

CHAPTER 35

**PROFESSIONS AND OCCUPATIONS**

**HOUSE BILL 97-1297**

BY REPRESENTATIVES Young, Gordon, Musgrave, Reeser, Salaz, and Schwarz;  
also SENATORS Ament and Chlouber.

**AN ACT**

CONCERNING CERTIFICATION OF SHELLFISH DEALERS BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

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

**SECTION 1.** Article 4 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 18  
SHELLFISH DEALER CERTIFICATION

**25-4-1801. Short title.** THIS PART 18 SHALL BE KNOWN AND MAY BE CITED AS THE "SHELLFISH DEALER CERTIFICATION ACT".

**25-4-1802. Legislative declaration.** THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE CERTIFICATION OF SHELLFISH DEALERS AND THE REGULATION OF PREMISES OR PLACES WHEREIN SHELLFISH ARE HANDLED, STORED, AND PROCESSED FOR DISTRIBUTION IN ACCORDANCE WITH THE GUIDELINES OF THE NATIONAL SHELLFISH SANITATION PROGRAM ADMINISTERED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION IS NECESSARY TO PROTECT THE PUBLIC HEALTH; WILL BENEFIT CONSUMERS BY ENSURING THAT THE SALE AND DISTRIBUTION OF SHELLFISH IS FROM SAFE SOURCES; WILL ASSIST RETAILERS BY ENSURING THAT SHELLFISH HAVE NOT BEEN ADULTERATED DURING PROCESSING, SHIPPING, OR HANDLING; AND WILL CONTRIBUTE TO THE ECONOMIC HEALTH OF THE STATE BY ASSURING THAT COLORADO CERTIFIED DEALERS ARE PERMITTED TO SHIP THEIR PRODUCT IN INTERSTATE COMMERCE.

**25-4-1803. Definitions.** AS USED IN THIS PART 18, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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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.*

(1) "CERTIFICATION" MEANS THE ISSUANCE OF A NUMBERED CERTIFICATE TO A PERSON FOR A PARTICULAR ACTIVITY OR GROUP OF ACTIVITIES THAT INDICATES:

- (a) PERMISSION FROM THE DEPARTMENT TO CONDUCT THE ACTIVITY; AND
- (b) COMPLIANCE WITH THE REQUIREMENTS OF THE DEPARTMENT.

(2) "CERTIFICATION NUMBER" MEANS THE UNIQUE IDENTIFICATION NUMBER ISSUED BY THE DEPARTMENT TO EACH DEALER FOR EACH LOCATION.

(3) "DEALER" MEANS A PERSON TO WHOM CERTIFICATION IS ISSUED FOR THE ACTIVITIES OF SHELL STOCK SHIPPER, SHUCKER-PACKER, REPACKER, RESHIPPER, DEPURATION PROCESSOR, OR WET STORAGE.

(4) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND ITS AUTHORIZED AGENTS AND EMPLOYEES.

(5) "DEPURATION PROCESSOR" OR "DP" MEANS A PERSON WHO RECEIVES SHELL STOCK FROM APPROVED OR RESTRICTED GROWING AREAS AND SUBMITS SUCH SHELL STOCK TO AN APPROVED, CONTROLLED PURIFICATION PROCESS.

(6) "FDA" MEANS THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

(7) "PERSON" MEANS ANY INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND, AND ANY PARTNERSHIP, ASSOCIATION, CORPORATION, OR OTHER ENTITY. "PERSON" ALSO INCLUDES THE FEDERAL OR STATE GOVERNMENT AND ANY OTHER PUBLIC OR PRIVATE ENTITY.

(8) "REPACKER" OR "RP" MEANS ANY PERSON, OTHER THAN THE ORIGINAL CERTIFIED SHUCKER-PACKER, WHO REPACKAGES SHUCKED SHELLFISH INTO OTHER CONTAINERS.

(9) "RESHIPPER" OR "RS" MEANS A PERSON WHO PURCHASES SHUCKED SHELLFISH OR SHELL STOCK FROM OTHER CERTIFIED SHIPPERS AND SELLS THE PRODUCT WITHOUT REPACKING OR RELABELING TO OTHER CERTIFIED SHIPPERS, WHOLESALERS, OR RETAILERS.

