSE OPERATOR shall be liable for any loss or deterioration of commodities in a public warehouse caused by ~~his~~ THE WAREHOUSE OPERATOR'S failure to exercise reasonable care of the commodities.

(2) If a ~~warehouseman~~ WAREHOUSE OPERATOR discovers that, as a result of a condition of a commodity placed in ~~his~~ THE WAREHOUSE OPERATOR'S public warehouse of which he OR SHE had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the public warehouse and if such commodity is not immediately removed by the owner upon the ~~warehouseman's~~ WAREHOUSE OPERATOR'S request, the ~~warehouseman~~ WAREHOUSE OPERATOR may sell the commodity after reasonable notice to all persons known to claim an interest in the commodity. If the ~~warehouseman~~ WAREHOUSE OPERATOR is unable to sell the commodity after a reasonable effort, ~~he~~ THE WAREHOUSE OPERATOR may dispose of it in any other lawful manner and shall incur no liability to the owner for such disposition.

(3) At any time before the sale or disposition authorized in this section, the ~~warehouseman~~ WAREHOUSE OPERATOR shall deliver the commodity to any person

entitled to it upon proper demand and payment of all charges incurred for the specific lot of that commodity.

(4) The commissioner may reject as unsuitable for storage any area of the ~~warehouseman's~~ WAREHOUSE OPERATOR'S premises, unless that area is used for storing the ~~warehouseman's~~ WAREHOUSE OPERATOR'S own commodities.

SECTION 14. The introductory portion to 12-16-216 (1), 12-16-216 (2), (3), (4), (5), and (6), the introductory portion to 12-16-216 (6.1) (a), and 12-16-216 (6.5) and (7), Colorado Revised Statutes, are amended to read:

12-16-216. Procedure on shortage - refusal to submit to inspection.

(1) Whenever it appears probable after investigation that a licensed ~~warehouseman~~ WAREHOUSE OPERATOR does not ~~have in his possession~~ POSSESS sufficient commodities to cover the outstanding negotiable warehouse receipts, scale tickets, or other evidences of storage liability issued or assumed by ~~him~~ THE WAREHOUSE OPERATOR, the department may give notice to the ~~warehouseman~~ WAREHOUSE OPERATOR that he OR SHE is required to do all or any of the following:

(2) If the ~~warehouseman~~ WAREHOUSE OPERATOR fails to comply with the terms of the notice within twenty-four hours after the date of its issuance or within such further time as the department may allow, the department may do all or any of the following:

(a) Issue a cease and desist order pursuant to section 12-16-219;

(b) Take possession of all commodities in the public warehouse owned, operated, or controlled by the ~~warehouseman~~ WAREHOUSE OPERATOR and of all books, papers, records, and property of all kinds used in connection with the conduct or operation of ~~his~~ THE WAREHOUSE OPERATOR'S public warehouse business, whether such books, papers, records, and property pertain specifically, exclusively, directly, or indirectly to that business or are related to his OR HER handling, storage, or use of commodities in any other business;

(c) Apply to any court of competent jurisdiction for an order to enjoin the ~~warehouseman~~ WAREHOUSE OPERATOR from interfering with the department in the discharge of its duties as required by this section;

(d) Petition any court of competent jurisdiction for an order requiring the ~~warehouseman~~ WAREHOUSE OPERATOR or any person who has possession of any commodities, books, papers, records, or property of any kind used in connection with the conduct or operation of the public warehouse business who has refused to surrender possession to the department to surrender possession of the same to the department.

(3) Upon its taking possession of the commodities, the department may give written notice of its action to the holders of all negotiable warehouse receipts or other evidences of deposits issued for commodities to present their negotiable warehouse receipts or other evidences of deposits for inspection or to account for the same. Thereupon, the department shall cause an audit to be made of the affairs of such public warehouse with respect to any commodity in which there is an

apparent shortage, determine the amount of such shortage, and compute the shortage as to each owner of the commodity. The department shall attempt to notify the ~~warehouseman~~ WAREHOUSE OPERATOR of the amount of such shortage and attempt to notify each owner thereby affected. If the owner cannot be notified after a reasonable attempt by the department, the department shall not be held liable for any losses incurred by such owner.

