Colorado Revised Statutes 2014

TITLE 35

AGRICULTURE

ADMINISTRATION

ARTICLE 1

Department of Agriculture

35-1-101. Short title. This article shall be known and may be cited as the "State Department of Agriculture Act of 1949".

35-1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agriculture" means the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production.

(1.5) Repealed.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Department" means the department of agriculture.

(5) "Division" means a primary subdivision of the department whose administrative head is directly responsible to the head of the department.

(6) "Livestock" means cattle, sheep, goats, swine, mules, poultry, horses, alternative livestock, as defined in section 35-41.5-102 (1), and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.

(7) "Section" means a subdivision of a division whose administrative head is directly responsible to the head of the division.

35-1-103. Department of agriculture. There is hereby created a department of agriculture, referred to in this article as the "department". When any law of this state refers to the

state department of agriculture, said law shall be construed as referring to the department of agriculture.

35-1-104. Functions, powers, and duties. (1) The department has and shall exercise the following functions, powers, and duties:

(a) To inquire into the needs of agriculture of the state and make appropriate recommendations to the governor and the general assembly, except as to functions specifically assigned under state law to other state agencies;

(b) To perform all regulatory and inspection services relating to agriculture, except agricultural education and research and those regulatory functions relating primarily to the control of milk or milk products or to public health or assigned by law to other state agencies;

(c) To make investigations, conduct hearings, and make recommendations concerning all matters as related to the powers, duties, and functions as provided in this article;

(d) To cooperate with the United States department of agriculture in getting and disseminating production statistics, market and trade information concerning demand, supply, prevailing prices, and commercial movements of agricultural products and extent of products in storage, and cooperate with any other state or federal agency which in any manner may be helpful to agriculture;

(e) To annually fix such inspection and license fees and service charges within maximum limits provided by law as may be necessary to pay the cost of service performed and reasonable reserves for contingencies, including cost of depository, accounting, disbursement, auditing, and rental of quarters and facilities furnished by the state;

(f) To foster and encourage the standardizing, grading, inspection, labeling, handling, storage, and marketing of agricultural products and, after investigation and public hearings thereon, acting in cooperation with the United States department of agriculture, to establish and promulgate standard grades and other standard classifications of and for agricultural products, except milk or milk products;

(g) To extend in every practicable way the distribution and sale of Colorado agricultural products throughout the markets of the world;

(h) To promote, in the interest of the producer, the distributor, and the consumer, the economical and efficient distribution of agricultural products of this state and to that end cooperate with the department of commerce of the United States and any other department or agency of the federal government;

(h.5) To promote, within existing appropriations, farmers' markets located within the state, including support or development of farmers' market organizations and working groups and the provision of education, outreach, and other assistance;

(i) To obtain and furnish information relating to the selection of shipping routes, adoption of shipping methods, or avoidance of delays in the transportation of agricultural products or helpful in the solution of other transportation problems connected with the distribution of agricultural products;

(j) To act as adviser to producers and distributors, when requested, and to assist them in the economical and efficient distribution of their agricultural product;

(k) To foster and encourage cooperation between producers and distributors in the interest of the general public;

(l) To act as a mediator or arbitrator in any controversy or issue that may arise between producers and distributors of any agricultural products concerning the grade or classification of such products;

(m) To determine for the protection of owners, buyers, creditors, or other interested parties the validity of warehouse receipts for any such products by verifying quantities, grade, and classification thereof;

(n) To enforce the state laws or regulations relating to fruit and vegetable inspection and grading; spray residue inspection and removal; the registration, inspection, and analysis of commercial feeding stuffs; the licensing of commission merchants, produce dealers, brokers, and agents handling agricultural products; the inspection and grading of poultry and eggs; the inspection of warehouses and frozen food locker plants; the inspection of commercial fertilizers; the control of plant and insect pests and diseases; the control and eradication of noxious and poisonous weeds; the inspection and sale of seeds; the control of contagious and infectious livestock diseases; and all other regulatory laws relating to agriculture;

(o) To inspect any nursery, orchard, farm garden, park, cemetery, greenhouse, or any private or public place which may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests; to establish and enforce quarantines; to issue and enforce orders and regulations for the control and eradication of said pests, wherever they may exist within the state; to perform such other duties relating to plants and plant products as may seem advisable and not contrary to law; and to inspect apiaries for diseases inimical to bees and beekeeping and enforce the laws relating thereto;

(p) to (t) Repealed.

(u) To license and inspect locker plants and enforce standards of construction and operation;

(v) To offer and award suitable premiums on livestock at the national western stock show;

(w) To take charge of the exhibition of Colorado agricultural products at international or national expositions;

(x) To cooperate with the United States department of agriculture or any other federal agency in control and eradication activities and programs involving predatory animals and rodent pests, plant diseases and insect pests, and noxious and poisonous weeds and to cooperate in the enforcement of the provisions of the federal seed act governing the movement of seeds in interstate commerce;

(y) To serve as the state agency to carry out the policies and purposes of the "Colorado Agricultural Conservation and Adjustment Act" and to promote and administer state plans for the same;

(z) Repealed.

(aa) On approval of the governor, to coordinate the management and operation of farms of state institutions and the exchange of agricultural products and equipment between state institutions;

(aa.1) To promulgate rules to specify the varieties of rapeseed, also known as canola,

produced in the state and the geographical locations where each variety may be produced or stored, to establish districts and require registration of fields producing rapeseed with the appropriate district, and to enforce the provisions of this paragraph (aa.1) by requiring a producer to take appropriate action necessary to prevent cross-pollination, establishing reasonable penalties or costs or both, and determining and collecting the actual costs to be recovered from the producers to offset the cash funds expended for services performed by the department in the administration of this paragraph (aa.1);

(aa.2) To promulgate rules specifying the class of strawberries allowed for production of nursery stock in the state and the geographical locations where each class may be produced, establishing districts and requiring registration of fields producing strawberries with the appropriate district, and enforcing the provisions of this paragraph (aa.2) by requiring a producer to take appropriate actions necessary to prevent the introduction of diseases and pests, establishing reasonable penalties or costs or both, and determining and collecting the actual costs to be recovered from the producers to offset the cash funds expended for services performed by the department in the administration of this paragraph (aa.2);

(aa.3) To identify agricultural management areas in the state and to develop best management practices pursuant to section 25-8-205.5 (3), C.R.S., and to assist the commissioner in the promulgation of any rules and regulations authorized pursuant to said section;

(bb) Such other and additional functions, powers, and duties as may be provided by law;

(cc) To solicit grants, donations, and gifts for the purpose of funding noxious weed management projects, as described in section 35-5.5-116. Such moneys shall be transferred to the state treasurer, who shall credit the same to the noxious weed management fund.

