CHAPTER 5

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 13-1034

BY REPRESENTATIVE(S) Sonnenberg, Buck, Conti, Coram, DelGrosso, Dore, Fischer, Gerou, Ginal, Holbert, Humphrey, Lebsock, McLachlan, Mitsch Bush, Moreno, Pabon, Rankin, Schafer, Scott, Waller, Wilson, Young;
also SENATOR(S) Giron, Jahn.

AN ACT

CONCERNING THE WHOLESALE MARKETING OF FARM PRODUCTS, AND, IN CONNECTION THEREWITH, AUTHORIZING ELECTRONIC WAREHOUSE RECEIPTS, MODIFYING PROCEDURES FOR LETTERS OF CREDIT AND SURETY BONDS, AND MODIFYING REQUIREMENTS FOR CREDIT SALE CONTRACTS.

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

SECTION 1. In Colorado Revised Statutes, 12-16-103, amend (3.5) as follows:

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

(3.5) "Credit sale contract" means a contract for the sale of a farm product when the sale price is to be paid on a date later than thirty days after delivery of the farm product to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

SECTION 2. In Colorado Revised Statutes, 12-16-106, amend (1) (c) and (1) (d); and repeal (3) as follows:

12-16-106. Bonds and irrevocable letters of credit - exemptions. (1) (c) The bond or irrevocable letter of credit shall be conditioned upon compliance with the provisions of this part 1 and upon the faithful and honest handling of farm products in accordance with the terms of this part 1 and shall cover any and all fees and costs and reasonable attorney fees incident to any suit upon the bond or irrevocable letter of credit. The bond or irrevocable letter of credit shall be to

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
the state DEPARTMENT OF AGRICULTURE in favor of every producer, dealer, small-volume dealer, or owner and, in the instance of a bond, shall MUST remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(d) (I) Any producer, owner, small-volume dealer, or other dealer within the state of Colorado claiming to be injured by the fraud, deceit, or willful negligence of, or failure to comply with the provisions of this part 1 of BY, any dealer may seek REQUEST the DEPARTMENT OF AGRICULTURE, AS BENEFICIARY, TO DEMAND PAYMENT ON THE IRREVOCABLE LETTER OF CREDIT OR SURETY BOND to recover the damages caused by such THE fraud, deceit, willful negligence, or failure to comply with the provisions of this part 1. If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with the prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.

(II) The surety on the bond or the person who filed the letter of credit shall IS not be liable to pay any claim pursuant to any action brought under the provisions of this part 1 if such THE action is not commenced within twenty-four months ONE HUNDRED EIGHTY DAYS after the date of the transaction, AS THAT TERM IS DEFINED IN SECTION 12-16-215 (12), on which the claim is based, OR THE DATE OF THE LOSS, AS THAT TERM IS DEFINED IN SECTION 12-16-202 (10), WHICHEVER IS LATER.

(3) A bond is not required for credit sale contracts.

SECTION 3. In Colorado Revised Statutes, 12-16-110.5, amend (1) introductory portion, (1) (a), and (1) (e) as follows:

12-16-110.5. Credit sale contracts. (1) When a dealer or small-volume dealer receives PURCHASES farm products for which payment has not been made, the dealer or small-volume dealer, within sixty THIRTY days after the receipt of such THE farm products, shall provide the producer or owner of the farm products with a credit sale contract. The credit sale contract shall MUST contain the following information:

(a) The type AND QUANTITY of farm products received, the quantity received PURCHASED and the date of receipt PURCHASE;

(c) The statement, "This contract constitutes a voluntary extension of credit by the owner to the dealer and is not protected by the surety bond or irrevocable letter of credit of the dealer." Such statement shall be conspicuously printed on the upper one-third of the first page of the contract, set off by solid lines on all four sides, and shall include a signature block for the signature of the seller ONE OR MORE STATEMENTS SPECIFIED BY THE COMMISSIONER BY RULE, INCLUDING ONE THAT WARNS A PRODUCER THAT ENTERING INTO A CREDIT SALE CONTRACT ENTAILS A RISK THAT THE BOND MAY NOT COMPLETELY PROTECT THE PRODUCER FROM LOSS IN THE EVENT OF A FAILURE OF THE DEALER OR SMALL-VOLUME DEALER.

SECTION 4. In Colorado Revised Statutes, 12-16-202, amend (6) as follows:
12-16-202. Definitions - rules. As used in this part 2, unless the context otherwise requires:

(6) "Credit sale contract" means a contract for the sale of a commodity when the sale price is to be paid on a date later than sixty days after delivery of the commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

SECTION 5. In Colorado Revised Statutes, 12-16-208, amend (1) introductory portion, (1) (a), and (1) (f) as follows:

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

(a) The class, and grade, and quantity of the commodities received, the
quantity received, and the date of the receipt;

(f) The statement "This contract constitutes a voluntary extension of credit by the
owner to the commodity handler and is not protected by the surety bond or
irrevocable letter of credit of the commodity handler." Such statement shall be
conspicuously printed on the upper third of the first page of the contract, set off by
solid lines on all four sides, including a signature block for the signature of the
seller. ONE OR MORE STATEMENTS SPECIFIED BY THE COMMISSIONER BY RULE,
INCLUDING ONE THAT WARNS A PRODUCER THAT ENTERING INTO A CREDIT SALE
CONTRACT ENTAILS A RISK THAT THE BOND MAY NOT COMPLETELY PROTECT THE
PRODUCER FROM LOSS IN THE EVENT OF A FAILURE OF THE COMMODITY HANDLER.

