

CHAPTER 190

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**NATURAL RESOURCES**

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SENATE BILL 96-090

BY SENATORS Dennis and Mutzebaugh;  
also REPRESENTATIVES Pfiffner, Acquafresca, and Entz.

**AN ACT**

**CONCERNING REGULATION OF WEATHER MODIFICATION, AND, IN CONNECTION THEREWITH, CONTINUING THE ISSUANCE OF PERMITS FOR WEATHER MODIFICATION OPERATIONS BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES AND ELIMINATING THE LICENSING OF WEATHER MODIFICATION OPERATORS.**

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

**SECTION 1.** 36-20-104 (3) and (6), Colorado Revised Statutes, 1990 Repl. Vol., are amended, and the said 36-20-104, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**36-20-104. Definitions.** As used in this article, unless the context otherwise requires:

(3) ~~"License" means a certification issued by the director indicating that a specific person has met the standards for certification as a weather modifier and is approved to direct weather modification operations in the state.~~

(4.5) "OPERATOR" MEANS ANY PERSON WHO CONDUCTS A WEATHER MODIFICATION OPERATION IN COLORADO.

(6) "Person" ~~means an individual, partnership, or public or private corporation or agency, except where the context indicates that "person" is used in the sense of a living individual~~ HAS THE SAME MEANING AS THAT PROVIDED IN SECTION 2-4-401 (8), C.R.S.

**SECTION 2.** 36-20-105 (2), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

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

**36-20-105. Administration.** (2) The director shall issue all licenses and permits provided for in this article. ~~He~~ THE DIRECTOR is hereby empowered to issue rules and regulations ~~he~~ THE DIRECTOR finds necessary to facilitate the implementation of this article, and ~~he~~ THE DIRECTOR is authorized to execute and administer all other provisions of this article pursuant to the powers and limitations contained in this article.

**SECTION 3.** 36-20-107 (2), Colorado Revised Statutes, 1990 Repl. Vol., as amended, is repealed as follows:

**36-20-107. Duties of the director.** (2) (a) ~~The director shall establish qualifications, procedures, and conditions for the issuance of licenses for the purpose of conducting weather modification activities within the state.~~

(b) (I) ~~The qualifications so established shall ensure that the licensee demonstrates knowledge, skill, and experience reasonably necessary to accomplish weather modification without actionable injury to person or property, but the licensee shall be limited in the exercise of such license to the method of weather modification within his area of expertise. At a minimum each such applicant, except for applicants for licenses for ground-based winter cloud seeding, shall meet requirements at least as stringent as one or more of the following:~~

(A) ~~Demonstrates that such person has at least eight years' experience at the professional level in weather modification field research or operations, at least three of those years as a project director; or~~

(B) ~~Has obtained a baccalaureate degree in engineering, mathematics, or the physical sciences plus three years' experience in weather modification field research or operations; or~~

(C) ~~Has obtained a baccalaureate degree in meteorology or a degree in engineering or the physical sciences which includes, or is in addition to, the equivalent of at least twenty-five semester hours of meteorological course work and two years' practical experience in weather modification operations or research.~~

(H) ~~Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the qualifications established by the director for ground-based winter cloud seeding shall ensure that the licensee demonstrates knowledge, skill, and experience reasonably necessary to accomplish weather modification without actionable injury to person or property, but the licensee shall be limited in the exercise of such license to the method of weather modification within such licensee's area of experience. Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (I) of this paragraph (b), for ground-based winter cloud seeding a person shall have at least eight years' experience at the professional level in weather modification field research or operations, at least two of those years as a project director.~~

**SECTION 4.** 36-20-108 (1) and (3) (b), Colorado Revised Statutes, 1990 Repl. Vol., as amended, are amended to read:

**36-20-108. Powers of the director.** (1) The director may issue permits

applicable to specific weather modification operations. For each operation, said permit shall describe the specific geographic area authorized to be affected and shall provide a specific time period during which the operation may continue, which period may be discontinuous but for operations other than ground-based winter cloud seeding may not have a total duration exceeding one calendar year from the day of its issuance. A separate permit shall be required for each operation. Permits for ground-based winter cloud seeding shall have a duration of five years. ~~The director shall issue a permit only after it is established that the project is conceived to provide economic benefits or that it will advance or enhance scientific knowledge.~~ IF A PERMIT FOR A GROUND-BASED WINTER CLOUD SEEDING OPERATION IS RENEWED, THE SECOND PERMIT SHALL HAVE A DURATION OF FIVE YEARS AND ANY THIRD OR SUBSEQUENT PERMIT SHALL HAVE A DURATION OF TEN YEARS. The director shall issue only one active permit for activities in any geographic area if two or more projects therein might adversely interfere with each other.

