

CHAPTER 88

AGRICULTURE

SENATE BILL 09-113

BY SENATOR(S) Brophy, Hodge, Isgar;
also REPRESENTATIVE(S) Sonnenberg, Curry, Fischer, Looper.

AN ACT

CONCERNING THE CONTINUATION OF THE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE TO
REGULATE MEASUREMENT STANDARDS.

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

SECTION 1. 35-14-134, Colorado Revised Statutes, is amended to read:

35-14-134. Repeal of sections - review of functions. Sections 35-14-102 (3), 35-14-121 to 35-14-124.5, 35-14-127, 35-14-129, and 35-14-131 ~~(2)(d), (2)(j), and (2)(m)~~ (5) (d), (5) (j), AND (5) (m) are repealed, effective July 1, ~~2009~~ 2018. Prior to such repeal, the licensing and certification functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 2. Repeal. 24-34-104 (40) (j) (II), Colorado Revised Statutes, is repealed as follows:

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:

(II) ~~The issuance of licenses and certificates related to measurement standards in accordance with article 14 of title 35, C.R.S.;~~

SECTION 3. 24-34-104 (49), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for

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

termination, continuation, or reestablishment. (49) The following agencies, functions, or both, shall terminate on July 1, 2018:

(c) THE ISSUANCE OF LICENSES AND CERTIFICATES RELATED TO MEASUREMENT STANDARDS BY THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 14 OF TITLE 35, C.R.S.

SECTION 4. 35-14-107 (1)(g), Colorado Revised Statutes, is amended to read:

35-14-107. Powers and duties of the commissioner - rules. (1) The commissioner shall:

(g) Test annually the standards of weights and measures used by any city or county within the state and approve the same when found to be correct; EXCEPT THAT TUNING FORKS USED TO DETERMINE THE ACCURACY OF RADAR GUNS SHALL NOT BE SUBJECT TO ANNUAL TESTING;

SECTION 5. 35-14-124, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

35-14-124. Inaccurate devices - stickers - tags - wire seals - rules. (5) THE COMMISSIONER SHALL PROMULGATE RULES TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A BLUE OR RED TAG SHOULD BE ISSUED.

SECTION 6. 35-14-102 (1), (1.7), (4), (7), (11), (14), (16), (17), (18), (20), (20.5), (21), (22), (23), (23.5), (24), (25), (26), (28), (29), (30), (31.5), (31.6), and (33), Colorado Revised Statutes, are amended, and the said 35-14-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-14-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Approved for commercial use" means a device that has been inspected, tested, and approved by the commissioner.~~

(1.7) ~~"Certificate of conformance" means a document issued by the national institute of standards and technology based on testing in participating laboratories, said document~~ NATIONAL TYPE EVALUATION PROGRAM constituting evidence of conformance of a ~~type~~ WEIGHING AND MEASURING DEVICE with the requirements of national institute of standards and technology ~~handbooks~~ HANDBOOK 44. ~~105-1, 105-2, or 105-3.~~

(4) "Commercial weighing and measuring devices" means those devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption that are sold or offered or exposed for sale OR hire ~~or award~~ or in computing any basic charge or payment for services rendered on the basis of weight, measure, or count.

(4.5) "COMMISSION" MEANS THE STATE AGRICULTURAL COMMISSION.

(5.5) "COMMODITY" MEANS ANY AGRICULTURAL COMMODITY, CONSUMER COMMODITY, OR ANY OTHER GOODS.

~~(7) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.~~

~~(11) "Grain test scale" means any device which is necessary to determine weight for any grain sample.~~

~~(14) "Laboratory" means the metrology laboratory of the measurement standards section of the division of inspection and consumer services in the department.~~

~~(16) "Metrology services" means all testing AND calibrating and opening of weights and, when necessary, the making of adjustments to weights and measures. in order to meet tolerances prescribed by the national institute of standards and technology.~~

~~(17) "Moisture content" means the percentage content of moisture and other volatiles on a wet basis in a grain sample or official grain sample as determined in a manner recognized by the United States department of agriculture.~~

~~(18) "Moisture meter charts" means charts and tables used to interpret or interpolate value indications on a particular moisture-determining device into moisture content values.~~

~~(20) "Multiunit package" means a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multiunit package but capable of being individually sold in full compliance with all of the requirements of this article.~~

~~(20.5) "National type evaluation program" means a program of cooperation between the national institute of standards and technology, the national conference on weights and measures, the state of Colorado, and the private sector for the purpose of determining, on a uniform basis, conformance of a type with the relevant provisions of the following national institute of standards and technology handbooks: THE EVALUATION PROGRAM ADMINISTERED BY THE NATIONAL CONFERENCE ON WEIGHTS AND MEASURES.~~

~~(a) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices";~~

~~(b) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST Class F)";~~

~~(c) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Measuring Flasks"; or~~

(d) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards:

(21) "Nonconsumer package" or "package of nonconsumer commodity" means any commodity in package form other than a consumer package and particularly a package intended solely for industrial or institutional use or for wholesale distribution.

(22) "Not susceptible of repair" means any weight or measure which THAT is designed or constructed in such a fashion so as to fail to comply with the applicable design or construction standards for such weight or measure as promulgated by the national institute of standards and technology or which THAT cannot be repaired to meet the tolerance standards for such weight or measure. as promulgated by the national bureau of standards.

