

CHAPTER 384

AGRICULTURE

SENATE BILL 10-072

BY SENATOR(S) Schwartz, Heath, Newell, Sandoval, Tapia, Whitehead;
also REPRESENTATIVE(S) Vigil, Curry, Fischer, Gerou, Kerr J., Pace, Schafer S.

AN ACT

CONCERNING CREATION OF THE "COLORADO SEED POTATO ACT", AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 2-3-1203 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(gg) SEPTEMBER 1, 2019: THE SEED POTATO ADVISORY COMMITTEE CREATED IN SECTION 35-27.3-107, C.R.S.

SECTION 2. 24-34-104 (50.5), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (50.5) The following agencies, functions, or both, shall terminate on September 1, 2019:

(a) The Colorado public utilities commission, created by article 2 of title 40, C.R.S.;

(b) THE FUNCTIONS OF THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE RELATED TO SEED POTATOES UNDER ARTICLE 27.3 OF TITLE 35, C.R.S.

SECTION 3. 35-27-103 (23), Colorado Revised Statutes, is amended to read:

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

35-27-103. Definitions. As used in this article, unless the context otherwise requires:

(23) "Seed" means agricultural, vegetable, ornamental, shrub, or tree seed for propagation. THE TERM "SEED" DOES NOT INCLUDE TUBERS THAT ARE PLANTED OR USED, OR INTENDED TO BE PLANTED OR USED, AS SEED POTATOES AND ARE THUS REGULATED UNDER THE "COLORADO SEED POTATO ACT", ARTICLE 27.3 OF THIS TITLE.

SECTION 4. The introductory portion to 35-27-104 (1), Colorado Revised Statutes, is amended, and the said 35-27-104 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-27-104. Scope of article. (1) ~~The provisions of This article shall~~ DOES not apply to:

(h) SEED POTATOES AS DEFINED IN SECTION 35-27.3-103.

SECTION 5. Title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 27.3 Colorado Seed Potato Act

35-27.3-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO SEED POTATO ACT".

35-27.3-102. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS ARTICLE IS TO CONTROL AND MINIMIZE THE SPREAD OF CONTAGIOUS COMMUNITY DISEASES BY REDUCING THE OVERALL INOCULUM POOL PRESENT IN POTATO CROPS. THIS ARTICLE IS FURTHER INTENDED TO COMPLY WITH SEED POTATO STANDARDS SET FORTH IN THE STATE NATIONAL HARMONIZATION PROGRAM.

35-27.3-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADVISORY COMMITTEE" MEANS THE SEED POTATO ADVISORY COMMITTEE CREATED IN SECTION 35-27.3-107.

(2) "CERTIFIED" MEANS CERTIFIED BY A CERTIFYING AUTHORITY AS MEETING ALL APPLICABLE LAWS AND RULES FOR CERTIFICATION OF SEED POTATOES.

(3) "CERTIFYING AUTHORITY" MEANS THE POTATO CERTIFICATION SERVICE OF COLORADO STATE UNIVERSITY OR THE AUTHORIZED SEED POTATO CERTIFYING AGENCY OF ANOTHER STATE, TERRITORY, OR COUNTRY.

(4) "COMMISSIONER" MEANS THE COMMISSIONER OF AGRICULTURE.

(5) "COMMUNITY DISEASE" MEANS A DISEASE OR PEST THAT CAN MOVE FROM FIELD TO FIELD DURING THE POTATO GROWING SEASON AND IS NOT CONFINED TO ANY

SINGLE POTATO GROWER'S OPERATION. THE TERM INCLUDES LATE BLIGHT AND POTATO VIRUS Y.

(6) "CULTIVAR" MEANS UNIQUE VARIETY.

(7) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

(8) "DISTRIBUTE" MEANS TO OFFER FOR SALE, SELL, BARTER, DELIVER, SUPPLY, FURNISH, OR OTHERWISE PROVIDE SEED POTATOES.

(9) "GENERATION" MEANS ONE FULL SEASONAL GROWTH CYCLE, INCLUDING PLANTING, GROWING, HARVESTING, AND STORING.

(10) "HUNDREDWEIGHT" MEANS A UNIT OF WEIGHT EQUAL TO ONE HUNDRED POUNDS.