(10) "SHELLFISH" MEANS ALL SPECIES OF:

(a) OYSTERS, CLAMS, OR MUSSELS, WHETHER:

- (I) SHUCKED OR IN THE SHELL;
- (II) FRESH OR FROZEN; AND
- (III) WHOLE OR IN PART; AND

(b) SCALLOPS IN ANY FORM, EXCEPT WHEN THE FINAL PRODUCT FORM IS THE ADDUCTOR MUSCLE ONLY.

(11) "SHELL STOCK" MEANS LIVE SHELLFISH IN THE SHELL.

(12) "SHELL STOCK SHIPPER" OR "SS" MEANS A PERSON WHO GROWS, HARVESTS, BUYS, OR REPACKS AND SELLS SHELL STOCK. A SHELL STOCK SHIPPER IS NOT AUTHORIZED TO SHUCK SHELLFISH NOR TO REPACK SHUCKED SHELLFISH, BUT MAY SHIP SHUCKED SHELLFISH.

(13) "SHUCKER-PACKER" OR "SP" MEANS A PERSON WHO SHUCKS AND PACKS SHELLFISH. A SHUCKER-PACKER MAY ACT AS A SHELL STOCK SHIPPER OR RESHIPPER OR MAY REPACK SHELLFISH ORIGINATING FROM OTHER CERTIFIED DEALERS.

(14) "WET STORAGE" MEANS THE TEMPORARY STORAGE OF SHELL STOCK FROM GROWING AREAS IN THE APPROVED CLASSIFICATION OR IN THE OPEN STATUS OF THE CONDITIONALLY APPROVED CLASSIFICATION IN CONTAINERS OR FLOATS IN NATURAL BODIES OF WATER OR IN TANKS CONTAINING NATURAL OR SYNTHETIC SEAWATER.

**25-4-1804. Department designated as certifying and inspecting agency.** FOR THE PURPOSE OF REGULATING AND CONTROLLING SHELLFISH DEALERS, ESTABLISHING SANITARY CONDITIONS THEREIN, AND THE ENFORCEMENT AND ADMINISTRATION OF THIS PART 18, THE DEPARTMENT IS HEREBY AUTHORIZED AS THE STATE CERTIFYING AND INSPECTION AGENCY PURSUANT TO APPLICABLE FEDERAL LAW AND RULES.

**25-4-1805. Powers and duties of the department.** (1) THE DEPARTMENT IS HEREBY AUTHORIZED TO ENFORCE THIS PART 18 AND TO ADOPT AND ENFORCE REASONABLE RULES AND STANDARDS TO IMPLEMENT THIS PART 18. SUCH RULES AND STANDARDS SHALL BE CONSISTENT WITH, AND NO MORE STRINGENT THAN, STANDARDS ADOPTED PURSUANT TO THE NATIONAL SHELLFISH SANITATION PROGRAM AND MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

(a) RULES GOVERNING APPLICATIONS FOR INITIAL CERTIFICATION AND FOR ANNUAL RENEWAL OF CERTIFICATIONS;

(b) REQUIREMENTS FOR COMPREHENSIVE ON-SITE INSPECTIONS OF THE PREMISES AND FACILITIES OF APPLICANTS FOR CERTIFICATION;

(c) STANDARDS CONCERNING THE FORM AND MANNER OF SUBMISSION OF RECORDS REQUIRED FOR CERTIFICATION AND RECORD KEEPING PURSUANT TO THIS PART 18;

(d) ESTABLISHMENT OF FEES REQUIRED FOR CERTIFICATION AND RENEWAL OF CERTIFICATION; AND

(e) GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE.

(2) THIS PART 18 SHALL BE ADMINISTERED BY THE DEPARTMENT; EXCEPT THAT LOCAL HEALTH DEPARTMENTS MAY BE AUTHORIZED BY THE DEPARTMENT TO ASSIST IT IN PERFORMING ITS POWERS AND DUTIES PURSUANT TO THIS PART 18.

(3) THE DEPARTMENT IS AUTHORIZED TO CONDUCT HEARINGS IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND TO USE ADMINISTRATIVE LAW JUDGES TO CONDUCT SUCH HEARINGS WHEN THE USE OF ADMINISTRATIVE LAW JUDGES WOULD RESULT IN A NET SAVING OF COSTS TO THE DEPARTMENT.

(4) THE DEPARTMENT IS AUTHORIZED TO ENTER INTO COOPERATIVE AGREEMENTS WITH AND TO ACCEPT GRANTS FROM ANY AGENCY OR POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER STATE, OR WITH ANY AGENCY OF THE UNITED STATES GOVERNMENT, SUBJECT TO LIMITATIONS SET FORTH ELSEWHERE IN LAW AND THE STATE CONSTITUTION, TO CARRY OUT THE PROVISIONS OF THIS PART 18.

