

CHAPTER 168

AGRICULTURE

SENATE BILL 95-006

BY SENATORS Martinez, Mutzebaugh, Schroeder, and Schaffer;
also REPRESENTATIVES Agler, George, Knox.

AN ACT

CONCERNING THE REGULATION BY THE DEPARTMENT OF AGRICULTURE OF PERSONS DEALING IN AGRICULTURAL PRODUCTS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 12-16-103 (3.5) and (11), 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:

(3.5) "Credit sale contract" means a contract for the sale of a ~~commodity~~ FARM PRODUCT when the sale price is to be paid on a date later than sixty days after delivery of the ~~commodity~~ FARM PRODUCT to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

(5.5) "LIVESTOCK" HAS THE SAME MEANING AS SET FORTH IN SECTION 35-1-102 (6), C.R.S.

(11) ~~"Transporter" means any person, other than a dealer or agent, who transports for hire any farm products or commodities originating in Colorado.~~

SECTION 2. 12-16-104 (1) and (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, as they will become effective March 1, 1995, are amended to read:

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

12-16-104. Application for license. (1) No person shall act as a dealer, small-volume dealer, OR agent ~~or transporter~~ without having obtained a license as provided in this part 1. Every person acting as a dealer, small-volume dealer, OR agent ~~or transporter~~ shall file an application in writing with the commissioner for a license to transact the business of dealer, small-volume dealer, OR 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.

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

SECTION 3. 12-16-105 (1) (c), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

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:

(c) ~~Transporters, fifty dollars for each year.~~

SECTION 4. 12-16-108 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(g) HAD A LICENSE REVOKED, SUSPENDED, OR NOT RENEWED OR HAS BEEN PLACED ON PROBATION IN ANOTHER STATE FOR CAUSE, IF SUCH CAUSE COULD BE THE BASIS FOR THE SAME OR SIMILAR DISCIPLINARY ACTION IN THIS STATE.

SECTION 5. 12-16-115 (1) (e) and (1) (k), Colorado Revised Statutes, 1991 Repl. Vol., as amended, as they will become effective March 1, 1995, are amended 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, OR 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.

(k) Act as a dealer, small-volume dealer, OR 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.

SECTION 6. 12-16-202 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-16-202, as amended, is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(1) ~~"Bailee" means the person who by a negotiable warehouse receipt or other document of title acknowledges possession of goods and contracts to deliver them.~~ "AGENT" MEANS A PERSON WHO, ON BEHALF OF A COMMODITY HANDLER, BUYS, RECEIVES, CONTRACTS FOR, OR SOLICITS FARM PRODUCTS FROM OR SELLS FARM PRODUCTS FOR THE OWNER THEREOF OR WHO NEGOTIATES THE CONSIGNMENT OR PURCHASE OF FARM PRODUCTS ON BEHALF OF A COMMODITY HANDLER.

(1.5) "BAILEE" MEANS A PERSON WHO, BY A NEGOTIABLE WAREHOUSE RECEIPT OR OTHER DOCUMENT OF TITLE, ACKNOWLEDGES POSSESSION OF GOODS AND CONTRACTS TO DELIVER THEM.

(9.5) "LIVESTOCK" HAS THE SAME MEANING AS SET FORTH IN SECTION 35-1-102 (6), C.R.S.

SECTION 7. 12-16-203 (1) and (2), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-16-203. Licenses - commodity handler - agent. (1) No person shall act as a commodity handler OR AS AN AGENT FOR A COMMODITY HANDLER in this state without having first obtained a license from the department.

(2) Every person intending to act as a commodity handler OR AS AN AGENT FOR A COMMODITY HANDLER in this state shall, before March 1 of each year, obtain a license from the department.

SECTION 8. 12-16-205 (1) and the introductory portion to 12-16-205 (2),

Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-16-205 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-16-205. Commodity handler or agent licenses - application requirements.

(1) Each applicant FOR A COMMODITY HANDLER LICENSE shall pay a license fee of fifty dollars for each year AND EACH APPLICANT FOR AN AGENT LICENSE SHALL PAY A LICENSE FEE OF TEN DOLLARS FOR EACH YEAR, which the department shall collect and transmit to the state treasurer, who shall credit the same to the general fund.

