

CHAPTER 51

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 94-1056

BY REPRESENTATIVES R. Hernandez, Eisenach, Greenwood, and Moellenberg;
also SENATORS Ament and Casey.

AN ACT

CONCERNING THE REGULATION BY THE DEPARTMENT OF AGRICULTURE OF PURCHASES OF AGRICULTURAL PRODUCTS, AND, IN CONNECTION THEREWITH, RELAXING CERTAIN LICENSING REQUIREMENTS FOR SMALL BUSINESS OPERATORS.

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

SECTION 1. 12-16-103 (1), (3), (4) (b), and (5) (a) (I), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-16-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-16-103. Definitions. As used in this part 1, 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.

(3) "Consignor" includes any person who ships or delivers to any dealer OR SMALL-VOLUME DEALER any farm products for handling, sale, or resale.

(4) (b) "Dealer" does not include bona fide retail grocery merchants or restaurateurs having a fixed or established place of business in Colorado AS LONG AS THE USE OF FARM PRODUCTS BY ANY SUCH PERSON IS DIRECTLY RELATED TO THE OPERATION OF THE PERSON'S RETAIL GROCERY OR RESTAURANT.

(5) (a) (I) "Farm products" includes the following unprocessed products produced in Colorado or owned by any Colorado resident, ~~or~~ dealer, OR SMALL-VOLUME

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

DEALER:

(10.5) "SMALL-VOLUME DEALER" MEANS ANY PERSON WHO:

(a) DOES NOT QUALIFY AS A "DEALER" UNDER SUBPARAGRAPHS (II), (III), (IV), OR (V) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION;

(b) HAS A FIXED OR ESTABLISHED PLACE OF BUSINESS IN COLORADO;

(c) BUYS LESS THAN TWENTY THOUSAND DOLLARS' WORTH OF FARM PRODUCTS PER YEAR FROM THE OWNERS FOR PROCESSING OR RESALE;

(d) DOES NOT PURCHASE IN A SINGLE TRANSACTION TWO THOUSAND FIVE HUNDRED DOLLARS' WORTH OR MORE OF FARM PRODUCTS; AND

(e) DOES NOT PURCHASE FARM PRODUCTS FOR COMMERCIAL FEEDING OF LIVESTOCK.

SECTION 2. 12-16-104 (1), (3), and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-16-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-16-104. Application for license. (1) No person shall act as a dealer, SMALL-VOLUME DEALER, agent, or transporter without having obtained a license as provided in this part 1. Every person acting as a dealer, SMALL-VOLUME DEALER, agent, or transporter shall file an application in writing with the commissioner for a license to transact the business of dealer, SMALL-VOLUME DEALER, agent, or transporter, and such application shall be accompanied by the license fee provided for in section 12-16-105 for each specified class of business.

(3) In addition to the general requirements applicable to all classes of applications, as set forth in this section, each application for an agent's license shall include such information as the commissioner may consider proper or necessary, and such application shall include the name and address of the applicant and the name and address of each dealer OR SMALL-VOLUME DEALER represented or sought to be represented by said agent and the written endorsement or nomination of such dealer OR SMALL-VOLUME DEALER. No person shall be licensed as an agent unless all of ~~his~~ SUCH AGENT'S principals are licensed under this part 1.

(4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when ~~he~~ THE COMMISSIONER is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the last day of February next following or until the license has been suspended or revoked. The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal. Any dealer, SMALL-VOLUME DEALER, or agent shall show said license upon the request of any interested person. Each licensed dealer, SMALL-VOLUME DEALER, or agent shall post ~~his~~ SUCH PERSON'S license or a copy thereof in ~~his~~ THE PERSON'S

office or salesroom in plain view of the public. Transporters must carry the license or a copy thereof in each vehicle used to transport farm products.

(6) ANY PERSON LICENSED UNDER PART 2 OF THIS ARTICLE MAY APPLY FOR A LICENSE AS A DEALER OR SMALL-VOLUME DEALER WITHOUT PAYING THE LICENSE FEE OTHERWISE REQUIRED BY SECTION 12-16-105.

SECTION 3. 12-16-105 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-16-105. License fee - renewal. (1) For filing the application described in section 12-16-104, each applicant shall pay the following fee to the commissioner, who shall transmit all such fees to the state treasurer for credit to the general fund:

(d) SMALL-VOLUME DEALERS, TWENTY DOLLARS FOR EACH YEAR.