(11) "OFFICIAL CONTROL", WITH RESPECT TO A CROP OF POTATOES, MEANS THAT THE SEED POTATOES USED TO PRODUCE THE CROP HAVE BEEN DERIVED FROM CERTIFIED SEED, QUALIFIED SEED, OR TESTED, DOCUMENTED SOURCES AND FOUND TO BE WITHIN THE LEGAL LIMITS FOR ALL DISEASES AND PESTS OF CONCERN.

(12) "PARENT" MEANS ONE PRIOR GENERATION REMOVED.

(13) "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, AGENCY, OR ORGANIZED GROUP OF PERSONS.

(14) "PROGENY" MEANS THE OFFSPRING OR DAUGHTER TUBERS OF A POTATO PLANT.

(15) "QUALIFIED", WITH RESPECT TO SEED POTATOES, MEANS THAT THE SEED POTATOES ARE DERIVED FROM CERTIFIED SEED POTATOES, HAVE BEEN INSPECTED BY A CERTIFYING AUTHORITY AND MEET ALL APPLICABLE LAWS AND RULES FOR SEED POTATO CERTIFICATION INCLUDING OFFICIAL DISEASE CONTROL STANDARDS, AND ARE THUS ELIGIBLE FOR PLANTING AS SEED.

(16) "QUARANTINE" MEANS A QUARANTINE IMPOSED BY THE COMMISSIONER PURSUANT TO SECTION 35-4-110.

(17) "SEED POTATOES" MEANS VEGETATIVELY PROPAGATED TUBERS USED OR INTENDED TO BE USED FOR POTATO PRODUCTION.

(18) "STATE NATIONAL HARMONIZATION PROGRAM" MEANS THE STATE NATIONAL HARMONIZATION PROGRAM FOR SEED POTATOES DEVELOPED BY THE PLANT PROTECTION AND QUARANTINE PROGRAM OF THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE IN THE UNITED STATES DEPARTMENT OF AGRICULTURE.

35-27.3-104. Distribution of seed potatoes - rules. (1) ALL SEED POTATOES DISTRIBUTED BY ANY PERSON IN LOTS THAT ARE SUFFICIENT TO PLANT ONE OR MORE ACRES IN COLORADO AS DETERMINED BY THE COMMISSIONER BY RULE SHALL BE CERTIFIED BY A CERTIFYING AUTHORITY.

(2) ALL LOTS OF SEED POTATOES SUBJECT TO SUBSECTION (1) OF THIS SECTION SHALL, AT THE TIME OF DISTRIBUTION, BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

(a) AN OFFICIAL TAG OR BULK CERTIFICATE INDICATING THEIR STATUS AS CERTIFIED SEED POTATOES;

(b) A CERTIFICATE OF SHIPPING POINT INSPECTION;

(c) A NORTH AMERICAN PLANT HEALTH CERTIFICATE ISSUED BY THE CERTIFYING AUTHORITY FOR SEED POTATOES IMPORTED FROM OUTSIDE COLORADO; AND

(d) ANY OTHER DOCUMENTATION NECESSARY TO PROVIDE THE INFORMATION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

(3) THE DOCUMENTS DESCRIBED IN SUBSECTION (2) OF THIS SECTION SHALL PROVIDE THE FOLLOWING:

(a) A DESCRIPTION OF THE GRADE OF THE SEED POTATOES;

(b) THE FINDINGS OF FIELD INSPECTIONS AND POSTHARVEST INSPECTIONS CONDUCTED ON EACH LOT OF SEED POTATOES, INCLUDING THE NAME AND AMOUNT OF ANY DISEASES OBSERVED;

(c) THE GENERATION OF SEED POTATOES; AND

(d) EVIDENCE THAT THE SEED POTATOES WERE TAGGED, AND, IF IMPORTED FROM OUTSIDE COLORADO, PACKED AND SEALED, UNDER THE CERTIFICATION STANDARDS OF THE STATE, TERRITORY, OR COUNTRY IN WHICH THEY WERE GROWN.

35-27.3-105. Minimum standards for planting seed potatoes - scope - qualified seed potatoes - rules. (1) (a) EXCEPT AS OTHERWISE PERMITTED UNDER THIS SECTION, NO SEED POTATOES IN LOTS THAT ARE SUFFICIENT TO PLANT ONE OR MORE ACRES AS DETERMINED BY THE COMMISSIONER BY RULE SHALL BE PLANTED UNLESS THE POTATOES HAVE BEEN CERTIFIED.