(dd) For each division, section, program, or established funding source of the department, to solicit, receive, and spend grants, donations, and gifts. Such moneys shall be transmitted to the state treasurer, who shall credit the same to the particular cash fund or established funding source deemed most appropriate by the department.

(ee) To receive submissions of information as specified in section 24-33-112, C.R.S., from organizations that accept donations of conservation easements in gross for which a state income tax credit is claimed and to make the information available to the public upon request.

(2) Whenever any law provides for issuance or renewal by the department of any license, permit, certificate, registration, or other form of authorization and such law provides for specific dates for the issuance, renewal, or expiration of the same, notwithstanding the provisions of any such laws, and in order to promote efficiency and avoid duplication of effort, the department may, by rule and regulation, establish dates for such issuance, renewal, or expiration different from those established by law; but in no case shall the department change the duration or period of time during which any license, permit, certificate, registration, or other form of authorization may be valid or effective as established by law, unless otherwise provided.

(3) Whenever a specific law provides for the renewal by the department of any license previously issued and provides a license renewal fee to be paid by the applicant therefor, upon the issuance of any such renewal license after the applicable renewal date, the applicant shall pay in addition to the renewal fee a penalty in an amount equal to the said renewal fee, but not to exceed twenty-five dollars. The provisions of this subsection (3) shall not apply to articles 14, 20, and 21 of this title, nor to any other specific law which provides for a penalty for the issuance of

a license, permit, or registration after the applicable renewal date.

(4) To the extent its costs are repaid by gifts, grants, or donations received pursuant to section 35-1-107 (6), and only to that extent, the department may provide educational programs and materials regarding any activity regulated under articles 12, 13, 14, 21, 33, and 60 of this title or article 16 of title 12, C.R.S.

35-1-105. State agricultural commission - creation - composition. (1) (a) There is hereby created the state agricultural commission, referred to in this article as the "commission", which shall consist of nine members, each of whom shall be appointed by the governor, with the consent of the senate, for terms of four years each. Of such members, one member shall be appointed from each of the four agricultural districts, as defined in paragraph (c) of this subsection (1), and five members shall be appointed from the state at large; except that no more than three members shall be appointed from any one agricultural district. No more than five of the nine members shall be members of the same political party.

(b) The members of the commission shall be appointed from persons who are currently or were previously actively engaged in the business of agriculture and allied activities, but a majority of the commission shall be appointed from persons actively engaged in the business of agriculture in such a manner that representation of no agricultural commodity organization shall constitute a majority of the commission. A vacancy on the commission shall be filled by the governor by the appointment of a qualified person.

(c) For the purposes of representation on the state agricultural commission, this state is divided into four agricultural districts as follows:

(I) The city and county of Denver and the counties of Adams, Arapahoe, Douglas, and Jefferson shall constitute the first district.

(II) The counties of Boulder, Cheyenne, Clear Creek, Elbert, Gilpin, Kit Carson, Larimer, Lincoln, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, and Yuma shall constitute the second district.

(III) The counties of Alamosa, Baca, Bent, Conejos, Costilla, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Las Animas, Mineral, Otero, Prowers, Pueblo, Rio Grande, Saguache, and Teller shall constitute the third district.

(IV) The counties of Archuleta, Chaffee, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, and Summit shall constitute the fourth district.

(2) The commission shall elect from its members a chairman, vice-chairman, and such other commission officers as it shall determine. The commissioner of agriculture, in the discretion of the commission, may serve as secretary of the commission but shall not be eligible to appointment as a member. All commission officers shall hold their offices at the pleasure of the commission. Regular meetings of the commission shall be held not less than once every three months at such times as may be fixed by resolution of the commission. Special meetings may be called by the chairman, by the commissioner, or by a majority of members of the commission at any time on at least three days' prior notice by mail or, in cases of emergency, on twenty-four

hours' notice by telephone or other telecommunications device. The commission shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the commission. Members shall serve without compensation but shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their places of residence in attendance at meetings.

35-1-106. Powers and duties of commission. (1) In addition to all other powers and duties conferred upon the commission by this article, the commission has the following specific powers and duties:

(a) To formulate the general policy with respect to the management of the department of agriculture and the general policy with respect to the enforcement of regulatory and service laws, rules, and regulations pertaining to agriculture;

(b) To make or cause to be made, within the limits of appropriations, such studies as it deems necessary to guide the commissioner concerning the agricultural policy of this state;

(c) To advise and make recommendations to the governor and the general assembly on matters pertaining to agriculture within this state;

(d) To require the preparation and transmittal by the commissioner of an annual departmental report and to establish publication policies for the department in accordance with the provisions of section 24-1-136, C.R.S.;

(e) To furnish the commissioner with advice on any agricultural or livestock problem with which he may be confronted;

(f) To promulgate and adopt all department of agriculture budgets for submission to the controller of this state in accordance with law and to approve and pass upon all annual budgets for expenditures of money from the various funds of the department and to review such budgets at each meeting of the commission;

(g) To approve prior to their release all rules and regulations issued by the commissioner and considered necessary and proper to carry out the provisions of this article;

(h) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties of the commission. Upon the failure or refusal of any witness to obey any subpoena, the commission may petition the district court, and, upon proper showing, the court may order a witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as contempt of court.

(i) To establish and appoint, as it may deem necessary or advisable, such advisory committees from the groups affected to advise and confer with the commission or the commissioner concerning aspects of agricultural or livestock products, marketing, disease, or any other pertinent matter;

(j) If not already required by law, to require and fix the bonds of such employees of the department as may be deemed necessary;

(k) To avoid duplication of effort within the department and to clarify responsibilities under this title (except part 2 of article 7 and articles 14, 42, 51, 65, 70, and 72) and articles 11 and 16 of title 12 and article 24 of title 30, C.R.S.; to enter into cooperative agreements with the

state board of health, the board of governors of the Colorado state university system, or any other state board or commission which is authorized by law to perform like or similar duties to those delegated by law to this commission, wherein it shall be prescribed whether this commission, the state board of health, the board of governors of the Colorado state university system, or such other state board or commission shall perform and be responsible for the performance of such duties mentioned in said agreements, so that there is no duplication of effort as between this commission and the state board of health, the board of governors of the Colorado state university system, or any other state board or commission; and to enter into agreements with the state board of health, the board of governors of the Colorado state university system, or any other state board or commission relative to the cooperative use by this commission of any laboratories, equipment, or facilities owned or used by this commission or any other state board or commission;

