

## CHAPTER 160

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**AGRICULTURE**


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**HOUSE BILL 21-1045**

BY REPRESENTATIVE(S) Young and Valdez D., Mullica, Hooton, Lontine, McCormick, Ricks;  
also SENATOR(S) Fields.

**AN ACT**

**CONCERNING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO CONTROL PESTS.**

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

**SECTION 1.** In Colorado Revised Statutes, 35-1-106.3, **amend** (4) as follows:

**35-1-106.3. Plant health, pest control, and environmental protection cash fund - creation.** (4) All interest derived from the deposit and investment of ~~moneys~~ MONEY in the plant health, pest control, and environmental protection cash fund shall be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered ~~moneys~~ MONEY in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund; EXCEPT THAT THE STATE TREASURER SHALL TRANSFER ANY UNEXPENDED AND UNENCUMBERED MONEY THAT IS REQUESTED BY THE COMMISSIONER TO BE TRANSFERRED FROM THE PLANT HEALTH, PEST CONTROL, AND ENVIRONMENTAL PROTECTION CASH FUND TO THE EMERGENCY INVASIVE-PEST RESPONSE FUND CREATED IN SECTION 35-1-106.4.

**SECTION 2.** In Colorado Revised Statutes, **add** 35-1-106.4 as follows:

**35-1-106.4. Emergency invasive-pest response fund.** (1) THE EMERGENCY INVASIVE-PEST RESPONSE FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

(a) MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH SECTION 35-1-106.3 (4);

(b) MONEY FROM REMUNERATION AUTHORIZED IN SECTION 35-4-118;

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(c) GIFTS, GRANTS, AND DONATIONS RECEIVED UNDER SUBSECTION (4) OF THIS SECTION; AND

(d) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

(2) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

(3) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE COMMISSIONER MAY EXPEND MONEY FROM THE FUND TO:

(a) IMPLEMENT SECTIONS 35-4-118 AND 35-4-119; AND

(b) IMPLEMENT EMERGENCY MEASURES TO CONTROL OR ERADICATE INVASIVE PESTS.

(4) THE COMMISSIONER MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION.

(5) THE DEPARTMENT SHALL REPORT ANNUALLY THE AMOUNT AND SOURCE OF MONEY RECEIVED UNDER THIS SECTION IN THE PRIOR FISCAL YEAR AT THE HEARING REQUIRED BY THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

**SECTION 3.** In Colorado Revised Statutes, 24-75-402, **add** (5)(rr) as follows:

**24-75-402. Cash funds - limit on uncommitted reserves - reduction in the amount of fees - exclusions.** (5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(rr) THE EMERGENCY INVASIVE-PEST RESPONSE FUND CREATED IN SECTION 35-1-106.4.

**SECTION 4.** In Colorado Revised Statutes, **amend** 35-4-102 as follows:

**35-4-102. Definitions.** As used in this ~~article~~ ARTICLE 4, unless the context otherwise requires:

(1) "Board of county commissioners" means the public officials duly elected to that public office or their designated agents.

(2) "COMMISSION" MEANS THE STATE AGRICULTURAL COMMISSION CREATED IN SECTION 35-1-105.

~~(2)~~ (3) "Commissioner" means the commissioner of agriculture or ~~his~~ THE COMMISSIONER'S designated agents.

~~(3)~~ (4) "County pest inspector" means any qualified employee of a board of county commissioners employed under this ~~article~~ ARTICLE 4.

~~(3-5)~~ (5) "Department" means the department of agriculture.

(6) "ERADICATE" MEANS THE COMPLETE ELIMINATION OF A PEST AND ITS PARTS CAPABLE OF REPRODUCTION BASED ON ITS ABSENCE.

~~(4)~~ (7) "Insect pests" means any of the small invertebrate animals in the phylum arthropoda ~~which~~ THAT are injurious to plants and animals.