(2) Application for a COMMODITY HANDLER license under this section shall be made to the department upon forms furnished by the department. The application shall include the following information:

(2.5) (a) APPLICATION FOR AN AGENT LICENSE UNDER THIS SECTION SHALL BE MADE TO THE DEPARTMENT UPON FORMS FURNISHED BY THE DEPARTMENT. THE APPLICATION SHALL INCLUDE THE FOLLOWING INFORMATION:

(I) THE NAME AND PRINCIPAL BUSINESS ADDRESS OF THE APPLICANT IN COLORADO AND IN EACH STATE IN WHICH THE APPLICANT OPERATES;

(II) THE NAME OF THE PERSON AUTHORIZED TO RECEIVE AND ACCEPT SERVICE OF SUMMONS AND LEGAL NOTICES OF ALL KINDS ON BEHALF OF THE APPLICANT IN EACH STATE;

(III) THE NAME AND ADDRESS OF THE COMMODITY HANDLER REPRESENTED OR THAT WILL BE REPRESENTED UPON LICENSURE OF THE AGENT;

(IV) A WRITTEN LETTER OF INTENTION FROM THE COMMODITY HANDLER NAMED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a) TO NAME THE APPLICANT AS SUCH COMMODITY HANDLER'S AGENT UPON LICENSURE;

(V) THE NAME AND ADDRESS OF ANY COMMODITY HANDLER FOR WHOM THE AGENT HAS BEEN ISSUED A LICENSE PURSUANT TO THIS SUBSECTION (2.5); AND

(VI) ANY OTHER INFORMATION THAT THE COMMISSIONER DEEMS REASONABLY NECESSARY TO CARRY OUT THE PURPOSES OF THIS PART 2.

(b) (I) NO PERSON MAY BE LICENSED AS AGENT FOR ANY COMMODITY HANDLER THAT IS NOT LICENSED.

(II) A SEPARATE LICENSE SHALL BE REQUIRED FOR EACH COMMODITY HANDLER THAT AN AGENT SEEKS TO REPRESENT.

(c) A LICENSE ISSUED PURSUANT TO THIS SUBSECTION (2.5) SHALL EXPIRE UPON EXPIRATION OF THE LICENSE OF THE COMMODITY HANDLER THE AGENT REPRESENTS.

SECTION 9. 12-16-206, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

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

(a) The applicant or ~~commodity handler~~ LICENSEE shall furnish the commissioner with evidence of minimum provisional insurance coverage in an amount sufficient to protect the applicant's storage obligations. If, at any time, the commissioner evaluates an applicant's provisional insurance coverage to be insufficient, the commissioner may require such additional insurance as ~~he~~ THE COMMISSIONER considers sufficient. Failure to provide evidence of the additional insurance within thirty days after written notice from the commissioner constitutes grounds for the suspension or revocation of the license.

(b) The applicant or ~~commodity handler~~ LICENSEE shall furnish the commissioner with a financial statement ~~which~~ THAT presents accurately his or her financial condition. The commissioner may promulgate rules ~~which~~ THAT clearly state the information required from each applicant or ~~commodity handler~~ LICENSEE under this section. Any financial statement submitted to the commissioner in support of a license application made pursuant to the provisions of this part 2 shall be confidential.

(2) If any ~~commodity handler~~ LICENSEE fails to apply for license renewal before March 1 of each year, such ~~handler~~ LICENSEE shall, upon application for a renewal license and before such license is issued, pay a penalty fee equal to the license fee. Such penalty fee shall be in addition to the license fee.

SECTION 10. 12-16-206.5 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-16-206.5. Disciplinary powers - licenses. (1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(h) HAD A LICENSE REVOKED, SUSPENDED, OR NOT RENEWED OR HAS BEEN PLACED ON PROBATION IN ANOTHER STATE FOR CAUSE, IF SUCH CAUSE COULD BE THE BASIS FOR SIMILAR DISCIPLINARY ACTION IN THIS STATE.