(23) "Official grain sample" means that portion of a grain, seed, or other agricultural commodity which this state uses as the official transfer standard to test the accuracy of a commercial grain moisture-testing device.

(23.5) "Participating laboratory" means any state measurement laboratory that has been certified by the national institute of standards and technology, in accordance with its program for the certification of capability of measurement laboratories, to conduct a type evaluation under the national type evaluation program.

(24) "Placing in service" means placing in use any new, used, REPAIRED, or previously rejected RECONDITIONED WEIGHING AND MEASURING device. which is being returned to service after repair.

(25) "Primary standards" means the physical standards of the state which serve as the legal reference from which all other standards and weights and measures are derived pursuant to section 35-14-104.

(26) "Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. When there is more than one principal display panel on a package, each of such panels shall meet the requirements pertaining to the principal display panel.

(27.5) "REFERENCE STANDARDS" MEANS THE PHYSICAL STANDARDS OF THE STATE THAT SERVE AS THE LEGAL REFERENCE FROM WHICH ALL OTHER STANDARDS AND WEIGHTS AND MEASURES ARE DERIVED PURSUANT TO SECTION 35-14-104.

(28) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(29) "Scale status report" means a report of the condition of the scale, including scale indication with applied known weights, upon completion of installation or repair.

(30) "Secondary standards" means the physical standards which THAT are

traceable to the ~~primary~~ REFERENCE standards through comparisons, using acceptable procedures, and are used in the enforcement of weights and measures laws and ~~regulations~~ RULES.

(30.5) "STANDARD" MEANS A WEIGHT OR MEASURE USED AS A REFERENCE TO ESTABLISH A MEASURED QUANTITY VALUE.

~~(31.5) "Type" means a model or models of a particular measurement system, instrument, element, or field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.~~

~~(31.6) "Type evaluation" means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program.~~

(33) "Weight" means net weight AS USED IN CONNECTION WITH ANY COMMODITY OR SERVICE; except that, where the label states that the product is sold by drained weight, the term "weight" means net drained weight.

SECTION 7. 35-14-104, Colorado Revised Statutes, is amended to read:

35-14-104. Physical standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state's ~~primary~~ REFERENCE standards of weights and measures and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the commissioner. The commissioner shall have the custody AND KEEP ACCURATE RECORDS of the state standards of weights and measures and of the other standards and equipment provided for by this article. ~~and he shall keep accurate records of the same.~~

SECTION 8. 35-14-105, Colorado Revised Statutes, is amended to read:

35-14-105. Technical requirements for weighing and measuring devices - certificate required. The specifications, tolerances, and other technical requirements, INCLUDING USER REQUIREMENTS, for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in this state, except as modified or rejected OR AS OTHERWISE SPECIFIED by this article or any rule ~~or regulation~~ promulgated pursuant to this article. ~~The commissioner shall require~~ Any weight or measure or any weighing or measuring instrument or device ~~to~~ SHALL be issued a certificate of conformance from the national type evaluation program prior to use for commercial or law enforcement purposes.

SECTION 9. 35-14-107 (1) (a), (1) (d), (1) (i), (1) (k), (1) (l), and (1) (o),

Colorado Revised Statutes, are amended, and the said 35-14-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

35-14-107. Powers and duties of the commissioner. (1) The commissioner shall:

(a) Maintain traceability of this state's standards to the STANDARDS OF THE national institute of standards and technology;

(d) Grant any exemptions from ~~the provisions of this article or any rules or regulations promulgated pursuant thereto~~ TO THIS ARTICLE if ~~appropriate to the maintenance of good commercial practices~~ IN THE COMMISSIONER'S OPINION SUCH EXEMPTION WOULD SERVE THE PUBLIC INTEREST;

(i) Inspect and test, to ascertain if they are correct, ~~weights and measures commercially used:~~ ALL COMMERCIAL WEIGHING AND MEASURING DEVICES FOR WHICH THE OWNER IS REQUIRED TO BE LICENSED UNDER THIS ARTICLE.

~~(f) In determining the weight, measure, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count, or~~

~~(H) In computing the basic charge or payment for services rendered on the basis of weight, measure, or count;~~

(k) Approve for use, and may mark, such weights and measures as he OR SHE finds to be correct and ~~shall~~ MAY reject and mark as rejected such weights and measures as he OR SHE finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in an unauthorized manner. The commissioner ~~shall~~ MAY condemn and ~~may~~ seize weights and measures found to be incorrect and ~~which~~ THAT are not capable of being made correct.

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules ~~and regulations~~ promulgated pursuant ~~thereto~~ TO THIS ARTICLE. Accuracy of weight, measure, or count shall be determined by procedures set forth in the national institute of standards and technology handbook 133 as adopted by the national conference on weights and measures 1980, and any supplements or revisions thereto UNLESS OTHERWISE SPECIFIED BY THE COMMISSIONER BY RULE. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

(o) Promulgate such rules ~~and regulations~~ as are necessary for the implementation and administration of this article in accordance with article 4 of title 24, C.R.S., including ~~but not limited to,~~ rules ~~and regulations~~ regarding THE USE OF WEIGHTS AND MEASURES, methods of sale, unit pricing, declaration of quantity, retail sales price representations FOR COMMODITIES AND SERVICES, including requirements for cents-off and introductory offer promotions, and labeling requirements; ~~related to the use and representation of measurement standards;~~

(2) THE COMMISSIONER MAY, UPON REQUEST, INSPECT AND TEST ANY WEIGHT, MEASURE, OR STANDARD USED BY A GOVERNMENTAL ENTITY.

