

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 17-0229.01 Jery Payne x2157

SENATE BILL 17-225

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

Willett, Foote, Herod, Lee, Wist

Senate Committees

Judiciary

House Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED**
102 **TO FARM PRODUCTS FROM TITLE 12 OF THE COLORADO**
103 **REVISED STATUTES AS PART OF THE ORGANIZATIONAL**
104 **RECODIFICATION OF TITLE 12.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Committee on Legal Services. Current law directs the office of legislative legal services to study the organizational recodification of title 12 of the Colorado Revised Statutes, which relates to professions and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 19, 2017

SENATE
3rd Reading Unamended
April 6, 2017

SENATE
2nd Reading Unamended
April 5, 2017

occupations. To implement the initial recommendations of the study, the bill relocates the following laws:

! Part 2 of article 16 of title 12, the "Commodity Handler Act", to article 36 of title 35 (**section 1** of the bill); and

! Part 1 of article 16 of title 12, the "Farm Products Act", to article 37 of title 35 (**section 2** of the bill).

Section 10 of the bill repeals the article where these laws were previously codified, and **sections 3 through 9** make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, **recreate and**
3 **reenact, with amended and relocated provisions,** article 36 of title 35
4 as follows:

5 **ARTICLE 36**

6 **Commodity Warehouses**

7 **35-36-101. [Formerly 12-16-201] Short title.** ~~This part 2 shall be~~
8 ~~known and may be cited as~~ THE SHORT TITLE OF THIS ARTICLE 36 IS the
9 "Commodity Handler Act".

10 **35-36-102. [Formerly 12-16-202] Definitions - rules.** As used
11 in this ~~part 2~~ ARTICLE 36, unless the context otherwise requires:

12 ~~(1) (Deleted by amendment, L. 2009, (SB 09-114), ch. 111, p.~~
13 ~~464, § 11, effective April 9, 2009.)~~

14 ~~(1.5)~~ (1) "Bailee" means a person who, by a negotiable warehouse
15 receipt or other document of title, acknowledges possession of goods and
16 contracts to deliver them.

17 (2) "Bailment" means the act of delivering goods or personal
18 property to another in trust.

19 ~~(2.5)~~ (3) "Commercial feeding" means the feeding of livestock by
20 a person who receives compensation from the owner of the livestock for

1 ~~such~~ THE feeding.

2 ~~(3)~~(4) "Commissioner" means the commissioner of agriculture or
3 his OR HER designee.

4 ~~(4)~~ (5) "Commodity" means unprocessed small, hard seeds or
5 fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans,
6 beans, grain sorghum, and such other seeds or fruits as may be
7 determined by the commissioner.

8 ~~(4.5)~~(a) (6) (a) "Commodity handler" means:

9 (I) Any person engaged in buying any commodities from the
10 owner for processing or resale;

11 (II) Any person engaged in receiving and taking possession of any
12 commodities from the owner for storage or safekeeping;

13 (III) Any person engaged in soliciting or negotiating sales of
14 commodities between the vendor and purchaser respectively;

15 (IV) Any person who receives on consignment or solicits from the
16 owner thereof any kind of commodity for sale on commission on behalf
17 of ~~such~~ THE owner, or who accepts any commodity in trust from the
18 owner thereof for the purpose of resale, or who sells or offers for sale on
19 commission any commodity or in any way handles any commodity for the
20 account of the owner thereof; or

21 (V) Any person engaged in buying any commodity from the
22 owner thereof for the commercial feeding of livestock that are owned
23 wholly or in part by another, at an animal feeding operation with a
24 capacity of more than two thousand five hundred head of livestock. The
25 commissioner shall establish rules to determine the capacity of animal
26 feeding operations for purposes of this ~~article~~ ARTICLE 36.

27 (b) "Commodity handler" does not include:

1 (I) A bona fide retail grocery merchant or restaurateur having a
2 fixed or established place of business in Colorado as long as the use of
3 commodities by ~~any such~~ THE person is directly related to the operation
4 of the person's retail grocery or restaurant; or

5 (II) A producer under the "Colorado Cottage Foods Act", section
6 25-4-1614 (9)(c), ~~C.R.S.~~, who earns net revenues of ten thousand dollars
7 or less per calendar year from the sale of each eligible food product.

8 ~~(5)~~ (7) "Compensation" means something of value or benefit,
9 whether in cash, in kind, or in any other form.

10 ~~(6)~~ (8) "Credit sale contract" means a contract for the sale of a
11 commodity when the sale price is to be paid on a date later than thirty
12 days after delivery of the commodity to the buyer and includes those
13 contracts commonly referred to as deferred payment contracts, deferred
14 pricing contracts, and price later contracts.

15 ~~(7)~~ (9) "Department" means the department of agriculture.

16 ~~(8)~~ (10) "Financial statement" means a statement that accurately
17 presents the financial condition of an applicant or licensee and that
18 includes, at a minimum, a balance sheet and a statement of income.

19 ~~(8.5)~~ (11) "Forwarded commodities" means commodities sent to
20 a terminal warehouse and put on open storage in the name of the
21 forwarding warehouse operator.

22 ~~(8.6)~~ (12) "Functional unit" means one or more warehouses that
23 constitute a single operating unit if:

24 (a) The same warehouse operator operates each warehouse in
25 conjunction with any other;

26 (b) All the warehouses are functioning under the same name and
27 with the same personnel, office, books, and records; and

1 (c) Together the warehouses have the capability to weigh, grade,
2 receive, store, and load out commodities.

3 ~~(9)~~ (13) "Handling" means buying commodities for resale or
4 processing, brokering commodities, or receiving and loading out
5 commodities tendered for storage.

6 ~~(9.5)~~ (14) "Livestock" has the same meaning as set forth in section
7 35-1-102 (6). ~~C.R.S.~~

8 ~~(10)~~ (15) "Loss" means any monetary loss to a producer or owner
9 ~~which~~ THAT is of an extraordinary nature and ~~which~~ THAT includes, but
10 is not limited to, bankruptcy, embezzlement, theft, fraud, or negligence.

11 ~~(11)~~ (16) "Market value" means the value required by law to be
12 used by insurance underwriters in paying for losses of commodities
13 insured for their actual value.

14 ~~(12)~~ (17) "Negotiable warehouse receipt" means a receipt ~~which~~
15 THAT specifies by its terms that the goods are to be delivered to the bearer
16 or to the order of a named person. Any other receipt is nonnegotiable.

17 ~~(13)~~ (18) "Owner" means any person in whom legal title to any
18 commodity is vested, whether produced by ~~him~~ THE OWNER or acquired
19 by purchase.

20 ~~(14)~~ (19) "Person" includes any individual, firm, association,
21 partnership, or corporation or the commissioner.

22 ~~(15)~~ (20) "Processing" means the operation of canning,
23 fermenting, distilling, extracting, preserving, grinding, crushing, flaking,
24 mixing, or otherwise changing the form of a commodity for the purpose
25 of selling any of the resulting products.

26 ~~(16)~~ (21) "Producer" means any grower of commodities.

27 ~~(17)~~ (22) "Provisional insurance coverage" means a certificate or

1 any other satisfactory evidence of fire and extended coverage insurance
2 issued by an insurance company authorized to do business in this state
3 insuring every commodity in the custody of a warehouse operator,
4 whether held for others or owned by the warehouse operator, at the full
5 local market value of each commodity.

6 ~~(18)~~ (23) "Public warehouse" includes any elevator, mill,
7 warehouse, or other structure in which commodities are received from
8 one or more members of the public for storage.

9 ~~(19)~~ (24) "Scale ticket" means a receipt issued for a commodity
10 ~~which~~ THAT names the person to whom it is issued and the kind and grade
11 of the commodity stored.

12 ~~(20)~~ (25) "Settlement sheet" means a summary of the commodity
13 handler's transactions with an owner.

14 ~~(21)~~ (26) "Storage" means the holding of a commodity for another
15 by a person who does not directly own the commodity. "Storage" does not
16 include transportation of a commodity.

17 ~~(21.5)~~ (27) "Terminal warehouse" means any public warehouse
18 licensed by the Colorado department of agriculture, the United States
19 department of agriculture, or any state that has a warehouse examination
20 cooperative agreement with Colorado or the United States department of
21 agriculture.

22 ~~(22)~~ (28) "Warehouse operator" includes any person or existing
23 legal entity owning, operating, or controlling any public warehouse.

24 **35-36-103. [Formerly 12-16-203] Licenses - commodity**
25 **handler - rules.** (1) No person shall act as a commodity handler in this
26 state without having first obtained a license from the department.

27 (2) Every person acting as a commodity handler in this state shall,

1 each year before the date specified by the commissioner by rule, obtain
2 a license from the department.

3 ~~(3) Repealed.~~

4 ~~(4) and (5) (Deleted by amendment, L. 2007, p. 847, § 7, effective~~
5 ~~August 3, 2007.)~~

6 **35-36-104. [Formerly 12-16-204] Exemptions.** (1) The
7 provisions of this ~~part 2~~ ARTICLE 36 that apply to warehouse operators do
8 not apply to the owner or operator of any public warehouse or other
9 facility where the owner or operator:

10 (a) Operates a public warehouse in this state with a valid license
11 issued either by the United States department of agriculture or under the
12 provisions of the "United States Warehouse Act", 7 U.S.C. ~~section~~ SEC.
13 241 et seq.;

14 (b) Receives only commodities that ~~he~~ THE OWNER OR OPERATOR
15 has purchased, or that he OR SHE is processing or cleaning for the owners
16 of the commodities, or that he OR SHE is maintaining for such other
17 purposes as the department may, by rule, prescribe; and

18 (c) Keeps written evidence, as required by the department, ~~which~~
19 THAT clearly shows that the warehouse operator maintains the
20 commodities for one or more of the purposes set forth in ~~paragraph (a) or~~
21 ~~(b) of this subsection~~ (1) SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION.
22 The department shall consider a commodity left or deposited with a
23 warehouse operator whose records do not include evidence that the
24 commodity was left or deposited for one or more of the purposes set forth
25 in ~~paragraph (a) or (b) of this subsection~~ (1) SUBSECTION (1)(a) OR (1)(b)
26 OF THIS SECTION as a commodity deposited for storage and handling.

27 **35-36-105. [Formerly 12-16-205] Commodity handler licenses**

1 **- application requirements - fee.** (1) (a) Each applicant for a commodity
2 handler license shall pay, for each year in which ~~such~~ THE license is to be
3 valid, a license fee established by the agricultural commission, which
4 license fee the department shall collect and transmit to the state treasurer,
5 who shall credit the same to the inspection and consumer services cash
6 fund created in section 35-1-106.5. ~~C.R.S.~~

7 (b) ~~(H) Except as provided in subparagraph (H) of this paragraph~~
8 ~~(b)~~, For each fiscal year, commencing on July 1, twenty-five percent of
9 the direct and indirect costs of administering and enforcing this ~~article~~
10 ARTICLE 36 shall be funded from the general fund. The agricultural
11 commission shall establish a fee schedule to cover any direct and indirect
12 costs not funded from the general fund.

13 ~~(H) Repealed.~~

14 (2) Application for a commodity handler license under this section
15 shall be made to the department upon forms furnished by the department.
16 The application shall include the following information:

17 (a) The name and address of the applicant; and, if the applicant is
18 a firm, exchange, association, or corporation, the full name of each
19 member of the firm or the names of the officers of the exchange,
20 association, or corporation. The application shall also state the principal
21 business address of the applicant in the state of Colorado and in every
22 other state in which the applicant does business and the names of the
23 persons authorized to receive and accept service of summons and legal
24 notices of all kinds on behalf of the applicant in each state. The applicant
25 shall further satisfy the commissioner of its character, responsibility, and
26 good faith in seeking to carry on the business stated in the application. In
27 determining a person's character, the commissioner shall be governed by

1 the provisions of section 24-5-101. ~~C.R.S.~~

2 (b) The location of each public warehouse of the applicant;

3 (c) The total rated storage capacity in bushels of each public
4 warehouse;

5 (d) The tariff schedule of charges to be made at each public
6 warehouse for the handling, storage, and shipment of commodities during
7 the license year;

8 (e) Any other information that the commissioner deems
9 reasonably necessary to carry out the purposes of this ~~part 2~~ ARTICLE 36.

10 ~~(2.5) (Deleted by amendment, L. 2009, (SB 09-114), ch. 111, p.~~
11 ~~464, § 13, effective April 9, 2009.)~~

12 ~~(3) Repealed.~~

13 ~~(4)~~(3) Fraud or misrepresentation in making any application shall
14 in and of itself work a revocation of any license granted pursuant to ~~such~~
15 THE application. All indicia of the possession of a license shall at all times
16 be the property of the state of Colorado, and each licensee is entitled to
17 the possession of ~~such~~ THE indicia only while said license remains valid
18 and current.

19 **35-36-106. [Formerly 12-16-206] Licenses - requirements -**
20 **rules.** (1) To receive or maintain a license, each applicant or licensee
21 shall satisfy the following requirements:

22 (a) The applicant or licensee shall furnish the commissioner with
23 evidence of minimum provisional insurance coverage in an amount
24 sufficient to protect the applicant's storage obligations. If, at any time, the
25 commissioner evaluates an applicant's provisional insurance coverage to
26 be insufficient, the commissioner may require such additional insurance
27 as the commissioner considers sufficient. Failure to provide evidence of

1 the additional insurance within thirty days after written notice from the
2 commissioner constitutes grounds for the suspension or revocation of the
3 license.

4 (b) The applicant or licensee shall furnish the commissioner with
5 a financial statement that presents accurately his or her financial
6 condition. The commissioner may promulgate rules that clearly state the
7 information required from each applicant or licensee under this section.
8 Any financial statement submitted to the commissioner in support of a
9 license application made pursuant to the provisions of this ~~part 2~~ ARTICLE
10 36 shall be confidential. Whenever the commissioner deems it
11 appropriate, he or she may require any applicant for an initial license, any
12 applicant for a renewal of a license, or any licensee to submit a financial
13 statement or an audit, prepared by a certified public accountant, or any
14 other information the commissioner deems necessary to determine
15 whether ~~such~~ THE person is in an adequate financial position to carry out
16 his or her duties as a licensee.

