

CHAPTER 307

AGRICULTURE

SENATE BILL 93-243

BY SENATORS Ament, Rizzuto, Bird, Traylor, Bishop, Cassidy, Mutzebaugh, Peterson, L. Powers, Roberts, and Tebedo;
also REPRESENTATIVES Owen, Grampsas, Romero, Chlouber, Eisenach, and Taylor.

AN ACT

**CONCERNING THE PROMOTION OF BEEF, AND, IN CONNECTION THEREWITH, ENACTING THE
"COLORADO BEEF COUNCIL AUTHORITY ACT".**

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

SECTION 1. Article 57 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended, WITH THE RELOCATION OF PROVISIONS, to read:

35-57-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO BEEF COUNCIL AUTHORITY ACT".

35-57-102. [Formerly 35-57-101] Legislative declaration. (1) It is declared to be in the interest of the public welfare that owners of cattle shall be authorized and encouraged to act jointly and in cooperation with handlers, processors, dealers, and purchasers of cattle in promoting and stimulating, by research, education, advertising, and other methods, the increased and efficient production, distribution, use, and sale of cattle and beef products; and it is the intent and purpose of this article to authorize and provide a method and procedure for a promotional program for the cattle industry and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the cattle industry of this state is affected with a public interest in that, among other things:

(a) The production, processing, handling, purchasing, manufacturing, and distributing of beef and beef products constitutes a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many thousands of its population but also furnishes essential foods that are vital to the public health and welfare.

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

(b) Stabilization, maintenance, and expansion of the cattle industry of Colorado, and of the state, nationwide, and foreign markets for its products, are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to provide and maintain an adequate standard of living for a great segment of the population of this state, to maintain proper wage scales for those engaged in the cattle industry, and to maintain existing employment.

(c) The essentiality of beef and beef products in proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof and be protected against misrepresentation and deception by the dissemination of accurate and scientific information relative to the healthful qualities of beef and beef products, their various classifications, the food values, and industrial and medicinal uses thereof; the methods, care, and precautions necessary to their proper production, processing, manufacture, and distribution; the necessary costs and expenses thereof; and the necessity and desirability on the part of the public of using and consuming beef and beef products of the highest standards of quality.

(2) The purposes of this article are:

(a) To enable the cattle industry, with the aid of the state, to protect their right to market, to develop, maintain, and expand the state, nationwide, and foreign markets for beef and beef products produced, processed, or manufactured in this state, and the use and the consumption of such beef and beef products therein;

(b) In aid, but not in limitation, of the purpose in paragraph (a) of this subsection (2), to authorize and enable the board to formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this article, sales stimulation and consumer or other educational programs designed to increase the use and consumption of beef and beef products;

(c) To provide funds for the administration and enforcement of this article by voluntary contributions to be collected in the manner prescribed in this article.

35-57-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AUTHORITY" MEANS THE COLORADO BEEF COUNCIL AUTHORITY CREATED BY SECTION 35-57-104 (1).

(2) "BOARD" OR "BEEF BOARD" OR "BEEF COUNCIL" MEANS THE BOARD OF THE COLORADO BEEF COUNCIL AUTHORITY CREATED BY SECTION 35-57-104 (1).

35-57-104. Colorado beef council authority - creation. (1) THERE IS HEREBY CREATED THE COLORADO BEEF COUNCIL AUTHORITY, WHICH SHALL BE A BODY CORPORATE AND A POLITICAL SUBDIVISION OF THE STATE. THE AUTHORITY SHALL NOT BE AN AGENCY OF STATE GOVERNMENT, NOR SHALL IT BE SUBJECT TO ADMINISTRATIVE DIRECTION BY ANY STATE AGENCY EXCEPT:

(a) AS PROVIDED IN THIS ARTICLE;

(b) FOR PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.;

(c) FOR PURPOSES OF INCLUSION IN THE RISK MANAGEMENT FUND AND THE SELF-INSURED PROPERTY FUND AND BY THE DIVISION OF RISK MANAGEMENT PURSUANT TO PART 15 OF ARTICLE 30 OF TITLE 24, C.R.S.