SECTION 10. 35-14-108, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

35-14-108. Special police powers. (2) THE COMMISSIONER MAY ADMINISTER OATHS AND TAKE STATEMENTS, ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE HIM OR HER AND THE PRODUCTION OF ALL BOOKS, MEMORANDA, PAPERS, AND OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS, AND 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 ANY 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.

(3) IF THE OWNER, OR THE OWNER'S AGENT, OF ANY COMMERCIAL PREMISES OR VEHICLE REFUSES TO ADMIT THE COMMISSIONER TO INSPECT SUCH PREMISES OR VEHICLE, THE COMMISSIONER MAY OBTAIN FROM THE DISTRICT OR COUNTY COURT FOR THE DISTRICT OR COUNTY IN WHICH SUCH PREMISES OR VEHICLE IS LOCATED A WARRANT TO ENTER AND INSPECT SUCH PREMISES OR VEHICLE.

SECTION 11. Repeal. 35-14-109, Colorado Revised Statutes, is repealed as follows:

~~**35-14-109. Contract services.** (1) Whenever a local government maintains a weights and measures division or employs an inspector and desires to enter into a contract with the department to render services prescribed by this article, the commissioner, at the time the contract is officially signed by both parties, shall certify the division personnel or inspector who is qualified to carry out the provisions of said contract. The average cost of such services rendered by a local government may not exceed the average cost of such services if rendered by the department.~~

~~(2) Repealed.~~

SECTION 12. 35-14-112, Colorado Revised Statutes, is amended to read:

35-14-112. Method of sale - general. Except as otherwise provided by the commissioner BY RULE, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides accurate quantity AND PRICING information.

SECTION 13. Repeal. 35-14-113, Colorado Revised Statutes, is repealed as follows:

~~**35-14-113. Method of sale - special food products.** (1)(a) Meat, poultry, and seafood shall be sold by weight, except that the following items may be sold by~~

~~weight, measure, or count:~~

~~(I) Shellfish;~~

~~(II) Items cooked on the premises and sold as ready for immediate consumption;~~

~~(III) Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold;~~

~~(IV) Items sold as part of a sandwich;~~

~~(V) Live fish for stocking purposes, unprocessed fish, fowl, or animals acquired through the lawful pursuit of recreational activities.~~

~~(b) When meat, poultry, or seafood is combined with some other food element to form a distinctive food product, the quantity representation need not be made for each element.~~

~~(c) In the case of ready-to-cook stuffed poultry products, the label must show the total net weight of the stuffed poultry product and the net weight of the poultry in the product.~~

~~(2) (a) At the time of delivery of bulk meat sold by carcass, side, or primal cut, the seller shall provide the purchaser with a written statement containing the following information:~~

~~(I) The name and address of the seller;~~

~~(II) The date of the sale;~~

~~(III) The name and address of the purchaser;~~

~~(IV) The identity of the meat in the most descriptive terms commercially practicable;~~

~~(V) The quality grade and yield grade of the meat, if so represented;~~

~~(VI) The price per pound of the meat before cutting and wrapping and the total price of the sale;~~

~~(VII) The total net weight (hanging weight) of the carcass, side, or primal cut prior to cutting or processing;~~

~~(VIII) The total net weight of the cut and processed meat delivered to the purchaser;~~

~~(IX) A list by name of all cuts of meat delivered;~~

~~(X) An itemized list of any and all charges over and above the original sale price of the carcass, side, or primal cut;~~

~~(XI) A separate indication of the quantity of any meat or other commodity received by a consumer purchaser as an inducement in connection with the purchase of the carcass, side, or primal cut.~~

~~(b) The written statement shall not include the weight of any meat or other commodities received by the purchaser as a bonus offer or gift in connection with the purchase of the carcass, side, or primal cut. The statement shall include a description of whether the sale is from the forequarter or hindquarter.~~

SECTION 14. Repeal. 35-14-114, Colorado Revised Statutes, is repealed as follows:

~~**35-14-114. Method of sale - special nonfood products.** (1) All coal, coke, and charcoal shall be sold by weight. All bulk sales shall be accompanied by a weight certificate, ticket, or invoice, as set forth in section 35-14-122 (6).~~

~~(2) Repealed.~~

SECTION 15. 35-14-117 (1), Colorado Revised Statutes, is amended to read:

~~**35-14-117. Unit pricing - application - inch pound or metric.** (1) Except for random-weight packages unit priced in accordance with rules and regulations and uniform weight packages of cheese and cheese products unit priced in the same manner and by the same type of equipment as random-weight packages PROMULGATED PURSUANT TO THIS ARTICLE, any retail establishment providing unit price information in addition to the total price for any commodity shall also provide the unit price information for all such commodities as required by rules and regulations PROMULGATED PURSUANT TO THIS ARTICLE.~~

SECTION 16. 35-14-118 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

~~**35-14-118. Declarations on packages.** (1) Except as otherwise provided in this article, any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of:~~