17 (2) If any licensee fails to apply for license renewal before an
18 annual date specified by the commissioner by rule, ~~such~~ THE licensee
19 shall, upon application for a renewal license and before ~~such~~ THE license
20 is issued, pay a penalty fee as established by the agricultural commission.
21 ~~Such~~ THE penalty fee shall be in addition to the license fee.

22 **35-36-107. [Formerly 12-16-206.5] Disciplinary powers -**
23 **licenses.** (1) The commissioner may deny any application for a license,
24 or may refuse to renew a license, or may revoke or suspend a license, or
25 may place a licensee on probation, as the case may require, if the licensee
26 or applicant has:

27 (a) Violated any of the provisions of this ~~part 2~~ ARTICLE 36 or

1 violated any of the rules ~~and regulations~~ promulgated by the
2 commissioner pursuant to this ~~part 2~~ ARTICLE 36;

3 (b) Failed to place and keep the premises ~~where he conducts~~ OF
4 the licensed business in the manner required under this ~~part 2~~ ARTICLE 36;

5 (c) Been convicted of a felony under the laws of this state, or of
6 any other state, or of the United States; except that, in consideration of the
7 conviction of a felony, the commissioner shall be governed by the
8 provisions of section 24-5-101; ~~C.R.S.~~;

9 (d) Committed fraud or deception in the procurement or attempted
10 procurement of a license;

11 (e) Failed or refused to execute and deliver to the commissioner
12 a surety bond as required by section ~~12-16-218~~ 35-36-119;

13 (f) Been determined by the commissioner to be in an inadequate
14 financial position to meet liability obligations;

15 (g) Failed to comply with any lawful order of the commissioner
16 concerning the administration of this ~~part 2~~ ARTICLE 36;

17 (h) Had a license revoked, suspended, or not renewed or has been
18 placed on probation in another state for cause, if ~~such~~ THE cause could be
19 the basis for similar disciplinary action in this state.

20 (2) All proceedings concerning the denial, refusal to renew,
21 revocation, or suspension of a license or the placing of a licensee on
22 probation shall be conducted pursuant to the provisions of article 4 of title
23 24. ~~C.R.S.~~

24 (3) Any previous violation of the provisions of this ~~part 2~~ ARTICLE
25 36 by the applicant or any person connected with ~~him~~ THE APPLICANT in
26 the business for which ~~he~~ THE APPLICANT seeks to be licensed or, in the
27 case of a partnership or corporation applicant, any previous violations of

1 the provisions of this ~~part 2~~ ARTICLE 36 by a partner, officer, director, or
2 stockholder of more than thirty percent of the outstanding shares, is
3 sufficient grounds for the denial of a license.

4 **35-36-108. [Formerly 12-16-207] Bailment of commodities.**

5 (1) Acceptance of commodities for storage by a warehouse operator shall
6 constitute a bailment and not a sale. Stored commodities shall not be
7 liable to seizure upon process of a court in an action against the bailee,
8 except upon action by owners of the stored commodities or the
9 commissioner to enforce the terms thereof; but, in the event of the failure
10 or insolvency of a bailee, commodities shall be first applied exclusively
11 to the settlement on an equal basis of all outstanding negotiable
12 warehouse receipts and other open storage obligations for commodities
13 so stored with the bailee.

14 (2) Forwarded commodities shall be used only to meet the storage
15 obligation to the forwarding warehouse operator.

16 (3) The purchase of a commodity does not constitute a bailment.

17 **35-36-109. [Formerly 12-16-208] Credit sale contracts - rules.**

18 (1) When a commodity handler purchases commodities for which
19 payment has not been made, the commodity handler, within thirty days
20 after the receipt of the commodities, shall provide the producer or owner
21 of the commodities with the credit sale contract. The credit sale contract
22 must contain the following information:

23 (a) The class, grade, and quantity of the commodities purchased,
24 and the date of the purchase;

25 (b) The charges for handling, if any;

26 (c) The name and address of the producer or owner and the
27 signature of the commodity handler;

- 1 (d) The contract number;
- 2 (e) The words "not a storage contract" printed in block capital
3 letters in bold-faced type, conspicuously on the first page of the contract;
- 4 (f) One or more statements specified by the commissioner by rule,
5 including one that warns a producer that entering into a credit sale
6 contract entails a risk that the bond may not completely protect the
7 producer from loss in the event of a failure of the commodity handler.
- 8 (2) A commodity handler's records shall be retained for a period
9 of two years and shall reflect those credit sale contracts that have been
10 cancelled and those that are still open. ~~Such~~ THE records shall be kept at
11 the commodity handler's place of business at all times.
- 12 (3) An annual report of the status of the credit sale contracts may
13 be required by the commissioner along with the financial statement
14 required in section ~~12-16-206~~ 35-36-106.
- 15 (4) All credit sale contracts entered into by a commodity handler
16 shall be consecutively numbered by ~~such~~ THE commodity handler, and
17 copies thereof shall be made available by the commodity handler for
18 inspection and examination by the commissioner or his ~~OR~~ HER authorized
19 agents.
- 20 (5) A commodity handler issuing credit sale contracts shall
21 maintain allowable net assets of not less than twenty-five thousand dollars
22 and shall maintain reserves in an amount equaling or exceeding fifty
23 percent of the value of all of that commodity handler's open credit sale
24 contracts, which value shall be determined with reference to the daily bid
25 price. ~~Such~~ THE reserves may be in the form of any one or a combination
26 of the following:
- 27 (a) Cash;

1 (b) Commodity assets, including commodities and warehouse
2 receipts or other evidences of storage of commodities;

3 (c) Credit sale contracts with other commodity handlers licensed
4 by the department of agriculture;

5 (d) An irrevocable letter of credit in favor of the commissioner,
6 which letter of credit shall be subject to the provisions of section
7 ~~12-16-218~~ 35-36-119; or

8 (e) Net worth of the commodity handler of at least four times the
9 value of the open credit sale contracts.

10 **35-36-110. [Formerly 12-16-209] Commodity grades**
11 **established - rules.** The department may promulgate rules ~~and~~
12 ~~regulations~~ concerning commodity grades in accordance with the
13 standards established by the United States department of agriculture as
14 the official grain standards of the United States government.

15 **35-36-111. [Formerly 12-16-210] Commissioner - rules -**
16 **delegation of powers and duties.** (1) The commissioner may
17 promulgate such rules ~~and regulations~~ in accordance with article 4 of title
18 ~~24 C.R.S.~~, as are necessary for the administration of this ~~part 2~~ ARTICLE
19 36.

20 (2) The commissioner shall be the enforcing authority of this ~~part~~
21 ~~2~~ ARTICLE 36, and the commissioner or the commissioner's authorized
22 representative shall have free and unimpeded access to all places of
23 business and all business records of the licensee pertinent to any proper
24 inquiry in the administration of this ~~part 2~~ ARTICLE 36. Any person in
25 whom the enforcement of any provision of this ~~part 2~~ ARTICLE 36 is
26 vested has the power of a peace officer as to ~~such~~ THE enforcement.

27 (3) The powers and duties of the commissioner set forth in this

1 ~~part 2~~ ARTICLE 36 may be delegated to qualified employees of the
2 department.

3 **35-36-112. [Formerly 12-16-211] Negotiable warehouse**
4 **receipts - rules.** (1) A negotiable warehouse receipt must be either a
5 paper or an electronic document. At no time may a paper receipt and an
6 electronic receipt represent the same lot of the commodity. A licensee
7 may issue warehouse receipts by use of a written warehouse receipt
8 system, an electronic warehouse receipt system, or both.

9 (2) The department is the sole source of paper negotiable
10 warehouse receipts and shall furnish those receipts at cost.

11 (3) Instead of a paper document, a licensee may issue an
12 electronic negotiable version of a warehouse receipt generated by a
13 vendor licensed and approved by the United States department of
14 agriculture if the receipt contains the same information as the paper
15 version of a warehouse receipt. The electronic version of a warehouse
16 receipt carries the same rights and obligations as the paper version. A
17 holder of an electronic version of a warehouse receipt may redeem the
18 warehouse receipt by applying an electronic signature registered and
19 authenticated by a vendor credited by the United States department of
20 agriculture.

21 (4) The commissioner may promulgate rules regarding the
22 issuance, use, and records requirements of negotiable warehouse receipts.

23 **35-36-113. [Formerly 12-16-212] Use of scale tickets and**
24 **negotiable warehouse receipts.** (1) It is unlawful to issue paper
25 negotiable warehouse receipts other than those furnished by the
26 department. The licensee shall issue these receipts consecutively, as
27 numbered, and each receipt must state the date on which it is actually

1 issued.

2 (2) Nothing in this ~~part 2~~ ARTICLE 36 shall be construed to prevent
3 the issuance of nonnegotiable scale tickets or other nonnegotiable
4 evidences of a similar nature showing the date on which the commodities
5 were received, the quantities received, and the condition of ~~such~~ THE
6 commodities upon their delivery.

7 (3) When partial withdrawal of a commodity is made by an owner,
8 the warehouse operator shall make an appropriate notation thereof on the
9 depositor's nonnegotiable warehouse receipt or on such other records as
10 may be prescribed by the department. If the warehouse operator has
11 theretofore issued a negotiable warehouse receipt to the owner, the
12 warehouse operator shall claim, cancel, and replace it with a new
13 negotiable warehouse receipt, showing the amount of ~~such~~ THE owner's
14 commodity remaining in the public warehouse.

15 (4) Every commodity handler receiving commodities for storage
16 or handling shall immediately, upon receipt of each load, issue to every
17 person delivering the commodity a scale ticket, which shall contain the
18 net weight of each separate draft or load of the commodity and the
19 dockage, if any, to be levied at the time of delivery, and such other
20 information as may be required by the department.

21 (5) Acceptance of commodities for storage by a warehouse
22 operator for which a negotiable warehouse receipt is issued shall
23 constitute a bailment process and not a sale. If a warehouse operator fails
24 to claim and cancel a negotiable warehouse receipt issued on delivery for
25 commodities stored in the warehouse operator's public warehouse and the
26 negotiation of which would transfer the right of possession of that
27 commodity, the warehouse operator shall be liable, to a good faith

1 purchaser for value, for his OR HER failure to deliver to the purchaser all
2 the commodities specified in the receipt. This liability shall apply whether
3 the purchaser acquired title to the negotiable warehouse receipt before,
4 on, or after the delivery of any part of the commodity by the warehouse
5 operator.

6 **35-36-114. [Formerly 12-16-213] Commodity handler records**
7 **- separate and distinct - time of maintenance.** (1) A commodity
8 handler operating another business in conjunction with, or in proximity
9 to, the handler's commodity handling business shall keep a complete set
10 of records for the commodity handling business, entirely separate and
11 distinct from the accounts and records of that other business. The deposits
12 of commodities for the account of another business or for commodities
13 owned by the commodity handler shall be entered in the books of the
14 commodity handler in the same manner as those of other depositors. For
15 the purpose of this section, "other business" shall mean any other separate
16 and legally established enterprise ~~which~~ THAT is distinct and separate
17 from the legal and financial transactions of the commodity handling
18 business.

19 (2) Commodity handlers shall maintain adequate records and
20 systems for the filing and accounting of negotiable warehouse receipts,
21 cancelled negotiable warehouse receipts, scale tickets, and other
22 documents and transactions necessary or common to the commodity
23 handling industry. Cancelled negotiable warehouse receipts, copies of
24 scale tickets, and copies of other documents evidencing ownership or
25 ownership liability shall be retained by the commodity handler for a
26 period of at least three years after the date of cancellation.

27 (3) A position report shall be posted daily by the commodity

1 handler; however, if a daily position report poses a substantial hardship,
2 the commissioner may authorize, in writing, a weekly position report. The
3 position report shall include, but need not be limited to, total stocks by
4 commodities received or loaded out, forwardings of commodities to
5 terminal storage, conversions of whole commodities to feed, negotiable
6 warehouse receipt obligations, open storage obligations, credit sale
7 contracts, and public warehouse-owned commodities.

8 (4) A scale ticket shall be issued for each receipt of commodities.
9 A copy of the scale ticket shall be given to the owner. The commodity
10 handler's copy shall be filed with all other such copies in numerical
11 sequence. Voided scale tickets shall be filed and retained at the
12 commodity handler's place of business. Scale tickets shall be issued in
13 numerical sequence. An issued scale ticket shall contain the following:
14 Sequential number; date; owner's name; commodity handler's name;
15 commodity; test weight with dockage, if applicable; grade, if assigned;
16 gross weight; tare weight; and net weights, in the case of weights from
17 hopper scales.

18 (5) A settlement sheet shall be maintained for each owner and
19 shall contain the following: Owner's name, scale ticket numbers, total
20 receipts, total withdrawals, test weight, and grade if assigned. A copy of
21 a current settlement sheet shall be provided the owner upon request.

22 **35-36-115. [Formerly 12-16-214] Warehouse operator's**
23 **liability for disposal of tainted commodities.** (1) A warehouse operator
24 shall be liable for any loss or deterioration of commodities in a public
25 warehouse caused by the warehouse operator's failure to exercise
26 reasonable care of the commodities.

27 (2) If a warehouse operator discovers that, as a result of a

1 condition of a commodity placed in the warehouse operator's public
2 warehouse of which he or she had no notice at the time of deposit, ~~such~~
3 THE commodity is a hazard to other commodities or to persons or to the
4 public warehouse and if ~~such~~ THE commodity is not immediately removed
5 by the owner upon the warehouse operator's request, the warehouse
6 operator may sell the commodity after reasonable notice to all persons
7 known to claim an interest in the commodity. If the warehouse operator
8 is unable to sell the commodity after a reasonable effort, the warehouse
9 operator may dispose of it in any other lawful manner and shall incur no
10 liability to the owner for ~~such~~ THE disposition.