35-57-105. [Formerly 35-57-102] Colorado beef council authority - board of directors. (1) ~~There is hereby created the Colorado beef board, which may also be known as the Colorado beef council, referred to in this article as the "board";~~ THE POWERS OF THE AUTHORITY SHALL BE VESTED IN THE BOARD OF DIRECTORS OF THE COLORADO BEEF COUNCIL AUTHORITY, which shall be composed of:

(a) Two persons who raise, breed, or grow cattle or calves for beef production;

(b) Two persons who are actively engaged in the business of feeding cattle and operating a feedlot;

(c) Two persons actively engaged in the processing, slaughtering, handling, or marketing of beef;

(d) One person engaged in the production, on a dairy farm, of fluid milk and the selling of dairy cattle for beef;

(e) One person actively engaged in the processing and distribution of beef or beef products.

(2) The governor shall appoint the members of the board. In making such appointments, the governor shall take into consideration nominations and recommendations made to him by organizations who represent, or who are engaged in, the same type of production or business as the person so nominated or recommended for appointment as a member of the board. Each member shall continue in office until ~~his~~ SUCH MEMBER'S successor is appointed and qualified. The terms of no two members from the same industry shall expire on the same year.

~~(3) The Colorado beef board created by this section shall comprise a part of the division of brand inspection in the department of agriculture.~~

35-57-106. [Formerly 35-57-103] Qualifications of members. (1) Each member of the board shall have the following qualifications which shall continue during ~~his~~ THE MEMBER'S term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of the state of Colorado.

(c) Each shall demonstrate through membership in a producers' organization, or an organization representing this type of production or business, or public service or otherwise, an active interest in the development of the beef industry of Colorado.

(d) Each shall be actively engaged in the type of production or business which ~~he~~ THE MEMBER will represent on the board for a period of at least five years and shall derive a substantial proportion of ~~his~~ SUCH MEMBER'S income from that type of production or business. Each shall be a contributor to the Colorado beef board.

(e) No more than one-half of the board shall be affiliated with one political party.

35-57-107. [Formerly 35-57-104] Terms of members. (1) ~~The governor shall appoint members to the board as follows: Two members for a terms ending July 1, 1966; two members for a terms ending July 1, 1967; two members for a term ending July 1, 1968; two members for a term ending July 1, 1969.~~ THE MEMBERS OF THE COLORADO BEEF BOARD WHO ARE IN OFFICE ON JULY 1, 1993, SHALL COMPRISE THE ORIGINAL BOARD OF THE BEEF COUNCIL AUTHORITY, AND THEIR INITIAL TERMS ON THE BEEF COUNCIL AUTHORITY SHALL END AT THE SAME TIME AS THE TERMS TO WHICH THEY WERE APPOINTED ON THE COLORADO BEEF BOARD PRIOR TO JULY 1, 1993.

(2) On the expiration of the term of a member of the board, ~~his~~ THAT MEMBER'S successor shall be appointed by the governor for a term of four years; except that, in case of a vacancy, the governor shall appoint a person who shall serve for the unexpired term.

35-57-108. [Formerly 35-57-105] Declaring office of member vacant. The governor shall immediately declare the office of any member of the board vacant whenever ~~he~~ THE GOVERNOR finds that: The member no longer is actively engaged in the type of beef or dairy production or business ~~he~~ THE MEMBER was engaged in at the time of ~~his~~ THE MEMBER'S appointment; the member has become a resident of another state; the member is unable to perform the duties of ~~his~~ THE office.

35-57-109. [Formerly 35-57-106] Removal of member. (1) The governor may remove any member of the board for inefficiency, neglect of duty, or misconduct in office or when the segment of the industry which ~~he~~ THE MEMBER represents fails or elects not to pay its equitable share relating to the promotion of beef. Such member shall be entitled to a public hearing after serving upon ~~him~~ SUCH MEMBER, ten days before the hearing, a copy of the charges against ~~him~~ THE MEMBER, together with the notice of the time and place of the hearing. At the hearing, the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged. ~~against him.~~

(2) In every case of removal, the governor shall file in the office of the secretary of state a complete statement of all charges against the member, and ~~his~~ THE GOVERNOR'S findings thereon, together with a record of the entire proceedings had in connection therewith.

35-57-110. [Formerly 35-57-107] Expenses of members. Members, officers, and employees of the board may receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

35-57-111. [Formerly 35-57-108] Meeting place. The board shall establish a meeting place anywhere within this state, but the selection of the location shall be

guided by consideration for the convenience of the majority of those most likely to have business with the board or to be affected by its acts.

35-57-112. [Formerly 35-57-109] Meetings. The board shall elect a ~~chairman~~ CHAIRPERSON from among its members and a secretary-treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance. The board shall meet regularly once each six months and at such other times as called by the ~~chairman~~ CHAIRPERSON. The ~~chairman~~ CHAIRPERSON may call special meetings at any time and shall call a special meeting when requested by four or more members of the board.