~~(c) THE IDENTITY OF THE COMMODITY IN THE MANNER SPECIFIED BY RULE PROMULGATED PURSUANT TO THIS ARTICLE.~~

SECTION 17. 35-14-121 (5), Colorado Revised Statutes, is amended to read:

~~**35-14-121. Weigher - qualification - certification - revocation.** (5) All certificates of certified weighers in existence as of June 30, 1983, shall expire December 31, 1988. All certifications issued on and after July 1, 1983, shall expire five years after issuance. ALL CERTIFICATES ISSUED ON OR AFTER JULY 1, 2009, SHALL EXPIRE ON THE DATE SPECIFIED BY THE COMMISSIONER BY RULE. A CERTIFIED WEIGHER WHO FAILS TO RENEW A CERTIFICATE ON OR BEFORE THE EXPIRATION DATE OF THE CERTIFICATE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE CERTIFICATE FEE. Renewal applications shall be in such form as the commissioner shall prescribe.~~

SECTION 18. 35-14-123, Colorado Revised Statutes, is amended to read:

35-14-123. Weighing and measuring device service providers - certification - fees - placing in service - rules. (1) ~~Except as provided in subsection (11) of this section, before installing or performing any repairs or services on~~ NO PERSON, OTHER THAN THE OWNER, MAY REPAIR, SERVICE, OR PLACE IN SERVICE any COMMERCIAL weighing or measuring device FOR which is ~~required to be licensed in this state, a person shall make written application to the commissioner for certification upon forms provided by the department~~ THE OWNER MUST OBTAIN A LICENSE TO OPERATE UNLESS THE PERSON IS CERTIFIED BY THE COMMISSIONER AS A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER. THE COMMISSIONER MAY SPECIFY THE REQUIREMENTS FOR CERTIFICATION OF SERVICE PROVIDERS BY RULE. For the purposes of this section, only one certificate is required for each business employing service persons. THE APPLICATION FOR A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER CERTIFICATE SHALL BE SUBMITTED TO THE COMMISSIONER ON FORMS FURNISHED BY THE COMMISSIONER AND SHALL BE ACCOMPANIED BY A FEE ESTABLISHED BY THE COMMISSION. ALL CERTIFICATES SHALL EXPIRE ON THE DATE SPECIFIED BY THE COMMISSIONER BY RULE. A PROVIDER WHO FAILS TO RENEW A CERTIFICATE ON OR BEFORE THE EXPIRATION DATE OF THE CERTIFICATE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE CERTIFICATE FEE.

(2) ~~Certificates for scale service persons shall be issued in the following classes~~ THE COMMISSIONER SHALL ADOPT RULES SPECIFYING:

(a) ~~Small capacity, up to one hundred pounds;~~ THE CATEGORIES AND REQUIREMENTS FOR CERTIFICATION OF COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDERS; AND

(b) ~~Medium capacity, up to two thousand pounds;~~ THE PERFORMANCE REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES SERVICE PROVIDERS.

(c) ~~Large capacity, two thousand pounds and over.~~

(3) ~~If ten percent or more of the devices installed or repaired in any one calendar year by a service person are rejected, such person shall be ordered to appear before the commissioner in accordance with the provisions of section 24-4-104, C.R.S., to show cause why the person's certificate should not be revoked.~~

(4) ~~Test weights totaling a minimum of ten percent of the rated capacity of any large capacity scales must be used in the repairing or testing of such scales. Each section of scales having multisection-type construction shall be tested. For the repairing or servicing of scales using ratio weights, tests shall be made up to the capacity of the largest denomination of the ratio weight on hand. EACH COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126 THAT IS PLACED IN SERVICE BY A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER SHALL COMPLY WITH SECTION 35-14-105. WHEN REPAIRING, SERVICING, OR PLACING IN SERVICE ANY SUCH DEVICE, A COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER SHALL COMPLY WITH THE MOST CURRENT VERSION OF THE NATIONAL INSTITUTE OF STANDARDS AND~~

TECHNOLOGY HANDBOOK 44, "SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES".

~~(5) (a) No scale service person shall possess any test weights other than those weights meeting the requirements of the national institute of standards and technology handbook 105-1: "Field Standard Weights", and any supplements or additions thereto. Weights employed in the testing, servicing, or repairing of a scale shall conform to the tolerances prescribed for such weights as set forth in said handbook 105-1, and any supplements or additions thereto, and scale service persons shall maintain their testing equipment within such tolerances at all times. NO COMMERCIAL WEIGHING AND MEASURING DEVICE SERVICE PROVIDER MAY USE A STANDARD WHEN REPAIRING, SERVICING, OR PLACING IN SERVICE A COMMERCIAL WEIGHING OR MEASURING DEVICE THAT IS NOT EXEMPTED PURSUANT TO SECTION 35-14-126 UNLESS THE COMMISSIONER HAS APPROVED THE STANDARD.~~

~~(b) All repairs and adjustments made by weighing or measuring device service persons shall conform to the technical requirements for weighing and measuring devices adopted in accordance with section 35-14-105.~~

(6) Each COMMERCIAL WEIGHING AND MEASURING DEVICE service ~~person~~ PROVIDER shall AT LEAST annually submit ~~weights and~~ ALL standards USED TO REPAIR, SERVICE, OR PLACE IN SERVICE ANY COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126 to the laboratory for ~~certification~~ APPROVAL PURSUANT TO SECTION 35-14-128; except that, if such ~~weights or standards~~ are annually ~~certified~~ APPROVED in another state by that state's NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY-RECOGNIZED metrology laboratory and evidence is shown of current ~~certification~~ APPROVAL, traceable to standards of the national institute of standards and technology, which is less than a year ~~from~~ AFTER date of issuance, the COMMISSIONER MAY EXEMPT THE service ~~person shall be exempt~~ PROVIDER from obtaining a Colorado ~~certificate~~ APPROVAL for the current year.