SECTION 11. 12-16-218 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (e) ANY PERSON LICENSED PURSUANT TO PART 1 OF THIS ARTICLE MAY APPLY FOR A LICENSE AS A COMMODITY HANDLER OR AGENT AND SHALL NOT BE SUBJECT TO THE LICENSE FEE REQUIRED BY SECTION 12-16-205. THE BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED BY SECTION 12-16-106 SHALL ALSO APPLY TO SUCH PERSON'S ACTIVITIES AS A COMMODITY HANDLER OR AGENT AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION AND SECTION 12-16-215.

SECTION 12. 12-16-221 (1) (e) and (1) (l), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

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

(e) Act as a commodity handler OR AGENT without having obtained a license or

ACT AS A COMMODITY HANDLER without having filed a surety bond or irrevocable letter of credit, as provided in this part 2. Violation of this paragraph (e) shall constitute a class 6 felony.

(l) Act as a commodity handler OR AGENT 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 commodities 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 (l), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (l) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

SECTION 13. 12-16-223, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-16-223. Repeal of article. This article is repealed, effective ~~July 1, 1995~~ JULY 1, 2010. Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 14. 24-34-104 (24.1) (e) and (24.1) (i), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended, and the said 24-34-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

~~(e) The issuance of licenses relating to poultry eggs through the department of agriculture or the commissioner of agriculture in accordance with article 21 of title 35, C.R.S.;~~

~~(i) The licensing functions of the commissioner of agriculture pursuant to article 16 of title 12, C.R.S.~~

(41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON JULY 1, 2010:

(a) THE FOLLOWING FUNCTIONS OF THE COMMISSIONER OF AGRICULTURE:

(I) THE LICENSING AND REGULATION OF PERSONS PURSUANT TO ARTICLE 16 OF TITLE 12, C.R.S.;

(II) THE ISSUANCE OF LICENSES RELATING TO POULTRY EGGS IN ACCORDANCE WITH ARTICLE 21 OF TITLE 35, C.R.S.

SECTION 15. 35-21-101 (6), (8), (9), and (12), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-21-101. Definitions. As used in this article, unless the context otherwise requires:

(6) "Dealer" means any person WHO IS not a producer AND WHO IS engaged in buying, ~~or selling, eggs~~ or buying and selling eggs.

(8) "Edible eggs" means eggs which are free from mould, blood ring, blood spot, bloody whites, filth, stuck yolk, black rot, white rot, mixed rot, or any other inedible quality AS DEFINED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE. ~~this includes adhering fecal or other extraneous matter covering more than one-fourth of the shell surface. Eggs which have been subjected to incubation practices, whether natural or artificial, shall be classed as inedible.~~

(9) ~~"Egg breaker" means any person who commercially engages in the business of removing eggs from their shells in the production of liquid, frozen, egg solids, or any preparation of egg products.~~

(12) The terms "gross sales" and "total annual gross sales of the establishment" are synonymous and when used for license fee classification purposes mean the gross sales of all items including poultry eggs, sold annually as reported to the department of revenue, BUT DOES NOT INCLUDE GASOLINE SALES.

SECTION 16. 35-21-103, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-21-103. Eggs to be candled - refrigeration - transportation. (1) Every person buying shell eggs from producers for resale shall candle and grade the eggs according to United States department of agriculture standards, grades, and weight classes for shell eggs. The candling and grading required by this subsection (1) shall be done in the presence of the producer if ~~said~~ THE producer so requests. IN BUYING EGGS FOR RESALE OR SELLING EGGS, no person shall ~~in buying or selling eggs,~~ give or take a greater or less deduction for eggs rejected as unfit for food or a lower grade than the actual loss or grade which has been determined by the careful examination of the same.

(2) All eggs shall be kept under adequate refrigeration from the time they are first received from the producer until sold to the consumer. This refrigeration shall be such that the temperature of the eggs does not exceed ~~sixty degrees Fahrenheit~~ THE TEMPERATURE ESTABLISHED IN RULES ADOPTED BY THE COMMISSION PURSUANT TO SECTION 35-21-106 (1).