(b) SEED POTATOES IMPORTED TO COLORADO SHALL MEET THE MINIMUM STANDARDS FOR CERTIFIED SEED SET FORTH IN THE STATE NATIONAL HARMONIZATION PROGRAM AND IN ANY ACTIVE APPLICABLE QUARANTINE.

(2) (a) A POTATO GROWER IN COLORADO SHALL BE ALLOWED TO PLANT UNCERTIFIED POTATOES IF:

(I) THE POTATOES WERE GROWN AND STORED AS PART OF THAT GROWER'S FARMING OPERATIONS; AND

(II) THE UNCERTIFIED POTATOES ARE NO MORE THAN ONE GENERATION FROM CERTIFIED PARENT POTATOES OR QUALIFIED PARENT POTATOES.

(b) A POTATO GROWER WHO PLANTS UNCERTIFIED POTATOES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) MAY PLANT PROGENY FROM THAT SEED IN

ADDITIONAL YEARS IF, IN EACH ADDITIONAL YEAR, THE GROWER SUBMITS THE SEED STOCK TO THE CERTIFYING AUTHORITY OF COLORADO FOR TESTING AND THE CERTIFYING AUTHORITY OF COLORADO APPROVES THE SEED STOCK FOR PLANTING. THE CERTIFYING AUTHORITY OF COLORADO SHALL APPROVE THE SEED STOCK IF IT MEETS THE STANDARDS FOR SUCH STOCK AS ESTABLISHED BY THE COMMISSIONER BY RULE.

(3) IN ANY YEAR THAT THE COMMISSIONER, AFTER CONSULTING WITH THE ADVISORY COMMITTEE, DETERMINES THAT THERE IS AN INSUFFICIENT VOLUME OF ANY CULTIVAR OF CERTIFIED SEED POTATOES AND SEED POTATOES MEETING THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, POTATO GROWERS MAY APPLY TO THE ADVISORY COMMITTEE FOR PERMISSION TO PLANT UNCERTIFIED SEED POTATOES. UPON RECOMMENDATION FROM THE ADVISORY COMMITTEE, THE COMMISSIONER MAY GRANT APPLYING GROWERS PERMISSION TO PLANT UNCERTIFIED COLORADO-GROWN SEED POTATOES. ANY SUCH PERMISSION SHALL BE VALID FOR ONLY THAT GROWING SEASON. IN NO EVENT SHALL ANY SEED POTATOES BE PLANTED WHEN BACTERIAL RING ROT, LATE BLIGHT, OR AN UNACCEPTABLE LEVEL OF COMMUNITY DISEASES IS PRESENT IN THE SEED POTATOES.

(4) PRIOR TO JANUARY 1, 2012, A COLORADO POTATO GROWER MAY PLANT UNCERTIFIED AND UNTESTED SEED POTATOES IF THE SEED POTATOES HAVE BEEN GROWN AS PART OF THAT GROWER'S FARMING OPERATIONS.

35-27.3-106. Record-keeping requirements - annual record reviews.

(1) EACH PERSON GROWING POTATOES IN THIS STATE IN LOTS OF ONE ACRE OR GREATER SHALL KEEP AND MAINTAIN RECORDS, BY CULTIVAR AND BY FIELD, OF THE HUNDREDWEIGHT OF POTATO CULTIVAR OR CULTIVARS PLANTED PER FIELD. THE RECORDS SHALL CONTAIN THE INFORMATION REQUIRED FOR AN INDEPENDENT RECORDS REVIEW CONDUCTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION. GROWERS SHALL MAINTAIN THE RECORDS FOR A PERIOD OF AT LEAST TWO YEARS AT THE GROWER'S BUSINESS ADDRESS.