(3) (b) All hearings conducted under this article shall be conducted pursuant to the provisions of this article and article 4 of title 24, C.R.S., and the director OR THE DIRECTOR'S DESIGNEE SHALL CONDUCT ANY HEARING REQUIRED BY THIS ARTICLE OR THE DIRECTOR may, by the director's own action, appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel, to conduct any hearing required by this article. ANY ~~said hearing to~~ SHALL be conducted under the provisions and within the limitations of article 4 or title 24, C.R.S., and this article.

**SECTION 5.** 36-20-109 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-109. Permit required - exemptions.** (1) No person may engage in activities for weather modification and control without ~~a weather modification license~~ and a weather modification permit issued by the director; nor may any person engage in any activities in violation of any term or condition of ~~the license or the permit.~~

**SECTION 6.** 36-20-110, Colorado Revised Statutes, 1990 Repl. Vol., is repealed as follows:

**36-20-110. Issuance of license.** ~~(1) The director, in accordance with applicable regulations, shall issue a weather modification license to each applicant who:~~

~~(a) Pays the license fee, if applicable; and~~

~~(b) Meets the qualifications for licensure established by the director pursuant to section 36-20-107 (2).~~

**SECTION 7.** 36-20-111, Colorado Revised Statutes, 1990 Repl. Vol., is repealed as follows:

**36-20-111. License fee - expiration.** ~~A license shall be issued under this article only upon the payment to the state of Colorado the sum of one hundred dollars for such license. Each such license shall expire at the end of the calendar year in which it is issued.~~

**SECTION 8.** The introductory portion to 36-20-112 (1) and 36-20-112 (1) (a), (1) (d), (1) (e), (3) (a), (3) (c), and (3) (d), Colorado Revised Statutes, 1990 Repl. Vol., as amended, are amended, and the said 36-20-112 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**36-20-112. Permit required - when issued.** (1) The director, in accordance with his regulations, shall issue a weather modification permit to each applicant who:

(a) ~~Holds, or if the applicant is a corporation, the corporation demonstrates that the person in control of the project holds, a valid weather modification license; except that, for ground-based winter cloud seeding, a political subdivision of the state may be issued a permit pursuant to this section without holding a weather modification license if the other requirements of this section are met;~~

(d) Submits a complete operational plan for each proposed project prepared by the licensed operator in control which includes a specific statement of objectives, a map of the proposed operating area which specifies the primary target area and shows the area reasonably expected to be affected, the name and address of the licensee OPERATOR, the nature and object of the intended operation, the person or organization on whose behalf it is to be conducted, AND a statement showing any expected effect upon the environment and methods of determining and evaluating the same. ~~and such other detailed information as may be required to describe the operation and its proposed method of evaluation.~~ This operational plan shall be placed on file with the director and with any other agent as ~~he~~ THE DIRECTOR may require.

(e) Publishes a notice of intent to modify weather in the counties to be affected by the weather modification program before the licensee OPERATOR secures a permit and before beginning operations. The published notice shall designate the primary target area and indicate the general area which might be affected. It shall also indicate the expected duration and intended effect and state that complete details are available on request from the licensee OPERATOR or the director or from the other agent specified by the director. The publication shall also specify a time and place, not more than one week following the completion of publication, for a hearing on the proposed project. Proof of publication shall be furnished to the director by the licensee OPERATOR.

(g) PROVIDES THE INFORMATION THAT IS REQUESTED BY THE DIRECTOR REGARDING THE QUALIFICATIONS, EDUCATION, AND EXPERIENCE OF THE OPERATOR.

(3) No permit may be issued unless the director determines, based on the information provided in the operational plan and on the testimony provided at the public hearing:

(a) ~~That, if it is a commercial project, the proposed weather modification operation is conceived to provide, and offers promise of providing, an economic benefit to the area in which the operation will be conducted;~~

(c) That the project is ~~if it is a commercial project,~~ scientifically and technically feasible;

(d) ~~That the project is, if it is a scientific or research project, designed for and~~

~~offers promise of expanding the knowledge and the technology of weather modification;~~

**SECTION 9.** 36-20-113, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-113. Permit fee.** The fee for each permit or the renewal thereof under section 36-20-114 shall be at a ~~minimum of~~ LEAST one hundred dollars. If the operation is a commercial project, ~~an additional amount equal to two percent of the value of the contract for such commercial project shall be required and paid before a permit may be issued~~ THE DIRECTOR SHALL SET A FEE THAT IS SUFFICIENT TO PAY THE DIRECT COSTS OF REVIEW OF THE PERMIT APPLICATION, PUBLIC HEARINGS REGARDING THE APPLICATION, AND MONITORING OF PERMIT OPERATIONS UNDER THE PROVISIONS OF THIS ARTICLE. Said fees are intended to provide at least a portion of the moneys necessary to administer this article.