(8) "JOINT PHYTOSANITARY PROGRAM" MEANS A FEDERAL PROGRAM DESIGNED TO RECOGNIZE A STATE OFFICIAL CONTROL PROGRAM TO ERADICATE OR CONTAIN A PLANT PEST THAT IS NOT REGULATED BY THE LEAD FEDERAL AGENCY AND AFFORDS EQUIVALENT PROTECTION AT PORTS OF ENTRY FOR THE SAME PEST IF THE STATES WHERE IT IS DESTINED ARE UNDER OFFICIAL CONTROL.

(9) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, CITY AND COUNTY, OR PEST CONTROL DISTRICT.

(10) "OFFICIAL CONTROL" MEANS OFFICIAL ACTIONS TAKEN BY A PLANT PEST REGULATORY AGENCY TO ERADICATE OR SUPPRESS A PLANT PEST WITH THE GOAL OF ELIMINATING ISOLATED PLANT PEST INFESTATIONS.

(11) "PERMIT" MEANS A DOCUMENT PREPARED BY THE COMMISSIONER THAT AUTHORIZES THE MOVEMENT OF REGULATED ARTICLES THAT CANNOT MEET OFFICIAL QUARANTINE REQUIREMENTS TO A SPECIFIED DESTINATION FOR SPECIALIZED HANDLING, UTILIZATION, OR PROCESSING OR FOR TREATMENT.

~~(5)~~ (12) "Person" means any individual, partnership, association, corporation, or organized group of persons, whether incorporated or not.

~~(6)~~ (13) (a) "Pests" means ORGANISMS THAT CAUSE HARM TO AGRICULTURE OR NATURAL LANDS.

(b) "PESTS" INCLUDES insect pests, PLANT PESTS, and animal pests, except rodents, jackrabbits, and predatory animals, and includes plant diseases and weeds.

(c) For purposes of section 35-4-107, the definition of pests ~~shall~~ DOES not include NOXIOUS weeds.

~~(7)~~ (14) "Plant diseases" means the pathological ~~condition~~ CONDITIONS in plants caused by fungi, bacteria, viruses, nematodes, mycoplasmas, or parasitic seed plants.

~~(8) Repealed.~~

(15) "PLANT PEST" MEANS ANY LIVING STAGE OF A PEST THAT CAN, DIRECTLY OR INDIRECTLY, CAUSE DISEASE IN, SPOILAGE OF, OR DAMAGE TO PLANTS, PLANT PARTS, OR PROCESSED PLANT MATERIALS.

(16) "PLANT PRODUCT" MEANS UNMANUFACTURED MATERIAL OF PLANT ORIGIN THAT, BY THE PRODUCT'S NATURE, MAY CREATE A RISK FOR THE INTRODUCTION AND SPREAD OF PESTS.

(17) "PUBLIC NUISANCE" MEANS A PLANT, PLANT PRODUCT, CONVEYANCE, PREMISES, OR REGULATED ARTICLE THAT HARBORS, IS INFESTED OR INFECTED WITH, IS LIABLE TO SPREAD, OR IS EXPOSED TO A PLANT PEST, COMMUNICABLE OR INFECTIOUS DISEASE, WEED, OR ARTHROPOD THAT MAY CAUSE DAMAGE OR HARM TO, OR WHOSE ERADICATION, TREATMENT, OR CONTROL MAY BENEFIT, PERSONS, INDUSTRIES, OR COMMUNITIES WITHIN THE STATE, REGARDLESS OF WHETHER IT MAY DAMAGE OR HARM THE PUBLIC GENERALLY.

(18) "QUARANTINE" MEANS THE OFFICIAL CONFINEMENT OF REGULATED ARTICLES FOR, REGULATED PESTS FOR, OR ORGANISMS FOR INSPECTION, TESTING, TREATMENT, OBSERVATION, OR RESEARCH.

