

CHAPTER 78

AGRICULTURE

HOUSE BILL 96-1018

BY REPRESENTATIVES Entz, Acquafresca, Dean, Friednash, George, Schwarz, and Young;
also SENATORS Dennis and Mutzebaugh.

AN ACT**CONCERNING THE ENFORCEMENT OF PEST CONTROL IN COLORADO.**

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

SECTION 1. 35-4-103, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-4-103. Administration. (1) The commissioner shall administer this article. A board of county commissioners shall concurrently administer this article and shall have full authority for the proper enforcement thereof by county pest inspectors employed by said board of county commissioners.

(2) (a) **WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE OR QUARANTINE DECLARED PURSUANT TO THIS ARTICLE HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, THE COMMISSIONER MAY ISSUE A CEASE AND DESIST ORDER, WHICH MAY REQUIRE ANY PERSON TO CEASE VIOLATING ANY PROVISION OF THIS ARTICLE OR ANY RULE MADE OR QUARANTINE DECLARED PURSUANT TO THIS ARTICLE. 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 FORTHWITH.**

(b) **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 PROMPTLY AND SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF 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.

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

(4) THE COMMISSIONER SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS, TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS, AND TO COMPEL THE DISCLOSURE BY SUCH WITNESSES OF ALL FACTS KNOWN TO THEM RELATIVE TO THE MATTERS UNDER INVESTIGATION. UPON THE FAILURE OR REFUSAL OF A WITNESS TO OBEY A SUBPOENA, THE COMMISSIONER MAY PETITION THE DISTRICT COURT, AND UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY THE COURT ORDER SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

SECTION 2. 35-4-109, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-4-109. Emergency disposal of plant material. Any shipment of any plant material into Colorado WHEN FOUND TO BE IN VIOLATION OF A QUARANTINE DECLARED PURSUANT TO SECTION 35-4-110 OR when found to carry exotic pests not previously found in the United States or pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state by the commissioner may be placed in isolation or quarantine by the commissioner and shall be completely under ~~his~~ THE COMMISSIONER'S control. The owner or bailee shall COMPLY WITH ALL TERMS OF THE QUARANTINE, abate such pests as directed by and to the satisfaction of the commissioner or remove such shipment from the state within ~~forty-eight hours~~ SUCH TIME AS ORDERED BY THE COMMISSIONER. Articles not removed from the state as ordered shall be destroyed by the commissioner ~~after forty-eight hours~~ with no recompense therefor to the owner. Any owner or bailee claiming that his OR HER shipment of plant material was destroyed or ordered removed from the state without reasonable justification may request a hearing on that issue before the commissioner within ten days after such destruction or order of removal. If it is determined that a shipment of plant material was destroyed or ordered removed from the state by the commissioner without reasonable justification and that such action was done arbitrarily and capriciously, the department of agriculture shall reimburse such owner or bailee for any losses suffered.

SECTION 3. 35-4-110, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-4-110. Quarantine and control of pests. (1) Whenever the commissioner finds any portion of the state to be affected with exotic pests not previously found in

the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state and in ~~his~~ THE COMMISSIONER'S judgment plants or plant parts, whether living or dead, domestic animals, or other objects from the district affected would be liable to spread the pests into other sections of the state to the injury of others, the commissioner, after a hearing conducted pursuant to section ~~24-4-105~~ 24-4-103, C.R.S., may declare a quarantine against such section or portion of the state to prevent the transfer of carriers of such pests from the quarantined area.

(2) Whenever it is ascertained that exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state are likely to be introduced into Colorado by the importation of plants or plant parts, whether living or dead, domestic animals, or other objects, the commissioner, after a hearing conducted pursuant to section ~~24-4-105~~ 24-4-103, C.R.S., may declare a quarantine against the importation into Colorado of such pest carriers.

(3) The commissioner is authorized, pursuant to the provisions of this article, to apply such control or eradication measures as may be necessary to prevent the migration of exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside the state, or pests which are known to have caused high levels of economic damage in the past within this state which threaten to become established in this state and which endanger agricultural or horticultural industries in this state. ~~THE ACTUAL COSTS TO OFFSET THE CASH FUNDS EXPENDED FOR SERVICES PERFORMED BY THE COMMISSIONER IN IMPOSING THE QUARANTINE AND SUCH CONTROL OR ERADICATION MEASURES SHALL BE APPLIED ONLY IF THE GENERAL ASSEMBLY APPROPRIATES MONEYS SPECIFICALLY FOR SUCH MEASURES EITHER IN A SPECIFIC APPROPRIATION ACT OR BY SPECIFIC LINE ITEM IN THE GENERAL APPROPRIATION ACT OR IF THE GOVERNOR DECLARES AN EMERGENCY PURSUANT TO SECTION 35-4-110.5, IN WHICH CASE THE MONEYS NECESSARY FOR SUCH MEASURES MAY BE TAKEN FROM THE GOVERNOR'S AGRICULTURAL EMERGENCY AND DISASTER FUND. NO OTHER MONEYS SHALL BE EXPENDED FOR SUCH MEASURES.~~ SHALL BE RECOVERED FROM THE PRODUCERS OF ANY CROP PROTECTED BY SUCH QUARANTINE PURSUANT TO RULES PROMULGATED BY THE COMMISSIONER. IF THE GOVERNOR DECLARES AN EMERGENCY PURSUANT TO SECTION 35-4-110.5, THE COMMISSIONER'S COSTS MAY BE RECOVERED FROM THE GOVERNOR'S AGRICULTURAL EMERGENCY AND DISASTER FUND. THE COMMISSIONER IS AUTHORIZED TO ACCEPT ASSISTANCE, SERVICES, FACILITIES, AND GRANTS TENDERED BY FEDERAL OR LOCAL GOVERNMENTAL UNITS OR OTHER PERSONS.