11 (3) At any time before the sale or disposition authorized in this
12 section, the warehouse operator shall deliver the commodity to any person
13 entitled to it upon proper demand and payment of all charges incurred for
14 the specific lot of that commodity.

15 (4) The commissioner may reject as unsuitable for storage any
16 area of the warehouse operator's premises, unless that area is used for
17 storing the warehouse operator's own commodities.

18 **35-36-116. [Formerly 12-16-215] Enforcement - inspection of**
19 **commodity handlers' property - confidentiality.** (1) The department
20 has the power to inspect commodity handlers' places of business. The
21 department shall investigate any complaint concerning the operation of
22 any commodity handler, or any person attempting or offering to act as
23 such, subject to the provisions of this ~~part 2~~ ARTICLE 36.

24 ~~(1.5)~~ (2) Complaints of record made to the commissioner and the
25 results of his OR HER investigations may, in the discretion of the
26 commissioner, be closed to public inspection during the investigatory
27 period and until dismissed or until notice of hearing and charges is served

1 on a licensee, unless otherwise provided by court order.

2 ~~(2)~~ (3) The commissioner, upon consent of the licensee or upon
3 obtaining an administrative search warrant, has the right to inspect any
4 commodity handler's place of business where commodities are stored,
5 handled, or received and any records pertaining to storage obligations and
6 commodity positions kept by the commodity handler that pertain to the
7 operation thereof. The property, books, records, accounts, and papers
8 pertaining to storage obligations and commodity positions of every
9 commodity handler shall be subject to inspection and copying by the
10 commissioner.

11 ~~(3)~~ (4) The commissioner shall have full authority to administer
12 oaths and take statements, to issue subpoenas requiring the attendance of
13 witnesses ~~before him~~ and the production of all books, memoranda,
14 papers, and other documents, articles, or instruments, and to compel the
15 disclosure by ~~such~~ THE witnesses of all facts known to them relative to
16 the matters under investigation. Upon the failure or refusal of any witness
17 to obey any subpoena, the commissioner may petition the district court,
18 and, upon a proper showing, the court may enter an order compelling the
19 witness to appear and testify or produce documentary evidence. Failure
20 to obey such an order of the court shall be punishable as a contempt of
21 court.

22 ~~(4)~~ (5) The commissioner may examine the ledgers, books,
23 accounts, memoranda, and other documents and the commodities, scales,
24 measures, and other items in connection with the business of any licensee
25 relating to whatever transactions may be involved.

26 ~~(5)~~ (6) The commissioner shall not be required to investigate or
27 act upon complaints regarding transactions ~~which~~ THAT occurred more

1 than one hundred twenty days prior to the date upon which the
2 commissioner received the written complaint.

3 ~~(6)~~ (7) If the investigation is against a licensee, the commissioner
4 shall proceed to ascertain the names and addresses of all producers,
5 dealers, or owners of commodities, together with the accounts
6 unaccounted for or due and owing to them by said licensee, and shall
7 request ~~all such~~ THE producers, dealers, or owners to file verified
8 statements of their respective claims with the commissioner. If a
9 producer, dealer, or owner so requested fails, refuses, or neglects to file
10 a verified statement in the office of the commissioner within thirty days
11 after the date of ~~such~~ THE request, the commissioner shall thereupon be
12 relieved of any further duty or action under this ~~part 2~~ ARTICLE 36 on
13 behalf of said producer, dealer, or owner.

14 ~~(7)~~ (8) In the course of any investigation, the commissioner may
15 attempt to effectuate a settlement between the respective parties.

16 ~~(8)(a)~~ (9) (a) If the commissioner determines, after concluding an
17 investigation on any complaint, that reasonable grounds exist to believe
18 that a licensee has violated any of the provisions of this ~~part 2, he~~
19 ARTICLE 36, THE COMMISSIONER shall notify the licensee that ~~such~~ THE
20 complaint is valid and shall inform the licensee of his OR HER opportunity
21 to request a hearing, in writing, on ~~such~~ THE complaint within ten days
22 after the date of ~~such~~ THE notice.

23 (b) Upon the receipt of a request for a hearing from a licensee or
24 if the commissioner determines that a hearing concerning any licensee is
25 necessary, ~~he~~ THE COMMISSIONER shall cause a copy of the complaint or
26 the grounds specified in section ~~12-16-206.5~~ 35-36-107, together with a
27 notice of the time and place of the hearing, to be served personally or by

1 mail upon ~~such~~ THE licensee. Service shall be made at least ten days
2 before the hearing, which shall be held in the city or town in which the
3 business location of the licensee is situated or in which the transactions
4 involved allegedly occurred or at any convenient place designated by the
5 commissioner.

6 (c) The commissioner shall conduct ~~such~~ THE hearing pursuant to
7 the provisions of section 24-4-105. ~~C.R.S.~~ Thereafter, the commissioner
8 shall enter a decision specifying the relevant facts established at ~~such~~ THE
9 hearing. If the commissioner determines from the facts specified that the
10 licensee has not violated any of the provisions of this ~~part 2~~ ARTICLE 36,
11 the complaint shall be dismissed. If the commissioner determines from
12 the facts specified that the licensee has violated any of the provisions of
13 this ~~part 2~~ ARTICLE 36, and that the licensee has not yet made complete
14 restitution to the person complaining, ~~he~~ THE COMMISSIONER shall
15 determine the amount of damages, if any, to which ~~such~~ THE person is
16 entitled as the result of ~~such~~ THE violation and ~~he~~ shall enter an order
17 directing the offender to pay ~~such~~ THE amount to the person complaining
18 on or before the date fixed in the order. A copy of the decision shall be
19 furnished to all the respective parties to the complaint.

20 ~~(9)~~ (10) As a result of ~~such~~ THE hearing, the commissioner may
21 also enter any order suspending or revoking the license of a licensee or
22 may place the licensee on probation if the commissioner determines that
23 the licensee has committed any of the unlawful acts specified in section
24 ~~12-16-221~~ 35-36-123 or that the licensee has violated any of the
25 provisions of this ~~part 2~~ ARTICLE 36.

26 ~~(10)(a)~~ (11) (a) If a person against whom an order, as specified
27 in ~~paragraph (c) of subsection (8)~~ SUBSECTION (9)(c) of this section, is

1 made and issued fails, neglects, or refuses to obey said order within the
2 time specified in the order, the commissioner may thereupon issue a
3 further order to that person directing the person to show cause why his or
4 her license should not be suspended or revoked for failure to comply with
5 said order.

6 (b) In such case, a copy of said order to show cause, together with
7 a notice of the time and place of the hearing thereupon, shall be served
8 personally or by mail upon the person involved. Service shall be made at
9 least ten days before the hearing, which shall be held in the city or town
10 in which the business location of the licensee is situated or at any
11 convenient place designated by the commissioner.

12 (c) The commissioner shall conduct ~~such~~ THE hearing pursuant to
13 the provisions of section 24-4-105 ~~C.R.S.~~, and thereafter shall enter an
14 order and decision specifying the facts established at the hearing and
15 either dismissing the order to show cause, or directing the suspension or
16 revocation of the license held by the licensee, or making such other
17 conditional or probationary orders as may be proper. A copy of said order
18 and decision shall be furnished to the licensee.

19 (d) Nothing in this section shall be construed as limiting the power
20 of the commissioner to revoke or suspend a license when he OR SHE is
21 satisfied of the existence of any of the facts specified in section
22 ~~12-16-221~~ 35-36-123.

23 ~~(11)~~(12) Whenever the absence of records or other circumstances
24 makes it impossible or unreasonable for the commissioner to ascertain the
25 names and addresses of all persons specified in subsection ~~(6)~~ (7) of this
26 section, the commissioner, after exercising due diligence and making a
27 reasonable inquiry to secure said information from all reasonable and

1 available sources, shall not be liable or responsible for the claims or the
2 handling of claims ~~which~~ THAT may subsequently appear or be
3 discovered. After ascertaining all claims, assessments, and statements in
4 the manner set forth in subsection ~~(6)~~ (7) of this section, the
5 commissioner may then demand payment on the bond or irrevocable letter
6 of credit on behalf of those claimants whose claims have been determined
7 by the commissioner as valid and, in the instance of a bond, may settle or
8 compromise said claims with the surety company on the bond and execute
9 and deliver a release and discharge of the bond involved. Upon the refusal
10 of the surety company to pay the demand, the commissioner may bring an
11 action on the bond on behalf of the producer, dealer, or owner.

12 ~~(12)~~ (13) For the purpose of this section, a transaction is deemed
13 to have occurred:

14 (a) On the date that possession of commodities is transferred by
15 a claimant; or

16 (b) In the case of delayed payment transactions, on the contractual
17 date of payment or, if there is no contractual date of payment, thirty days
18 following the transfer of title.

19 ~~(13)~~ (14) A public warehouse shall be maintained by the
20 commodity handler in a manner adequate to provide a convenient and
21 safe means of ingress and egress to the various storage bins and
22 compartments by those persons authorized to make inspections.

23 ~~(14)~~ ~~(a)~~ (15) (a) Each warehouse shall be kept open for the
24 purpose of receiving commodities for storage and delivering commodities
25 out of storage every business day for a period of not less than six hours
26 between the hours of 8 a.m. and 6 p.m. except as provided in ~~paragraph~~
27 ~~(b) of this subsection~~ ~~(14)~~ SUBSECTION (15)(b) OF THIS SECTION. The

1 commodity handler shall post conspicuously on the door of the public
2 entrance to his OR HER office and to his OR HER licensed warehouse a
3 notice showing the hours during which the warehouse will be kept open;
4 except that ~~such~~ THE notice is not necessary when a warehouse is kept
5 open continuously from 8 a.m. to 6 p.m.

6 (b) Whenever a warehouse is not to be kept open as required by
7 ~~paragraph (a) of this subsection (14)~~ SUBSECTION (15)(a) OF THIS
8 SECTION, the notice posted as prescribed in ~~said paragraph (a)~~
9 SUBSECTION (15)(a) OF THIS SECTION shall state the period during which
10 the warehouse is to be closed and the name, address, and telephone
11 number, if any, of the person who shall be authorized to deliver
12 commodities stored in ~~such~~ THE warehouse upon lawful demand by the
13 depositor thereof or the holder of the receipt thereof, as the case may be.

14 **35-36-117. [Formerly 12-16-216] Procedure on shortage -**
15 **refusal to submit to inspection.** (1) Whenever it appears probable after
16 investigation that a licensed warehouse operator does not possess
17 sufficient commodities to cover the outstanding negotiable warehouse
18 receipts, scale tickets, or other evidences of storage liability issued or
19 assumed by the warehouse operator, the department may give notice to
20 the warehouse operator that he or she is required to do all or any of the
21 following:

- 22 (a) Cover ~~such~~ THE shortage;
- 23 (b) Give an additional bond or irrevocable letter of credit;
- 24 (c) Submit to such inspection as the department may deem
25 necessary.

26 (2) If the warehouse operator fails to comply with the terms of the
27 notice within twenty-four hours after the date of its issuance or within

1 such further time as the department may allow, the department may do all
2 or any of the following:

3 (a) Issue a cease-and-desist order pursuant to section ~~12-16-219~~
4 35-36-120;

5 (b) Take possession of all commodities in the public warehouse
6 owned, operated, or controlled by the warehouse operator and of all
7 books, papers, records, and property of all kinds used in connection with
8 the conduct or operation of the warehouse operator's public warehouse
9 business, whether ~~such~~ THE books, papers, records, and property pertain
10 specifically, exclusively, directly, or indirectly to that business or are
11 related to his or her handling, storage, or use of commodities in any other
12 business;

13 (c) Apply to any court of competent jurisdiction for an order to
14 enjoin the warehouse operator from interfering with the department in the
15 discharge of its duties as required by this section;

16 (d) Petition any court of competent jurisdiction for an order
17 requiring the warehouse operator or any person who has possession of
18 any commodities, books, papers, records, or property of any kind used in
19 connection with the conduct or operation of the public warehouse
20 business who has refused to surrender possession to the department to
21 surrender possession of the same to the department.

22 (3) Upon its taking possession of the commodities, the department
23 may give written notice of its action to the holders of all negotiable
24 warehouse receipts or other evidences of deposits issued for commodities
25 to present their negotiable warehouse receipts or other evidences of
26 deposits for inspection or to account for the same. Thereupon, the
27 department shall cause an audit to be made of the affairs of ~~such~~ THE

1 public warehouse with respect to any commodity in which there is an
2 apparent shortage, determine the amount of ~~such~~ THE shortage, and
3 compute the shortage as to each owner of the commodity. The department
4 shall attempt to notify the warehouse operator of the amount of ~~such~~ THE
5 shortage and attempt to notify each owner thereby affected. If the owner
6 cannot be notified after a reasonable attempt by the department, the
7 department shall not be held liable for any losses incurred by ~~such~~ THE
8 owner.

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

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

26 (6) At any time within ten days after the department takes
27 possession of any commodities or the books, papers, records, and

1 property of any public warehouse, the warehouse operator may apply to
2 a court of competent jurisdiction for an order requiring the department to
3 show cause why ~~such~~ THE commodities, books, papers, records, and
4 property should not be restored to the warehouse operator's possession.
5 Upon its being served notice, the department shall have not more than ten
6 days to respond.

7 ~~(6.1)(a)~~ (7) (a) If a court of competent jurisdiction determines that
8 all or any part of the commodities, books, papers, records, and property
9 should not be restored to the possession of the warehouse operator, the
10 court may:

11 (I) Appoint a receiver for all or any part of the commodities,
12 books, papers, records, and property; or

13 (II) Determine the disposition of the commodities, books, papers,
14 records, and property ~~which~~ THAT were in the public warehouse and
15 seized pursuant to this ~~part 2~~ ARTICLE 36.

16 (b) Pending determination of the ownership of the commodities,
17 any funds received from the disposition of the commodities shall be
18 placed in an interest-bearing escrow account.