SECTION 6. In Colorado Revised Statutes, amend 12-16-211 as follows:

12-16-211. Negotiable warehouse receipts - rules. (1) Upon written notice, the
department shall print, bind, and deliver a sufficient number of negotiable
warehouse receipts to any person operating a public warehouse. No person shall use
these forms for any purpose other than in connection with the receipt of
commodities for storage. A NEGOTIABLE WAREHOUSE RECEIPT MUST BE EITHER A
PAPER OR AN ELECTRONIC DOCUMENT. AT NO TIME MAY A PAPER RECEIPT AND AN
ELECTRONIC RECEIPT REPRESENT THE SAME LOT OF THE COMMODITY. A LICENSEE
MAY ISSUE WAREHOUSE RECEIPTS BY USE OF A WRITTEN WAREHOUSE RECEIPT
SYSTEM, AN ELECTRONIC WAREHOUSE RECEIPT SYSTEM, OR BOTH.

(2) Negotiable warehouse receipts shall conform to the terms set forth in section
4-7-202, C.R.S. The warehouse operator shall maintain a file of all voided, issued,
and unused warehouse receipts. THE DEPARTMENT IS THE SOLE SOURCE OF PAPER
NEGOTIABLE WAREHOUSE RECEIPTS AND SHALL FURNISH THOSE RECEIPTS AT COST.

(3) The department shall be the sole source of negotiable warehouse receipts and
shall furnish those receipts at cost. Orders for receipts shall specify the number
required and shall be submitted at least fifteen days prior to the time the receipts are
needed. Instead of a paper document, a licensee may issue an electronic
negotiable version of a warehouse receipt generated by a vendor
licensed and approved by the United States Department of Agriculture
if the receipt contains the same information as the paper version of a
warehouse receipt. The electronic version of a warehouse receipt carries
the same rights and obligations as the paper version. A holder of an
electronic version of a warehouse receipt may redeem the warehouse
receipt by applying an electronic signature registered and authenticated
by a vendor credited by the United States Department of Agriculture.

(4) The commissioner may promulgate rules regarding the issuance,
use, and records requirements of negotiable warehouse receipts.

SECTION 7. In Colorado Revised Statutes, 12-16-212, amend (1) as follows:

12-16-212. Use of scale tickets and negotiable warehouse receipts. (1) It is
unlawful to issue paper negotiable warehouse receipts other than those furnished
by the department. The licensee shall issue these receipts consecutively, as numbered, and each receipt shall be stamped with
must state the date on which it is actually issued.

SECTION 8. In Colorado Revised Statutes, 12-16-218, amend (1) (b) and (1)
(c); and repeal (3) as follows:

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (b) The
bond or irrevocable letter of credit shall must be conditioned upon compliance with
the provisions of this part 2 and upon the faithful and honest handling of
commodities in accordance with the terms of this part 2 and shall must cover any
and all inspection fees due the people of the state of Colorado Department of
Agriculture by the commodity handler and all costs and reasonable attorney fees
incurred in any suit upon said the bond or irrevocable letter of credit. Said the
bond or irrevocable letter of credit shall must be to the state Department of
Agriculture in favor of every producer or owner and, in the instance of a bond,
shall must remain in full force and effect until cancelled by the surety upon thirty
days' prior written notice to the commissioner.

(c) (I) Any producer or owner within the state of Colorado claiming to be injured
by the fraud, deceit, or willful negligence of, or failure to comply with the
provisions of this part 2 by, any commodity handler may seek request the
Department, as beneficiary, to demand payment on the irrevocable letter of
credit or surety bond to recover the damages caused by such fraud, deceit,
willful negligence, or failure to comply with the provisions of this part 2. If the
licensee has elected to file a bond pursuant to this section, the injured party may
bring an action, with prior written consent of the commissioner, for collection
against both principal and surety in any court of competent jurisdiction. If the
licensee has elected to file an irrevocable letter of credit pursuant to this section, the
injured party may request the department of agriculture, as beneficiary, to demand
payment on the irrevocable letter of credit.

(II) The surety on the bond or the person who filed issuer of the letter of credit
shall not be liable to pay any claim pursuant to any action brought under the provisions of this part 2 if such action is not commenced within twenty-four months one hundred eighty days after the date of the transaction, as that term is defined in section 12-16-215 (12), on which the claim is based, or the date of the loss, whichever is later.

(3) A bond is not required for credit sale contracts.

SECTION 9. In Colorado Revised Statutes, 11-35-101.5, repeal (3) as follows:

11-35-101.5. Irrevocable letter of credit permitted - requirements. (3) Before accepting such irrevocable letters of credit, each appropriate state agency shall determine that the financial institution upon which such irrevocable letter of credit is drawn will be able to make payment upon such letter should it become necessary.

SECTION 10. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2013; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on September 1, 2013, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to acts occurring on or after the applicable effective date of this act.

Approved: February 27, 2013