

CHAPTER 86

AGRICULTURE

SENATE BILL 02-069

BY SENATOR(S) Hillman, Entz, Isgar, Chlouber, Hanna, Musgrave, Taylor, Teck, Andrews, Arnold, Cairns, Dyer, Epps, Lamborn, Matsunaka, May, McElhany, and Owen;
also REPRESENTATIVE(S) Hoppe, Miller, Tochtrop, Fairbank, Fritz, Groff, Hodge, Johnson, Kester, King, Mace, Snook, Tapia, Webster, and Williams T.

AN ACT**CONCERNING THE PROTECTION OF PRODUCTS OF AGRICULTURE.**

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

SECTION 1. Article 31 of title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2
CIVIL DAMAGES FOR THE PROTECTION OF
AGRICULTURAL PRODUCTS**

35-31-201. Protection of agricultural products - damages. (1) (a) ANY PERSON WHO, WITHOUT THE CONSENT OF THE OWNER OF AN AGRICULTURAL PRODUCT, EXERCISES CONTROL OVER THE AGRICULTURAL PRODUCT WITH THE INTENT TO DEPRIVE SUCH OWNER OF THE AGRICULTURAL PRODUCT OR WHO MALICIOUSLY DAMAGES OR DESTROYS THE AGRICULTURAL PRODUCT, OR WHO ENCOURAGES OR CONSPIRES WITH ANOTHER TO DO SO, SHALL BE LIABLE FOR DAMAGES AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

(b) FOR PURPOSES OF THIS SECTION:

(I) "AGRICULTURAL PRODUCT" MEANS ANY PRODUCT OF AGRICULTURE AS DEFINED IN SECTION 35-1-102 (1).

(II) "EXPERIMENTAL AGRICULTURAL PRODUCT" MEANS ANY PRODUCT OF AGRICULTURE, AS DEFINED IN SECTION 35-1-102 (1) THAT IS THE SUBJECT OF TESTING OR A PRODUCT DEVELOPMENT PROGRAM BEING CONDUCTED BY A PRIVATE ENTITY, A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY, OR AN EDUCATIONAL

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

INSTITUTION, OR THAT HAS BEEN DEVELOPED THROUGH SUCH A PROGRAM.

(2) FOR A VIOLATION OF SUBSECTION (1) OF THIS SECTION, A COURT SHALL AWARD:

(a) THE MARKET VALUE OF THE EXPERIMENTAL AGRICULTURAL PRODUCT ITSELF AND COSTS DIRECTLY RELATED TO RESEARCH, TESTING, PRODUCTION, REPLACEMENT, AND DEVELOPMENT OF THE EXPERIMENTAL AGRICULTURAL PRODUCT. THE COURT MAY AWARD TREBLE DAMAGES.

(b) THE MARKET VALUE OF THE AGRICULTURAL PRODUCT ITSELF AND COSTS DIRECTLY RELATED TO PRODUCTION AND REPLACEMENT. THE COURT MAY AWARD TREBLE DAMAGES.

(c) REASONABLE ATTORNEY FEES; AND

(d) LITIGATION COSTS.

(3) THE RIGHTS AND REMEDIES AVAILABLE UNDER THIS SECTION ARE IN ADDITION TO ANY OTHER RIGHTS OR REMEDIES OTHERWISE AVAILABLE.

SECTION 2. 35-31-102, Colorado Revised Statutes, is amended to read:

35-31-102. Applicable to unripe or unripe foods. This ~~article~~ PART 1 shall apply to the destruction of unripe or unripe food products or articles as well as to the destruction of the same when unripe or ready for marketing.

SECTION 3. 35-31-103, Colorado Revised Statutes, is amended to read:

35-31-103. Evidence. Evidence of the voluntary destruction or of the destruction, if unexplained, of any of the food products or articles mentioned in section 35-31-101, or of the voluntary and willful permitting of the same to decay, or of the taking, sending, or causing of the same to be transported out of this state to be destroyed or permitted to decay shall be prima facie proof of the violation of this ~~article~~ PART 1.

SECTION 4. 35-31-104, Colorado Revised Statutes, is amended to read:

35-31-104. Penalty. (1) Any person, whether acting individually or otherwise, in such person's own behalf, or as the agent, employee, servant, director, or officer of any other person, partnership, firm, association, or corporation, or any corporation who violates any of the provisions of this ~~article~~ PART 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(2) As a condition of any sentence imposed pursuant to subsection (1) of this section, the court shall order in addition to any other penalty, that any person convicted of a violation of this ~~article~~ PART 1 shall make restitution to any victim of such a violation. The amount and any conditions of such a restitution order shall be determined in the same manner as a restitution order imposed pursuant to the

provisions of section 16-11-204.5, C.R.S.

SECTION 5. 35-31-105, Colorado Revised Statutes, is amended to read:

35-31-105. Enforcement. It is the duty of the district attorneys in their respective districts and of the attorney general to enforce the provisions of this ~~article~~ PART 1. It is the duty of all citizens of this state who have knowledge or information of a violation of this ~~article~~ PART 1 to at once inform against anyone who may have violated the same.

SECTION 6. 35-31-106, Colorado Revised Statutes, is amended to read:

35-31-106. Liberal construction. This ~~article~~ PART 1 shall be liberally construed to effectuate its purpose of preventing waste and of conserving and protecting the food supply available to the people of the state, to the end that the people may enjoy the benefit of any abundance or oversupply of any such food articles or products that may from time to time arise in any locality or in the state at large.

SECTION 7. 24-6-402 (3) (a) (IV) and (4) (d), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(IV) Specialized details of security arrangements OR INVESTIGATIONS, INCLUDING DEFENSES AGAINST TERRORISM, BOTH DOMESTIC AND FOREIGN, AND INCLUDING where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and

amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(d) Specialized details of security arrangements or investigations, INCLUDING DEFENSES AGAINST TERRORISM, BOTH DOMESTIC AND FOREIGN, AND INCLUDING WHERE DISCLOSURE OF THE MATTERS DISCUSSED MIGHT REVEAL INFORMATION THAT COULD BE USED FOR THE PURPOSE OF COMMITTING, OR AVOIDING PROSECUTION FOR, A VIOLATION OF THE LAW;

SECTION 8. 24-72-204 (3) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(XVI) SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS.

SECTION 9. 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 12, 2002