(2)(a) THE COMMISSIONER SHALL, UPON RECOMMENDATION FROM THE ADVISORY COMMITTEE, SELECT A QUALIFIED DEPARTMENT EMPLOYEE OR INDEPENDENT AUDITOR TO PERFORM A RECORDS REVIEW ON AT LEAST TEN PERCENT OF POTATO GROWERS SUBJECT TO THIS ARTICLE ONCE EVERY SEED POTATO CROP CYCLE. THE COMMISSIONER SHALL DETERMINE A METHOD FOR THE ANNUAL RANDOM SELECTION OF GROWERS. THE AREA COMMITTEE FOR AREA NO. 2, ESTABLISHED IN THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF THIS TITLE, SHALL PAY THE ACTUAL COSTS OF SUCH RECORDS REVIEWS.

(b) A RECORDS REVIEW PERFORMED PURSUANT TO THIS SECTION SHALL VERIFY RECORDS THAT TRACE BACK THE GROWER'S POTATOES, INCLUDING RECORDS THAT EVIDENCE THE FOLLOWING:

(I) ACREAGE PLANTED BY CULTIVAR; AND

(II) HUNDREDWEIGHT AND SOURCE OF THE SEED USED TO PLANT THE ACREAGE, WITH VERIFIABLE DOCUMENTS RELATED TO:

(A) FOR SEED POTATOES PURCHASED, THE DOCUMENTS DESCRIBED IN SECTION 35-27.3-104 (2) AND (3); OR

(B) FOR SEED POTATOES PLANTED PURSUANT TO SECTION 35-27.3-105 (2), THE TESTING HISTORY AND SEED POTATOES USED TO REPLANT THE GROWER'S OWN OPERATIONS.

(3) IF THE INDEPENDENT AUDITOR WHO CONDUCTED THE RECORDS REVIEW BELIEVES A VIOLATION OF THIS SECTION HAS OCCURRED, HE OR SHE SHALL NOTIFY THE COMMISSIONER. THE COMMISSIONER SHALL THEN INVESTIGATE THE ALLEGED VIOLATION ACCORDING TO SECTION 35-27.3-109.

35-27.3-107. Advisory committee - created - members - terms - duties - sunset review - repeal. (1) (a) THERE IS HEREBY CREATED THE SEED POTATO ADVISORY COMMITTEE.

(b) (I) THE ADVISORY COMMITTEE SHALL CONSIST OF NINE MEMBERS APPOINTED BY THE COMMISSIONER AS FOLLOWS:

(A) FOUR POTATO GROWERS WHO DO NOT GROW SEED POTATOES AND WHOSE OPERATIONS ARE LOCATED IN AREA NO. 2, ESTABLISHED IN THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF THIS TITLE;

(B) ONE POTATO GROWER WHO DOES NOT GROW SEED POTATOES AND WHOSE OPERATION IS LOCATED IN AREA NO. 3, ESTABLISHED IN THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF THIS TITLE;

(C) TWO MEMBERS OF THE COLORADO CERTIFIED POTATO GROWERS' ASSOCIATION, OR ITS SUCCESSOR ORGANIZATION, ONE OF WHOM SHALL BE THE SITTING PRESIDENT OF THAT ASSOCIATION;

(D) ONE PERSON EMPLOYED BY COLORADO STATE UNIVERSITY; AND

(E) ONE PERSON EMPLOYED BY THE DEPARTMENT.

(II) WHENEVER POSSIBLE, THE ADVISORY COMMITTEE MEMBERS APPOINTED UNDER SUB-SUBPARAGRAPHS (D) AND (E) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL HAVE KNOWLEDGE OF OR EXPERIENCE WITH SEED POTATOES.

(2) (a) EXCEPT AS PROVIDED IN PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (2), MEMBERS APPOINTED TO THE ADVISORY COMMITTEE SHALL SERVE FOR TERMS OF THREE YEARS. MEMBERS MAY BE APPOINTED FOR AN UNLIMITED NUMBER OF TERMS; EXCEPT THAT NO MEMBER SHALL SERVE MORE THAN TWO TERMS CONSECUTIVELY.

(b) THE INITIAL APPOINTMENTS OF TWO OF THE ADVISORY COMMITTEE MEMBERS DESCRIBED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, ONE OF THE MEMBERS DESCRIBED IN

SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, AND THE MEMBER DESCRIBED IN SUB-SUBPARAGRAPH (E) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, SHALL BE FOR TWO YEARS. THEREAFTER, EACH APPOINTMENT TO THE ADVISORY COMMITTEE SHALL BE FOR A TERM OF THREE YEARS.