(7) Upon ~~the completion of an installation or the repair of any device~~ PLACING IN SERVICE ANY COMMERCIAL WEIGHING OR MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126, the service ~~person~~ PROVIDER shall submit a placing-in-service report to the commissioner within ten days after ~~such completion~~ THE PLACING-IN-SERVICE date. ~~The report shall include a scale status report for scale capacities of five thousand pounds or more. Any weighing or measuring device tagged for repairs by the commissioner shall be repaired by the service person within thirty days after receiving notification from the owner of the device.~~ THE COMMISSIONER SHALL PROMULGATE RULES TO SPECIFY THE INFORMATION TO BE INCLUDED IN PLACING-IN-SERVICE REPORTS.

(8) ~~Any person shipping, delivering, or installing weighing and measuring devices shall cause a placing-in-service report to be filed with the commissioner within ten days after completing such action. The placing-in-service report shall indicate the date of shipment, delivery, or installation, the name and address of the user or operator, and the serial number, type, and capacity of such device.~~

(9) (Deleted by amendment, L. 95, p. 896, § 8, effective July 1, 1995.)

(10) ~~All licenses and certificates issued on or after July 1, 1983, shall expire five years after issuance. Renewal application shall be in such form as the commissioner shall prescribe. Persons licensed or certified as service persons shall also have authority to sell weighing and measuring devices.~~

(11) Nothing in this section shall be construed to prohibit ~~any~~ A person from performing ~~any~~ repairs or service on ~~any~~ A weighing or measuring device ~~which is THAT THE COMMISSIONER HAS condemned or placed under work order, by the commissioner,~~ but such person may not remove any tag placed on any weighing or measuring device pursuant to ~~the requirements of~~ this article.

SECTION 19. 35-14-124, Colorado Revised Statutes, is amended to read:

35-14-124. Inaccurate devices - stickers - tags - wire seals. (1) A blue tag indicating "Work Order" shall be placed on any COMMERCIAL weighing or measuring device ~~which~~ THAT in the judgment of the commissioner is out of tolerance or in need of minor repairs. ~~The owner or agent of the device shall call or notify a serviceman within two days of the date shown on the tag. Repairs must~~ SHALL be made within thirty days, and, if not so made, the device shall be removed from commercial use. If the ~~serviceman cannot complete~~ repairs CANNOT BE COMPLETED OR THE DEVICE CANNOT BE PLACED INTO SERVICE due to delay in obtaining parts or other justified circumstances, the commissioner may extend the time limit for repair OR PLACING IN SERVICE for a reasonable time.

(2) A red tag indicating "CONDEMNED" shall be placed on any COMMERCIAL weighing or measuring device that is to be removed from use. ~~The tag's~~ A wire seal ~~shall~~ MAY be so placed as to make the device unusable in any form. A DEVICE THAT HAS BEEN CONDEMNED PURSUANT TO THIS SUBSECTION (2) SHALL NOT BE USED FOR ANY COMMERCIAL PURPOSE.

(3) (a) ~~A device which requires a license and for which the license fee has not been paid shall be sealed with a wire seal and a yellow tag indicating that said device is sealed for nonpayment of the license fee. A TAG INDICATING "NO LICENSE FEE PAID" SHALL BE PLACED ON ANY COMMERCIAL WEIGHING OR MEASURING DEVICE THAT THE OWNER IS NOT LICENSED TO OPERATE. A WIRE SEAL MAY BE SO PLACED AS TO MAKE THE DEVICE UNUSABLE IN ANY FORM. A device sealed with~~ ON WHICH a ~~yellow~~ "NO LICENSE FEE PAID" tag HAS BEEN PLACED shall not be used for any commercial purpose. A "NO LICENSE FEE PAID" TAG NEED NOT BE PLACED ON devices ~~which~~ THAT are being held for resale and are not being used. ~~need not be sealed and tagged for nonpayment.~~

(b) When a weighing or measuring device is found in a commercial establishment, it shall be prima facie evidence that said device is being used or employed. IF THE OWNER OF ANY such device ~~must be properly licensed or~~ DOES NOT HAVE A LICENSE FOR ITS USE, THE DEVICE SHALL have a ~~wire seal and yellow~~ "NO LICENSE FEE PAID" OR "NOT APPROVED FOR COMMERCIAL USE" tag attached.

(4) ~~The official state seal, showing the condition of the device, is the only seal permitted on a device. No stickers indicating such statements as "Tested and Correct" or "Tested and Sealed" shall be placed on any weighing or measuring device by any operator thereof, serviceman, or other person.~~

SECTION 20. 35-14-124.5 (1) (f), Colorado Revised Statutes, is amended to read:

35-14-124.5. Disciplinary powers. (1) The commissioner may deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if such person has:

(f) Used a commercial WEIGHING OR measuring device or moisture-testing device in deceptive trade practices in violation of any state or federal law.