(4) The department shall retain possession of the commodity in the public warehouse and of the books, papers, records, and property of the ~~warehouseman~~ WAREHOUSE OPERATOR until such time as the ~~warehouseman~~ WAREHOUSE OPERATOR or the ~~warehouseman's~~ WAREHOUSE OPERATOR'S bond or irrevocable letter of credit has satisfied the claims of all holders of negotiable warehouse receipts or other evidences of deposits. In case the shortage exceeds the amount of the bond or irrevocable letter of credit, the ~~warehouseman's~~ WAREHOUSE OPERATOR'S bond or irrevocable letter of credit shall satisfy such claims pro rata. Nothing in this section shall be construed to prevent the department from complying with an order of a court of competent jurisdiction to surrender possession.

(5) If during or after the audit provided for in this section or at any other time the department is of the opinion that the ~~warehouseman~~ WAREHOUSE OPERATOR is insolvent or in danger of becoming so or is unable to satisfy the claims of all holders of negotiable warehouse receipts or other evidences of deposits, the department may petition a court of competent jurisdiction in such county for the appointment of a receiver to operate or liquidate the business of the ~~warehouseman~~ WAREHOUSE OPERATOR in accordance with applicable law.

(6) At any time within ten days after the department takes possession of any commodities or the books, papers, records, and property of any public warehouse, the ~~warehouseman~~ WAREHOUSE OPERATOR may apply to a court of competent jurisdiction for an order requiring the department to show cause why such commodities, books, papers, records, and property should not be restored to ~~his~~ THE WAREHOUSE OPERATOR'S possession. Upon its being served notice, the department shall have not more than ten days to respond.

(6.1) (a) If a court of competent jurisdiction determines that all or any part of the commodities, books, papers, records, and property should not be restored to the possession of the ~~warehouseman~~ WAREHOUSE OPERATOR, the court may:

(6.5) If the ~~warehouseman~~ WAREHOUSE OPERATOR does not apply to a court of competent jurisdiction for a show cause order under subsection (6) of this section, the department's action is presumed valid, and the commissioner may determine the disposition of the commodities, books, papers, records, and property ~~which~~ THAT were in the public warehouse and seized pursuant to this part 2. Pending determination of the ownership of the commodities, any funds received from the disposition of the commodities shall be placed in an interest-bearing escrow account.

(7) All expenses incurred by the department in carrying out the provisions of this section shall be a first charge and lien upon the assets of the ~~warehouseman~~ WAREHOUSE OPERATOR; and such expenses may be recovered in a separate civil action brought by the department, represented by the attorney general, in a court in

the county in which the public warehouse is located, or they may be recovered at the same time and as a part of an action filed under subsection (5) of this section.

SECTION 15. 12-16-218 (1) (a), Colorado Revised Statutes, is amended to read:

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (a) Before any license is issued to any commodity handler, the applicant shall file with the commissioner a bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as a surety or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., in the sum of not less than ten thousand dollars nor more than ~~two hundred thousand~~ ONE MILLION dollars, ~~unless the applicant operates a public warehouse under the provisions of this part 2, in which case the amount shall be not less than twenty-five thousand dollars nor more than five hundred thousand dollars,~~ at the discretion of the commissioner.

SECTION 16. 12-16-221 (1) (b), Colorado Revised Statutes, is amended to read:

12-16-221. Unlawful acts. (1) It is unlawful and a violation of this part 2 for any person to:

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for commodities received ~~within the time and in the manner required by this part 2~~ ON THE DATE AND IN THE MANNER SPECIFIED IN THE CONTRACT WITH THE OWNER OR, IF NO DATE IS SPECIFIED IN THE CONTRACT OR ON DELIVERY, WITHIN THIRTY DAYS AFTER THE DATE OF DELIVERY OR THE DATE ON WHICH THE PERSON TOOK POSSESSION OF SUCH COMMODITIES. Violation of this paragraph (b) shall constitute a class 6 felony.

SECTION 17. Effective date. (1) Except as specified in subsection (2) of this section, this act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) Section 12-16-105 (1) (b) (I), Colorado Revised Statutes, as amended by section 3 of this act, shall not take effect if House Bill 07-1198 is enacted at the First Regular Session of the Sixty-sixth General Assembly and becomes law.

Approved: May 14, 2007