SECTION 4. 35-4-110.5 (2), (3), and (4), Colorado Revised Statutes, 1995 Repl. Vol., are amended to read:

35-4-110.5. Declaration of quarantine emergency. (2) Upon being so notified by the commissioner, the governor may declare a state of quarantine emergency to be in effect. Such state of emergency shall be in effect for no more than ~~sixty~~ ONE HUNDRED EIGHTY days and may be renewed for successive periods of no more than ~~sixty~~ ONE HUNDRED EIGHTY days upon certification by the commissioner to the governor that the threat from the pest continues to exist and continues to justify the

emergency enforcement measures.

(3) When the governor declares a quarantine emergency, ~~he~~ THE GOVERNOR is authorized to accept assistance, services, ~~and~~ facilities, AND GRANTS tendered by federal and local governmental units or ~~private agencies~~ OTHER PERSONS.

(4) ~~The possession of any material which is host to a pest during the existence of a state quarantine emergency shall not be a criminal offense, notwithstanding any provisions to the contrary in this article.~~

SECTION 5. 35-4-112, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-4-112. Right of entry. Except as provided in section 35-4-107, the commissioner and ~~his~~ ANY authorized ~~agents~~ AGENT THEREOF and county pest inspectors employed under this article, together with such help as they may need in the prosecution of their work, are authorized UPON CONSENT OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT, during reasonable business hours, to enter upon or into any premises, land, buildings, or other places of business for the purpose of carrying out the provisions of this article.

SECTION 6. 35-4-113, Colorado Revised Statutes, 1995 Repl. Vol., is amended to read:

35-4-113. Federal agreements. (1) The commissioner may enter into agreements with other agencies of this state or of other states or any agency of the federal government and delegate authority to representatives thereof when such agencies or representatives may assist in carrying out the provisions of this article.

(2) THE COMMISSIONER MAY ENTER INTO AGREEMENTS WITH ANY AGENCY OF THE FEDERAL GOVERNMENT FOR THE PURPOSES OF INSPECTING SITES AND PLANTS AND MONITORING COMPLIANCE WITH POST-ENTRY QUARANTINE AS REQUIRED BY THE FEDERAL "PLANT QUARANTINE ACT OF 1912", 7 U.S.C. SEC. 154, AS AMENDED, AND THE RULES AND REGULATIONS PROMULGATED THERETO. THE ACTUAL COSTS TO OFFSET THE CASH FUNDS EXPENDED BY THE COMMISSIONER PURSUANT TO SUCH AGREEMENT, INCLUDING, BUT NOT LIMITED TO, PROMULGATING ANY RULES NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF SUCH AGREEMENT AND CONDUCTING INSPECTIONS OF SITES AND PLANTS SHALL BE RECOVERED FROM THE PERSONS WHO HAVE SIGNED POST-ENTRY QUARANTINE GROWING AGREEMENTS COVERING THE SITES WHERE THE ARTICLES ARE GROWN OR, IF NO SUCH AGREEMENT EXISTS, FROM THE OWNERS OF THE ARTICLES AT THE GROWING SITES.

SECTION 7. Article 4 of title 35, Colorado Revised Statutes, 1995 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

35-4-114.5. Civil penalties. (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE OR QUARANTINE DECLARED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER. THE MAXIMUM PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS PER VIOLATION.

(2) NO CIVIL PENALTY MAY BE IMPOSED 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 SUCH 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 IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES.

(4) BEFORE IMPOSING ANY CIVIL PENALTY, THE COMMISSIONER MAY CONSIDER THE FINANCIAL HARDSHIP SUCH PENALTY MAY CAUSE TO THE BUSINESS OF THE PERSON CHARGED.

(5) ANY CIVIL PENALTY RECOVERED PURSUANT TO THIS SECTION SHALL BE CREDITED TO THE GENERAL FUND.

SECTION 8. 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: April 16, 1996