SECTION 21. Repeal. 35-14-125, Colorado Revised Statutes, is repealed as follows:

~~**35-14-125. Household scales.** (1) No overload type of spring scale or balance, commonly known as household scales, shall be used or employed in any commercial establishment for the weighing of any commodity sold or offered for sale to the public. Such scales may be sold or offered for sale for household use only.~~

~~(2) No such household scale shall be sold or offered for sale by any manufacturer or vendor for use or service whatsoever unless the dial or reading face is plainly and conspicuously marked with the wording "Not legal for use in trade".~~

~~(3) Any household scale found in commercial use shall be subject to immediate confiscation and condemnation.~~

SECTION 22. The introductory portion to 35-14-126 (1), Colorado Revised Statutes, is amended, and the said 35-14-126 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-14-126. Commercial weighing device exemption - licensing - testing. (1) ~~The following classes of devices shall be exempt from licensing and testing~~ NO LICENSE SHALL BE REQUIRED FOR THE USE OF THE FOLLOWING COMMERCIAL WEIGHING OR MEASURING DEVICES AND SUCH DEVICES SHALL BE EXEMPT FROM TESTING:

(f) ANY OTHER DEVICE EXEMPTED BY THE COMMISSIONER BY RULE.

SECTION 23. 35-14-127 (1), (2), (3), (4) (a) (I), (4) (c), (5), (11), (12), and (12.5), Colorado Revised Statutes, are amended to read:

35-14-127. Licenses - fees - rules - stickers - certificates. (1) Before ~~any person operates~~ OPERATING any scale, textile meter, or cordage meter for commercial purposes, except those exempted in section 35-14-126, ~~he~~ THE OWNER shall first procure from the department a license ~~as provided for in this section~~ FOR THE OPERATION OF THE DEVICE. All such licenses shall expire on the ~~June 30 next succeeding the date of issue~~ DATE ESTABLISHED BY THE COMMISSIONER BY RULE.

(2) Any person desiring to obtain a license for the operation of a scale, textile meter, or cordage meter shall ~~make application therefor to~~ FILE AN APPLICATION WITH the department upon a form furnished by the commissioner, which shall

contain such information as the commissioner may ~~by rule~~ require. Every application for license shall be accompanied by the proper fee. ~~as established by this article or by the agricultural commission.~~ A PERSON WHO FAILS TO RENEW A LICENSE ON OR BEFORE THE EXPIRATION DATE OF THE LICENSE SHALL PAY A LATE FEE, AS ESTABLISHED BY THE COMMISSION, IN ADDITION TO THE LICENSE FEE.

(3) The commissioner shall test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which ~~a license has been issued~~ THE OWNER HAS BEEN ISSUED A LICENSE TO OPERATE at least once every twelve months or more often if necessary. ~~It is the duty of the inspector making the tests to make minor adjustments to all scales, textile meters, and cordage meters that may be necessary to make them measure correctly.~~ UPON TESTING AND APPROVING A DEVICE FOR USE, THE COMMISSIONER SHALL AFFIX AN APPROVAL STICKER TO THE DEVICE AND MAY ISSUE A DEVICE IDENTIFICATION NUMBER. If the design, construction, or location of any scale, textile meter, or cordage meter is such as to require a testing procedure involving special equipment or accessories or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the LICENSED owner ~~or operator of said~~ THE scale, textile meter, or cordage meter as required by the commissioner. Nothing in this section shall prevent an inspector from testing a scale, textile meter, or cordage meter before the issuance of a license if the license fee is paid or is in the process of being paid.

(4) (a) (I) The ~~agricultural~~ commission shall establish annual license fees for ~~scales~~ THE OPERATION OF COMMERCIAL WEIGHING AND MEASURING DEVICES based on THE NUMBER, capacity, ~~in the following classifications:~~ AND TYPES OF DEVICES.

- ~~(A) Scales with a capacity of 80,001 pounds and over;~~
- ~~(B) Scales with a capacity of 30,001 pounds through 80,000 pounds;~~
- ~~(C) Scales with a capacity of 10,001 pounds through 30,000 pounds;~~
- ~~(D) Scales with a capacity of 2,001 pounds through 10,000 pounds;~~
- ~~(E) Scales with a capacity of 451 pounds through 2,000 pounds;~~
- ~~(F) Scales with a capacity of 76 pounds through 450 pounds; and~~
- ~~(G) Scales with a capacity of 75 pounds or less.~~

(c) The annual license fee for belt conveyor and in-motion railroad scales shall be as determined by the ~~agricultural~~ commission.

(5) The annual license fee for textile meters, cordage meters, moisture meters, certified weighers, persons who sell or install weighing and measuring devices, and persons who service weighing and measuring devices shall be as determined by the ~~agricultural~~ commission.