19 ~~(6.5)~~ (8) If the warehouse operator does not apply to a court of
20 competent jurisdiction for a show-cause order under subsection (6) of this
21 section, the department's action is presumed valid, and the commissioner
22 may determine the disposition of the commodities, books, papers, records,
23 and property that were in the public warehouse and seized pursuant to this
24 ~~part 2~~ ARTICLE 36. Pending determination of the ownership of the
25 commodities, any funds received from the disposition of the commodities
26 shall be placed in an interest-bearing escrow account.

27 ~~(7)~~ (9) All expenses incurred by the department in carrying out the

1 provisions of this section shall be a first charge and lien upon the assets
2 of the warehouse operator; and ~~such~~ THE expenses may be recovered in
3 a separate civil action brought by the department, represented by the
4 attorney general, in a court in the county in which the public warehouse
5 is located, or they may be recovered at the same time and as a part of an
6 action filed under subsection (5) of this section.

7 ~~(8)~~ (10) As a part of the expenses so incurred, the department or
8 the receiver is authorized to include the cost of adequate liability
9 insurance necessary to protect the department, its officers, and others
10 engaged in carrying out the provisions of this section.

11 **35-36-118. [Formerly 12-16-217] Inspection fees.** (1) The state
12 agricultural commission, after conferring with interested industry groups,
13 is authorized to fix, assess, and collect fees for the inspection of
14 commodity handlers.

15 (2) ~~(a)~~ For each fiscal year, commencing on July 1, twenty-five
16 percent of the direct and indirect costs of administering and enforcing this
17 ~~article~~ ARTICLE 36 shall be funded from the general fund. The agricultural
18 commission shall establish a fee schedule to cover any direct and indirect
19 costs not funded from the general fund. The inspection fee shall be paid
20 by the person, firm, corporation, or other organization requesting the
21 service at the time it is rendered or as otherwise provided and authorized
22 by the commission.

23 ~~(b) Repealed.~~

24 (3) All ~~moneys~~ MONEY collected pursuant to this section shall be
25 transmitted to the state treasurer, who shall credit the same to the
26 inspection and consumer services cash fund created in section 35-1-106.5.

27 ~~C.R.S.~~

1 **35-36-119. [Formerly 12-16-218] Bonds or irrevocable letters**
2 **of credit - exemptions.** (1) (a) Before any license is issued to any
3 commodity handler, the applicant shall file with the commissioner a bond
4 executed by the applicant as principal and by a surety company qualified
5 and authorized to do business in this state as a surety or an irrevocable
6 letter of credit meeting the requirements of section 11-35-101.5, ~~C.R.S.~~,
7 in the sum of not less than ten thousand dollars nor more than one million
8 dollars, at the discretion of the commissioner.

9 (b) The bond or irrevocable letter of credit must be conditioned
10 upon compliance with this ~~part 2~~ ARTICLE 36 and upon the faithful and
11 honest handling of commodities in accordance with this ~~part 2~~ ARTICLE
12 36 and must cover any inspection fees due the department of agriculture
13 by the commodity handler and all costs and reasonable attorney fees
14 incident to any suit upon the bond or irrevocable letter of credit. The bond
15 or irrevocable letter of credit must be to the department of agriculture in
16 favor of every producer or owner and, in the instance of a bond, must
17 remain in full force and effect until cancelled by the surety upon thirty
18 days' prior written notice to the commissioner.

19 (c) (I) Any producer or owner within the state of Colorado
20 claiming to be injured by the fraud, deceit, or willful negligence of, or
21 failure to comply with this ~~part 2~~ ARTICLE 36 by, any commodity handler
22 may request the department, as beneficiary, to demand payment on the
23 irrevocable letter of credit or surety bond to recover the damages caused
24 by ~~such~~ THE fraud, deceit, willful negligence, or failure to comply with
25 this ~~part 2~~ ARTICLE 36.

26 (II) The surety on the bond or the issuer of the letter of credit is
27 not liable to pay any claim pursuant to any action brought under this ~~part~~

1 2 ARTICLE 36 if the action is not commenced within one hundred eighty
2 days after the date of the transaction, as that term is defined in section
3 ~~12-16-215 (12)~~ 35-36-116 (13), on which the claim is based, or the date
4 of the loss, whichever is later.

5 (d) When any action is commenced on said bond or irrevocable
6 letter of credit, the commissioner may require the filing of a new bond or
7 irrevocable letter of credit, and the commodity handler's failure to file the
8 new bond or irrevocable letter of credit within ten days after the
9 commencement of said action constitutes grounds for the suspension or
10 revocation of his OR HER license.

11 (e) Any person licensed pursuant to ~~part 1 of this article~~ ARTICLE
12 37 OF THIS TITLE 35 may apply for a license as a commodity handler and
13 shall not be subject to the license fee required by section ~~12-16-205~~
14 35-36-105. The bond or irrevocable letter of credit required by section
15 ~~12-16-106~~ 35-37-106 shall also apply to ~~such~~ THE person's activities as
16 a commodity handler and shall be subject to the provisions of this section
17 and section ~~12-16-215~~ 35-36-116.

18 (2) Whenever the commissioner determines that a previously
19 approved bond or irrevocable letter of credit is or for any cause has
20 become insufficient, ~~he~~ THE COMMISSIONER may require an additional
21 bond or irrevocable letter of credit or other evidence of financial
22 responsibility to be given by a commodity handler to conform to the
23 requirements of this ~~part 2~~ ARTICLE 36 or any rule ~~or regulation~~
24 promulgated pursuant to the provisions of this ~~part 2~~ ARTICLE 36. The
25 commodity handler's failure to comply with the commissioner's
26 requirement within thirty days after written demand therefor constitutes
27 grounds for the suspension or revocation of his OR HER license.

1 (3) ~~Repealed.~~

2 **35-36-120. [Formerly 12-16-219] Cease-and-desist order -**

3 **restraining order.** (1) If the commissioner determines that there exists
4 a violation of any provision of this ~~part 2~~ ARTICLE 36 or of any rule ~~or~~
5 ~~regulation~~ promulgated under the authority of this ~~part 2~~ ARTICLE 36, the
6 commissioner may issue a cease-and-desist order, which may require any
7 person to cease functioning as a commodity handler, except for those
8 functions necessary to prevent spoilage of products stored in his OR HER
9 public warehouse. ~~Such~~ THE order shall set forth the provision alleged to
10 have been violated, the facts alleged to have constituted the violation, and
11 the requirement that all functions, except those necessary to prevent
12 spoilage, be ceased forthwith. At any time after the date of the service of
13 the order to cease and desist, the person may request a hearing on the
14 question of whether or not ~~any such~~ THE violation has occurred. ~~Such~~ THE
15 hearing shall be concluded in not more than ten days after ~~such~~ THE
16 request and shall be conducted pursuant to the provisions of article 4 of
17 title 24. ~~C.R.S.~~

18 (2) In the event that any person fails to comply with a
19 cease-and-desist order within twenty-four hours after service, the
20 commissioner may apply to a court of competent jurisdiction to
21 temporarily or permanently restrain or enjoin the act or practice in
22 question and to enforce compliance with this ~~part 2~~ ARTICLE 36 or any
23 rule or order pursuant to this ~~part 2~~ ARTICLE 36. In any such action, the
24 commissioner shall not be required to plead or prove irreparable injury or
25 the inadequacy of a remedy at law. Under no circumstances shall the
26 court require the commissioner to post a bond.

27 (3) No stay of a cease-and-desist order shall be issued before a

1 hearing thereon involving both parties.

2 (4) Matters brought before a court pursuant to this section shall
3 have preference over other matters on the court's calendar.

4 **35-36-121. [Formerly 12-16-219.5] Civil penalties.** (1) Any
5 person who violates any provision of this ~~part 2~~ ARTICLE 36 or any
6 ~~regulation~~ RULE enacted pursuant to this ~~part 2~~ ARTICLE 36 is subject to
7 a civil penalty as determined by the commissioner. The maximum penalty
8 shall not exceed one thousand dollars per violation per day.

9 (2) No civil penalty may be imposed unless the person charged is
10 given notice and an opportunity for a hearing pursuant to article 4 of title
11 24. ~~C.R.S.~~

12 (3) If the commissioner is unable to collect a civil penalty or if any
13 person fails to pay all or any portion of a civil penalty, the commissioner
14 may recover ~~such~~ THE amount, plus costs and attorney fees, by action in
15 any court of competent jurisdiction.

16 (4) Under circumstances where the commissioner did not have
17 probable cause to impose a civil penalty, the person charged may recover
18 his OR HER costs and attorney fees from the department of agriculture.

19 (5) All ~~moneys~~ MONEY collected from civil penalties pursuant to
20 the provisions of this section shall be transmitted to the state treasurer and
21 credited to the inspection and consumer services cash fund created in
22 section 35-1-106.5. ~~C.R.S.~~

23 (6) Before imposing a civil penalty, the commissioner may
24 consider the effect of ~~such~~ THE penalty on the ability of the person
25 charged to stay in business.

26 **35-36-122. [Formerly 12-16-220] Appeal.** Any action of the
27 commissioner with reference to the administration of this ~~part 2~~ ARTICLE

1 36 may be reviewed by any court of competent jurisdiction pursuant to
2 the provisions of section 24-4-106 ~~C.R.S.~~, only after all administrative
3 remedies have been exhausted.

4 **35-36-123. [Formerly 12-16-221] Unlawful acts.** (1) It is
5 unlawful and a violation of this ~~part 2~~ ARTICLE 36 for any person to:

6 (a) Make fraudulent charges or returns for the handling, sale, or
7 storage or for the rendering of any service in connection with the
8 handling, sale, or storage of any commodities. Violation of this ~~paragraph~~
9 ~~(a)~~ SUBSECTION (1)(a) shall constitute a class 6 felony.

10 (b) Willfully fail or refuse to render a true account of sales or
11 storage or to make a settlement thereon or to pay for commodities
12 received on the date and in the manner specified in the contract with the
13 owner or, if no date is specified in the contract or on delivery, within
14 thirty days after the date of delivery or the date on which the person took
15 possession of ~~such~~ THE commodities. Violation of this ~~paragraph (b)~~
16 SUBSECTION (1)(b) shall constitute a class 6 felony.

17 (c) Intentionally make false or misleading statements as to the
18 market conditions for commodities or false or misleading statements as
19 to the condition, quality, or quantity of commodities received, handled,
20 sold, or stored. Violation of this ~~paragraph (c)~~ SUBSECTION (1)(c) shall
21 constitute a class 6 felony.

22 (d) Engage in fictitious sales, in collusion, or in unfair practices
23 to defraud the owners. Violation of this ~~paragraph (d)~~ SUBSECTION (1)(d)
24 shall constitute a class 6 felony.

25 (e) Act as a commodity handler without having obtained a license
26 or act as a commodity handler without having filed a surety bond or
27 irrevocable letter of credit, as provided in this ~~part 2~~ ARTICLE 36.

1 Violation of this ~~paragraph (e)~~ SUBSECTION (1)(e) shall constitute a class
2 6 felony.

3 (f) Willfully convert to his OR HER own use or benefit the
4 commodities of another. Violation of this ~~paragraph (f)~~ SUBSECTION (1)(f)
5 shall constitute theft, as defined in section 18-4-401. ~~C.R.S.~~

6 (g) Commit fraud or deception in the procurement or attempted
7 procurement of a license. Violation of this ~~paragraph (g)~~ SUBSECTION
8 (1)(g) shall constitute a class 1 misdemeanor.

9 (h) Fail to comply with any lawful order of the commissioner
10 concerning the administration of this ~~part 2~~ ARTICLE 36. Violation of this
11 ~~paragraph (h)~~ SUBSECTION (1)(h) shall constitute a class 1 misdemeanor.

12 (i) Interfere with or hinder an authorized representative of the
13 department while performing his OR HER duties under this ~~part 2~~ ARTICLE
14 36. Violation of this ~~paragraph (i)~~ SUBSECTION (1)(i) shall constitute a
15 class 1 misdemeanor.

16 (j) Willfully alter or destroy any negotiable warehouse receipt or
17 the record of ~~such~~ THE negotiable warehouse receipt or issue a negotiable
18 warehouse receipt without preserving a record thereof; or issue a
19 negotiable warehouse receipt when the commodity described is not in the
20 building certified in the receipt; or, with intent to defraud, issue a second
21 or other negotiable warehouse receipt for any commodity for which, or
22 for any part of which, a valid negotiable warehouse receipt is already
23 outstanding and in force; or, while any valid negotiable warehouse receipt
24 is outstanding and in force, sell, pledge, mortgage, encumber, or transfer
25 a commodity in violation of the provisions of this ~~part 2~~ ARTICLE 36 or
26 permit the same to be done without the written consent of the holder of
27 the negotiable warehouse receipt or receive ~~such~~ THE property or help to

1 dispose of the same. Violation of this ~~paragraph (j)~~ SUBSECTION (1)(j)
2 shall constitute a class 6 felony.

3 (k) Sell commodities for less than the current market price to any
4 person with whom he or she has any financial connection, directly or
5 indirectly, either as an owner of the corporate stock of a corporation, as
6 a copartner, or in any other capacity, or sell any commodities out of the
7 purchase price of which said handler, directly or indirectly, retains any
8 portion thereof other than the commission allowed and reported pursuant
9 to section ~~12-16-112~~ 35-37-114. Violation of this ~~paragraph (k)~~
10 SUBSECTION (1)(k) shall constitute theft, as defined in section 18-4-401.