(l) To employ any person, partnership, or corporation for services in carrying out the provisions of this title (except part 2 of article 7 and articles 14, 42, 51, 65, 70, and 72) and articles 11 and 16 of title 12 and article 24 of title 30, C.R.S., and not inconsistent with section 13 of article XII of the state constitution or to provide information, statistics, or data deemed beneficial by the commission to livestock and agriculture in the state of Colorado;

(m) The commission shall act only by resolution adopted at a duly called meeting of the commission, and no individual member of the commission shall exercise individually any administrative authority with respect to the department;

(n) To comply with the requirements of section 24-1-136.5, C.R.S., concerning the preparation of operational master plans, facilities master plans, and facilities program plans, as if the commission were the executive director of the department;

(o) To promulgate rules requiring the owners of alternative livestock, as defined in section 35-41.5-102 (1), to obtain certification showing that the alternative livestock herd meets the requirements of a tuberculosis surveillance plan approved by the state veterinarian and meets regulations pertaining to the control of infectious diseases and parasites as determined by the department. This paragraph (o) shall not apply if the owner of the alternative livestock is a zoological park that is accredited by the American zoo and aquarium association; except that any intrastate transfer of alternative livestock by a zoological park that is accredited by the American zoo and aquarium association to any person or entity that is not accredited by the American zoo and aquarium association is subject to the rules of the commission adopted under this paragraph (o).

(p) (I) In consultation with interested industry groups, to fix, assess, and collect fees in amounts sufficient to recover the department's direct and indirect costs incurred in carrying out and enforcing the provisions of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S.

(II) Fees established pursuant to this paragraph (p) that exceed the amount of any corresponding fees that were in effect as of April 1, 2003, and any new or additional fees established after April 1, 2003, shall be reported, on or before December 1 of each year, to the agriculture, natural resources and energy committee of the senate and the agriculture, livestock, and natural resources committee of the house of representatives.

(III) (Deleted by amendment, L. 2007, p. 1902, § 1, effective July 1, 2007.)

(2) The parks and wildlife commission shall review the rules concerning alternative

livestock proposed by the commission pursuant to paragraph (o) of subsection (1) of this section and shall make recommendations to the commission concerning such rules. The commission shall not adopt or implement rules concerning alternative livestock that impact native big game wildlife without the prior approval of the parks and wildlife commission. In addition, the parks and wildlife commission may propose rules to the commission designed to protect native big game wildlife.

35-1-106.3. Plant health, pest control, and environmental protection cash fund - creation. (1) There is hereby created in the state treasury the plant health, pest control, and environmental protection cash fund.

(2) All revenues collected in pursuit of the department's efforts in relation to plant health, pest control, and environmental protection shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund. The commission may establish a fee schedule to cover the direct and indirect costs of the collection and distribution of beneficial insects.

(3) The plant health, pest control, and environmental protection cash fund shall consist of any fees, fines, or penalties collected pursuant to articles 4, 9, 10, 11, 11.5, 25, 26, 27, and 27.5 of this title; any fees, fines, or penalties collected pursuant to article 8 of title 25, C.R.S.; any fees collected under article 12 of this title for the purpose of funding groundwater protection activities; and all revenues collected in pursuit of the department's efforts to conduct biological pest control. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of implementing, administering, and enforcing the provisions of articles 4, 9, 10, 11, 11.5, 25, 26, 27, and 27.5 of this title and of article 8 of title 25, C.R.S.; except that any appropriation for the indirect costs of issuing chemigation permits pursuant to section 35-11-106 shall not exceed the amount specified in section 35-11-106 (3) (b). Any moneys from the fund that are allocated for biological pest control shall supplement any general fund moneys appropriated for that purpose.

(4) All interest derived from the deposit and investment of moneys in the plant health, pest control, and environmental protection cash fund shall be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(5) Notwithstanding section 24-75-402, C.R.S., the target reserve balance for the plant health, pest control, and environmental protection cash fund shall be fifty percent of the amount expended from the fund during each fiscal year.

35-1-106.5. Inspection and consumer services cash fund - creation. (1) All fees, fines, and penalties collected pursuant to articles 12, 13, 14, 21, 33, and 60 of this title and article 16 of title 12, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund

shall remain in the fund and shall not be credited or transferred to the general fund or any other fund or used for any purpose other than to offset the costs of implementing, administering, and enforcing the provisions of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S. Moneys in the fund are subject to annual appropriation to the department for such purposes.

(2) Notwithstanding section 24-75-402 (2) (g), C.R.S., the target reserve balance for the inspection and consumer services cash fund shall be fifty percent of the amount expended from the fund during the fiscal year.

(3) (Deleted by amendment, L. 2007, p. 1902, § 2, effective July 1, 2007.)

35-1-106.7. Conservation district grant fund - repeal. (1) There is hereby created in the state treasury the conservation district grant fund. The fund shall consist of moneys transferred pursuant to section 39-29-109.3 (2) (b), C.R.S. Moneys in the fund are specifically and continuously appropriated to the department. The department shall grant moneys in the fund to conservation districts for the purpose of implementing and maintaining soil and water conservation efforts. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of the fund and shall not be transferred or credited to the general fund or to any other fund.

(2) This section is repealed, effective December 31, 2022.

35-1-106.8. Biological pest control cash fund - transfer of moneys to plant health, pest control, and environmental protection cash fund. (1) All revenues collected in pursuit of the department's efforts to conduct its program of biological pest control shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the biological pest control cash fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 315, § 2, effective July 1, 2009.)

35-1-106.9. Agriculture management fund - creation. There is hereby created in the state treasury the agriculture management fund. The fund shall consist of moneys transferred pursuant to section 38-13-116.7 (3), C.R.S., and any moneys realized from the sale of the inspection and consumer services division facility. The department shall use such moneys to fund agricultural efforts approved by the commissioner, including, but not limited to, funding additional department employees necessary to implement and manage approved programs. Moneys may be used for direct assistance or grant assistance for conservation districts created pursuant to article 70 of this title. Moneys in the fund may be used for expenses related to the department's office consolidation as authorized by House Bill 13-1234, enacted in 2013. Moneys

in the fund are subject to annual appropriation to the department. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund and shall not be transferred or credited to the general fund or any other fund.