(3) Every vehicle used to transport eggs from a producer to any dealer, processing plant, or retailer shall be maintained in a sanitary condition and shall be enclosed to protect eggs from extreme heat or cold.

(4) ~~A certificate shall be placed upon the top layer of each case or part case of candled and graded loose eggs showing the grade, size, date of candling, and the name and address of the dealer selling the eggs. The person selling the eggs shall be responsible for the maintenance of grade for a period of ten days, after which the subsequent buyer is responsible.~~

(5) ~~An invoice shall be furnished the subsequent purchaser of eggs by the first receiver, showing the name of the seller, the date sold, and the grade and size classification of the eggs sold. A copy of this invoice shall be retained by the buyer and seller of such eggs for a period of thirty days after receipt of the eggs.~~

(6) ~~Every carton or container of eggs offered for sale to the consumer in the state of Colorado shall have clearly imprinted thereon, or shall bear a tag or adhesive label securely fastened thereto, showing that the eggs have been candled and graded, together with the date of candling and the name and address of the firm, and stating, in letters not less than one-fourth inch in height, the grade and weight designation as specified in section 35-21-102.~~

(7) ~~Any person advertising eggs for sale in this state shall include in the advertisement, in type at least one-half the size of the statement of price, a statement of the correct grade and weight of such eggs; but a person may add a special name, design, or trademark to the grade and weight if such special name, design, or trademark is not misleading or contradictory to the actual grade and weight and if such special name, design, or trademark is first approved by and registered with the commissioner.~~

(8) ~~It is unlawful for any person to sell or offer for sale eggs in any carton or container on which there is evidence of adhering filth or contamination on the inside or outside of such carton, or in any used carton on which there is printed, stamped, or affixed any trademark, design, or other identification of any person other than the person so selling such eggs.~~

(9) ~~It is unlawful to sell eggs labeled as "fertile" unless seventy-five percent of the eggs are actually fertile as determined for inspection purposes by candling, by incubation, or by any other means, including breaking out for physical examination.~~

SECTION 17. 35-21-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-21-104. Licenses - application - fees. (1) Every person buying POULTRY EGGS FOR RESALE OR selling ~~candling, or receiving on consignment~~ poultry eggs within this state shall obtain, on or before July 1 of each year, from the department, a retailer's OR wholesaler's ~~or candler's~~ license ~~applicable~~ for each place where such business is conducted. A license ~~shall not be~~ IS NOT transferable and ~~shall expire~~ EXPIRES on June 30 of each year. ~~and~~ No reduction of license fee ~~shall~~ MAY be made for a fractional part of a year.

(2) (a) ~~No person shall, without first obtaining a license from the commissioner, engage commercially in the business of removing eggs from their shells in the preparation of frozen, liquid, egg solids, or any other forms of whole eggs, any mixture of yolks, whites, sugared yolks, salted yolks, or any preparation of egg meat with or without other wholesome ingredients.~~

(b) ~~Before such license is granted, the commissioner shall inspect the establishment and the equipment to be used in the egg breaking process, and shall also determine whether or not the building, equipment, and method of operation comply with the sanitary regulations established by the commission or other~~

recognized regulatory authority:

~~(c) If, after such inspection, it is evident that the establishment complies with the sanitary requirements, the commissioner shall issue an egg-breaker license to the establishment. Such license shall not be transferable and shall expire on June 30 of each year, and no reduction of license fees shall be made for a fractional part of a year.~~

~~(d) Every egg-breaking establishment shall include its license number as a part of the proper labeling of all cans or containers in which frozen eggs or egg products are sold or offered for sale for human consumption.~~

(3) An application for ~~any~~ A license shall state:

- (a) The name of the applicant; ~~and~~
- (b) If THE APPLICANT IS a firm, the names of its members; ~~and~~
- (c) If THE APPLICANT IS a corporation, the names of its officers;
- (d) The location of the business; and
- (e) The telephone number, if any.