**SECTION 10.** 36-20-114, Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended to read:

**36-20-114. Limits of permit.** (1) Except for ground-based winter cloud seeding, a separate permit is required annually for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. Subject to the provisions of subsection (2) of this section, a permit may be granted for more than one year's duration. A permit for ground-based winter cloud seeding shall be issued for a period of five years. IF A PERMIT FOR A GROUND-BASED WINTER CLOUD SEEDING OPERATION IS RENEWED, THE SECOND PERMIT SHALL HAVE A DURATION OF FIVE YEARS AND ANY THIRD OR SUBSEQUENT PERMIT SHALL HAVE A DURATION OF TEN YEARS.

(2) The director may conditionally approve a project other than ground-based winter cloud seeding for a continuous time period in excess of one year's duration. Permits for such operations must be renewed annually. In approving the renewal of a permit for a continuous program, the director may waive the procedures for initial issuance of a permit in section 36-20-112 and, upon review and approval of the project's operational record, the director may issue a renewed permit for the operation to continue. In such instances, the fees ~~based upon the value of the contract~~ IMPOSED pursuant to section 36-20-113 may be prorated and paid on an annual basis.

(3) A project permit may be granted by the director without prior publication of notice by the ~~licensee~~ OPERATOR in cases of fire, frost, hail, sleet, smog, fog, drought, or other emergency. In such cases, publication of notice shall be performed as soon as possible and shall not be subject to the time limits specified in this article or in article 4 of title 24, C.R.S.

**SECTION 11.** 36-20-115 (1) (a), (2), and (3), Colorado Revised Statutes, 1990 Repl. Vol., are amended to read:

**36-20-115. Modification of permit.** (1) The director may revise the terms and conditions of a permit if:

(a) The ~~licensee~~ OPERATOR is first given notice and a reasonable opportunity for a hearing on the need for a revision; and

(2) If it appears to the director that an emergency situation exists or is impending which could endanger life, property, or the environment, ~~he~~ THE DIRECTOR may, without prior notice or a hearing, immediately modify the conditions of a permit or order temporary suspension of the permit on ~~his~~ THE DIRECTOR'S own order. The issuance of such order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions of a permit shall be grounds for immediate revocation of the permit. ~~and of the operator's license.~~

(3) It shall be the responsibility of the ~~licensee~~ OPERATOR conducting any operation to notify the director of any emergency which can reasonably be foreseen or of any existing emergency situations in subsection (2) of this section which might in any way be caused or affected by the weather modification operation. Failure by the ~~licensee~~ OPERATOR to so notify the director of any such existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the director, for ~~revocation of the license and~~ revocation of the permit for operation.

**SECTION 12.** 36-20-116, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-116. Scope of activity.** Once a permit is issued, the ~~licensee~~ OPERATOR shall confine his OR HER activities within the limits of time and area specified in the permit, except to the extent that the limits are modified by the director. ~~He~~ THE OPERATOR shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the director.

**SECTION 13.** 36-20-117, Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended to read:

**36-20-117. Reports of operator.** (1) ~~In order to aid in research and development in weather modification and to aid in the protection of life and property or the environment, any person conducting any weather modification operation in Colorado or elsewhere by undertaking operations within Colorado shall file such reports at such time and in the manner and form as shall be required by regulation of the director; except that, for ground-based winter cloud seeding projects, operators shall be required to keep a record of all operations conducted, showing the equipment, the methods, the types, amounts, times, and places of seeding agents employed, a statement as to the estimated effect of the operation in relation to its intended purpose, and the name and address of each person participating or assisting in the operation. A report on the evaluation of project results for ground-based winter cloud seeding shall be filed with the director within one year of the termination of a project or, in the case of an ongoing project, at least once every two years. The director may require such additional reports as the director deems necessary. Ground-based winter cloud seeding projects shall not be subject to any other reporting requirements contained in this article or rules and regulations of the director. THE DIRECTOR MAY PROMULGATE RULES REQUIRING ANY OPERATOR WHO HAS BEEN ISSUED A WEATHER~~

## MODIFICATION PERMIT TO FILE CERTAIN REPORTS REGARDING OPERATIONS CONDUCTED UNDER THE PERMIT.

(2) ~~Report forms may be developed by the director and shall include basic records showing: The method employed, the type of equipment used, the kind and amount of each material used, the times and places the equipment is operated, the name and address of each individual, other than the licensee, who participates or assists in the operation, any environmental effects realized or suspected to have occurred, and any other necessary data the director may require.~~

