

CHAPTER 182

AGRICULTURE

SENATE BILL 08-097

BY SENATOR(S) Tochtrop, and Isgar;
also REPRESENTATIVE(S) Sonnenberg, Frangas, and Labuda.

AN ACT**CONCERNING CHANGES TO THE REGULATION OF ANHYDROUS AMMONIA.**

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

SECTION 1. 35-13-101, Colorado Revised Statutes, is amended to read:

35-13-101. Legislative declaration. (1) This is an article to prescribe uniform regulations in this state for safety in the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank or tank trailer, and utilizing anhydrous ammonia as an agricultural fertilizer; and to provide for the enjoining or abatement of violations of regulations issued under this article; and to prohibit the refilling or use of such containers without authorization by the owner thereof; and to prohibit the adoption by municipalities or other political subdivisions of ordinances or regulations in conflict with this article.

(2) THE GENERAL ASSEMBLY HEREBY DECLARES THAT ANY VIOLATION OF THIS ARTICLE OR RULES PROMULGATED PURSUANT TO THIS ARTICLE SHALL CONSTITUTE A SUBSTANTIAL DANGER TO PUBLIC HEALTH AND SAFETY.

SECTION 2. 35-13-105, Colorado Revised Statutes, is amended to read:

35-13-105. Restriction of use of containers. (1) No person, firm, or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver, or permit to be delivered, or use in any manner any anhydrous ammonia ~~container or receptacle~~ STORAGE TANK, MOBILE TRANSPORTATION TANK, OR TANK-MOUNTED APPLICATOR for any other purpose whatsoever.

(2) No person shall ~~sell, purchase, attempt to purchase,~~ fill, refill, deliver, or

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

permit to be delivered any anhydrous ammonia ~~container or receptacle~~ STORAGE TANK, MOBILE TRANSPORTATION TANK, OR TANK-MOUNTED APPLICATOR that has not been ~~inspected~~ REGISTERED in compliance with the provisions of this article ~~and that is less than five hundred gallons~~ AND RULES PROMULGATED PURSUANT TO THIS ARTICLE.

SECTION 3. 35-13-107, Colorado Revised Statutes, is amended to read:

35-13-107. Enforcement - investigation - access to locations and records.

(1) ~~The department of agriculture is authorized to administer and supervise the enforcement~~ COMMISSIONER, PURSUANT TO THE PROVISIONS OF THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., SHALL ENFORCE THE PROVISIONS of this article and of rules ~~adopted under~~ PROMULGATED PURSUANT TO this article or ~~under~~ section 35-1-107 (5). ~~To this end, the department of agriculture and the commissioner shall:~~

~~(a) Provide for and have full and complete power and authority to make such periodic investigations and inspections as may be deemed necessary to disclose violations;~~

~~(b) Give written notice to violators of this article that a deficiency exists and that a reasonable period of time shall be given to correct the noted deficiencies, after which period another inspection shall be made;~~

~~(c) Receive and provide for investigation of complaints of violations of this article;~~

~~(d) Determine whether a deficiency exists and, if all administrative remedies have been exhausted, to correct such deficiencies, and, if the commissioner considers that immediate and irreparable injury, loss, or damage will result if such violation is not immediately restrained or enjoined, the district attorney of the judicial district in which a cause of action may arise under this article, upon being requested by the commissioner, shall bring an action to obtain an order to restrain or enjoin any such violation.~~

(2) UPON THE COMMISSIONER'S OWN MOTION OR UPON THE COMPLAINT OF ANY PERSON, THE COMMISSIONER MAY MAKE ANY INVESTIGATIONS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE.

(3) AT ANY TIME DURING REGULAR BUSINESS HOURS, UPON CONSENT OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT AND FOR THE PURPOSE OF ENFORCING ANY PROVISION OF THIS ARTICLE OR RULE PROMULGATED PURSUANT TO THIS ARTICLE, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED ACCESS TO:

(a) ALL BUILDINGS, YARDS, WAREHOUSES, STORAGE FACILITIES, TANKS, TANK TRAILERS, VEHICLES, AND ANY OTHER PUBLIC OR PRIVATE PROPERTY, PREMISES, OR CARRIERS IN WHICH ANHYDROUS AMMONIA IS KEPT, STORED, HANDLED, DISTRIBUTED, OR TRANSPORTED; AND

(b) ALL BUSINESS RECORDS REQUIRED TO BE KEPT THAT RELATE TO THE STORAGE, USE, TRANSPORTATION, OR DISTRIBUTION OF ANHYDROUS AMMONIA. THE

COMMISSIONER MAY MAKE COPIES OF SUCH RECORDS.

(4) (a) WHENEVER THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY RULE PROMULGATED 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 PROMULGATED 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 BE CEASED FORTHWITH.

(b) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A CEASE-AND-DESIST ORDER WITHIN TWENTY-FOUR HOURS, THE COMMISSIONER MAY BRING A SUIT FOR A TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF SUCH ORDER.

(c) NO STAY OF A CEASE-AND-DESIST ORDER SHALL BE ISSUED BEFORE A HEARING ON THE ORDER INVOLVING BOTH PARTIES.

(d) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

(5) THE COMMISSIONER SHALL HAVE FULL AUTHORITY TO ADMINISTER OATHS AND TAKE STATEMENTS, TO ISSUE ADMINISTRATIVE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE THE COMMISSIONER 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 ANY WITNESS TO OBEY AN ADMINISTRATIVE 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 SUCH AN ORDER OF THE COURT SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.

(6) WHENEVER THE COMMISSIONER CONSIDERS THAT A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR RULE PROMULGATED PURSUANT TO THIS ARTICLE HAS OCCURRED OR WILL OCCUR, AND THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE WILL RESULT IF SUCH VIOLATION IS NOT IMMEDIATELY RESTRAINED OR ENJOINED, 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 PROMULGATED PURSUANT TO 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. 35-13-109 (1), Colorado Revised Statutes, is amended to read:

35-13-109. Registration - application - fees. (1) On or before ~~July 1~~ of THE DATE SPECIFIED BY RULE OF THE COMMISSIONER each year, every person who owns

one or more anhydrous ammonia storage tanks, mobile transportation tanks, or tank-mounted applicators within this state shall register each of such tanks or applicators with the department and shall pay a registration fee as established by the agricultural commission. A registration is not transferable. No reduction of a registration fee shall be made for a fractional part of a year.

SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 25, 2008