(11) ~~Upon payment of the required fee, the department shall issue a license certificate and identification sticker for each licensed device. Any license issued under this article shall apply only to the device licensed.~~

(12) The fees for ~~special tests where scale test trucks, passenger vehicles, or light duty pickup trucks are used~~ INSPECTION AND TESTING PURSUANT TO SECTION 35-14-107 (2) shall be as determined by the ~~agricultural~~ commission. ~~The agricultural commission shall review and set the fees annually. If any test of a device at one location requires time beyond the first day, the special test fee shall be effective for the balance of time after one day and until the test is completed. The special test fee may be charged for any test made at the request of the owner of the device.~~

(12.5) (a) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the ~~agricultural~~ commission shall establish fees associated with the licensing, testing, inspection, and regulation of scales with a capacity of ~~two~~ ONE thousand pounds or less, cordage meters, and textile meters. Such fees shall cover the direct and indirect costs of administering and enforcing ~~the provisions of this article other than subsection (12) of this section, paragraph (b) of this subsection (12.5), and section 35-14-128 (2).~~

(b) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, twenty-five percent of the direct and indirect costs associated with the licensing, testing, inspection, and regulation of certified weighers, scales with a capacity of greater than ~~two~~ ONE thousand pounds, belt conveyers, in-motion railroad scales, and moisture ~~meters~~ TESTING DEVICES shall be funded from the general fund. The ~~agricultural~~ commission shall establish a fee schedule to cover the remaining direct and indirect costs.

SECTION 24. 35-14-122 (6) (a), Colorado Revised Statutes, is amended to read:

35-14-122. Public scales - requirements - weight certificates - procedures - records. (6) (a) All commodities bought, sold, delivered, or in the process of changing ownership ~~which~~ THAT use the weight of the content for final determination and settlement shall be weighed on a ~~certified~~ scale LICENSED IN ACCORDANCE WITH THIS ARTICLE if neither the buyer nor the seller owns his OR HER own scale. The weigher shall issue a weight certificate containing all the information required by subsection (2) of this section to both the buyer and the seller. If the buyer or seller owns his OR HER own scale licensed by the department and uses such scale to determine the weight of such commodities, such party shall issue a ticket or invoice in duplicate to the other party. Said ticket or invoice shall contain all the information required by subsection (2) of this section.

SECTION 25. 35-14-128, Colorado Revised Statutes, is amended to read:

35-14-128. Laboratory approval - service - condemnation. (1) THE COMMISSIONER MAY INSPECT AND TEST ANY WEIGHTS, MEASURES, OR STANDARDS SUBMITTED TO THE METROLOGY LABORATORY. Weights, ~~and~~ measures, ~~will~~ AND STANDARDS MAY not be approved by the department's laboratory unless the design and construction of the unit complies with the design and construction requirements prescribed by the national institute of standards and technology ~~set forth in handbook 105-1: "Field Standard Weights"; handbook 105-2: "Field Measuring Flasks"; handbook 105-3: "Metal Volumetric Field Standards"; and circular 547: "Precision Laboratory Weights"; and any supplements or revisions to such handbooks or circular~~ OR OTHER ENTITY APPROVED BY THE COMMISSIONER. THE

COMMISSIONER MAY ESTABLISH APPROVAL PERIODS, CONDITIONS, AND LIMITATIONS BY RULE.

(2) The laboratory may require that specified WEIGHTS, MEASURES, OR standards submitted for calibration be cleaned or sanded, scraped, and painted before submission. ~~Precision weights, volume, and length standards shall be cleaned and dried before submission.~~ The fee for any metrology service shall be established by the ~~agricultural~~ commission. For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, seventy-five percent of the direct and indirect costs associated with metrology laboratory services, including the regulation of weighing and measuring device sales, installation, and service persons, shall be funded from the general fund. The ~~agricultural~~ commission shall establish a fee schedule to cover the remaining direct and indirect costs.

(3) The laboratory may seize any weight, measure, or standard ~~which~~ THAT it deems not to be susceptible of repair. Within twenty-four hours after such seizure, the laboratory shall cause notice of such seizure to be served personally or by first-class mail upon the owner of such weight, measure, or standard, advising such owner of the seizure and of the laboratory's intention to destroy such weights, measures, or standards, pursuant to section 35-14-107 (1) (k). Such notice shall also state that the owner of such weights, measures, or standards may, within twenty days after the date of personal service or mailing, request in writing that the commissioner conduct a hearing to determine whether such weights, measures, or standards are not susceptible of repair. If a hearing is requested, it shall be conducted promptly, and the commissioner or ~~his~~ THE COMMISSIONER'S designated agent shall preside over such hearing, and the laboratory shall take no further action pending such hearing. If hearing is not requested, the seized weights, measures, or standards ~~shall~~ MAY be destroyed after the expiration of the twenty-day period.

SECTION 26. The introductory portion to 35-14-129 (1), Colorado Revised Statutes, is amended to read:

35-14-129. Moisture-testing devices - specifications. (1) Before any ~~moisture-measuring~~ MOISTURE-TESTING device is operated for commercial use, a license ~~must~~ SHALL be obtained from the commissioner. An application for such license shall be made upon a form furnished by the commissioner. A moisture-testing device shall be considered in commercial use if the results of the device are a factor in determining:

SECTION 27. 35-14-130, Colorado Revised Statutes, is amended to read:

35-14-130. Stop sale order. (1) The commissioner ~~shall~~ MAY issue ~~citations or~~ warning notices to anyone who has not complied with ~~the requirements of~~ this article and may establish a time period to correct any minor violation.