(5) (a) WHEN THE DEPARTMENT DETERMINES THAT A DEALER'S ACTIVITY CONSTITUTES A MAJOR PUBLIC HEALTH THREAT, THE DEPARTMENT SHALL:

(I) SUSPEND OR WITHDRAW CERTIFICATION; AND

(II) IMMEDIATELY NOTIFY THE FDA AND THE AUTHORITIES IN KNOWN STATES THAT RECEIVE THE DEALER'S SHELLFISH.

(b) THE DEPARTMENT SHALL PROHIBIT ANY DEALER WHOSE CERTIFICATION HAS BEEN SUSPENDED OR WITHDRAWN FROM SHIPPING IN INTERSTATE OR INTRASTATE COMMERCE.

(c) WHEN THE DEPARTMENT RECERTIFIES ANY DEALER, THE DEPARTMENT SHALL NOTIFY THE FDA AND THE AUTHORITIES IN KNOWN STATES THAT RECEIVE THE SHELLFISH.

**25-4-1806. Shellfish dealers - certificate required - application - fees.** (1) ANY PERSON DESIRING TO DO BUSINESS AS A SHELLFISH DEALER IN COLORADO SHALL APPLY FOR AND OBTAIN A VALID SHELLFISH DEALER CERTIFICATION ISSUED BY THE DEPARTMENT PURSUANT TO THIS PART 18 AND ANY RULES ADOPTED PURSUANT THERETO. ANY SUCH APPLICATION SHALL BE ACCOMPANIED BY THE APPROPRIATE FEE, IF ANY, SET BY THE DEPARTMENT.

(2) EACH SHELLFISH DEALER CERTIFICATION SHALL EXPIRE ON JUNE 30 IN THE YEAR FOLLOWING THE YEAR OF ISSUANCE.

(3) EACH CERTIFICATED SHELLFISH DEALER SHALL REPORT TO THE DEPARTMENT, IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT, ANY CHANGE IN THE INFORMATION PROVIDED IN THE DEALER'S APPLICATION OR IN SUCH REPORTS PREVIOUSLY SUBMITTED, WITHIN THIRTY DAYS OF SUCH CHANGE.

(4) CERTIFICATIONS ISSUED PURSUANT TO THIS PART 18 ARE NOT TRANSFERABLE.

(5) AN APPLICATION FOR RENEWAL OF A SHELLFISH DEALER CERTIFICATION SHALL BE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT.

(6) THE DEPARTMENT SHALL ISSUE ONLY ONE CERTIFICATION NUMBER TO ANY DEALER FOR ANY LOCATION. A DEALER MAY MAINTAIN MORE THAN ONE CERTIFICATION IF EACH BUSINESS IS OPERATED AS A SEPARATE ENTITY AND IS NOT FOUND AT THE SAME LOCATION.

(7) THE CERTIFICATION NUMBER ISSUED TO ANY DEALER BY THE DEPARTMENT SHALL BE UNIQUE. EACH CERTIFICATION NUMBER SHALL CONSIST OF A ONE- TO FIVE-DIGIT ARABIC NUMBER PRECEDED BY THE TWO-LETTER STATE POSTAL ABBREVIATION ("CO") AND FOLLOWED BY A TWO-LETTER ABBREVIATION FOR THE

TYPE OF ACTIVITY OR ACTIVITIES THE DEALER IS QUALIFIED TO PERFORM IN ACCORDANCE WITH THE FOLLOWING TERMS AS DEFINED IN SECTION 25-4-1802:

- (a) SHELL STOCK SHIPPER (SS);
- (b) SHUCKER-PACKER (SP);
- (c) REPACKER (RP);
- (d) RESHIPPER (RS);
- (e) DEPURATION PROCESSOR (DP); OR
- (f) WET STORAGE (WS).

(8) ALL FEES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FOOD PROTECTION CASH FUND CREATED IN SECTION 25-4-1605.

**25-4-1807. Record-keeping requirements.** (1) EACH CERTIFICATED SHELLFISH DEALER SHALL KEEP AND MAINTAIN RECORDS IN THE FORM AND MANNER DESIGNATED BY THE DEPARTMENT.

(2) RECORDS MAINTAINED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE RETAINED AT THE DEALER'S ADDRESS OF RECORD FOR AT LEAST ONE YEAR OR FOR SUCH DIFFERENT PERIOD AS THE DEPARTMENT MAY SPECIFY BY RULE.