(c) IN THE EVENT OF A VACANCY ON THE ADVISORY COMMITTEE PRIOR TO THE COMPLETION OF A MEMBER'S FULL TERM, THE COMMISSIONER SHALL APPOINT A PERSON TO COMPLETE THE REMAINDER OF THAT TERM. THE PERSON SO APPOINTED SHALL REPRESENT THE SAME GROUP AS THE MEMBER HE OR SHE IS REPLACING, AS SET FORTH IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

(3) THE MEMBERS SHALL RECEIVE NO COMPENSATION OR REIMBURSEMENT FROM THE STATE OF COLORADO OR THE DEPARTMENT FOR ANY EXPENSES INCURRED IN THE EXERCISE OF THEIR DUTIES.

(4) THE ADVISORY COMMITTEE SHALL ADVISE THE COMMISSIONER IN ESTABLISHING RULES UNDER THIS ARTICLE, ASSIST IN THE DETERMINATION OF AVAILABILITY OF POTATOES, RECOMMEND WHETHER TO GRANT PERMISSION TO PLANT UNCERTIFIED SEED POTATOES, RECOMMEND INDEPENDENT AUDITORS TO PERFORM RECORDS REVIEWS PURSUANT TO SECTION 35-27.3-106 (2), AND CONSULT WITH THE COMMISSIONER REGARDING THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE.

(5) (a) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2019.

(b) PRIOR TO SAID REPEAL, THE ADVISORY COMMITTEE APPOINTED PURSUANT TO THIS SECTION SHALL BE REVIEWED PURSUANT TO SECTION 2-3-1203, C.R.S.

35-27.3-108. Powers and duties of the commissioner - rules. (1) IN ADDITION TO ANY OTHER DUTIES IN THIS ARTICLE, THE COMMISSIONER SHALL:

(a) ADMINISTER AND ENFORCE THIS ARTICLE;

(b) ADOPT RULES NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE, INCLUDING RULES THAT:

(I) ESTABLISH REQUIREMENTS FOR COMPLIANCE VERIFICATION, TESTING, SAMPLING, AND INSPECTION;

(II) SPECIFY QUALITY OR DISEASE STANDARDS FOR POTATOES;

(III) ALLOW FOR THE RANDOM SELECTION OF TEN PERCENT OF POTATO GROWERS SUBJECT TO THE ANNUAL RECORDS REVIEW REQUIRED UNDER SECTION 35-27.3-106 (2);

(IV) SET STANDARDS FOR UNCERTIFIED SEED POTATO STOCK THAT MAY BE PLANTED PURSUANT TO SECTION 35-27.3-105 (2) (b);

(V) ESTABLISH METHODS FOR DETERMINING THAT BACTERIAL RING ROT OR AN UNACCEPTABLE LEVEL OF COMMUNITY DISEASES IS NOT PRESENT IN SEED POTATOES

PLANTED UNDER SECTION 35-27.3-105 (3);

(VI) DESIGNATE THE TYPE OF RECORDS THAT MUST BE KEPT BY GROWERS; AND

(VII) SET A SCHEDULE OF FEES FOR SERVICES PERFORMED BY THE DEPARTMENT, WHICH FEES SHALL BE BILLED ON A PRO RATA BASIS TO THE AREA COMMITTEES FOR AREAS NO. 2 AND NO. 3, ESTABLISHED IN THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF THIS TITLE.

35-27.3-109. Inspections - access - investigations - subpoenas. (1) THE COMMISSIONER, UPON THE COMMISSIONER'S OWN MOTION OR UPON THE RECOMMENDATION OF AN INDEPENDENT AUDITOR PURSUANT TO SECTION 35-27.3-106 (2), MAY MAKE AN INVESTIGATION NECESSARY TO DETERMINE COMPLIANCE WITH THIS ARTICLE.

(2)(a) FOR INSPECTION PURPOSES PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED ACCESS DURING REGULAR BUSINESS HOURS, EITHER UPON CONSENT OF THE OWNER OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT, TO INSPECT ANY RECORDS REQUIRED TO BE KEPT PURSUANT TO THIS ARTICLE.

(b) THE COMMISSIONER MAY MAKE COPIES OF ANY RECORDS INSPECTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2).