(2) THE COMMISSIONER MAY ISSUE A STOP SALE ORDER DIRECTING THAT ANY products not meeting the requirements of this article or the rules ~~and regulations~~ promulgated by the commissioner ~~shall~~ be taken off sale. ~~and a citation issued.~~

SECTION 28. 35-14-131, Colorado Revised Statutes, is amended to read:

35-14-131. Civil penalties. (1) ~~Any person who, acting alone, through a servant or agent, or as the servant or agent of another person commits any of the acts enumerated in subsection (2) of this section shall be subject to a civil penalty of not more than seven hundred fifty dollars for each day of violation.~~ A PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER OR A COURT OF COMPETENT JURISDICTION. THE MAXIMUM PENALTY SHALL NOT EXCEED SEVEN HUNDRED FIFTY DOLLARS PER VIOLATION; EXCEPT THAT SUCH PENALTY MAY BE DOUBLED IF IT IS DETERMINED, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THAT THE PERSON HAS VIOLATED THE PROVISION OR RULE FOR THE SECOND TIME. EACH DAY THE VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE VIOLATION.

(2) NO CIVIL PENALTY MAY BE IMPOSED BY THE COMMISSIONER 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 A PERSON FAILS TO PAY ALL OR A SET PORTION OF THE CIVIL PENALTY AS DETERMINED BY THE COMMISSIONER, THE COMMISSIONER MAY BRING SUIT TO RECOVER SUCH AMOUNT PLUS COSTS AND ATTORNEY FEES BY ACTION IN A COURT OF COMPETENT JURISDICTION.

(4) BEFORE IMPOSING A CIVIL PENALTY, THE COMMISSIONER OR A COURT OF COMPETENT JURISDICTION MAY CONSIDER THE EFFECT OF SUCH PENALTY ON THE BUSINESS.

~~(2)~~ (5) It is a violation for any person to:

(a) Sell, offer, or expose for sale or hire or have in his OR HER possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure;

(b) Use, or possess for current use or for hire, in the buying or selling of any commodity or thing, in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure ~~which has not been sealed~~ THAT IS NOT APPROVED by the commissioner or the commissioner's designated agent, ~~within the last year,~~ unless specific written permission to use such weight or measure has been received from the commissioner;

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or ~~regulation~~ RULE;

(d) Remove, break, or deface, contrary to law or ~~regulation~~ RULE, any tag, seal, or mark placed on any weight or measure pursuant to ~~the requirements of~~ this article, except in the case of the commissioner or a service person, certified pursuant to section 35-14-123, performing duties provided for in this article or any rule adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the quantity such person represents

of any commodity, thing, or service;

(f) Take more than the quantity such person represents of any commodity, thing, or service when, as a buyer, such person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to the requirements of this article;

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and medical prescriptions, a weight or measure ~~which~~ THAT is so positioned that its indications may not be accurately read and the weighing or measuring operation observed from some position ~~which~~ THAT may reasonably be assumed by a customer; except that this paragraph (h) shall not apply to livestock scales used in any licensed yard selling livestock;

(i) Violate any provision of this article or any rule ~~or regulation~~ promulgated under this article for which a specific penalty has not been prescribed;

(j) Act as or represent oneself to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify, REPRESENT, OR RECORD the weight of any load, or part of any load, or of any article whatsoever OBTAINED FROM A COMMERCIAL WEIGHING AND MEASURING DEVICE NOT EXEMPTED PURSUANT TO SECTION 35-14-126; falsely certify, REPRESENT, OR RECORD any net or gross weight required by this article to be in said certificate OR RECORD; refuse to weigh any article or thing ~~which~~ THAT it is such person's duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(k) Alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighed, alter or diminish the quantity thereof;

(l) Hinder or obstruct in any way the commissioner or the commissioner's authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent oneself to be a certified weighing or measuring device service ~~person~~ PROVIDER without being so certified.

~~(3)~~ (6) ~~Any~~ A civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit ~~the same~~ IT to the inspection and consumer services cash fund created in section 35-1-106.5. Penalties shall be determined by the commissioner or the commissioner's designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or the commissioner's designee shall be subject to judicial review. ~~In the event that~~ IF such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty if such issue

is raised by the party against whom the penalty was assessed.

SECTION 29. 35-14-133, Colorado Revised Statutes, is amended to read:

35-14-133. Enforcement. (1) ~~If any person fails to comply with any provision of this article or any rule or regulation promulgated under this article, the commissioner may request the district attorney for the judicial district in which the alleged violation exists or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation.~~ THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE SHALL ENFORCE THIS ARTICLE.

(2) ~~Actions brought under this section shall be brought in the district or county court where the violation occurs. The institution of such injunction proceeding shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other authorized enforcement action.~~ 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 CEASE FORTHWITH. AT ANY TIME AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE PERSON MAY REQUEST, AT THE PERSON'S DISCRETION, A HEARING TO BE HELD WITHIN A REASONABLE PERIOD OF TIME TO DETERMINE WHETHER SUCH VIOLATION HAS OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE DETERMINED PROMPTLY.

(3) WHENEVER THE COMMISSIONER POSSESSES SUFFICIENT EVIDENCE SATISFACTORY TO HIM OR HER INDICATING THAT A PERSON HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE OR ANY RULE OR ORDER ADOPTED PURSUANT TO THIS ARTICLE, THE COMMISSIONER MAY APPLY TO A 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 OR ORDER ADOPTED 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 30. Applicability. This act shall apply to acts occurring on or after the effective date of this act.

SECTION 31. 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 2, 2009