11 ~~C.R.S.~~

12 (l) Act as a commodity handler and, with intent to defraud, make,
13 draw, utter, or deliver any check, draft, or order for the payment of money
14 upon any bank or other depository to the owner for the purchase price of
15 any commodities or any part thereof upon obtaining possession or control
16 thereof, when at the time of the making, drawing, uttering, or delivery the
17 maker or drawer has not sufficient funds in or credit with ~~such~~ THE bank
18 or other depository for the payment of ~~such~~ THE check, draft, or order in
19 full upon its presentation. The making, drawing, uttering, or delivery of
20 ~~such~~ THE check, draft, or order shall be prima facie evidence of an intent
21 to defraud. "Credit", as used in this ~~paragraph (l)~~ SUBSECTION (1)(l),
22 means an arrangement or understanding with the bank or depository for
23 the payment of ~~such~~ THE check, draft, or order. Violation of this
24 ~~paragraph (l)~~ SUBSECTION (1)(l) shall constitute fraud by check, as
25 defined in section 18-5-205. ~~C.R.S.~~

26 **35-36-124. [Formerly 12-16-222] Penalties.** (1) Any person who
27 violates any of the provisions of section ~~12-16-221 (1)(a), (1)(b), (1)(c),~~

1 ~~(1)(d), (1)(e), or (1)(j)~~ 35-36-123 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), OR
2 (1)(j) commits a class 6 felony and shall be punished as provided in
3 section 18-1.3-401. ~~C.R.S.~~ Any person who violates any of the provisions
4 of section ~~12-16-221 (1)(f)~~ 35-36-123 (1)(f) commits theft, as defined in
5 section 18-4-401. ~~C.R.S.~~ Any person who violates any of the provisions
6 of section ~~12-16-221 (1)(g), (1)(h), or (1)(i)~~ 35-36-123 (1)(g), (1)(h), OR
7 (1)(i) commits a class 1 misdemeanor and shall be punished as provided
8 in section 18-1.3-501. ~~C.R.S.~~

9 (2) Any person who violates any other provision of this ~~part 2~~
10 ARTICLE 36 commits a class 1 misdemeanor and shall be punished as
11 provided in section 18-1.3-501. ~~C.R.S.~~

12 (3) Civil suits and criminal prosecutions arising by virtue of any
13 of the provisions of this ~~part 2~~ ARTICLE 36 may be commenced and tried
14 either in the county in which the commodities were received by the
15 commodity handler, or in the county in which the principal place of
16 business of ~~such~~ THE commodity handler is located, or in the county in
17 which the violation of this ~~part 2~~ ARTICLE 36 occurred. The attorney
18 general or the district attorney for the judicial district in which the
19 violation of any of the provisions of this ~~part 2~~ ARTICLE 36 occurs shall,
20 upon the request of any enforcing officer or other interested person,
21 prosecute ~~such~~ THE violation.

22 **35-36-125. [Formerly 12-16-223] Repeal of article.** This ~~article~~
23 ARTICLE 36 is repealed, effective July 1, 2020. Prior to ~~such~~ THE repeal,
24 the licensing functions of the commissioner shall be reviewed as provided
25 for in section 24-34-104. ~~C.R.S.~~

26 **SECTION 2.** In Colorado Revised Statutes, **add with amended**
27 **and relocated provisions** article 37 to title 35 as follows:

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ARTICLE 37

Farm Products

35-37-101. [Formerly 12-16-101] Short title. ~~This part shall be known and may be cited as~~ THE SHORT TITLE OF THIS ARTICLE 37 IS the "Farm Products Act".

35-37-102. [Formerly 12-16-102] Legislative declaration. The general assembly hereby declares that farm products are commodities affected with a public interest and thus should be regulated for the protection of both the producer and the consumer.

35-37-103. [Formerly 12-16-103] Definitions - rules. As used in this ~~part~~ ARTICLE 37, unless the context otherwise requires:

(1) "Agent" means any person who, on behalf of any dealer or small-volume dealer, buys, receives, contracts for, or solicits any farm products from or sells farm products for the owner thereof or who negotiates the consignment or purchase of any farm products on behalf of any dealer or small-volume dealer.

~~(1.5)~~ (2) "Commercial feeding" means the feeding of livestock by a person who receives compensation from the owner of the livestock for ~~such~~ THE feeding.

~~(2)~~ (3) "Commissioner" means the commissioner of agriculture or his OR HER designee.

~~(2.5)~~ (4) "Commodity" means unprocessed small, hard seeds or fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans, beans, grain sorghums, and ~~such~~ other seeds or fruits as may be determined by the commissioner.

~~(3)~~ (5) "Consignor" includes any person who ships or delivers to any dealer or small-volume dealer any farm products for handling, sale,

1 or resale.

2 ~~(3.5)~~ (6) "Credit sale contract" means a contract for the sale of a
3 farm product when the sale price is to be paid on a date later than thirty
4 days after delivery of the farm product to the buyer and includes those
5 contracts commonly referred to as deferred payment contracts, deferred
6 pricing contracts, and price later contracts.

7 ~~(4)(a)~~ (7) (a) "Dealer" means:

8 (I) Any person engaged in buying any farm products from the
9 owner for processing or resale;

10 (II) Any person engaged in receiving and taking possession of any
11 farm products from the owner for storage or safekeeping;

12 (III) Any person engaged in soliciting or negotiating sales of farm
13 products between the vendor and purchaser respectively;

14 (IV) Any person who receives on consignment or solicits from the
15 owner thereof any kind of farm product for sale on commission on behalf
16 of ~~such~~ THE owner, or who accepts any farm product in trust from the
17 owner thereof for the purpose of resale, or who sells or offers for sale on
18 commission any farm product or in any way handles any farm product for
19 the account of, or as an agent of, the owner thereof; or

20 (V) Any person engaged in buying any farm products from the
21 owner thereof for the commercial feeding of livestock that are owned
22 wholly or in part by another, at an animal feeding operation with a
23 capacity of more than two thousand five hundred head of livestock. The
24 commissioner shall establish rules to determine the capacity of animal
25 feeding operations for purposes of this ~~article~~ ARTICLE 37.

26 (b) "Dealer" does not include:

27 (I) A bona fide retail grocery merchant or restaurateur having a

1 fixed or established place of business in Colorado as long as the use of
2 farm products by ~~any such~~ THE person is directly related to the operation
3 of the person's retail grocery or restaurant; or

4 (II) A producer under the "Colorado Cottage Foods Act", section
5 25-4-1614 (9)(c), ~~C.R.S.~~, who earns net revenues of ten thousand dollars
6 or less per calendar year from the sale of each eligible food product.

7 ~~(5) (a) (I)~~ (8) (a) (I) "Farm products" includes the following
8 unprocessed products produced in Colorado or owned by any Colorado
9 resident, dealer, or small-volume dealer:

10 (A) Agricultural, horticultural, viticultural, fruit, and vegetable
11 products of the soil;

12 (B) Livestock and livestock products, except livestock held by the
13 purchaser and not resold or processed within ninety days after the
14 purchase date;

15 (C) Milk; and

16 (D) Honey.

17 (II) The term also includes ensiled corn and baled, cubed, or
18 ground hay.

19 (b) "Farm products" does not include poultry and poultry products,
20 timber products, nursery stock, or commodities.

21 ~~(5.5)~~ (9) "Livestock" has the same meaning as set forth in section
22 35-1-102 (6). ~~C.R.S.~~

23 ~~(6)~~ (10) "Owner" means any person in whom legal title to any
24 farm product is vested, whether produced by him OR HER or acquired by
25 purchase.

26 ~~(7)~~ (11) "Person" includes an individual, a firm, an association, a
27 partnership, a corporation, or the commissioner.

1 ~~(8)~~ (12) "Processing" means the operation of drying, canning,
2 fermenting, distilling, extracting, preserving, grinding, crushing, flaking,
3 mixing, or otherwise changing the form of a farm product for the purpose
4 of reselling the product.

5 ~~(9)~~ (13) "Producer" means any person engaged in growing or
6 producing any farm product.

7 ~~(10)~~ (14) "Retail grocery merchant" means any person whose sales
8 are more than fifty percent non-farm product grocery household
9 merchandise.

10 ~~(10.5)~~ (15) "Small-volume dealer" means any person who:

11 (a) Does not qualify as a "dealer" under ~~subparagraph (II), (III),~~
12 ~~(IV), or (V) of paragraph (a) of subsection (4)~~ SUBSECTIONS (7)(a)(II) TO
13 (7)(a)(V) of this section;

14 (b) Has a fixed or established place of business in Colorado;

15 (c) Buys less than twenty thousand dollars' worth of farm products
16 or commodities, in aggregate, per year from the owners for processing or
17 resale;

18 (d) Does not purchase in a single transaction two thousand five
19 hundred dollars' worth or more of farm products or commodities, in
20 aggregate; and

21 (e) Does not purchase farm products for commercial feeding of
22 livestock.

23 ~~(11) (Deleted by amendment, L. 95, p. 693, § 1, effective May 23,~~
24 ~~1995.)~~

25 **35-37-104. [Formerly 12-16-104] Application for license -**
26 **rules.** (1) No person shall act as a dealer, small-volume dealer, or agent
27 without having obtained a license as provided in this ~~part~~ ARTICLE 37.

1 Every person acting as a dealer, small-volume dealer, or agent shall file
2 an application in writing with the commissioner for a license to transact
3 the business of dealer, small-volume dealer, or agent, and ~~such~~ THE
4 application shall be accompanied by the license fee provided for in
5 section ~~12-16-105~~ 35-37-105 for each specified class of business.

6 (2) The application in each case shall state the class or classes of
7 farm products the applicant proposes to handle, the full name of the
8 person applying for ~~such~~ THE license, and, if the applicant is a firm,
9 exchange, association, or corporation, the full name of each member of
10 the firm or the names of the officers of the exchange, association, or
11 corporation. ~~Such~~ THE application shall further state the principal
12 business address of the applicant in the state of Colorado and elsewhere
13 and the names of the persons authorized to receive and accept service of
14 summons and legal notices of all kinds for the applicant. The applicant
15 shall further satisfy the commissioner of his OR HER character,
16 responsibility, and good faith in seeking to carry on the business stated in
17 the application. In determining a person's character, the commissioner
18 shall be governed by the provisions of section 24-5-101. ~~C.R.S.~~

19 (3) In addition to the general requirements applicable to all classes
20 of applications, as set forth in this section, each application for an agent's
21 license shall include such information as the commissioner may consider
22 proper or necessary, and ~~such~~ THE application shall include the name and
23 address of the applicant and the name and address of each dealer or
24 small-volume dealer represented or sought to be represented by said agent
25 and the written endorsement or nomination of ~~such~~ THE dealer or
26 small-volume dealer. No person shall be licensed as an agent unless all
27 of ~~such~~ THE agent's principals are licensed under this ~~part~~ ARTICLE 37.

1 (4) Upon the applicant's filing of the proper application with the
2 commissioner, accompanied by the proper fee, and when the
3 commissioner is satisfied that the convenience and necessity of the
4 industry and the public will be served thereby, the commissioner shall
5 issue to ~~such~~ THE applicant a license entitling the applicant to conduct the
6 business described in the application at the place named in the application
7 until the date specified by the commissioner by rule or until the license
8 has been suspended or revoked. The license of an agent shall expire upon
9 the date of expiration of the license of the principal for whom the agent
10 acts. The commissioner may also issue a license to each agent, with a
11 separate agent's license being required for each principal. Any dealer,
12 small-volume dealer, or agent shall show ~~said~~ THE license upon the
13 request of any interested person. Each licensed dealer, small-volume
14 dealer, or agent shall post ~~such~~ THE person's license or a copy thereof in
15 the person's office or salesroom in plain view of the public.

16 (5) Fraud or misrepresentation in making any application shall
17 ipso facto work a revocation of any license granted pursuant thereto. All
18 indicia of the possession of a license shall be at all times the property of
19 the state of Colorado, and each licensee is entitled to the possession
20 thereof only for the duration of said license.

21 (6) Any person licensed under ~~part 2 of this article~~ ARTICLE 36 OF
22 THIS TITLE 35 may apply for a license as a dealer or small-volume dealer
23 without paying the license fee otherwise required by section ~~12-16-105~~
24 35-37-105.

25 **35-37-105. [Formerly 12-16-105] License fee - renewal - rules.**

26 (1) (a) For filing the application described in section ~~12-16-104~~
27 35-37-104, each applicant for a license in each of the following categories

1 shall pay to the commissioner a fee as determined by the agricultural
2 commission, which fee shall be transmitted to the state treasurer for credit
3 to the inspection and consumer services cash fund created in section
4 35-1-106.5: ~~C.R.S.~~

5 (I) Dealers; except that a dealer who signs an affidavit stating that
6 ~~such~~ THE dealer shall make payment in cash or by one of the other means
7 specified in section ~~12-16-106(1)(f)~~ 35-37-106 (1)(e) for each transaction
8 for farm products shall pay the same application fee as a small-volume
9 dealer;

10 (II) Agents; and

11 (III) Small-volume dealers.

12 (b) ~~(f)~~ For each fiscal year, commencing on July 1, twenty-five
13 percent of the direct and indirect costs of administering and enforcing this
14 ~~article~~ ARTICLE 37 shall be funded from the general fund. The agricultural
15 commission shall establish a fee schedule to cover any direct and indirect
16 costs not funded from the general fund.

17 ~~(H) Repealed.~~

18 (2) If any licensee fails for any reason to apply for the renewal of
19 a license before an annual date specified by the commissioner by rule,
20 ~~such~~ THE licensee shall, upon application for a renewal license and before
21 ~~such~~ THE license is issued, pay a penalty as established by the agricultural
22 commission, which shall be in addition to the license fee.

23 (3) Any person against whose surety a claim has been collected or
24 any person against whom an irrevocable letter of credit has been drawn
25 by the commissioner in accordance with the provisions of this ~~part~~
26 ARTICLE 37 shall not be licensed by the commissioner during the period
27 of three years from the date of ~~such~~ THE collection; except that the

1 commissioner may, in his OR HER discretion and consistent with the
2 purpose of this ~~part~~ ARTICLE 37, issue a temporary license to ~~such~~ THE
3 person for ~~such~~ THE period, subject to such restrictions as the
4 commissioner deems reasonable and necessary.

5 (4) Any licensee who has a verified complaint pending against
6 him OR HER with the commissioner shall not be issued a renewal license
7 until the complaint has been settled to the satisfaction of the
8 commissioner.

9 (5) Upon the failure of an applicant to file a bond or an
10 irrevocable letter of credit meeting the requirements of section
11 11-35-101.5, ~~C.R.S.~~, within ninety days of the date of application, the
12 application will be rendered void, and the license fee will not be
13 refunded. Any subsequent application for a license shall require a new
14 license fee.