35-1-107. Commissioner of agriculture - report - publications - deputy commissioner. (1) The commissioner of agriculture shall be the chief administrative officer of the department of agriculture and shall have direct control and management of its functions, subject only to the powers and duties of the commission as prescribed in this article. The commissioner shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The commissioner shall be allowed traveling and subsistence expenses actually and necessarily incurred in the performance of official duties. The commissioner shall maintain an office at the state capitol buildings group and shall be custodian of all property and records of the department.

(2) The commissioner shall require of the head of each agency assigned to the department an annual report containing such information and submitted at such time as the commissioner shall decide.

(3) The commissioner shall exercise control over publications of the department and subordinate units thereof and shall cause such publications as are approved for circulation in quantity outside the executive branch to be issued in accordance with the provisions of section 24-1-136, C.R.S.

(4) The commissioner may appoint the deputy commissioner of agriculture, pursuant to section 13 of article XII of the state constitution. Subject to the supervision of the commissioner, the deputy commissioner shall have all the powers, duties, and responsibilities of the commissioner, as provided by law, and shall exercise such powers, duties, and responsibilities in the absence of the commissioner and when so instructed by the commissioner.

(5) The commissioner is authorized to adopt all reasonable rules for the implementation of articles 12, 13, 14, 21, 33, and 60 of this title and of articles 11 and 16 of title 12, C.R.S. Such rules may include, but are not limited to:

(a) The establishment of classifications and sub-classifications for any license authorized under said articles; and

(b) The establishment of any penalty fees that may be assessed for violations of said articles or of rules adopted under said articles or under this section.

(6) The commissioner is authorized to accept gifts, grants, and donations of any kind from any private or public source and, upon receipt, shall transmit all such gifts, grants, or donations to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(7) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving gifts, grants, or donations, securing uniformity of rules, and entering into reciprocal licensing agreements.

(8) Repealed.

35-1-108. Divisions created. There is hereby created in the department an administrative services division, a division of plant industry, a division of animal industry, a division of markets, and a division of inspection and consumer services.

35-1-109. Employees interchangeable. It is the duty of the commissioner of agriculture in the administration of his department to so organize the same that all employees of the department, so far as possible, shall be interchangeable in work assignment to the end that they may be shifted within the department so as to meet seasonal and emergency demands upon any division or section of the department and the number of such help kept to a minimum possible for efficient operation.

35-1-110. Legal adviser - legal actions. The attorney general shall be the legal adviser for the department of agriculture and shall defend it in all actions and proceedings brought against it. The district attorney of the judicial district in which a cause of action may arise shall bring any action, civil or criminal, requested by the commissioner to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or to prosecute for the violation of or for the enforcement of, the agricultural laws or the standards, orders, rules, and regulations of the department established by or issued under the provisions of this article. If the district attorney fails to act, the commissioner may bring any such action and shall be represented by the attorney general or, with the approval of the commission, by special counsel.

35-1-111. Records of receipts and expenditures - appropriations. (1) The department shall maintain records, in the manner prescribed by the controller, on all receipts and expenditures made with respect to each service for which moneys are credited to the general fund under the provisions of articles 1 to 13, 26, and 27 of this title and article 24 of title 30, C.R.S.

(2) The general assembly shall appropriate moneys from the general fund for the administration of the services rendered by the department for which moneys are credited to the general fund under the provisions of articles 1 to 13, 26, and 27 of this title and article 24 of title 30, C.R.S.

35-1-112. Licensing functions subject to periodic review. (Repealed)

35-1-113. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

ARTICLE 1.5

Preemption

35-1.5-101. Scope of article. (1) Nothing in this article shall be construed to limit the authority of a local government to:

(a) Zone for the sale or storage of any agricultural chemical, provide or designate sites for disposal of any agricultural chemical or container, regulate the discharge of any agricultural chemical into sanitary sewer systems, adopt regulations pursuant to a storm water management program that is consistent with federal or state regulation, adopt or enforce building and fire code requirements, or to protect surface or groundwater drinking water supplies in accordance with current state or federal applicable law;

(b) Comply with any federal or state law or regulation or take any action otherwise

prohibited by this article in order to comply with any federal or state requirement or avoid a fine or other penalty under federal or state law;

(c) Implement a cooperative agreement with any federal or state agency;

(d) Regulate the use of agricultural chemicals on property in which the local government has a fee simple absolute ownership interest;

(e) Issue local occupational licenses.

(2) The lack of a provision in this article explicitly preempting local government regulation of any particular agricultural chemical not listed in section 35-1.5-102 (2) shall not be construed as an implicit grant of authority to a local government pursuant to this article to regulate on that subject.

35-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adjuvant" means a material added to an agrichemical solution to improve performance.

(2) "Agricultural chemical" means any device, plant nutrient, animal nutrient, or adjuvant and any treated, altered, or engineered plant or animal material.

(3) "Animal nutrient" means any feed subject to article 60 of this title and any material for the maintenance, growth, or production of animals.

(4) "Device" means a device as defined in section 35-9-103 (5).

(5) "Local government" means a county, home rule county, city and county, city, home rule city, special district, or other political subdivision of the state.

(6) "Plant nutrient" means:

(a) (Deleted by amendment, L. 2008, p. 1625, § 2, effective August 5, 2008.)

(b) A plant amendment as defined in section 35-12-103 (24);

(c) A plant nutrient as defined in section 35-12-103 (25);

(d) A soil conditioner as defined in section 35-12-103 (29);

(e) Anhydrous ammonia as defined in section 35-13-102 (1);

(f) A commercial fertilizer as defined in section 35-12-103 (3);

(g) Treated or untreated manure;

(h) Water runoff from a confined animal feeding operation that is captured and then applied to a field; and

(i) A plant growth regulator.

(7) "Use" means all aspects of the handling of agricultural chemicals, including, without limitation, the mixing, loading, application or administration, spill control, and disposal of an agricultural chemical or its container.

35-1.5-103. Preemption. (1) No local government shall adopt or continue in effect any ordinance, rule, charter provision, or statute regarding the use of any agricultural chemical and pertaining to:

(a) The name of the product, name and address of the manufacturer, and applicable

registration numbers;

(b) Directions for use, use classification (general or restricted), mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker protection standards, application and storage container specifications, storage and disposal of the agricultural chemical or container, or limitations to prevent unreasonable adverse effects such as required intervals between application and harvest of food or feed crops, rotational crop restrictions, warnings against use on certain crops, animals, objects, or in or adjacent to certain areas;

(c) Warnings and precautionary statements, hazards to humans, children, domestic animals, or the environment, physical or chemical hazards, or statements of practical treatment; or

(d) Record-keeping requirements.

