

CHAPTER 25

AGRICULTURE

HOUSE BILL 95-1054

BY REPRESENTATIVES Taylor, Chlouber, Entz, George, Moellenberg, and Reeser;
also SENATORS Wattenberg, Johnson, and Rizzuto.

AN ACT

CONCERNING THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF AGRICULTURE, AND, IN CONNECTION THEREWITH, ESTABLISHING CIVIL PENALTIES AND AUTHORIZING THE ISSUANCE OF CEASE AND DESIST ORDERS AND THE ISSUANCE OF INJUNCTIONS BY THE COURTS TO ENFORCE PROVISIONS GOVERNING THE "COLORADO AGRICULTURAL MARKETING ACT OF 1939" AND LIVESTOCK.

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

SECTION 1. 35-28-116 (7) and (8), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-28-116. Administration and enforcement. (7) ~~The commissioner through the attorney general of this state may upon his own initiative and shall upon complaint of any person, if, after investigation he believes a violation has occurred, bring an action in the name of the people of this state in the proper court of the state of Colorado for an injunction against any person violating any provisions of this article or of any marketing order duly issued by the commissioner under this article.~~

(a) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR BY THE COMMISSIONER. THE PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE ON AT LEAST ONE PRIOR OCCASION OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION.

(b) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSIONER UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

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

(c) IF THE COMMISSIONER IS UNABLE TO COLLECT THE CIVIL PENALTY, OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(d) BEFORE IMPOSING ANY CIVIL PENALTY, THE COURT OR THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE PERSON CHARGED.

(e) ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE GENERAL FUND.

~~(8) The court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief and upon trial of such action, and if judgment is in favor of plaintiff, the court shall permanently enjoin the defendant from further violations.~~ (a) THE COMMISSIONER SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE.

(b) WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING ANY PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH CEASE AND DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL ACTIONS CEASE IMMEDIATELY. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST A PROMPT HEARING TO DETERMINE WHETHER OR NOT SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(c) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO THE COMMISSIONER THAT ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, THE COMMISSIONER MAY APPLY TO A COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE OR ORDER UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

SECTION 2. Article 50 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

35-50-145.1. Civil penalties. (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE EXCEPT SECTION 35-50-110, OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE EXCEPT A RULE ADOPTED PURSUANT TO SECTION 35-50-110, IS SUBJECT TO A CIVIL PENALTY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR BY THE COMMISSION OR THE COMMISSION'S DESIGNEE. THE PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE

DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE ON AT LEAST ONE PRIOR OCCASION OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION.

(2) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSION OR ITS DESIGNEE UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSION OR ITS DESIGNEE IS UNABLE TO COLLECT THE CIVIL PENALTY, OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSION OR ITS DESIGNEE, THE COMMISSION MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COURT, THE COMMISSION, OR THE COMMISSION'S DESIGNEE MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE PERSON CHARGED.

(5) ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE GENERAL FUND.

35-50-145.2. Enforcement. (1) THE COMMISSION OR ITS DESIGNEE SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE.

(2) WHENEVER THE COMMISSION OR ITS DESIGNEE HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, SAID COMMISSION OR DESIGNEE MAY ISSUE AN ORDER REQUIRING ANY PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH CEASE AND DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL ACTIONS CEASE IMMEDIATELY. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST A PROMPT HEARING TO DETERMINE WHETHER OR NOT SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) WHENEVER THE COMMISSION OR ITS DESIGNEE POSSESSES SATISFACTORY EVIDENCE THAT ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, THE COMMISSION OR ITS DESIGNEE MAY APPLY TO ANY COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE OR ORDER UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSION OR ITS DESIGNEE SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSION OR ITS DESIGNEE TO POST A BOND.

SECTION 3. Article 51 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to

read:

35-51-103. Civil penalties. (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR THE COMMISSIONER. THE PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE ON AT LEAST ONE PRIOR OCCASION OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION.

(2) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSIONER UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT THE CIVIL PENALTY, OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COURT OR THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE PERSON CHARGED.

(5) ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE GENERAL FUND.

35-51-104. Enforcement. (1) THE COMMISSIONER SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE.

(2) WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING ANY PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH CEASE AND DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL ACTIONS CEASE IMMEDIATELY. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST A PROMPT HEARING TO DETERMINE WHETHER OR NOT SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO THE COMMISSIONER THAT ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, THE COMMISSIONER MAY APPLY TO ANY COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE OR ORDER UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE

INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

SECTION 4. Article 52 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

35-52-111.1. Civil penalties. (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR OF ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR THE COMMISSIONER. THE PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE ON AT LEAST ONE PRIOR OCCASION OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION.

(2) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSIONER UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT THE CIVIL PENALTY, OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN ANY COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COURT OR THE COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE PERSON CHARGED.

(5) ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE GENERAL FUND.

35-52-111.2. Enforcement. (1) THE COMMISSIONER SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE.

(2) WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING ANY PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH CEASE AND DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL ACTIONS CEASE IMMEDIATELY. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST A PROMPT HEARING TO DETERMINE WHETHER OR NOT SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) WHENEVER THE COMMISSIONER POSSESSES EVIDENCE SATISFACTORY TO THE COMMISSIONER THAT ANY PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF

ANY RULE ADOPTED UNDER THIS ARTICLE, THE COMMISSIONER MAY APPLY TO ANY COURT OF COMPETENT JURISDICTION TO TEMPORARILY OR PERMANENTLY RESTRAIN OR ENJOIN THE ACT OR PRACTICE IN QUESTION AND TO ENFORCE COMPLIANCE WITH THIS ARTICLE OR ANY RULE OR ORDER UNDER THIS ARTICLE. IN ANY SUCH ACTION, THE COMMISSIONER SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. UNDER NO CIRCUMSTANCES SHALL THE COURT REQUIRE THE COMMISSIONER TO POST A BOND.

SECTION 5. Effective date - applicability. This act shall take effect upon passage, and shall apply to acts occurring on or after said date.

SECTION 6. 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 23, 1995