

CHAPTER 111

PROFESSIONS AND OCCUPATIONS

SENATE BILL 09-114

BY SENATOR(S) Kester, Hodge, Isgar;
also REPRESENTATIVE(S) Sonnenberg, Baumgardner, Curry, King S., Labuda, Looper, Nikkel, Roberts, Stephens, Vigil, Waller.

AN ACT

CONCERNING THE CONTINUATION OF THE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE TO REGULATE THE SALE OF AGRICULTURAL PRODUCTS, AND, IN CONNECTION THEREWITH, REGULATING FARM PRODUCTS AND COMMODITY WAREHOUSES.

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

SECTION 1. 12-16-223, Colorado Revised Statutes, is amended to read:

12-16-223. Repeal of article. This article is repealed, effective July 1, ~~2010~~ 2020. Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 2. 24-34-104 (40) (j) (III) and (51), Colorado Revised Statutes, are amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (40) The following agencies, functions, or both, shall terminate on July 1, 2009:

(j) The following functions of the commissioner of the department of agriculture:

(III) ~~The licensing and regulation of persons pursuant to article 16 of title 12, C.R.S.;~~

(51) The following agencies, functions, or both, shall terminate on July 1, 2020:

(a) The regulation of persons working in coal mines by the department of natural resources through the coal mine board of examiners in accordance with article 22 of title 34, 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.

(d) THE LICENSING AND REGULATION OF PERSONS BY THE DEPARTMENT OF AGRICULTURE PURSUANT TO ARTICLE 16 OF TITLE 12, C.R.S.

SECTION 3. 12-16-105 (2), Colorado Revised Statutes, is amended to read:

12-16-105. License fee - renewal - rules. (2) If any licensee fails for any reason to apply for the renewal of a license before ~~March 1 of each year~~ AN ANNUAL DATE SPECIFIED BY THE COMMISSIONER BY RULE, such licensee shall, upon application for a renewal license and before such license is issued, pay a penalty as established by the agricultural commission, which shall be in addition to the license fee.

SECTION 4. 12-16-206 (2), Colorado Revised Statutes, is amended to read:

12-16-206. Licenses - requirements - rules. (2) If any licensee fails to apply for license renewal before ~~March 1 of each year~~ AN ANNUAL DATE SPECIFIED BY THE COMMISSIONER BY RULE, such licensee shall, upon application for a renewal license and before such license is issued, pay a penalty fee as established by the agricultural commission. Such penalty fee shall be in addition to the license fee.

SECTION 5. 12-16-105 (1) (a) (I), Colorado Revised Statutes, is amended to read:

12-16-105. License fee - renewal - rules. (1) (a) For filing the application described in section 12-16-104, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the agricultural commission, which fee shall be transmitted to the state treasurer for credit to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.:

(I) Dealers; except that a dealer who signs an affidavit stating that such dealer shall make payment in cash or by one of the other means specified in section 12-16-106 (1) (f) for each transaction for farm products shall pay ~~no~~ THE SAME application fee AS A SMALL-VOLUME DEALER;

SECTION 6. 12-16-103 (10.5) (c) and (10.5) (d), Colorado Revised Statutes, are amended to read:

12-16-103. Definitions - rules. As used in this part 1, unless the context otherwise requires:

(10.5) "Small-volume dealer" means any person who:

(c) Buys less than twenty thousand dollars' worth of farm products OR COMMODITIES, IN AGGREGATE, per year from the owners for processing or resale;

(d) Does not purchase in a single transaction two thousand five hundred dollars' worth or more of farm products OR COMMODITIES, IN AGGREGATE; and

SECTION 7. 12-16-107 (3) and (4), Colorado Revised Statutes, are amended to read:

12-16-107. Investigations, hearings, and examinations. (3) (a) ~~At any reasonable time during regular business hours,~~ The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, shall have free and unimpeded access to all buildings, yards, warehouses, and storage facilities owned by a licensee in which any farm products are kept, stored, handled, processed, or transported.

(b) ~~At any reasonable time during regular business hours,~~ The commissioner, upon consent of the licensee or upon obtaining a search warrant, shall have free and unimpeded access to all records required to be kept and may make copies of such records.

(4) ~~At any reasonable time during regular business hours,~~ The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the farm products, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.

SECTION 8. 12-16-114 (1), Colorado Revised Statutes, is amended to read:

12-16-114. Enforcement. (1) The commissioner shall be the enforcing authority of this part 1, and ~~he or his~~ THE COMMISSIONER OR THE COMMISSIONER'S authorized representative shall have free and unimpeded access ~~during regular business hours~~ to all places of business and all business records of a licensee pertinent to any proper inquiry in the administration of this part 1. Any person in whom the enforcement of any provision of this part 1 is vested has the power of a peace officer as to such enforcement.

SECTION 9. 12-16-210 (2), Colorado Revised Statutes, is amended to read:

12-16-210. Commissioner - rules - delegation of powers and duties. (2) The commissioner shall be the enforcing authority of this part 2, and ~~he or his~~ THE COMMISSIONER OR THE COMMISSIONER'S authorized representative shall have free and unimpeded access ~~during regular business hours~~ to all places of business and all business records of the licensee pertinent to any proper inquiry in the administration of this part 2. Any person in whom the enforcement of any provision of this part 2 is vested has the power of a peace officer as to such enforcement.