SECTION 4. 12-16-106 (1) (c), (1) (d) (I), and (1) (g), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-16-106. Bonds and irrevocable letters of credit - exemptions. (1) (c) The bond or irrevocable letter of credit shall be conditioned upon compliance with the provisions of this part 1 and upon the faithful and honest handling of farm products in accordance with the terms of this part 1 and shall cover any and all fees due the people of the state of Colorado by said dealer or transporter and all costs and reasonable attorney fees incident to any suit upon said bond or irrevocable letter of credit. Said bond or irrevocable letter of credit shall be to the state in favor of every producer, dealer, SMALL-VOLUME DEALER, or owner and, in the instance of a bond, shall remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(d) (I) Any producer, owner, SMALL-VOLUME DEALER, or other dealer within the state of Colorado claiming to be injured by the fraud, deceit, willful negligence, or failure to comply with the provisions of this part 1 of any dealer may seek to recover the damages caused by such fraud, deceit, willful negligence, or failure to comply with the provisions of this part 1. If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with the prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.

(g) ~~Any person licensed pursuant to part 2 of this article may apply for a license as a dealer and shall not be subject to the license fee required by section 12-16-105. The bond or irrevocable letter of credit required by section 12-16-218 shall also apply to such person's~~ THE activities as a dealer ~~and~~ OF ANY PERSON LICENSED PURSUANT TO PART 2 OF THIS ARTICLE. SUCH PERSONS shall ALSO be subject to the provisions of this section and section 12-16-107.

SECTION 5. 12-16-107 (1), (6), and (11), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-16-107. Investigations, hearings, and examinations. (1) For the purpose of enforcing the provisions of this part 1, the commissioner may receive complaints from persons against any dealer, SMALL-VOLUME DEALER, agent, transporter, or person assuming or attempting to act as such and, upon the receipt of such a complaint, may make any and all necessary investigations relative to said complaint.

(6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, SMALL-VOLUME DEALERS, or owners of farm products, together with the accounts unaccounted for or due and owing to them by said licensee, and shall request all such producers, dealers, SMALL-VOLUME DEALERS, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, SMALL-VOLUME DEALER, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after the date of such request, the commissioner shall thereupon be relieved of any further duty or action under this part 1 on behalf of said producer, dealer, SMALL-VOLUME DEALER, or owner.

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

SECTION 6. 12-16-109 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-16-109. Cease and desist order - suit for restraining order. (1) If the commissioner determines that there exists a violation of any provision of this part 1 or of any rule or regulation promulgated under the authority of this part 1, the commissioner may issue a cease and desist order, which may require any person to cease functioning as a dealer OR SMALL-VOLUME DEALER, except for those functions necessary to prevent spoilage of products stored in his SUCH DEALER'S warehouse. Such order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all functions, except those necessary to prevent spoilage, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not any such violation has occurred. Such hearing shall be concluded in not more than ten days after such request and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

SECTION 7. The introductory portion to 12-16-110.5 (1) and 12-16-110.5 (1) (c), (2), (3), and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended to

read:

12-16-110.5. Credit sale contracts. (1) When a dealer OR SMALL-VOLUME DEALER receives farm products for which payment has not been made, the dealer OR SMALL-VOLUME DEALER, within sixty days after the receipt of such farm products, shall provide the producer or owner of the farm products with a credit sale contract. The credit sale contract shall contain the following information:

(c) The name and address of the producer or owner and the signature of the dealer or ~~the dealer's~~ SMALL-VOLUME DEALER OR THE authorized agent THEREOF;

(2) ~~Dealer~~ Records OF A DEALER OR SMALL-VOLUME DEALER shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. Such records shall be kept at the dealer's OR SMALL-VOLUME DEALER'S place of business at all times.

(3) An annual report of the status of all of a dealer's OR SMALL-VOLUME DEALER'S credit sale contracts may be required by the commissioner.

(4) All credit sale contracts entered into by a dealer OR SMALL-VOLUME DEALER shall be consecutively numbered by the dealer, and copies thereof shall be made available for inspection by the commissioner or the commissioner's authorized agents.