(4) (a) The annual license fees for retailers ~~shall be~~ ARE based on the total annual gross sales, EXCLUDING THE SALE OF GASOLINE, of the establishment for the previous calendar year, as reported to the department of revenue. ~~or~~; In the case of chain stores, THE ANNUAL LICENSE FEE IS BASED ON total annual gross sales, EXCLUDING THE SALE OF GASOLINE, of individual stores for the previous calendar year as reported by the home office of such chain to the department. ~~except that, for~~ NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, a retailer who has not been engaged in business during the previous calendar year ~~the fee shall be~~ SHALL PAY two dollars FOR ITS ANNUAL LICENSE FEE. Retail classes and fees ~~shall be~~ ARE as follows:

Class I. Retailer - Gross sales up to and including \$50,000, fee \$2.00.

Class II. Retailer - Over \$50,000 to and including \$100,000 gross sales, fee \$5.00.

Class III. Retailer - Over \$100,000 to and including \$200,000 gross sales, fee \$8.00.

Class IV. Retailer - Over \$200,000 to and including \$500,000 gross sales, fee \$15.00.

Class V. Retailer - Over \$500,000 gross sales, fee \$25.00.

(b) The annual license fees for wholesalers ~~shall be~~ ARE based on the average number of cases of eggs (thirty dozen per case) sold per week during the previous year; except that for a wholesaler who has not been engaged in business during the previous calendar year, the fee ~~shall be~~ IS twenty-five dollars. The applicant for a

wholesale license shall keep such records as may be necessary to indicate accurately the quantity of eggs sold per week during the year and shall allow the commissioner to examine these records in determining the quantity of eggs sold. A WHOLESALER SHALL RETAIN such records of quantity sold ~~shall be held by a wholesaler~~ for a period of two years. The wholesale classes and fees ~~shall be~~ ARE as follows:

Class I. Wholesaler - Up to and including 50 cases per week, fee \$25.00.

Class II. Wholesaler - Over 50 cases to and including 100 cases per week, fee \$50.00.

Class III. Wholesaler - Over 100 cases to and including 250 cases per week, fee \$100.00.

Class IV. Wholesaler - Over 250 cases to and including 750 cases per week, fee \$300.00.

Class V. Wholesaler - Over 750 cases per week, fee \$500.00.

~~(c) Any out-of-state wholesaler or trucker selling eggs in this state shall be classified as a Class IV wholesaler and shall obtain a Class IV wholesaler license. This includes any person, other than a common or contract carrier, hauling eggs into this state for the account of a person other than himself.~~

~~(d) Any person receiving eggs on consignment to be shipped to a first receiver for candling shall obtain a license to carry on such business. The license fee for a consignment receiver shall be fifteen dollars per year.~~

~~(e) Any person operating retail delivery trucks or other vehicles and selling eggs from these SUCH trucks or vehicles to the consumer shall obtain a Class I retailer license for each vehicle so used.~~

~~(f) Any Colorado resident not holding a wholesale license for a place of business who uses a truck or other vehicle in buying eggs from producers or other dealers shall obtain a license for each vehicle so used, the fee for which shall be twenty-five dollars per year.~~

~~(g) The license fee for egg breakers shall be based on the establishment's annual production in pounds: Class I breaker's license up to and including fifty thousand pounds per year, twenty-five dollars; Class II breaker's license, over fifty thousand pounds per year, fifty dollars; except that, for any egg breaker who has not been engaged in business during the previous year, the fee shall be twenty-five dollars.~~

~~(h) Any person selling frozen eggs or egg solids (dried eggs) shall obtain the applicable wholesale license based on the number of pounds sold per week per year converted to cases at the rate of thirty-six pounds per case on frozen eggs or twelve pounds per case on egg solids. If the person has a wholesale license for shell eggs or a breaker's license, he shall be credited for such license on his frozen egg or egg solids license.~~

~~(i) Any person candling eggs in this state shall obtain a candler's license. This~~

~~includes producers selling candled and graded eggs of their own production to retailers, restaurants, or manufacturers. The fee for such license shall be two dollars per year. This license shall entitle the holder to candle and grade eggs in this state.~~

(5) All LICENSE fees ~~from licenses~~ shall be deposited with the state treasurer and credited to the general fund. Commencing with the fiscal year beginning July 1, 1965, the general assembly shall appropriate to the department of agriculture from the general fund such moneys as are necessary for the administration of this article.