15 (6) Whenever the commissioner deems it appropriate, the
16 commissioner may require of any applicant for an initial license, any
17 applicant for a renewal of a license, or any licensee the submission of a
18 financial statement or an audit, prepared by a certified public accountant,
19 or any other information to determine whether ~~such~~ THE person is in an
20 adequate financial position to carry out his or her duties as a licensee.

21 **35-37-106. [Formerly 12-16-106] Bonds and irrevocable letters**
22 **of credit - exemptions.** (1) (a) Before any license is issued to any dealer,
23 the applicant shall file with the commissioner a bond executed by the
24 applicant as principal and by a surety company qualified and authorized
25 to do business in this state as a surety or an irrevocable letter of credit
26 meeting the requirements of section 11-35-101.5 ~~C.R.S.~~, in the sum of not
27 less than two thousand dollars nor more than two hundred thousand

1 dollars, at the discretion of the commissioner.

2 ~~(b) Repealed.~~

3 ~~(e)~~(b) The bond or irrevocable letter of credit must be conditioned
4 upon compliance with this ~~part~~ ARTICLE 37 and upon the faithful and
5 honest handling of farm products in accordance with this ~~part~~ ARTICLE
6 37 and shall cover any fees due the department of agriculture by the
7 dealer and all costs and reasonable attorney fees incident to any suit upon
8 the bond or irrevocable letter of credit. The bond or irrevocable letter of
9 credit must be to the department of agriculture in favor of every producer,
10 dealer, small-volume dealer, or owner and, in the instance of a bond, must
11 remain in full force and effect until cancelled by the surety upon thirty
12 days' prior written notice to the commissioner.

13 ~~(d)~~ (c) (I) Any producer, owner, small-volume dealer, or other
14 dealer within the state of Colorado claiming to be injured by the fraud,
15 deceit, or willful negligence of, or failure to comply with this ~~part~~
16 ARTICLE 37 by, any dealer may request the department of agriculture, as
17 beneficiary, to demand payment on the irrevocable letter of credit or
18 surety bond to recover the damages caused by the fraud, deceit, willful
19 negligence, or failure to comply with this ~~part~~ ARTICLE 37.

20 (II) The surety on the bond or the issuer of the letter of credit is
21 not liable to pay any claim pursuant to any action brought under this ~~part~~
22 ~~+~~ ARTICLE 37 if the action is not commenced within one hundred eighty
23 days after the date of the transaction, as that term is defined in section
24 ~~12-16-215 (12)~~ 35-36-116 (13), on which the claim is based, or the date
25 of the loss, as that term is defined in section ~~12-16-202 (10)~~ 35-36-102
26 (15), whichever is later.

27 ~~(e)~~(d) When any action is commenced on said bond or irrevocable

1 letter of credit, the commissioner may require the filing of a new bond or
2 irrevocable letter of credit, and failure of the licensee to file the new bond
3 or irrevocable letter of credit within ten days after the commencement of
4 said action constitutes grounds for the suspension or revocation of his OR
5 HER license.

6 (f) (e) No bond or irrevocable letter of credit shall be required of
7 a dealer who pays for farm products in cash or with a bank-certified
8 check, a bank cashier's check, an irrevocable electronic funds transfer, or
9 a money order at the time the dealer obtains from the owner thereof
10 possession or control of the farm products, or of an applicant for a license
11 or a licensee operating under a bond required by the United States to
12 secure the performance of his or her obligations; except that the bond
13 shall include all obligations pertaining to Colorado farm products, and
14 documentary evidence shall be furnished to the commissioner that the
15 bond required by the United States is in full force and effect.

16 (g) (f) The bond or irrevocable letter of credit required by section
17 ~~12-16-218~~ 35-36-119 shall apply to the activities as a dealer of any person
18 licensed pursuant to ~~part 2 of this article.~~ Such ARTICLE 36 OF THIS TITLE
19 35. THE persons shall also be subject to the provisions of this section and
20 section ~~12-16-107~~ 35-37-107.

21 (2) Whenever the commissioner determines that a previously
22 approved bond or irrevocable letter of credit is, or for any cause has
23 become, insufficient, ~~he~~ THE COMMISSIONER may require an additional
24 bond or irrevocable letter of credit or other evidence of financial
25 responsibility to be given by a dealer to conform to the requirements of
26 this ~~part~~ ARTICLE 37 or any rule or regulation promulgated pursuant to
27 the provisions of this ~~part~~ ARTICLE 37. The failure of the dealer to

1 comply with the commissioner's requirement within thirty days after
2 written demand therefor constitutes grounds for the suspension or
3 revocation of his OR HER license.

4 ~~(3) Repealed.~~

5 **35-37-107. [Formerly 12-16-107] Investigations, hearings, and**
6 **examinations.** (1) For the purpose of enforcing the provisions of this
7 ~~part 4~~ ARTICLE 37, the commissioner may receive complaints from
8 persons against any dealer, small-volume dealer, agent, or person
9 assuming or attempting to act as such and, upon the receipt of ~~such~~ THE
10 a complaint, may make any and all necessary investigations relative to
11 ~~said~~ THE complaint.

12 (2) The commissioner upon his OR HER own motion may, and
13 upon the verified complaint of any person shall, investigate any
14 transactions involving any provisions of this ~~part 4~~ ARTICLE 37.

15 (3) (a) The commissioner, upon consent of the licensee or upon
16 obtaining an administrative search warrant, shall have free and
17 unimpeded access to all buildings, yards, warehouses, and storage
18 facilities owned by a licensee in which any farm products are kept, stored,
19 handled, processed, or transported.

20 (b) The commissioner, upon consent of the licensee or upon
21 obtaining a search warrant, shall have free and unimpeded access to all
22 records required to be kept and may make copies of ~~such~~ THE records.

23 (c) The commissioner shall have full authority to administer oaths
24 and take statements, to issue subpoenas requiring the attendance of
25 witnesses ~~before him~~ and the production of all books, memoranda,
26 papers, and other documents, articles, or instruments, and to compel the
27 disclosure by ~~such~~ THE witnesses of all facts known to them relative to

1 the matters under investigation. Upon the failure or refusal of any witness
2 to obey any subpoena, the commissioner may petition the district court,
3 and, upon a proper showing, the court may enter an order compelling the
4 witness to appear and testify or produce documentary evidence. Failure
5 to obey ~~such an~~ THE order of the court shall be punishable as a contempt
6 of court.

7 (4) The commissioner may examine the ledgers, books, accounts,
8 memoranda, and other documents and the farm products, scales,
9 measures, and other items in connection with the business of any licensee
10 relating to whatever transactions may be involved.

11 (5) The commissioner shall not be required to investigate or act
12 upon complaints regarding transactions ~~which~~ THAT occurred more than
13 one hundred twenty days prior to the date upon which the commissioner
14 received the written complaint.

15 (6) If the investigation is against a licensee, the commissioner
16 shall proceed to ascertain the names and addresses of all producers,
17 dealers, small-volume dealers, or owners of farm products, together with
18 the accounts unaccounted for or due and owing to them by ~~said~~ THE
19 licensee, and shall request all ~~such~~ THE producers, dealers, small-volume
20 dealers, or owners to file verified statements of their respective claims
21 with the commissioner. If a producer, dealer, small-volume dealer, or
22 owner so requested fails, refuses, or neglects to file a verified statement
23 in the office of the commissioner within thirty days after the date of ~~such~~
24 THE request, the commissioner shall thereupon be relieved of any further
25 duty or action under this ~~part~~ ARTICLE 37 on behalf of said producer,
26 dealer, small-volume dealer, or owner.

27 (7) In the course of any investigation, the commissioner may

1 attempt to effectuate a settlement between the respective parties.

2 (8) (a) If the commissioner determines, after concluding an
3 investigation on any complaint, that reasonable grounds exist to believe
4 that a licensee has violated any of the provisions of this ~~part 1, he~~
5 ARTICLE 37, THE COMMISSIONER shall notify the licensee that ~~such~~ THE
6 complaint is valid and shall inform the licensee of his OR HER opportunity
7 to request a hearing, in writing, on ~~such~~ THE complaint within ten days
8 after the date of ~~such~~ THE notice.

9 (b) Upon the receipt of a request for a hearing from a licensee or
10 if the commissioner determines that a hearing concerning any licensee is
11 necessary, ~~he~~ THE COMMISSIONER shall cause a copy of the complaint or
12 the grounds specified in section ~~12-16-108~~ 35-37-108, together with a
13 notice of the time and place of the hearing, to be served personally or by
14 mail upon ~~such~~ THE licensee. Service shall be made at least ten days
15 before the hearing, which shall be held in the city or town in which the
16 business location of the licensee is situated, or in which the transactions
17 involved allegedly occurred, or at the location deemed by the
18 commissioner to be most convenient.

19 (c) The commissioner shall conduct ~~such~~ THE hearing pursuant to
20 the provisions of section 24-4-105. ~~C.R.S.~~ Thereafter, the commissioner
21 shall enter in his OR HER office a decision specifying the relevant facts
22 established at ~~such~~ THE hearing. If the commissioner determines from the
23 facts specified that the licensee has not violated any of the provisions of
24 this ~~part 1~~ ARTICLE 37, the complaint shall be dismissed. If the
25 commissioner determines from the facts specified that the licensee has
26 violated any of the provisions of this ~~part 1~~ ARTICLE 37, and that the
27 licensee has not yet made complete restitution to the person complaining,

1 ~~he~~ THE COMMISSIONER shall determine the amount of damages, if any, to
2 which ~~such~~ THE person is entitled as the result of ~~such~~ THE violation and
3 ~~he shall~~ enter an order directing the offender to pay the person
4 complaining ~~such~~ THE amount on or before the date fixed in the order. A
5 copy of the decision shall be furnished to all the respective parties to the
6 complaint.

7 (9) As a result of ~~such~~ THE hearing, the commissioner may also
8 enter any order suspending or revoking the license of a licensee or may
9 place the licensee on probation if the commissioner determines that the
10 licensee has committed any of the unlawful acts specified in section
11 ~~42-16-115~~ 35-37-118 or that the licensee has violated any of the
12 provisions of this ~~part~~ ARTICLE 37.

13 (10) (a) If a person against whom an order, as specified in
14 ~~paragraph (c) of subsection (8)~~ SUBSECTION (8)(c) of this section, is made
15 and issued fails, neglects, or refuses to obey ~~said~~ THE order within the
16 time specified in the order, the commissioner may thereupon issue a
17 further order to that person directing him OR HER to show cause why his
18 OR HER license should not be suspended or revoked for failure to comply
19 with ~~said~~ THE order.

20 (b) In such case, a copy of ~~said~~ THE order to show cause, together
21 with a notice of the time and place of the hearing thereupon, shall be
22 served personally or by mail upon the person involved. Service shall be
23 made at least ten days before the hearing, which shall be held in the city
24 or town in which the business location of the licensee is situated or at any
25 convenient place designated by the commissioner.

26 (c) The commissioner shall conduct ~~such~~ THE hearing pursuant to
27 the provisions of section 24-4-105 ~~C.R.S.~~, and thereafter shall enter in his

1 OR HER office an order and decision specifying the facts established at the
2 hearing and either dismissing the order to show cause, or directing the
3 suspension or revocation of the license held by the licensee, or making
4 such other conditional or probationary orders as may be proper. A copy
5 of ~~said~~ THE order and decision shall be furnished to the licensee.

6 (d) Nothing in this section shall be construed as limiting the power
7 of the commissioner to revoke or suspend a license when ~~he is~~ satisfied
8 of the existence of any of the facts specified in section ~~12-16-115~~
9 35-37-118.

10 (11) Whenever the absence of records or other circumstances
11 makes it impossible or unreasonable for the commissioner to ascertain the
12 names and addresses of all persons specified in subsection (6) of this
13 section, the commissioner, after exercising due diligence and making a
14 reasonable inquiry to secure said information from all reasonable and
15 available sources, shall not be liable or responsible for the claims or the
16 handling of claims ~~which~~ THAT may subsequently appear or be
17 discovered. After ascertaining all claims, assessments, and statements in
18 the manner set forth in subsection (6) of this section, the commissioner
19 may then demand payment on the bond or irrevocable letter of credit on
20 behalf of those claimants whose claims have been determined by the
21 commissioner as valid and, in the instance of a bond, may settle or
22 compromise ~~said~~ THE claims with the surety company on the bond and
23 execute and deliver a release and discharge of the bond involved. Upon
24 the refusal of the surety company to pay the demand, the commissioner
25 may bring an action on the bond on behalf of the producer, dealer,
26 small-volume dealer, or owner.

27 (12) For the purpose of this section, a transaction is deemed to

1 have occurred:

2 (a) On the date that possession of farm products is transferred by
3 a claimant;

4 (b) On delayed payment transactions, on the contractual date of
5 payment or, if there is no contractual date of payment, thirty days
6 following the transfer of title.

7 (13) Complaints of record made to the commissioner and the
8 results of his OR HER investigations may, in the discretion of the
9 commissioner, be closed to public inspection during the investigatory
10 period and until dismissed or until notice of hearing and charges is served
11 on a licensee, unless otherwise provided by court order.

12 **35-37-108. [Formerly 12-16-108] Disciplinary powers -**
13 **licenses.** (1) The commissioner may deny any application for a license,
14 or may refuse to renew a license, or may revoke or suspend a license, or
15 may place a licensee on probation, as the case may require, if the licensee
16 or applicant has:

17 (a) Violated any of the provisions of this ~~part~~ ARTICLE 37 or
18 violated any of the rules ~~and regulations~~ promulgated by the
19 commissioner pursuant to this ~~part~~ ARTICLE 37;

20 (b) Been convicted of a felony under the laws of this state, or of
21 any other state, or of the United States; except that, in considering a
22 conviction of a felony, the commissioner shall be governed by the
23 provisions of section 24-5-101; ~~C.R.S.~~;

24 (c) Committed fraud or deception in the procurement or attempted
25 procurement of a license;

26 (d) Failed or refused to file with the commissioner a surety bond
27 or an irrevocable letter of credit, as required by section ~~12-16-106~~

1 35-37-106;

2 (e) Been determined by the commissioner to be in an inadequate
3 financial position to meet liability obligations;

4 (f) Failed to comply with any lawful order of the commissioner
5 concerning the administration of this ~~part~~ ARTICLE 37;

6 (g) Had a license revoked, suspended, or not renewed or has been
7 placed on probation in another state for cause, if ~~such~~ THE cause could be
8 the basis for the same or similar disciplinary action in this state.