ARTICLE 2

Agricultural Statistics

35-2-101. Information furnished - by whom. The commissioner of agriculture, acting under the direction of the state agricultural commission in the collection of information necessary to the performance of his or her duties as such commissioner and subject to the provisions of section 24-1-136, C.R.S., in regard to publication of such information, is authorized to call upon the several state, county, city, town, and school district officers and officers of the several state institutions of education and penal and other state institutions, and it is the duty of all such officers to furnish, upon written or printed request of the commissioner, such information as may be required for properly setting forth the resources of the state and their development, upon blanks furnished by the commissioner. Each owner, operator, or manager of any manufacturing, mining, or other business establishment operating in this state, or other person having information necessary for carrying out the purposes of this article, upon the request of the commissioner, shall furnish the same upon blanks supplied by the commission. Except as otherwise provided by law, any agricultural statistics collected by any of the several state, county, city, town, school district, or institutional officers specified in this section shall be collected in accordance with the requirements of this article.

35-2-102. Statistical reports. It is the duty of the assessor of each county in this state, at the time of making the annual assessment of property, to collect such statistics in relation to population, farm operations, the principal farm products, agricultural resources, and livestock of the county as may be required by the commissioner of agriculture, and it is the duty of all persons within this state having information relative to such matters to give such information to the

assessor upon his request therefor. The original sheets on which such statistics are collected shall be forwarded to the commissioner of agriculture as soon as they are completed, but not later than June 1 of each year, immediately following their collection. From these original sheets there shall be compiled in the office of the state agricultural commission complete reports on all subjects covered for each county in the state. The blanks to be used by county assessors in the collection of statistics required by the state agricultural commission shall be supplied by the commission, and the form thereof shall be fixed by the commissioner of agriculture, after conference with a representative of Colorado state university and with the bureau of crop estimates of the United States department of agriculture through the official representative for Colorado. This report shall be issued subject to the provisions of section 24-1-136, C.R.S.

35-2-103. Cooperation with secretary of agriculture. To facilitate the work of collecting agricultural and livestock statistics required by this article, the commissioner of agriculture is empowered to enter into a cooperative agreement with the secretary of agriculture of the United States, or his accredited representatives, under which the facilities and information of the bureau of crop estimates of the United States department of agriculture relating to the state of Colorado are made available for the use of the state agricultural commission, and the facilities and information of said state agricultural commission are likewise made available for the use of said bureau of crop estimates.

35-2-104. Failure to give information to commission - penalty. Any person having in his possession information necessary to carrying out the purposes of this article, who fails or refuses to furnish such information to the state agricultural commission upon proper request by the commissioner of agriculture, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars and costs of prosecution. Any county or state official who fails or refuses to collect or compile for the state agricultural commission such information as he is required by this article to collect and compile, when properly requested by the commissioner of agriculture so to do, and who is supplied with proper blanks for collecting and compiling the same, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars and costs of prosecution.

35-2-105. Failure to give information to assessor - penalty. Any person who is required by this article to give information to the county assessor concerning farm operations, crop production, agricultural resources, livestock, or other matters covered by this article, and who, upon proper request being made, fails, refuses, or neglects to do so, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars and shall pay all costs of the prosecution. All fines and penalties collected under the provisions of this article shall be paid into the school funds of the county in which such conviction is had.

35-2-106. Reports confidential. The reports made to the commissioner of agriculture by individuals, firms, or corporations, or to any of the several state, county, city, town, school district, or institutional officers specified in section 35-2-101, shall be regarded as confidential and not for the purpose of disclosing personal or corporate affairs. In the reports of the commissioner, no use shall be made of the names of individuals, firms, or corporations supplying the information called for in this article. Any officer or employee of the state agricultural commission disclosing such information is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars and costs of prosecution or by imprisonment in the county jail for a period of not more than one year.

35-2-107. Contracts to remain in force. All existing contracts and obligations of the state agricultural commission shall remain in full force and effect and shall be performed by the state agricultural commission, and particularly that certain contract entered into on April 30, 1919, by and between the state of Colorado, by its commissioner of agriculture, and the United States, by the acting secretary of agriculture of the United States, for the establishment and maintenance of a cooperative crop and livestock reporting service.

ARTICLE 3

Conservation and Adjustment Law

35-3-101. Short title. This article shall be known and may be cited as the "Colorado Agricultural Conservation and Adjustment Act".

35-3-102. Legislative declaration. (1) It is recognized and declared:

(a) That the soil resources and fertility of the land of this state, and the economic use thereof, the prosperity of the farming population of this state, and the waters of the rivers of this state, and the prevention of floods are matters affected with a public interest;

(b) That the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful and unscientific use of its soil resources, by floods and impairment of its rivers as a result of soil erosion, and by the decrease in the purchasing power of the net income per person on farms in the state as compared with the net income per person in the state not on farms;

(c) That said evils have been augmented and are likely to be augmented by similar

conditions in other states and are so interrelated with such conditions in other states that the remedying of such conditions in this state requires action by this state in cooperation with the governments and agencies of other states and of the United States and requires assistance therein by the government and agencies of the United States;

(d) That the formulation and effectuation by this state of state plans, in conformity with the provisions of section 7 of the "Soil Conservation and Domestic Allotment Act", is calculated to remedy said conditions and will tend to advance the public welfare of this state.

(2) In order to promote the welfare of the people of this state by aiding in the preservation and improvement of soil fertility, in the promotion of the economic use and conservation of land, in the diminution of exploitation and wasteful and unscientific use of soil resources, in the protection of rivers against the results of soil erosion, and in the reestablishment, at as rapid a rate as is practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the net income per person not on farms that prevailed during the five-year period, August 1909 to July 1914, inclusive, as determined from statistics available in the United States department of agriculture, and the maintenance of such ratio, the state of Colorado assents to and accepts the provisions of the "Soil Conservation and Domestic Allotment Act" and adopts the policy and purpose of cooperating with the government and agencies of other states and of the United States in the accomplishment of the policy and purposes specified in section 7 of said act, subject to the following limitations:

(a) The powers conferred in this article shall be used to assist voluntary action calculated to effectuate such purposes.

(b) Such powers shall not be used to discourage the production of supplies of foods and fibers in this state sufficient when taken together with the production thereof in other states of the United States to maintain normal domestic human consumption as determined by the secretary of agriculture of the United States from the records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodities that were forced into domestic consumption by a decline in exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities.

(c) In carrying out the purposes specified in this section due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

35-3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Other states of the United States" includes Puerto Rico.