**25-4-1808. Unlawful acts.** (1) UNLESS OTHERWISE AUTHORIZED BY LAW, IT IS UNLAWFUL AND A VIOLATION OF THIS PART 18 FOR ANY PERSON TO:

- (a) PERFORM ANY OF THE ACTS FOR WHICH CERTIFICATION AS A SHELLFISH DEALER IS REQUIRED WITHOUT POSSESSING A VALID CERTIFICATION;
- (b) HOLD ONESELF OUT AS BEING SO QUALIFIED TO PERFORM ANY OF THE ACTS FOR WHICH CERTIFICATION PURSUANT TO THIS PART 18 IS REQUIRED WITHOUT POSSESSING A VALID CERTIFICATION;
- (c) SOLICIT, ADVERTISE, OR OFFER TO PERFORM ANY OF THE ACTS FOR WHICH CERTIFICATION UNDER THIS PART 18 IS REQUIRED WITHOUT POSSESSING A VALID CERTIFICATION TO PERFORM SUCH ACTS;
- (d) REFUSE OR FAIL TO COMPLY WITH THE PROVISIONS OF THIS PART 18;
- (e) REFUSE OR FAIL TO COMPLY WITH ANY RULES ADOPTED BY THE DEPARTMENT PURSUANT TO THIS PART 18 OR TO ANY LAWFUL ORDER ISSUED BY THE DEPARTMENT;
- (f) REFUSE TO COMPLY WITH A CEASE AND DESIST ORDER ISSUED PURSUANT TO SECTION 25-4-1810;
- (g) WILLFULLY MAKE A MATERIAL MISSTATEMENT IN THE APPLICATION FOR A CERTIFICATION OR IN THE APPLICATION FOR RENEWAL THEREOF OR TO THE

DEPARTMENT DURING AN OFFICIAL INVESTIGATION;

(h) IMPERSONATE ANY FEDERAL, STATE, COUNTY, CITY AND COUNTY, OR MUNICIPAL OFFICIAL OR INSPECTOR;

(i) AID OR ABET ANOTHER IN ANY VIOLATION OF THIS PART 18 OR OF ANY RULE ADOPTED PURSUANT THERETO;

(j) REFUSE TO PERMIT ENTRY OR INSPECTION IN ACCORDANCE WITH SECTION 25-4-1809;

(k) ALLOW A CERTIFICATION ISSUED PURSUANT TO THIS PART 18 TO BE USED BY AN UNCERTIFICATED PERSON; OR

(l) MAKE ANY MISREPRESENTATION OR FALSE PROMISE, THROUGH ADVERTISEMENTS, EMPLOYEES, AGENTS, OR OTHERWISE, IN CONNECTION WITH THE BUSINESS OPERATIONS CERTIFICATED PURSUANT TO THIS PART 18 OR FOR WHICH AN APPLICATION FOR A CERTIFICATION IS PENDING.

**25-4-1809. Inspections - investigations - access - subpoena.** (1) THE DEPARTMENT, UPON ITS OWN MOTION OR UPON THE COMPLAINT OF ANY PERSON, MAY MAKE ANY AND ALL INVESTIGATIONS NECESSARY TO ENSURE COMPLIANCE WITH THIS PART 18.

(2) THE DEPARTMENT SHALL HAVE THE RIGHT OF ACCESS, AT ANY REASONABLE TIME, DURING REGULAR WORKING HOURS AND AT OTHER TIMES DURING WHICH ACTIVITY IS EVIDENT, TO ANY PREMISES FOR THE PURPOSE OF ANY EXAMINATION OR INSPECTION NECESSARY TO ENFORCE ANY OF THE PROVISIONS OF THIS PART 18 OR THE RULES OR STANDARDS ADOPTED THEREUNDER.

(3) COMPLAINTS OF RECORD MADE TO THE DEPARTMENT AND THE RESULTS OF THE DEPARTMENT'S INVESTIGATIONS MAY, IN THE DISCRETION OF THE DEPARTMENT, BE CLOSED TO PUBLIC INSPECTION, EXCEPT TO THE PERSON IN INTEREST, AS DEFINED IN SECTION 24-72-202 (4), C.R.S., OR AS PROVIDED BY COURT ORDER, DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR UNTIL NOTICE OF HEARING AND CHARGES ARE SERVED ON THE PERSON IN INTEREST.

(4) (a) THE DEPARTMENT SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS, TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF 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.