35-57-113. [Formerly 35-57-110] Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of beef and beef products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of beef and its products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters concerning the beef industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to carry out the purposes of the board as authorized by this article;

(f) Borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(g) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(h) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(i) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the board, and enter into contracts with such organizations or agencies for carrying on joint programs;

(j) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board as beneficial to the beef industry of this state, and expend funds in connection therewith if that program is compatible with the powers conferred by this article;

(k) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties;

(l) Enter into contracts for the promotion of beef and develop new markets through such promotion;

(m) RECEIVE AND HOLD FUNDS FOR AND ON BEHALF OF THE NATIONAL BEEF PROMOTION AND RESEARCH BOARD AS A QUALIFIED STATE BEEF COUNCIL PURSUANT TO THE BEEF PROMOTION AND RESEARCH ORDER, 7 C.F.R. 1260.172.

35-57-114. [Formerly 35-57-111] Acceptance of grants and gifts. The board may accept grants, donations, contributions, or gifts from any source for expenditures for any purpose consistent with the powers conferred on the board.

35-57-115. [Formerly 35-57-112] Payments to national organizations. From the contributions it receives, the board may pay or contribute to organizations such as, but not limited to, the national livestock and meat board to carry out work and programs approved by the board on a national basis.

35-57-116. [Formerly 35-57-113] Rules and regulations. The board is authorized to promulgate regulations necessary to carry out the intent and purposes of this article.

35-57-117. [Formerly 35-57-115] Collection of contributions for purposes of this article - custody and disbursement. (1) In order for the board to carry out the provisions and intent of this article, the state board of stock inspection commissioners, by and through the brand commissioner, shall collect a beef board fee on cattle and calves for which a brand inspection fee is also collected as provided in section 35-41-104 (5). ~~For the period Commencing July 1, 1985, and ending June 30, 1986, the fee shall not exceed fifty cents per head; for the period commencing July 1, 1986, and ending June 30, 1987, the fee shall not exceed seventy-five cents per head; and, after July 1, 1987, JULY 1, 1993, the fee shall not exceed one dollar per head OR THE AMOUNT ASSESSED PURSUANT TO THE BEEF PROMOTION AND RESEARCH ORDER, 7 C.F.R. 1260.172, AS AMENDED, WHICHEVER IS GREATER.~~

(2) The additional fee is a contribution to and for the board ACTING AS A QUALIFIED STATE BEEF COUNCIL PURSUANT TO 7 C.F.R. 1260.172 TO 1260.181 and shall be kept separate and distinct from other funds collected by the state board of stock inspection commissioners. At least once each two months, such contributions shall be transferred or paid over to the board, less a sum not in excess of three percent per head on each animal for which a contribution dollar is collected. ~~for the fiscal year beginning July 1, 1989. During such fiscal year, a study shall be made by a committee comprised of one representative from the Colorado cattlemen's association, one representative from the Colorado cattle feeders association, one representative from the Colorado beef board, and one representative from the state board of stock inspection commissioners for the purpose of determining actual costs incurred by the state board of stock inspection commissioners for collecting such contribution fee for beef promotion. Based on the results of such study, the state board of livestock inspection commissioners shall set the amount which it shall retain from such fee to cover the costs of collection, which amount shall not exceed five cents from each contribution dollar for fiscal years 1990-91 and 1991-92 and seven cents for fiscal years beginning on and after July 1, 1992.~~ In carrying out the purposes of this article, the board may coordinate its activities with any other state agency and may allocate such sums collected under this section as are necessary for such coordination.

(3) ~~All moneys earned in interest on the moneys in the beef board fund shall be credited to the beef board fund.~~

35-57-118. [Formerly 35-57-116] Collection procedure. (1) The operators of all stockyards, slaughterhouses, packing plants, and livestock auction markets shall deduct from the proceeds of sale owed by them to the respective owners of animals the contributions as authorized by section ~~35-57-115~~ 35-57-117.

(2) When an operator sends or gives any written statement to an owner or ~~his~~ SUCH OWNER'S agent relating to the proceeds owing such owner, the operator shall include a statement of the amount deducted from such proceeds for board purposes under section ~~35-57-115~~ 35-57-117 and the amount deducted from such proceeds under article 53 of this title for brand inspection.