SECTION 10. 12-16-215 (2) and (4), Colorado Revised Statutes, are amended to read:

12-16-215. Enforcement - inspection of commodity handlers' property - confidentiality. (2) ~~At any reasonable time during regular business hours,~~ The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, has the right to inspect any commodity handler's place of business where commodities are stored, handled, or received and any records pertaining to storage obligations and commodity positions kept by the commodity handler ~~which~~ THAT pertain to the operation thereof. The property, books, records, accounts, and papers pertaining to storage obligations and commodity positions of every commodity handler shall be subject to inspection and copying by the commissioner. ~~at any reasonable time during business hours.~~

(4) ~~At any reasonable time during regular business hours;~~ The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the commodities, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.

SECTION 11. 12-16-202 (1) and (4.5) (a) (IV), Colorado Revised Statutes, are amended to read:

12-16-202. Definitions - rules. As used in this part 2, unless the context otherwise requires:

(1) ~~"Agent" means a person who, on behalf of a commodity handler, buys, receives, contracts for, or solicits farm products from or sells farm products for the owner thereof or who negotiates the consignment or purchase of farm products on behalf of a commodity handler.~~

(4.5) (a) "Commodity handler" means:

(IV) Any person who receives on consignment or solicits from the owner thereof any kind of commodity for sale on commission on behalf of such owner, or who accepts any commodity in trust from the owner thereof for the purpose of resale, or who sells or offers for sale on commission any commodity or in any way handles any commodity for the account of ~~or as an agent of,~~ the owner thereof; or

SECTION 12. 12-16-203 (1) and (2), Colorado Revised Statutes, are amended to read:

12-16-203. Licenses - commodity handler - rules. (1) No person shall act as a commodity handler ~~or as an agent for a commodity handler~~ in this state without having first obtained a license from the department.

(2) Every person acting as a commodity handler ~~or as an agent for a commodity handler~~ in this state shall, each year before the date specified by the commissioner by rule, obtain a license from the department.

SECTION 13. 12-16-205 (1) (a) and (2.5), Colorado Revised Statutes, are amended to read:

12-16-205. Commodity handler licenses - application requirements.

(1) (a) Each applicant for a commodity handler license ~~or agent license~~ shall pay, for each year in which such license is to be valid, a license fee established by the agricultural commission, which license fee the department shall collect and transmit to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.

(2.5) (a) ~~Application for an agent license under this section shall be made to the department upon forms furnished by the department. The application shall include the following information:~~

(f) ~~The name and principal business address of the applicant in Colorado and in each state in which the applicant operates;~~

~~(H) The name of the person authorized to receive and accept service of summons and legal notices of all kinds on behalf of the applicant in each state;~~

~~(III) The name and address of the commodity handler represented or that will be represented upon licensure of the agent;~~

~~(IV) A written letter of intention from the commodity handler named in subparagraph (III) of this paragraph (a) to name the applicant as such commodity handler's agent upon licensure;~~

~~(V) The name and address of any commodity handler for whom the agent has been issued a license pursuant to this subsection (2.5); and~~

~~(VI) Any other information that the commissioner deems reasonably necessary to carry out the purposes of this part 2.~~

~~(b) (i) No person may be licensed as agent for any commodity handler that is not licensed.~~

~~(ii) A separate license shall be required for each commodity handler that an agent seeks to represent.~~

~~(c) A license issued pursuant to this subsection (2.5) shall expire upon expiration of the license of the commodity handler the agent represents.~~

SECTION 14. The introductory portion to 12-16-208 (1) and 12-16-208 (1) (c), Colorado Revised Statutes, are amended to read:

12-16-208. Credit sale contracts. (1) When a commodity handler receives commodities in a manner which is not pursuant to storage for which payment has not been made, the commodity handler, not more than sixty days after the receipt of such commodities, shall provide the producer or owner of the commodities with a THE credit sale contract. The credit sale contract shall contain the following information:

(c) The name and address of the producer or owner and the signature of the commodity handler; ~~and the handler's authorized agent;~~

SECTION 15. 12-16-218 (1) (e), Colorado Revised Statutes, is amended to read:

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (e) Any person licensed pursuant to part 1 of this article may apply for a license as a commodity handler ~~or agent~~ and shall not be subject to the license fee required by section 12-16-205. The bond or irrevocable letter of credit required by section 12-16-106 shall also apply to such person's activities as a commodity handler ~~or agent~~ and shall be subject to the provisions of this section and section 12-16-215.

SECTION 16. 12-16-221 (1) (e) and (1) (l), Colorado Revised Statutes, are amended to read:

12-16-221. Unlawful acts. (1) It is unlawful and a violation of this part 2 for

any person to:

(e) Act as a commodity handler ~~or agent~~ without having obtained a license or act as a commodity handler without having filed a surety bond or irrevocable letter of credit, as provided in this part 2. Violation of this paragraph (e) shall constitute a class 6 felony.

(l) Act as a commodity handler ~~or agent~~ and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any commodities or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (l), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (l) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

SECTION 17. 12-16-107 (1), Colorado Revised Statutes, is amended to read:

12-16-107. Investigations, hearings, and examinations. (1) For the purpose of enforcing the provisions of this part 1, the commissioner may receive complaints from persons against any dealer, small-volume dealer, agent, ~~transporter~~, or person assuming or attempting to act as such and, upon the receipt of such a complaint, may make any and all necessary investigations relative to said complaint.

SECTION 18. Applicability. This act shall apply to acts occurring on or after the effective date of this act.

SECTION 19. 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 9, 2009