(2) "Person" includes an individual, corporation, partnership, firm, business trust, joint stock company, association, syndicate, group, pool, joint venture, and any other unincorporated association or group.

35-3-104. Designation of state agency. (1) The department of agriculture, referred to in this article as the "department", is designated and authorized as the state agency to carry out the

policy and purposes of this article and to formulate and administer state plans pursuant to the terms of this article.

(2) The department shall perform its duties and functions as such agency under this article separately and distinctly from the performance of its duties and functions under any other law or in any other capacity; except that the department may utilize the services and the assistance of its personnel and facilities normally used in the performance of such other functions if it finds that the utilization of such services and assistance is necessary to, or is calculated to assist substantially in, the effective administration of this article and that such facilities may be utilized without interference with the effective performance of such other duties and functions.

35-3-105. Administration of state plans. (1) The department is authorized to formulate for each calendar year and to submit to the secretary of agriculture of the United States, for and in the name of this state, a state plan for carrying out the purposes of this article during such calendar year.

(2) The department is authorized to modify or revise any such plan in whatever manner, consistent with the terms of this article, it finds necessary to provide for more substantial furtherance of the accomplishment of the purposes of this article.

(3) Each such plan shall provide for such participation in its administration, by voluntary county and community committees or associations of agricultural producers organized for such purposes, as the department determines to be necessary or proper for the effective administration of the plan.

(4) Each such plan shall provide, through agreements with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities, as the department determines to be calculated to effectuate as substantial an accomplishment of the purposes of this article as may reasonably be achieved through action of this state, and for payments to agricultural producers in connection with such agreements or methods in such amounts as the department determines to be fair and reasonable and calculated to promote such accomplishment of the purposes of this article without depriving such producers of a voluntary and uncoerced choice of action.

(5) Any such plan shall provide for such educational programs as the department determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this article.

(6) Each such plan shall contain an estimate of expenditures necessary to carry out such plan, together with a statement of such amount as the department determines to be necessary to be paid by the secretary of agriculture of the United States as a grant to aid of such plan under section 7 of the "Soil Conservation and Domestic Allotment Act", in order to provide for the effective carrying out of such plan, and shall designate the amount and due date of each installment of such grant, the period to which such installment relates, and the amount determined by the department to be necessary for carrying out such plan during such period.

(7) The department shall provide for such investigations as it finds to be necessary for the formulation and administration of such plans.

35-3-106. Administration of funds. (1) The department is authorized to receive on behalf of this state all grants of money or other aid made available from any source to assist the state in carrying out the policy and purposes of this article. All such money or other aid, together with any moneys appropriated or other provision made by this state for such purpose, shall be forthwith available to said department as the agency of the state subject, in the case of any funds or other aid received upon conditions, to the conditions upon which such funds or other aid has been received, for the purpose of administering this article and may be expended by the department in carrying out such state plans or in otherwise effectuating the purposes and policies of this article, but shall not be expended or disposed of for any other purposes, nor shall any funds made available to the department for purposes other than the administration of this article be expended or otherwise disposed of in connection with the administration of this article except in providing services and assistance in the administration of this article pursuant to the provisions of section 35-3-104 and in such case only to the extent that such funds are properly available for such purpose and subject in such cases to reimbursement of the funds so expended pursuant to the provisions of section 35-3-107.

(2) Subject to any conditions upon which any such money or other aid is made available to the state and to the terms of any applicable plan made effective pursuant to this article, such expenditures may include, but need not be limited to, expenditures for administrative expenses, equipment, cost of research and investigation, cost of educational activities, compensation and expenses of members of the state advisory committee, reimbursement to other state agencies or to voluntary committees or associations of agricultural producers for costs to such agencies, committees, or associations of assistance in the administration of this article, requested in writing by the department and rendered to the department, reimbursement of any other fund from which it has made expenditures in providing services in the administration of this article pursuant to the provisions of section 35-3-104, payments to agricultural producers provided for in any plan made effective pursuant to this article, salaries of employees, and all other expenditures requisite to carrying out the provisions and purposes of this article.

(3) The department shall provide for the keeping of full and accurate accounts as such state agency, separate from its accounts kept in its other capacities, showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under the provisions of this article and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this article.

35-3-107. Powers and duties of state agency. (1) The department shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this article.

(2) The department has authority to make such rules and regulations, consistent with the provisions of this article, and to do any and all other acts consistent with the provisions of this

article, which it finds to be necessary or proper for the effective administration of this article.

(3) The department has the authority to obtain, by lease or purchase, such equipment, office accommodations, facilities, services, and supplies, and to employ, pursuant to section 13 of article XII of the state constitution, such technical or legal experts or assistants and such other employees, including clerical and stenographic help, as it determines to be necessary or proper to carry out the provisions of this article, and to determine the qualifications, duties, and compensation of such experts, assistants, and other employees.

(4) All other agencies of this state are authorized to assist said department in carrying out the provisions of this article, upon written request of the department, in any manner determined by the department to be necessary or appropriate for the effective administration of this article.

35-3-108. Districts and communities. (1) The department shall designate within the state five agricultural districts. As far as practicable, such districts shall be so constituted as to contain approximately equal numbers of agricultural producers. Such districts shall include in the aggregate all of the land in the state.

(2) The department shall also designate within each county of this state such geographic units, which shall be called communities, as it determines to be the most convenient for the administration of this article and of state plans adopted pursuant to this article, and it shall establish the boundaries of such communities.

(3) The department may revise the boundaries of such agricultural districts and of such communities, in conformity with the respective standards prescribed in this article, at such times as it finds that such revision is necessary either to cause such districts or communities, or both, to conform to said standards or to provide for the more substantial or more efficient accomplishment of the purposes of this article.

35-3-109. Community and county committees. (1) The department by regulations shall provide:

(a) For the organization within each community of a voluntary association, in which all agricultural producers who are citizens of this state and residents in such community shall be entitled to equal participation; for the selection by each such association of a community committee, composed of three members of such association; and for the selection of a chairman of each such community committee;

(b) For the selection by the members of such community committees within each county of a county committee for such county, composed of three members of such community committees, and for the selection of a chairman of each such county committee.

35-3-110. State advisory committee - sunset review. (Repealed)

35-3-111. Reports - publications. The administrative officer within the department

charged with administration of this article shall report to the commissioner at such times and on such matters as the commissioner may require. Publications made pursuant to this article and circulated in quantity outside the department are subject to the approval and control of the commissioner.