SECTION 18. 35-21-106 (1) and (2), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-21-106. Rules - commissioner to enforce - procedure. (1) The commission is authorized to formulate such rules ~~and regulations~~ RELATING TO LABELING, SALE, STORAGE, INSPECTION, AND RECORD-KEEPING as it may deem proper and necessary for the FURTHERANCE AND enforcement of ~~the provisions of~~ this article. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(2) (a) THE COMMISSIONER IS RESPONSIBLE FOR ENFORCING THIS ARTICLE. THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE SHALL HAVE ACCESS DURING REGULAR BUSINESS HOURS TO THOSE PLACES OF BUSINESS AND THOSE BUSINESS RECORDS PERTINENT TO ACTIVITIES REGULATED UNDER THIS ARTICLE.

(b) IF the commissioner ~~upon determining~~ DETERMINES that the provisions of this article or the rules ~~and regulations~~ promulgated for its enforcement are being violated, THE COMMISSIONER may cause "stop sale notices" to be placed on all eggs being sold or offered for sale in violation of ~~the provisions of~~ this article or ~~the SAID rules. and regulations thereof.~~ NO PERSON MAY SELL OR OTHERWISE DISPOSE OF eggs upon which a "stop sale notice" has been issued ~~shall not be sold or otherwise disposed of~~ until such "stop sale notice" has been cancelled by the commissioner or ~~his~~ A duly authorized agent.

SECTION 19. 35-21-107 (2), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-21-107. Penalty. (2) ~~The commissioner may~~ After proper hearing as provided in article 4 of title 24, C.R.S., THE COMMISSIONER MAY DENY AN APPLICATION FOR LICENSURE, PLACE A LICENSEE ON PROBATION, OR RESTRICT, suspend, ~~or~~ revoke, ~~any~~ OR REFUSE TO RENEW THE license ~~issued to any~~ OF A person who violates any of the provisions of this article or any ~~rules and regulations issued by the commission pursuant thereto~~ RULE ADOPTED UNDER THIS ARTICLE. Such RESTRICTION, revocation, ~~or~~ suspension of OR REFUSAL TO RENEW a license may be in addition to, or in lieu of, any penalties or fines imposed in subsection (1) of this section.

SECTION 20. Article 21 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

35-21-107.5. Civil penalties. (1) (a) THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY ON ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE ADOPTED UNDER THIS ARTICLE. SUCH PENALTY SHALL NOT EXCEED SEVEN HUNDRED FIFTY DOLLARS PER DAY PER VIOLATION.

(b) BEFORE IMPOSING A CIVIL PENALTY, THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE ABILITY OF THE VIOLATOR TO STAY IN BUSINESS.

(2) (a) THE COMMISSIONER SHALL NOT IMPOSE A CIVIL PENALTY UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND AN OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(b) UPON A FINDING THAT THE COMMISSIONER DID NOT HAVE PROBABLE CAUSE TO IMPOSE A CIVIL PENALTY, THE PERSON CHARGED MAY RECOVER FROM THE DEPARTMENT SUCH PERSON'S COSTS AND ATTORNEY FEES.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT A CIVIL PENALTY OR IF ANY PERSON FAILS TO PAY ALL OR ANY PORTION OF A CIVIL PENALTY IMPOSED PURSUANT TO THIS SECTION, THE COMMISSIONER MAY RECOVER THE AMOUNT OF THE PENALTY, PLUS COSTS AND ATTORNEY FEES, BY ACTION IN A COURT OF COMPETENT JURISDICTION.

(4) ALL MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE GENERAL FUND.

SECTION 21. 35-21-108, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-21-108. Repeal - review of functions. Sections 35-21-104 and 35-21-107 (2) are repealed, effective ~~July 1, 1995~~ JULY 1, 2010. Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 22. 35-23-111, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-23-111. Inspection made mandatory. It is unlawful for any person, firm, corporation, or other organization to ship potatoes ~~or peaches~~ in excess of one thousand pounds, except those destined for commercial processing, unless they have first been inspected by a duly authorized inspector who shall issue a certificate of inspection showing the grade or other classification thereof.