(19) "REGULATED ARTICLE" MEANS ANY OF THE FOLLOWING THAT COULD HARBOR PESTS: AN ORGANISM, A MATERIAL, A TANGIBLE OBJECT, OR A SUBSTANCE.

(20) "REGULATED NONQUARANTINE PEST" MEANS A PEST THAT IS:

(a) PRESENT IN COLORADO; AND

(b) UNDER A MANDATED CONTROL PROGRAM DUE TO SPECIFIC LOCAL CIRCUMSTANCES, NOTWITHSTANDING THAT THE PEST MAY BE WIDELY DISTRIBUTED IN THE UNITED STATES.

(21) "REGULATED PEST" MEANS A QUARANTINE PEST OR A REGULATED NONQUARANTINE PEST DESIGNATED BY FEDERAL OR STATE PLANT PROTECTION OFFICIALS.

(9) (22) "~~Weeds~~" "WEED" means any ~~noxious~~, destructive or troublesome plant when found to be of sufficient economic importance to threaten the public welfare OR AFFECT NATURAL RESOURCES.

**SECTION 5.** In Colorado Revised Statutes, **add** 35-4-118, 35-4-119, 35-4-120, and 35-4-121 as follows:

**35-4-118. Voluntary agreements to provide pest services.** THE COMMISSIONER MAY ENTER INTO AN AGREEMENT WITH ANY PERSON TO OR LOCAL GOVERNMENT TO PROVIDE PEST CONTROL SERVICES, INCLUDING ERADICATION OR TREATMENT, AUTHORIZED BY THIS ARTICLE 4. THE DEPARTMENT MAY PROVIDE PEST CONTROL SERVICES DIRECTLY OR THROUGH A LOCAL GOVERNMENT AND MAY REQUIRE REMUNERATION FOR PROVIDING PEST CONTROL SERVICES. THE COMMISSIONER SHALL TRANSFER ANY MONEY RECEIVED UNDER THIS SECTION TO THE STATE TREASURER, WHO SHALL DEPOSIT THE MONEY IN THE EMERGENCY INVASIVE-PEST RESPONSE FUND CREATED IN SECTION 35-1-106.4.

**35-4-119. Joint phytosanitary program.** THE COMMISSIONER MAY WORK COOPERATIVELY WITH THE UNITED STATES SECRETARY OF AGRICULTURE, OR THE SECRETARY'S DESIGNEE, TO IMPLEMENT A JOINT PHYTOSANITARY PROGRAM IF THE PROGRAM WOULD ECONOMICALLY OR ENVIRONMENTALLY ASSIST WITH MITIGATING OR ERADICATING THE SPREAD OF A REGULATED NONQUARANTINE PEST.

**35-4-120. Quarantine of nonregulated pests.** THE COMMISSIONER MAY

QUARANTINE A REGULATED ARTICLE IF THE REGULATED ARTICLE MAY HARBOR A REGULATED PEST THAT HAS AN ECONOMICALLY UNACCEPTABLE IMPACT, AS DETERMINED BY THE COMMISSIONER, AND IF THE MEASURES TO CONTROL THE PEST MAY ACHIEVE AN ACCEPTABLE LEVEL OF OFFICIAL CONTROL.

**35-4-121. Emergency control and eradication of invasive pests.** (1) IF THE COMMISSIONER DETERMINES THAT A PUBLIC NUISANCE CREATES AN UNACCEPTABLE RISK OF SPREADING A PEST, THE COMMISSIONER MAY COORDINATE WITH INDUSTRY TO, SUPPORT LOCAL GOVERNMENTS TO, AND MAKE GRANTS TO TAKE EMERGENCY ACTION TO QUARANTINE, CONTROL, OR ERADICATE AN INVASIVE PEST.

(2) A BOARD OF COUNTY COMMISSIONERS MAY DECLARE A PEST TO BE A PUBLIC NUISANCE AND REQUIRE ITS CONTROL OR ERADICATION.

**SECTION 6. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 20, 2021