ARTICLE 3.5

Nuisance Liability of Agricultural Operations

35-3.5-101. Legislative declaration. It is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly recognizes that, when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the state of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further recognized that units of local government may adopt ordinances or pass resolutions that provide additional protection for agricultural operations consistent with the interests of the affected agricultural community, without diminishing the rights of any real property interests.

35-3.5-102. Agricultural operation deemed not nuisance - state agricultural commission - attorney fees - exceptions. (1) (a) Except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

(b) An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production shall not be found to be a public or private nuisance as a result of any of the following activities or conditions:

(I) Change in ownership;

(II) Nonpermanent cessation or interruption of farming;

(III) Participation in any government sponsored agricultural program;

(IV) Employment of new technology; or

(V) Change in the type of agricultural product produced.

(2) (a) Notwithstanding any other provision of this section to the contrary, an agricultural operation shall not be found to be a public or private nuisance if such agricultural operation:

(I) Was established prior to the commencement of the use of the area surrounding such

agricultural operation for nonagricultural activities;

(II) Employs methods or practices that are commonly or reasonably associated with agricultural production; and

(III) Is not operating negligently.

(b) Employment of methods or practices that are commonly or reasonably associated with agricultural production shall create a rebuttable presumption that an agricultural operation is not operating negligently.

(3) The court may, pursuant to sections 13-16-122 and 13-17-102, C.R.S., award expert fees, reasonable court costs, and reasonable attorney fees to the prevailing party in any action brought to assert that an agricultural operation is a private or public nuisance. Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening in any way the provisions of sections 25-7-138 (5), C.R.S., and 25-8-501.1 (8), C.R.S.

(4) As used in this article, "agricultural operation" has the same meaning as "agriculture", as defined in section 35-1-102 (1).

(5) Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection (5) shall not apply when an agricultural operation is located within the corporate limits of any city or town on July 1, 1981, or is located on a property that the landowner voluntarily annexes to a municipality on or after July 1, 1981.

(6) This section shall not invalidate any contracts made prior to September 1, 2000, but shall be applicable only to contracts and agreements made on or after September 1, 2000.

(7) A local government may adopt an ordinance or pass a resolution that provides additional protection for agricultural operations; except that no such ordinance or resolution shall prevent an owner from selling his or her land or prevent or hinder the owner in seeking approval to put the land into alternative use.

35-3.5-103. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

PEST AND WEED CONTROL

ARTICLE 4

Pest Control

35-4-101. Short title. This article shall be known and may be cited as the "Pest Control Act".

35-4-101.5. Legislative declaration. The general assembly hereby finds and declares that there is a need to prevent the introduction into Colorado and the dissemination within this state of plant pests through the movement of plant products and other plant material. This act provides for the regulation of the movement of plant products, materials, and pests in Colorado and establishes provisions under which such plant products and materials may legally enter or leave the state. This act also provides for the establishment of interstate and intrastate quarantines to restrict the movement of plant products, materials, and pests. To this end, the commissioner of agriculture is hereby directed and authorized to control and prevent, by such means as shall be prescribed and provided by law, rule, or order of the commissioner, all contagious, infectious, and plant pests destructive to the state's agricultural, forestry, or horticultural interests or to the state's general environmental quality.

35-4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board of county commissioners" means the public officials duly elected to that public office or their designated agents.

(2) "Commissioner" means the commissioner of agriculture or his designated agents.

(3) "County pest inspector" means any qualified employee of a board of county commissioners employed under this article.

(3.5) "Department" means the department of agriculture.

(4) "Insect pests" means any of the small invertebrate animals in the phylum arthropoda which are injurious to plants and animals.

(5) "Person" means any individual, partnership, association, corporation, or organized group of persons, whether incorporated or not.

(6) "Pests" means insect pests and animal pests, except rodents, jackrabbits, and predatory animals, and includes plant diseases and weeds. For purposes of section 35-4-107, the definition of pests shall not include weeds.

(7) "Plant diseases" means the pathological condition in plants caused by fungi, bacteria, viruses, nematodes, mycoplasmas, or parasitic seed plants.

(8) Repealed.

(9) "Weeds" means any noxious, destructive, or troublesome plant when found to be of sufficient economic importance to threaten the public welfare.

35-4-103. Administration. (1) The commissioner shall administer this article. A board of county commissioners shall concurrently administer this article and shall have full authority for the proper enforcement thereof by county pest inspectors employed by said board of county commissioners.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made, order issued, or quarantine declared 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 made, order issued, or quarantine declared 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 immediately.

(b) At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted promptly and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to the commissioner indicating that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or rule, order, or quarantine, the commissioner may apply to any court of competent jurisdiction for an order to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule, quarantine, or order under 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.

(4) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of a witness to obey a 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 the court order shall be punishable as a contempt of court.

35-4-104. County pest inspectors. The persons who may be employed under this article, aside from employees of the department of agriculture, shall be county pest inspectors and their deputies, who shall be appointed by the board of county commissioners of the county where they are to serve and receive their pay. The board of county commissioners of any county when petitioned by not less than fifty landowners of the county shall appoint a county pest inspector at its next regular board meeting.

35-4-105. Compensation. A county pest inspector shall receive such compensation as may be fixed by the board of county commissioners hiring such county pest inspector. The board of county commissioners shall provide for reimbursement of the county pest inspector for actual expenses incurred in carrying out the provisions of this article.

35-4-106. County pest inspectors - examination of applicants. It is the duty of a board of county commissioners to examine all applicants for the positions of county pest inspectors, and, if an applicant is found competent and fully qualified to perform the duties of the office, the board shall issue a license as county pest inspector. A person shall not act as county pest inspector without a license. The license is valid for three years.

35-4-107. Inspections - notice - treatment - collection of costs. (1) (a) The county pest inspector shall have the right to enter upon any public or private property during reasonable business hours to inspect for pest infestations or infection and ensure compliance with the requirements of this article and any local requirements when at least one of the following has occurred:

(I) The landowner or occupant has requested an inspection;

(II) A neighboring landowner or occupant has reported a suspected pest infestation or infection and requested an inspection; or

(III) An authorized agent of the county in which the property is situated has made a visual observation from a public right-of-way or area and has reason to believe that a pest infestation or infection exists.

(b) No entry upon any property shall be permitted until the landowner or occupant has been sent a notification by certified mail to the landowner's or occupant's last-known address that such entry is pending. When possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(c) If, after receiving notice that an inspection is pending, the landowner or occupant denies access to the county pest inspector, the board of county commissioners may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the board of county commissioners, through its agent or employee, of an affidavit that provides a specific description of the location of the affected land and sets forth information that gives the county pest inspector probable cause to believe that a provision of this article is being or has been violated and the landowner or occupant has denied access to the county pest inspector. No landowner or occupant shall deny access to such land when presented with an inspection warrant.