SECTION 23. 35-23.5-103, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-23.5-103. Voluntary inspection of facility - rules - fee. ~~On or after July 1, 1977, no person shall operate a controlled atmosphere storage facility for the storage of apples without applying for and receiving a license therefor from the commissioner. A fee established by the commissioner to cover the costs of issuing the license and making the inspection shall accompany the application. Prior to the issuance of the license, the commissioner or his authorized agent shall inspect the storage facility to determine compliance with this article and the rules adopted pursuant thereto. Each license shall expire three years after issuance but may be renewed upon paying the current fee established by the commissioner for an original license, unless his license has been revoked or suspended for a violation of this article or the rules adopted pursuant thereto within the last two years. THE COMMISSIONER~~

MAY INSPECT A CONTROLLED ATMOSPHERE STORAGE FACILITY UPON REQUEST BY THE OPERATOR OR UNDER CONDITIONS SET FORTH IN RULES ADOPTED BY THE COMMISSIONER PURSUANT TO SECTIONS 24-4-103, C.R.S., AND 35-23.5-104. THE COMMISSIONER MAY FIX, ASSESS, AND COLLECT FEES IN AMOUNTS THAT COVER ACTUAL COSTS ASSOCIATED WITH INSPECTION AND THE ISSUANCE OF CERTIFICATES OF INSPECTION.

SECTION 24. 35-23.5-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-23.5-104. Commissioner to develop rules. The commissioner shall develop reasonable rules concerning the VOLUNTARY INSPECTION OF APPLES STORED PURSUANT TO THIS ARTICLE AND THE controlled atmosphere storage of apples, including, among other factors, the following: Storage facility regulations; record keeping and reports; length of storage time, including the maximum time allowed to reach prescribed atmospheric conditions of temperature, oxygen, and carbon dioxide; quality regulations; and labeling and marketing.

SECTION 25. The introductory portion to 35-23.5-107 (1) and 35-23.5-107 (1) (a) and (1) (b), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-23.5-107. Penalty. (1) ~~On or after July 1, 1977, It shall be~~ IS unlawful for any person to:

(a) Operate a facility for the storage of apples that is represented as being a controlled atmosphere storage facility unless it ~~has been licensed~~ MEETS THE STANDARDS SET PURSUANT TO RULE by the commissioner under the provisions of this article;

(b) Sell, exchange, or offer for sale, ADVERTISE, LABEL, OR OTHERWISE REPRESENT THAT apples ~~grown in Colorado which are represented as having been~~ HAVE BEEN exposed to controlled atmosphere storage, unless such apples have been stored in a facility ~~licensed~~ THAT MEETS THE STANDARDS SET PURSUANT TO RULE by the commissioner under provisions of this article.

SECTION 26. 35-23.5-108, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-23.5-108. Repeal - review of functions. Sections ~~35-23.5-103~~, 35-23.5-106 AND 35-23.5-107 ~~(1) (a), (1) (b), and~~ (1) (c) are repealed, effective July 1, 1995. Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 27. Adjustments to the 1995 long bill. (1) For the implementation of this act, general fund appropriations made in the annual general appropriation act to the department of agriculture, agricultural services division, for the fiscal year beginning July 1, 1995, shall be reduced by nine thousand eight hundred six dollars (\$9,806) and 0.4 FTE, or so much thereof as may be necessary, for the purpose of implementing this act.

(2) For the implementation of this act, cash funds exempt appropriations made in

the annual general appropriation act to the department of revenue, ports of entry division, for the fiscal year beginning July 1, 1995, shall be reduced by fifty-three thousand three hundred fifty-six dollars (\$53,356) and 1.8 FTE, or so much thereof as may be necessary, for the purpose of implementing this act.

SECTION 28. Effective date - applicability. This act shall take effect upon passage, and shall apply to acts occurring on or after said date.

SECTION 29. 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: May 23, 1995