9 (2) All proceedings concerning the denial, refusal to renew,
10 revocation, or suspension of a license or the placing of a licensee on
11 probation shall be conducted pursuant to the provisions of section
12 ~~12-16-107~~ 35-37-107 and article 4 of title 24. ~~C.R.S.~~

13 (3) Any previous violation of the provisions of this ~~part~~ ARTICLE
14 37 by the applicant or any person connected with ~~him~~ THE APPLICANT in
15 the business for which ~~he~~ THE APPLICANT seeks to be licensed, or in the
16 case of a partnership or corporation applicant any previous violations of
17 the provisions of this ~~part~~ ARTICLE 37 by a partner, officer, director, or
18 stockholder of more than thirty percent of the outstanding shares, is
19 sufficient grounds for the denial of a license.

20 **35-37-109. [Formerly 12-16-109] Cease-and-desist order - suit**
21 **for restraining order.** (1) If the commissioner determines that there
22 exists a violation of any provision of this ~~part~~ ARTICLE 37 or of any rule
23 ~~or regulation~~ promulgated under the authority of this ~~part~~ ARTICLE 37,
24 the commissioner may issue a cease-and-desist order, which may require
25 any person to cease functioning as a dealer or small-volume dealer,
26 except for those functions necessary to prevent spoilage of products
27 stored in ~~such~~ THE dealer's warehouse. ~~Such~~ THE order shall set forth the

1 provisions alleged to have been violated, the facts alleged to have
2 constituted the violation, and the requirement that all functions, except
3 those necessary to prevent spoilage, be ceased forthwith. At any time after
4 the date of the service of the order to cease and desist, the person may
5 request a hearing on the question of whether or not ~~any such~~ THE
6 violation has occurred. ~~Such~~ THE hearing shall be concluded in not more
7 than ten days after ~~such~~ THE request and shall be conducted pursuant to
8 the provisions of article 4 of title 24. ~~C.R.S.~~

9 (2) In the event that any person fails to comply with a
10 cease-and-desist order within twenty-four hours after service, the
11 commissioner may bring a suit pursuant to section ~~12-16-114 (2)~~
12 35-37-116 (2) to prevent any further or continued violation of ~~such~~ THE
13 order.

14 (3) No stay of a cease-and-desist order shall be issued before a
15 hearing thereon involving both parties.

16 (4) Matters brought before a court pursuant to this section shall
17 have preference over other matters on the court's calendar.

18 **35-37-110. [Formerly 12-16-110] Appeal.** Any action of the
19 commissioner with reference to the administration of this ~~part~~ ARTICLE
20 37 may be reviewed by any court of competent jurisdiction pursuant to
21 the provisions of section 24-4-106 ~~C.R.S.~~, only after all administrative
22 remedies have been exhausted.

23 **35-37-111. [Formerly 12-16-110.5] Credit sale contracts -**
24 **rules.** (1) When a dealer or small-volume dealer purchases farm products
25 for which payment has not been made, the dealer or small-volume dealer,
26 within thirty days after the receipt of the farm products, shall provide the
27 producer or owner of the farm products with a credit sale contract. The

1 credit sale contract must contain the following information:

2 (a) The type and quantity of farm products purchased and the date
3 of purchase;

4 (b) The charges for handling, if any;

5 (c) The name and address of the producer or owner and the
6 signature of the dealer or small-volume dealer or the authorized agent
7 thereof;

8 (d) The contract number required pursuant to subsection (4) of
9 this section; and

10 (e) One or more statements specified by the commissioner by rule,
11 including one that warns a producer that entering into a credit sale
12 contract entails a risk that the bond may not completely protect the
13 producer from loss in the event of a failure of the dealer or small-volume
14 dealer.

15 (2) Records of a dealer or small-volume dealer shall be retained
16 for a period of two years and shall reflect those credit sale contracts that
17 have been cancelled and those that are still open. ~~Such~~ THE records shall
18 be kept at the dealer's or small-volume dealer's place of business at all
19 times.

20 (3) An annual report of the status of all of a dealer's or
21 small-volume dealer's credit sale contracts may be required by the
22 commissioner.

23 (4) All credit sale contracts entered into by a dealer or
24 small-volume dealer shall be consecutively numbered by the dealer, and
25 copies thereof shall be made available for inspection by the commissioner
26 or the commissioner's authorized agents.

27 **35-37-112. [Formerly 12-16-111] Records of dealers.** (1) Every

1 dealer handling farm products for any consignor having received any
2 farm products on commission for sale shall promptly make and keep a
3 correct record, showing in detail the following with reference to the
4 handling, sale, or storage of ~~such~~ THE farm products:

- 5 (a) The name and address of the consignor;
- 6 (b) The date received;
- 7 (c) The condition and quantity upon arrival;
- 8 (d) The date of ~~such~~ THE sale for the account of the consignor;
- 9 (e) The price for which sold;
- 10 (f) An itemized statement of the charges to be paid by the
11 consignor in connection with the sale;
- 12 (g) The names and addresses of the purchasers if ~~said~~ THE dealer
13 has any financial interest in the business of ~~said~~ THE purchasers or if ~~said~~
14 THE purchasers have any financial interest in the business of ~~said~~ THE
15 dealer, directly or indirectly, as a holder of the other's corporate stock, as
16 a copartner, as a lender or borrower of money to or from the other, or in
17 any other capacity;
- 18 (h) A lot number or other identifying mark for each consignment,
19 which number or mark shall appear on all sales tags or other essential
20 records needed to show what the product actually sold for;
- 21 (i) Any claims ~~which~~ THAT have been or may be filed by the
22 dealer against any person for overcharges or for damages resulting from
23 the injury or deterioration of ~~such~~ THE farm products by the act, neglect,
24 or failure of ~~such~~ THE person; and ~~such~~ THE records shall be open to the
25 inspection of the commissioner and the consignor for whom ~~such~~ THE
26 claims are made.

27 **35-37-113. [Formerly 12-16-111.5] Records of small-volume**

1 **dealers.** Each small-volume dealer shall maintain records of all aspects
2 of each purchase of farm products in the form and manner required by the
3 commissioner.

4 **35-37-114. [Formerly 12-16-112] Daily reports and**
5 **settlements.** (1) When requested by his OR HER consignor, a dealer,
6 before the close of the next business day following the sale of any farm
7 products consigned to ~~him~~ THE DEALER, shall transmit or deliver to the
8 owner or consignor a true written report of ~~such~~ THE sale, showing the
9 amount sold and the selling price. Remittance in full of the amount
10 realized from ~~such~~ THE sale, including all collections, overcharges, and
11 damages, less the agreed commission and other charges together with a
12 complete account of sales, shall be made to the consignor within ten days
13 after the receipt of the ~~moneys~~ MONEY by the dealer unless otherwise
14 agreed to in writing. In the account, the names and addresses of
15 purchasers need not be given, except as required in section ~~12-16-111~~
16 35-37-112.

17 (2) Every dealer shall retain a copy of the record covering each
18 consignment transaction for a period of one year after the date thereof,
19 which copy shall, at all times, be available for, and open to, the inspection
20 of the commissioner and the consignor or the authorized representative
21 of either.

22 (3) Every dealer shall pay for farm products delivered to him OR
23 HER on the date and in the manner specified in the contract with the
24 owner or, if no date is set by the contract or on the date of the delivery,
25 within thirty days after the date of the delivery or the taking possession
26 of ~~such~~ THE farm products.

27 **35-37-115. [Formerly 12-16-113] Pooled consignment.** Local

1 produce or fruit associations or other shippers located in the
2 neighborhood where products are grown may receive a reasonable
3 compensation for loading, shipping, and securing persons to handle the
4 same on commission in markets away from the locality where grown.
5 Dealers receiving consignments of farm products from a number of
6 consignors under written agreements or under written authority from them
7 to market ~~such~~ THE products in season and prorate the net proceeds of
8 ~~such~~ THE consignments among all consignors or to market the same in
9 connection with other products of the same class may withhold ~~such~~ THE
10 proportion of the net returns of sales of the consignments as may be
11 necessary to carry out the agreements pertaining to ~~said~~ THE consignments
12 until final sales have been made. In every case, final settlement shall be
13 made within fifteen days after the final sale of the consignment, unless
14 otherwise agreed to in writing by the consignor.

15 **35-37-116. [Formerly 12-16-114] Enforcement.** (1) The
16 commissioner shall be the enforcing authority of this ~~part 1~~ ARTICLE 37,
17 and the commissioner or the commissioner's authorized representative
18 shall have free and unimpeded access to all places of business and all
19 business records of a licensee pertinent to any proper inquiry in the
20 administration of this ~~part 1~~ ARTICLE 37. Any person in whom the
21 enforcement of any provision of this ~~part 1~~ ARTICLE 37 is vested has the
22 power of a peace officer as to ~~such~~ THE enforcement.

23 (2) Whenever, upon sufficient evidence satisfactory to the
24 commissioner, the commissioner determines a person has engaged in or
25 is about to engage in any act or practice constituting a violation of any
26 provision of this ~~part 1~~ ARTICLE 37 or of any rule or of any order
27 promulgated under this ~~part 1, he~~ ARTICLE 37, THE COMMISSIONER may

1 apply to a court of competent jurisdiction to temporarily or permanently
2 restrain or enjoin the act or practice in question and to enforce compliance
3 with this ~~part~~ ARTICLE 37 or any rule or order pursuant to this ~~part~~
4 ARTICLE 37. In ~~any such~~ THE action, the commissioner shall not be
5 required to plead or prove irreparable injury or the inadequacy of a
6 remedy at law. Under no circumstances shall the court require the
7 commissioner to post a bond.

8 **35-37-117. [Formerly 12-16-114.5] Civil penalties.** (1) Any
9 person who violates any provision of this ~~part~~ ARTICLE 37 or any
10 ~~regulation~~ RULE enacted pursuant to this ~~part~~ ARTICLE 37 is subject to
11 a civil penalty as determined by the commissioner. The maximum penalty
12 shall not exceed one thousand dollars per violation per day.

13 (2) No civil penalty may be imposed unless the person charged is
14 given notice and an opportunity for a hearing pursuant to article 4 of title
15 24. ~~C.R.S.~~

16 (3) If the commissioner is unable to collect a civil penalty or if any
17 person fails to pay all or any portion of a civil penalty, the commissioner
18 may recover ~~such~~ THE amount, plus costs and attorney fees, by action in
19 any court of competent jurisdiction.

20 (4) Under circumstances where the commissioner did not have
21 probable cause to impose a civil penalty, the person charged may recover
22 his OR HER costs and attorney fees from the department of agriculture.

23 (5) All ~~moneys~~ MONEY collected from civil penalties pursuant to
24 the provisions of this section shall be transmitted to the state treasurer and
25 credited to the inspection and consumer services cash fund created in
26 section 35-1-106.5. ~~C.R.S.~~

27 (6) Before imposing a civil penalty, the commissioner may

1 consider the effect of ~~such~~ THE penalty on the ability of the person
2 charged to stay in business.

3 **35-37-118. [Formerly 12-16-115] Unlawful acts.** (1) It is
4 unlawful and a violation of this ~~part~~ ARTICLE 37 for any person to:

5 (a) Make fraudulent charges or returns for the handling, sale, or
6 storage or for the rendering of any service in connection with the
7 handling, sale, or storage of any farm products. Violation of this
8 ~~paragraph (a)~~ SUBSECTION (1)(a) shall constitute a class 6 felony.

9 (b) Willfully fail or refuse to render a true account of sales or
10 storage or to make a settlement thereon or to pay for farm products
11 received within the time and in the manner required by this ~~part~~
12 ARTICLE 37. Violation of this ~~paragraph (b)~~ SUBSECTION (1)(b) shall
13 constitute a class 6 felony.

14 (c) Intentionally make false or misleading statements as to the
15 market conditions for farm products or false or misleading statements as
16 to the condition, quality, or quantity of farm products received, handled,
17 sold, or stored. Violation of this ~~paragraph (c)~~ SUBSECTION (1)(c) shall
18 constitute a class 6 felony.

19 (d) Engage in fictitious sales, in collusion, or in unfair practices
20 to defraud the owners. Violation of this ~~paragraph (d)~~ SUBSECTION (1)(d)
21 shall constitute a class 6 felony.

22 (e) Act as a dealer, small-volume dealer, or agent without having
23 obtained a license or act as a dealer without having filed a surety bond or
24 an irrevocable letter of credit, as provided in this ~~part~~ ARTICLE 37.
25 Violation of this ~~paragraph (e)~~ SUBSECTION (1)(e) shall constitute a class
26 6 felony.

27 (f) Willfully convert to his OR HER own use or benefit the farm

1 products of another. Violation of this ~~paragraph (f)~~ SUBSECTION (1)(f)
2 shall constitute theft, as defined in section 18-4-401. ~~C.R.S.~~

3 (g) Commit fraud or deception in the procurement or attempted
4 procurement of a license. Violation of this ~~paragraph (g)~~ SUBSECTION
5 (1)(g) shall constitute a class 1 misdemeanor.

6 (h) Fail to comply with any lawful order of the commissioner
7 concerning the administration of this ~~part~~ ARTICLE 37. Violation of this
8 ~~paragraph (h)~~ SUBSECTION (1)(h) shall constitute a class 1 misdemeanor.

9 (i) Interfere with or hinder an authorized representative of the
10 commissioner while performing his OR HER duties under this ~~part~~
11 ARTICLE 37. Violation of this ~~paragraph (i)~~ SUBSECTION (1)(i) shall
12 constitute a class 1 misdemeanor.