SECTION 8. Part 1 of article 16 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-16-111.5. Records of small-volume dealers. EACH SMALL-VOLUME DEALER SHALL MAINTAIN RECORDS OF ALL ASPECTS OF EACH PURCHASE OF FARM PRODUCTS IN THE FORM AND MANNER REQUIRED BY THE COMMISSIONER.

SECTION 9. 12-16-115 (1) (e), (1) (j), and (1) (k), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-16-115 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

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

(e) Act as a dealer, SMALL-VOLUME DEALER, agent, or transporter without having obtained a license or act as a dealer or agent without having filed a surety bond or an irrevocable letter of credit, as provided in this part 1. Violation of this paragraph (e) shall constitute a class 6 felony.

(j) If licensed as a dealer OR SMALL-VOLUME DEALER, sell farm products for less than the current market price to any person with whom ~~he~~ SUCH DEALER has any financial connection, directly or indirectly, either as an owner of the corporate stock of a corporation, as a copartner, or in any other capacity, or sell any farm products out of the purchase price of which said dealer OR SMALL-VOLUME DEALER receives, directly or indirectly, any portion thereof other than the commission allowed in section 12-16-112. Violation of this paragraph (j) shall constitute theft, as defined in section 18-4-401, C.R.S.

(k) Act as a dealer, SMALL-VOLUME DEALER, agent, or transporter and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any farm products or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (k), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (k) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

(m) IF LICENSED AS A SMALL-VOLUME DEALER, PURCHASE TWENTY THOUSAND DOLLARS' WORTH OR MORE OF FARM PRODUCTS IN ONE YEAR FROM THE OWNER FOR PROCESSING OR RESALE OR PURCHASE TWO THOUSAND FIVE HUNDRED DOLLARS' WORTH OR MORE OF FARM PRODUCTS IN ANY SINGLE TRANSACTION FROM THE OWNER FOR PROCESSING OR RESALE. VIOLATION OF THIS PARAGRAPH (m) SHALL CONSTITUTE A CLASS 1 MISDEMEANOR.

SECTION 10. 12-16-116 (1) and (3), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-16-116. Penalties. (1) Any person who violates any of the provisions of section 12-16-115 (1) (a), (1) (b), (1) (c), (1) (d), or (1) (e) commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (f) or (1) (j) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (g), (1) (h), (1) (i), ~~or~~ (1) (l), OR (1) (m) commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (k) commits fraud by check, as defined in section 18-5-205, C.R.S.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this part 1 may be commenced and tried either in the county in which the farm products were received by the dealer, SMALL-VOLUME DEALER, or agent, or in the county in which the principal place of business of such dealer, SMALL-VOLUME DEALER, or agent is located, or in the county in which the violation of this part 1 occurred. The attorney general or the district attorney for the judicial district in which a violation of any of the provisions of this part 1 occurs shall, upon the request of any enforcing officer or other interested person, prosecute such violation.

SECTION 11. 12-16-202 (4.5) (b) and (21.5), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

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

(4.5) (b) "Commodity handler" does not include bona fide retail grocery merchants or restaurateurs having a fixed or established place of business in Colorado AS LONG AS THE USE OF COMMODITIES BY ANY SUCH PERSON IS DIRECTLY RELATED TO THE

OPERATION OF THE PERSON'S RETAIL GROCERY OR RESTAURANT.

(21.5) "Terminal warehouse" means any public warehouse licensed by the Colorado department of agriculture, ~~or~~ the United States department of agriculture, OR ANY STATE THAT HAS A WAREHOUSE EXAMINATION COOPERATIVE AGREEMENT WITH COLORADO OR THE UNITED STATES DEPARTMENT OF AGRICULTURE.

SECTION 12. 35-28-104 (1), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-28-104. Definitions. (1) "Agricultural commodity" means any agricultural, horticultural, viticultural, and vegetable products, livestock and livestock products, wheat, HAY, corn, bees and honey, poultry and poultry products, and milk and milk products, either in their natural state or as processed, including any marketable agricultural product, but does not include sugar beets, timber and timber products, ~~hay~~, oats, malting barley, barley, hops, rice milo, and other feed grains. These exceptions shall be the sole exemptions, irrespective of any other exemptions provided by law, and particularly as set forth in section 35-28-122.

SECTION 13. Effective date. This act shall take effect March 1, 1995.

SECTION 14. 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: March 29, 1994