(3) In accordance with the provisions of subsection (1) of this section, operators shall promptly pay to the state board of stock inspection commissioners all contributions collected by them.

35-57-119. [Formerly 35-57-117] Refunds. (1) Any person who has paid a contribution at the time of brand inspection as required by section ~~35-57-115~~ 35-57-117 shall be entitled to a prompt refund of such contribution from the board. Claim for refund shall be made to the Colorado beef board within ten days from the date of the brand inspection on a form furnished by the Colorado beef board.

(2) Notwithstanding any other laws to the contrary, and to carry out the intent of this section to ~~insure~~ ENSURE immediate refund, the board, except as provided by subsection (3) of this section, is authorized to promptly process claims for refund and shall make such refunds without the necessity of verification of payment by the applicant. The refund shall be based only on the signed statement of the refund claim and other information as is contained thereon unless other information or verification is required by subsection (3) of this section.

(3) The board, before processing and making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for refund. All persons who forward claims for refund shall keep pertinent records for a period of at least three years, which shall be available for audit by the board. The board may file an action to recover from any person a refund of contributions illegally obtained.

(4) Claim for refund shall be signed by the person who paid the contribution. Any person who files a fraudulent or false claim for refund, or who by any false pretenses obtains or attempts to obtain a refund not legally due ~~him~~ SUCH PERSON, or who signs a refund claim in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished accordingly.

35-57-120. [Formerly 35-57-118] Payment of board money to authorized agent - deposits and withdrawals. Any person authorized by the board to receive or disburse funds as provided in this article shall post with the board surety bond in an amount the board determines sufficient, the cost or premium to be paid by the board.

SECTION 2. The introductory portion to 35-41-104 (5), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-41-104. Board's authority to impose fees and charges. (5) In addition to the brand inspection fee, a Colorado beef board fee up to and not in excess of one dollar per head OR THE AMOUNT ASSESSED PURSUANT TO THE BEEF PROMOTION AND RESEARCH ORDER, 7 C.F.R. 1260.172, AS AMENDED, WHICHEVER IS GREATER, shall be collected on cattle and calves as a part of the brand inspection made on such animals under the same authority, at the same time and place, in the same manner, and upon the same animals which are subject to brand inspection and a brand inspection fee, except:

SECTION 3. 24-1-123 (4) (g) (II), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-1-123. Department of agriculture - creation. (4) The department of agriculture shall consist of the following divisions:

(g) (II) ~~The Colorado beef board, created by article 57 of title 35, C.R.S., and its powers, duties, and functions are transferred by a type 1 transfer to the department of agriculture as a part of the division of brand inspection.~~

SECTION 4. 29-1-102 (13), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

29-1-102. Definitions. As used in this part 1, unless the context otherwise requires:

(13) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. The office of the county public trustee shall be deemed an agency of the county for the purposes of this part 1. "Local government" does not include the Colorado postsecondary educational facilities authority, the university of Colorado hospital authority, the Colorado student obligation bond authority, the Colorado health facilities authority, the Colorado housing and finance authority, the Colorado agricultural development authority, THE COLORADO BEEF COUNCIL AUTHORITY, the fire and police pension association, any public entity insurance or investment pool formed pursuant to state law, any county or municipal housing authority, any association of political subdivisions formed pursuant to section 29-1-401, or any home rule city or town, home rule city and county, cities and towns operating under a territorial charter, school district, or junior college district.

SECTION 5. 29-1-602 (5) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

29-1-602. Definitions. (5) (b) Except for purposes of section 29-1-603 (4), "local government" does not include the fire and police pension association, any county or municipal housing authority, any public entity insurance pool formed pursuant to state

law, THE COLORADO BEEF COUNCIL AUTHORITY, or any association of political subdivisions formed pursuant to section 29-1-401.

SECTION 6. Repeal of provisions not relocated in this act. 35-57-114, Colorado Revised Statutes, 1984 Repl. Vol., is repealed.

SECTION 7. Adjustments to 1993 long bill. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of agriculture for the fiscal year beginning July 1, 1993, shall be adjusted as follows:

(a) The line item "Beef Council" is eliminated.

(b) The line item "Indirect Cost Assessment" is decreased by twenty-six thousand three hundred sixty-four dollars (\$26,364).

(c) The total cash funds appropriation for special purposes is decreased by one million nine hundred twenty-six thousand three hundred sixty-four dollars (\$1,926,364).

SECTION 8. Effective date. This act shall take effect July 1, 1993.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993