13 (j) If licensed as a dealer or small-volume dealer, sell farm
14 products for less than the current market price to any person with whom
15 ~~such~~ THE dealer has any financial connection, directly or indirectly, either
16 as an owner of the corporate stock of a corporation, as a copartner, or in
17 any other capacity, or sell any farm products out of the purchase price of
18 which said dealer or small-volume dealer receives, directly or indirectly,
19 any portion thereof other than the commission allowed in section
20 ~~12-16-112~~ 35-37-114. Violation of this ~~paragraph (j)~~ SUBSECTION (1)(j)
21 shall constitute theft, as defined in section 18-4-401. ~~C.R.S.~~

22 (k) Act as a dealer, small-volume dealer, or agent and, with intent
23 to defraud, make, draw, utter, or deliver any check, draft, or order for the
24 payment of money upon any bank or other depository to the owner for the
25 purchase price of any farm products or any part thereof upon obtaining
26 possession or control thereof, when at the time of the making, drawing,
27 uttering, or delivery the maker or drawer has not sufficient funds in or

1 credit with ~~such~~ THE bank or other depository for the payment of ~~such~~
2 THE check, draft, or order in full upon its presentation. The making,
3 drawing, uttering, or delivery of ~~such~~ THE check, draft, or order shall be
4 prima facie evidence of an intent to defraud. "Credit", as used in this
5 ~~paragraph (k)~~ SUBSECTION (1)(k), means an arrangement or understanding
6 with the bank or depository for the payment of ~~such~~ THE check, draft, or
7 order. Violation of this ~~paragraph (k)~~ SUBSECTION (1)(k) shall constitute
8 fraud by check, as defined in section 18-5-205. ~~€R.S.~~

9 (l) If acting as a dealer who has signed an affidavit in accordance
10 with section ~~12-16-105 (1)(a)(I)~~ 35-37-105 (1)(a)(I), fail to make payment
11 in cash or by one of the other means specified in section ~~12-16-106 (1)(f)~~
12 35-37-106 (1)(e) for any transaction without first complying with the
13 bonding requirements of section ~~12-16-106~~ 35-37-106. Violation of this
14 ~~paragraph (l)~~ SUBSECTION (1)(l) shall constitute a class 1 misdemeanor.

15 (m) If licensed as a small-volume dealer, purchase twenty
16 thousand dollars' worth or more of farm products in one year from the
17 owner for processing or resale or purchase two thousand five hundred
18 dollars' worth or more of farm products in any single transaction from the
19 owner for processing or resale. Violation of this ~~paragraph (m)~~
20 SUBSECTION (1)(m) shall constitute a class 1 misdemeanor.

21 **35-37-119. [Formerly 12-16-116] Penalties.** (1) Any person who
22 violates any of the provisions of section ~~12-16-115 (1)(a), (1)(b), (1)(c),~~
23 ~~(1)(d), or (1)(e)~~ 35-37-118 (1)(a), (1)(b), (1)(c), (1)(d), OR (1)(e) commits
24 a class 6 felony and shall be punished as provided in section 18-1.3-401.
25 ~~€R.S.~~ Any person who violates any of the provisions of section
26 ~~12-16-115 (1)(f) or (1)(j)~~ 35-37-118 (1)(f) OR (1)(j) commits theft, as
27 defined in section 18-4-401. ~~€R.S.~~ Any person who violates any of the

1 provisions of section ~~12-16-115 (1)(g), (1)(h), (1)(i), (1)(l), or (1)(m)~~
2 35-37-118 (1)(g), (1)(h), (1)(i), (1)(l), OR (1)(m) commits a class 1
3 misdemeanor and shall be punished as provided in section 18-1.3-501.
4 ~~C.R.S.~~ Any person who violates any of the provisions of section
5 ~~12-16-115 (1)(k)~~ 35-37-118 (1)(k) commits fraud by check, as defined in
6 section 18-5-205. ~~C.R.S.~~

7 (2) Any person who violates any other provision of this ~~part~~
8 ARTICLE 37 commits a class 1 misdemeanor and shall be punished as
9 provided in section 18-1.3-501. ~~C.R.S.~~

10 (3) Civil suits and criminal prosecutions arising by virtue of any
11 of the provisions of this ~~part~~ ARTICLE 37 may be commenced and tried
12 either in the county in which the farm products were received by the
13 dealer, small-volume dealer, or agent, or in the county in which the
14 principal place of business of ~~such~~ THE dealer, small-volume dealer, or
15 agent is located, or in the county in which the violation of this ~~part~~
16 ARTICLE 37 occurred. The attorney general or the district attorney for the
17 judicial district in which a violation of any of the provisions of this ~~part~~
18 ~~+~~ ARTICLE 37 occurs shall, upon the request of any enforcing officer or
19 other interested person, prosecute ~~such~~ THE violation.

20 **35-37-120. [Formerly 12-16-117] Administration - rules and**
21 **regulations - delegation of duties.** (1) The commissioner may
22 promulgate such rules ~~and regulations~~ in accordance with article 4 of title
23 24 ~~C.R.S.~~, as are necessary for the administration of this ~~part~~ ARTICLE
24 37.

25 (2) The powers and duties of the commissioner in this ~~part~~
26 ARTICLE 37 may be delegated to qualified employees of the department
27 of agriculture.

1 **35-37-121. [Formerly 12-16-118] Penalties for theft of farm**
2 **products.** (1) If farm products are contracted for sale to an out-of-state
3 purchaser, the purchaser shall be subject to the jurisdiction of the courts
4 of this state in accordance with the provisions of section 13-1-124 (1)(a).
5 ~~C.R.S.~~ The seller shall be entitled to all remedies at law in seeking the
6 return of ~~such~~ THE farm products when the purchaser takes delivery of the
7 products but is unable or refuses to make payment for said products and
8 the products have been physically removed to another state. ~~Any such~~
9 THE action shall be given priority on the court's docket.

10 (2) If any person purchases farm products in this state and
11 removes ~~such~~ THE products to another state and issues a check in payment
12 for those products knowing there are insufficient funds, as defined in
13 section 18-5-205 (1)(d), ~~C.R.S.~~, to pay for said products, ~~he~~ THE PERSON
14 commits theft of farm products and shall be punished as provided in
15 section 18-4-401 (2). ~~C.R.S.~~

16 **35-37-122. Repeal of article.** THIS ARTICLE 37 IS REPEALED,
17 EFFECTIVE JULY 1, 2020. BEFORE ITS REPEAL, THIS ARTICLE 37 IS
18 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

19 **SECTION 3.** In Colorado Revised Statutes, 11-35-101.5, **amend**
20 (1) as follows:

21 **11-35-101.5. Irrevocable letter of credit permitted -**
22 **requirements.** (1) Where there is the requirement of either an
23 irrevocable letter of credit or a bond as a condition to licensure in sections
24 ~~12-16-106 (1) and 12-16-218 (1), C.R.S.~~, 35-36-119 (1) AND 35-37-106
25 (1) or where an irrevocable letter of credit is permitted as an alternative
26 to a surety bond, evidence of a savings account, deposit, or certificate of
27 deposit meeting the requirements of section 11-35-101, as a condition to

1 licensure or authority to conduct business or perform duties in this state,
2 provided in sections ~~12-16-105 (5), 12-16-106 (1)(a), 12-16-218 (1)(a),~~
3 ~~33-4-101 (1), 33-12-104 (1), 37-91-107 (2), and 39-27-104 (2.1) (c),~~
4 ~~C.R.S.~~ 33-4-101 (1), 33-12-104 (1), 35-36-119 (1)(a), 35-37-105 (5),
5 35-37-106 (1)(a), 37-91-107 (2), AND 39-27-104 (2.1)(c), the requirement
6 shall be satisfied by an irrevocable letter of credit issued by a state or
7 national bank or a state or federal savings and loan association doing
8 business in this state. The requirement shall also be satisfied by an
9 irrevocable letter of credit issued by the bank or banks for cooperatives
10 that are organized pursuant to federal statutes and that serve the region in
11 which the state of Colorado is located. Such letter of credit shall be in an
12 amount specified by statute, if any, and shall name the appropriate state
13 agency as beneficiary, in favor of the people of the state of Colorado.

14 **SECTION 4.** In Colorado Revised Statutes, **amend** 16-2.5-118
15 as follows:

16 **16-2.5-118. Commissioner of agriculture.** The commissioner of
17 agriculture or his or her designee is a peace officer while engaged in the
18 performance of his or her duties whose authority shall be limited pursuant
19 to the "Farm Products Act", section ~~12-16-114~~, ~~C.R.S.~~ 35-37-116, the
20 "Commodity Handler Act", section ~~12-16-210~~, ~~C.R.S.~~ 35-36-111, the
21 "Animal Protection Act", section 35-42-107 (4), ~~C.R.S.~~, and the "Pet
22 Animal Care and Facilities Act", section 35-80-109 (6). ~~C.R.S.~~

23 **SECTION 5.** In Colorado Revised Statutes, 18-1-202, **amend**
24 (7)(b)(II) introductory portion and (7)(b)(II)(R) as follows:

25 **18-1-202. Place of trial.** (7) (b) (II) The provisions of
26 ~~subparagraph (I) of this paragraph (b)~~ SUBSECTION (7)(b)(I) OF THIS
27 SECTION shall apply to the following offenses:

1 (R) Theft of farm products, as defined in section ~~12-16-118,~~
2 ~~C.R.S.~~ 35-37-121;

3 **SECTION 6.** In Colorado Revised Statutes, 24-34-104, **amend**
4 (18)(a) introductory portion and (18)(a)(IV) as follows:

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (18) (a) The following agencies, functions, or both,
8 ~~with~~ IS SCHEDULED TO repeal on July 1, 2020:

9 (IV) The licensing and regulation of persons by the department of
10 agriculture in accordance with ~~article 16 of title 12,~~ C.R.S. ARTICLES 36
11 AND 37 OF TITLE 35;

12 **SECTION 7.** In Colorado Revised Statutes, 35-1-104, **amend** (4)
13 as follows:

14 **35-1-104. Functions, powers, and duties.** (4) To the extent its
15 costs are repaid by gifts, grants, or donations received pursuant to section
16 35-1-107 (6), and only to that extent, the department may provide
17 educational programs and materials regarding any activity regulated under
18 articles 12, 13, 14, 21, 33, 36, 37, and 60 of this title ~~or article 16 of title~~
19 ~~12,~~ C.R.S. 35.

20 **SECTION 8.** In Colorado Revised Statutes, 35-1-106, **amend** (1)
21 introductory portion, (1)(k), and (1)(l) as follows:

22 **35-1-106. Powers and duties of commission.** (1) In addition to
23 all other powers and duties conferred upon the commission by this ~~article~~
24 ARTICLE 1, the commission has the following specific powers and duties:

25 (k) To avoid duplication of effort within the department and to
26 clarify responsibilities under this ~~title~~ TITLE 35 (except part 2 of article 7
27 and articles 14, 42, 51, 65, 70, and 72) ~~and articles 11 and 16 of title 12~~

1 and article 24 of title 30; ~~C.R.S.~~; to enter into cooperative agreements
2 with the state board of health, the board of governors of the Colorado
3 state university system, or any other state board or commission ~~which~~
4 THAT is authorized by law to perform like or similar duties to those
5 delegated by law to this commission, wherein it shall be prescribed
6 whether this commission, the state board of health, the board of governors
7 of the Colorado state university system, or such other state board or
8 commission shall perform and be responsible for the performance of ~~such~~
9 THE duties mentioned in ~~said~~ THE agreements, so that there is no
10 duplication of effort as between this commission and the state board of
11 health, the board of governors of the Colorado state university system, or
12 any other state board or commission; and to enter into agreements with
13 the state board of health, the board of governors of the Colorado state
14 university system, or any other state board or commission relative to the
15 cooperative use by this commission of any laboratories, equipment, or
16 facilities owned or used by this commission or any other state board or
17 commission;

18 (l) To employ any person, partnership, or corporation for services
19 in carrying out the provisions of this ~~title~~ TITLE 35 (except part 2 of article
20 7 and articles 14, 42, 51, 65, 70, and 72) ~~and articles 11 and 16 of title 12~~
21 and article 24 of title 30, ~~C.R.S.~~, and not inconsistent with section 13 of
22 article XII of the state constitution or to provide information, statistics, or
23 data deemed beneficial by the commission to livestock and agriculture in
24 the state of Colorado;

25 **SECTION 9.** In Colorado Revised Statutes, 35-1-106.5, **amend**
26 (1) as follows:

27 **35-1-106.5. Inspection and consumer services cash fund -**

1 **creation.** (1) All fees, fines, and penalties collected pursuant to articles
2 12, 13, 14, 21, 33, 35, 37, and 60 of this title ~~and article 16 of title 12,~~
3 ~~C.R.S.~~, 35 shall be transmitted to the state treasurer, who shall credit the
4 same to the inspection and consumer services cash fund, which fund is
5 hereby created in the state treasury. All interest derived from the deposit
6 and investment of ~~moneys~~ MONEY in the fund shall be credited to the
7 fund. At the end of any fiscal year, all unexpended and unencumbered
8 ~~moneys~~ MONEY in the fund shall remain in the fund and shall not be
9 credited or transferred to the general fund or any other fund or used for
10 any purpose other than to offset the costs of implementing, administering,
11 and enforcing the provisions of articles 12, 13, 14, 21, 33, 36, 37, and 60
12 of this title ~~and of articles 11 and 16 of title 12, C.R.S. Moneys~~ 35.
13 MONEY in the fund ~~are~~ IS subject to annual appropriation to the
14 department for such purposes.

15 **SECTION 10. Repeal of relocated provisions in this act.** In
16 Colorado Revised Statutes, **repeal** article 16 of title 12.

17 **SECTION 11. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly (August
20 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
21 referendum petition is filed pursuant to section 1 (3) of article V of the
22 state constitution against this act or an item, section, or part of this act
23 within such period, then the act, item, section, or part will not take effect
24 unless approved by the people at the general election to be held in
25 November 2018 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.