(3)(a) THE COMMISSIONER HAS FULL AUTHORITY TO ADMINISTER OATHS; TAKE STATEMENTS; ISSUE SUBPOENAS TO COMPEL THE APPEARANCE OF WITNESSES BEFORE THE COMMISSIONER; ISSUE SUBPOENAS FOR THE PRODUCTION OF ANY BOOKS, MEMORANDA, PAPERS, OR OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS; AND COMPEL DISCLOSURE BY WITNESSES OF ALL FACTS KNOWN TO SUCH WITNESSES RELATIVE TO ANY MATTER UNDER INVESTIGATION.

(b) UPON FAILURE OR REFUSAL OF ANY PERSON TO OBEY A SUBPOENA ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), THE COMMISSIONER MAY PETITION THE DISTRICT COURT TO ENTER AN ORDER COMPELLING SUCH PERSON TO COMPLY WITH THE SUBPOENA.

(c) FAILURE TO OBEY AN ORDER OF THE COURT ENTERED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) MAY BE PUNISHABLE AS CONTEMPT OF COURT.

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

35-27.3-110. Violations - civil penalties. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY ON ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE

ADOPTED UNDER THIS ARTICLE. SUCH PENALTY SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION.

(b) ANY PERSON WHO PLANTS OR DISTRIBUTES POTATOES IN VIOLATION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE COMMISSIONER. THE PENALTY IMPOSED BY THE COMMISSIONER SHALL BE AT LEAST TWENTY DOLLARS PER ACRE BUT SHALL NOT EXCEED ONE HUNDRED DOLLARS PER ACRE PER VIOLATION.

(c) ANY PERSON WHO FAILS TO MAINTAIN COMPLETE AND ACCURATE RECORDS PURSUANT TO SECTION 35-27.3-106 OR RULES PROMULGATED PURSUANT TO SECTION 35-27.3-108 (1) (b) (VII) IS SUBJECT TO A CIVIL PENALTY OF AT LEAST FIVE HUNDRED DOLLARS BUT NO MORE THAN ONE THOUSAND DOLLARS, AS DETERMINED BY THE COMMISSIONER.

(2) NO CIVIL PENALTY SHALL BE IMPOSED UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND AN OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

(3) IF THE COMMISSIONER IS UNABLE TO COLLECT A CIVIL PENALTY OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF SUCH CIVIL PENALTY, THE COMMISSIONER MAY BRING SUIT IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER THE PENALTY PLUS COSTS AND ATTORNEY FEES.

(4) MONEYS COLLECTED FROM ANY CIVIL PENALTY IMPOSED UNDER THIS ARTICLE SHALL BE PAID TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE SEED POTATO CASH FUND CREATED IN SECTION 35-27.3-111.

35-27.3-111. Seed potato cash fund - created. ALL FEES AND CIVIL FINES COLLECTED PURSUANT TO THIS ARTICLE SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE SEED POTATO CASH FUND, WHICH FUND IS HEREBY CREATED. ALL MONEYS CREDITED TO THE FUND AND ALL INTEREST EARNED ON THE INVESTMENT OF MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR CREDITED TO THE GENERAL FUND OR TO ANY OTHER FUND EXCEPT AS DIRECTED BY THE GENERAL ASSEMBLY ACTING BY BILL. IN ADDITION TO ANY APPROPRIATION FROM THE GENERAL FUND, THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS FROM THE SEED POTATO CASH FUND TO THE DEPARTMENT TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

35-27.3-112. Repeal of article - termination of functions. THIS ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2019. PRIOR TO SUCH REPEAL, THE CERTIFICATION FUNCTIONS OF THE COMMISSIONER SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the seed potato cash fund created in section 35-27.3-111, Colorado Revised Statutes, not otherwise appropriated, to the department of agriculture, for allocation to the agricultural services division, for implementation of the Colorado seed potato act, for the fiscal year beginning July 1, 2010, the sum of two thousand nine hundred fifty-nine dollars (\$2,959) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of nine hundred five dollars (\$905), or so much thereof as may be necessary, for the provision of legal services to the department of agriculture related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of agriculture out of the appropriation made in subsection (1) of this section.

SECTION 7. Specified effective date - applicability. This act shall take effect July 1, 2010, and shall apply to seed potatoes distributed or planted on or after said date.

SECTION 8. 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: June 8, 2010