(3) ~~Except for ground-based winter cloud seeding projects, the director shall require written biweekly reports summarizing the project's activities and intended results while the project is actually in operation, and except for ground-based winter cloud seeding projects, the director shall require a written final operational report and a written final report evaluating the project, or an annual operational report and an annual project evaluation, as the case may be. Except for ground-based winter cloud seeding projects, a final operational report along with a preliminary scientific evaluation of the project shall be filed no later than thirty days after the completion of the project. Except for ground-based winter cloud seeding projects, a final complete scientific evaluation of the project shall be filed no later than one hundred eighty days after the completion of the project. Except for ground-based winter cloud seeding projects, an annual summary report shall be filed sixty days prior to the renewal of a permit under the provisions of section 36-20-114 (2). All such reports FILED UNDER THE PROVISIONS OF THIS SECTION are declared to be public records subject to the provisions and limitations of part 2 of article 72 of title 24, C.R.S.~~

**SECTION 14.** 36-20-119, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-119. Suspension - revocation - refusal to renew.** (1) The director may suspend or revoke a ~~license or~~ permit if it appears that the ~~licensee~~ OPERATOR no longer has the qualifications necessary for the issuance of an original ~~license or~~ permit or has violated any provision of this article.

(2) The director may ~~refuse to renew the license of,~~ or to issue another permit to any applicant who has failed to comply with any provision of this article.

**SECTION 15.** 36-20-120, Colorado Revised Statutes, 1990 Repl. Vol., is repealed as follows:

**36-20-120. Operation under permit.** ~~Operations under permits may only be carried forward by or under the immediate direction and supervision of a licensee.~~

**SECTION 16.** 36-20-121 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-121. Hearing required.** (1) Except as provided in section 36-20-115, the director may not suspend or revoke a ~~license or~~ permit without first giving the ~~licensee~~ OPERATOR notice and a reasonable opportunity to be heard with respect to the grounds for ~~his~~ THE DIRECTOR'S proposed action.

**SECTION 17.** 36-20-123 (2), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-123. Legal recourse - liability - damages.** (2) (a) Failure to obtain a ~~license or~~ permit before conducting an operation, or any actions which knowingly constitute a violation of the conditions of a permit, shall constitute negligence per se.

(b) The director may order any person who is found to be conducting a weather modification operation without a ~~license and~~ permit to cease and desist from said operation. Any person who fails to obey said order commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

**SECTION 18.** 36-20-124, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-124. Permit as defense in actions.** The fact that a person ~~holds a license or~~ was issued a permit under this article, or that ~~he~~ THE PERSON has complied with the requirements established by the director pursuant to this article, is not admissible as a defense in actions for damages or injunctive relief brought against ~~him~~ THE PERSON.

**SECTION 19.** 36-20-126 (1) (a) and (2), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-126. Penalties.** (1) (a) Any person responsible for conducting a weather modification operation without first having procured the required ~~license and~~ permit and any person who contracts with or pays another person known to be ~~unlicensed and~~ without a permit to conduct a weather modification operation commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

(2) Any person who makes a false statement in the application for a ~~license or~~ permit, ~~or~~ who fails to file any report as required by this article, or who violates any other provisions of this article, except as otherwise provided in section 36-20-123 and subsection (1) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each such violation shall be a separate offense.

**SECTION 20.** 36-20-127, Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

**36-20-127. Repeal of article.** This article is repealed, effective ~~July 1, 1996~~ JULY 1, 2011. Prior to such repeal, the function of the issuance of permits for specific weather modifications operations through the director shall be reviewed as provided for in section 24-34-104, C.R.S.

**SECTION 21.** 24-34-104 (25.1) (i), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (25.1) The following functions of the specified agencies shall terminate on July 1, 1996:

(i) ~~The function of the issuance of permits for specific weather modifications operations through the executive director of the department of natural resources performed in accordance with article 20 of title 36, C.R.S.;~~

**SECTION 22.** 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is 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.** (42) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH SHALL TERMINATE ON JULY 1, 2011: THE ISSUANCE OF PERMITS FOR SPECIFIC WEATHER MODIFICATION OPERATIONS THROUGH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES IN ACCORDANCE WITH ARTICLE 20 OF TITLE 36, C.R.S.

**SECTION 23. Effective date - applicability.** This act shall take effect July 1, 1996, and shall apply to offenses committed on or after said date.

**SECTION 24. 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, 1996