(b) UPON FAILURE OR REFUSAL OF ANY WITNESS TO OBEY ANY SUBPOENA, THE DEPARTMENT 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 SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

**25-4-1810. Enforcement.** (1) THE DEPARTMENT OR ITS DESIGNEE SHALL ENFORCE

THE PROVISIONS OF THIS PART 18.

(2) (a) IF THE DEPARTMENT HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS PART 18 OR ANY RULE ADOPTED PURSUANT TO THIS PART 18 HAS OCCURRED AND IMMEDIATE ENFORCEMENT IS DEEMED NECESSARY, IT MAY ISSUE A CEASE AND DESIST ORDER, WHICH SHALL REQUIRE A PERSON TO CEASE VIOLATING ANY PROVISION OF THIS PART 18 OR ANY RULE PROMULGATED PURSUANT TO THIS PART 18.

(b) A CEASE AND DESIST ORDER SHALL SET FORTH THE PROVISIONS ALLEGED TO HAVE BEEN VIOLATED, THE FACTS CONSTITUTING THE VIOLATION, AND THE REQUIREMENT THAT ALL VIOLATING ACTIONS IMMEDIATELY CEASE.

(c) (I) AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON FOR WHOM SUCH ORDER WAS SERVED MAY REQUEST, AT SUCH PERSON'S DISCRETION, A PROMPT HEARING TO DETERMINE WHETHER OR NOT SUCH VIOLATION HAS OCCURRED.

(II) A HEARING HELD PURSUANT TO THIS PARAGRAPH (c) SHALL BE CONDUCTED IN CONFORMANCE WITH THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) IF THE DEPARTMENT POSSESSES SUFFICIENT EVIDENCE TO INDICATE THAT A PERSON HAS ENGAGED IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS PART 18 OR OF ANY RULE ADOPTED UNDER THIS PART 18, THE DEPARTMENT 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 PART 18 OR ANY RULE OR ORDER UNDER THIS PART 18. IN ANY SUCH ACTION, THE DEPARTMENT SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW. THE COURT SHALL NOT REQUIRE THE DEPARTMENT TO POST A BOND.

**25-4-1811. Disciplinary actions - denial of certification.** (1) THE DEPARTMENT, PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., MAY ISSUE LETTERS OF ADMONITION OR MAY DENY, SUSPEND, REFUSE TO RENEW, RESTRICT, OR REVOKE ANY CERTIFICATION AUTHORIZED UNDER THIS PART 18 IF THE APPLICANT OR CERTIFICATED PERSON HAS:

(a) REFUSED OR FAILED TO COMPLY WITH ANY PROVISION OF THIS PART 18, ANY RULE ADOPTED UNDER THIS PART 18, OR ANY LAWFUL ORDER OF THE DEPARTMENT;

(b) HAD AN EQUIVALENT CERTIFICATION DENIED, REVOKED, OR SUSPENDED BY ANY AUTHORITY;

(c) REFUSED TO PROVIDE THE DEPARTMENT WITH REASONABLE, COMPLETE, AND ACCURATE INFORMATION WHEN REQUESTED BY THE DEPARTMENT; OR

(d) FALSIFIED ANY INFORMATION REQUESTED BY THE DEPARTMENT.

(2) IN ANY PROCEEDING HELD UNDER THIS SECTION, THE DEPARTMENT MAY ACCEPT AS PRIMA FACIE EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION ANY

DISCIPLINARY ACTION TAKEN AGAINST A DEALER IN ANOTHER JURISDICTION IF THE VIOLATION WHICH PROMPTED THE DISCIPLINARY ACTION IN THAT JURISDICTION WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER THIS SECTION.

**25-4-1812. Civil penalties.** (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS PART 18 OR ANY RULE ADOPTED PURSUANT TO THIS PART 18 IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE DEPARTMENT. THE MAXIMUM PENALTY SHALL NOT EXCEED FIFTY 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 DEPARTMENT 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 DEPARTMENT, THE DEPARTMENT 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 DEPARTMENT MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE ABILITY OF THE PERSON CHARGED TO STAY IN BUSINESS.

(5) ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION BY THE DEPARTMENT SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE FOOD PROTECTION CASH FUND CREATED IN SECTION 25-4-1605.

**25-4-1813. Criminal penalties.** ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SECTION 25-4-1808 COMMITS A CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106 (1), C.R.S.

**SECTION 2. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 1997, and shall apply to acts committed on or after said date.

**SECTION 4. 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 24, 1997