(d) The county pest inspector shall have the authority to notify and advise the landowner or occupant in writing by certified mail of the findings of the inspection. If such findings indicate a pest infestation or infection, such notice shall name the pest, advise the landowner or occupant to manage the pest, and specify the available control methods of integrated pest management, including mechanical, chemical, and biological methods. Such notice shall inform the landowner or occupant that the state forester or county extension office may be consulted concerning integrated pest management. Where possible, the county pest inspector shall consult with such landowner or occupant in the development of a plan for the management of pest infestations and infections on the premises or lands.

(e) Within ten days after receipt of notification of a pest infestation or infection, the landowner or occupant:

(I) Shall comply with the terms of the notification;

(II) Shall acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of a plan for compliance; or

(III) May request a hearing before the board of county commissioners or a panel appointed by the board if the landowner or occupant disputes the finding of infestation or infection by the county pest inspector. Any owner requesting a hearing need not control the pests pending the outcome of the hearing. The board of county commissioners conducting the hearing shall order appropriate relief if it finds there is infestation or infection as alleged in the written notice. The owner shall pay for any relief, not to exceed ten thousand dollars annually, ordered under this article, including up to twenty percent of the cost of pest control measures for inspection and other incidental costs.

(2) When necessary to enforce the provisions of this article, a county pest inspector, after notice of pest infestation or infection to the owner pursuant to subsection (1) of this section, shall treat to control the pests on plant host material, buildings, or other property. Such treatment shall not be commenced by a county pest inspector pending the outcome of any hearing requested pursuant to subsection (1) of this section. Upon the completion of such work, a statement of the cost and expense thereof along with a description of the property upon which such work was done shall be filed with the board of county commissioners, who shall pay same without unnecessary delay.

(3) Upon payment by the board of county commissioners of any cost and expense of treating pest infestation or infection in accordance with subsection (2) of this section, the county shall demand in writing from the owner, in person or by mail addressed to the owner at his or her last-known place of residence, reimbursement to the county for the amount of the county's direct costs and expenses only. The county shall not send a written demand for more than ten thousand dollars. In the written notice, the county shall inform the owner of the right to appear before the board of county commissioners at any meeting thereof, as fixed by law, to be held within the following four months, and be heard as to the amount of the claim for reimbursement. If the claim, as originally demanded by the board or as adjusted upon a hearing, is not paid at the end of the four-month period, the board shall certify the claim to the county treasurer of the county where the property is located. The county treasurer shall add the amount of the claim to any taxes due, or to become due, from the owner, and if the claim is not paid in due course, the county treasurer shall file a lien on the property. The lien's priority is based upon the date of recording in accordance with article 35 of title 38, C.R.S. The board of county commissioners shall work with any landowner to develop a payment schedule for the cost of an assessment for pest treatment upon a demonstration by the landowner of an economic hardship. All accounts when collected must be deposited into the general fund of the county.

(4) If the board of county commissioners finds that a pest infestation or infection is a result of or can be attributed to an infestation or infection on land owned by any federal, state, or local governmental unit that has not been treated or is not under control, the landowner shall not be charged for any relief ordered pursuant to this section.

(5) A county shall not provide for or compel the management of pests on private property under this section without first applying the same or greater management measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the private

property.

(6) A county pest inspector or agent thereof does not have a cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land while working within the course and scope of the inspector's duties except when such damages were willfully caused by the landowner.

35-4-108. Unlawful to transport pests. (1) It is unlawful for any person, by any means whatsoever, to knowingly transport, into or in Colorado, live pests or host material which may be injurious to agriculture or horticulture in this state, without permission from the commissioner.

(2) The commissioner may issue and enforce a hold order against any person who owns or controls any nursery stock, agricultural crop, or other plant material that is suspected of harboring a plant pest or disease, for the purpose of isolating the material, restricting its movement, and specifying appropriate sanitary measures pending completion of testing to confirm the presence of such pest or disease.

35-4-109. Emergency disposal of plant material. Any shipment of any plant material into Colorado when found to be in violation of a quarantine declared pursuant to section 35-4-110 or when found to carry exotic pests not previously found in the United States or pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state by the commissioner may be placed in isolation or quarantine by the commissioner and shall be completely under the commissioner's control. The owner or bailee shall comply with all terms of the quarantine, abate such pests as directed by and to the satisfaction of the commissioner or remove such shipment from the state within such time as ordered by the commissioner. Articles not removed from the state as ordered shall be destroyed by the commissioner with no recompense therefor to the owner. Any owner or bailee claiming that his or her shipment of plant material was destroyed or ordered removed from the state without reasonable justification may request a hearing on that issue before the commissioner within ten days after such destruction or order of removal. If it is determined that a shipment of plant material was destroyed or ordered removed from the state by the commissioner without reasonable justification and that such action was done arbitrarily and capriciously, the department of agriculture shall reimburse such owner or bailee for any losses suffered.

35-4-110. Quarantine and control of pests. (1) Whenever the commissioner finds any portion of the state to be affected with exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state and in the commissioner's judgment plants or plant parts, whether living or dead, domestic animals, or other objects from the district affected would be liable to spread the pests into other sections of the state to the injury of others, the commissioner, after a hearing conducted pursuant to section 24-4-103, C.R.S., may declare a

quarantine against such section or portion of the state to prevent the transfer of carriers of such pests from the quarantined area.

(2) Whenever it is ascertained that exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside this state, or pests which are known to have caused high levels of economic damage in the past within this state are likely to be introduced into Colorado by the importation of plants or plant parts, whether living or dead, domestic animals, or other objects, the commissioner, after a hearing conducted pursuant to section 24-4-103, C.R.S., may declare a quarantine against the importation into Colorado of such pest carriers.

(3) The commissioner is authorized, pursuant to the provisions of this article, to apply such control or eradication measures as may be necessary to prevent the migration of exotic pests not previously found in the United States, pests known to cause high levels of economic damage under similar conditions of climate and natural habitat in other areas outside the state, or pests known to have caused high levels of economic damage in the past within this state that threaten to become established in this state and that endanger agricultural or horticultural industries in this state. The actual costs to offset the cash funds expended for services performed by the commissioner in imposing the quarantine and such control or eradication measures shall be recovered from the producers of any crop protected by such quarantine pursuant to rules promulgated by the commissioner. If the governor declares an emergency pursuant to section 35-4-110.5, the commissioner's costs may be recovered from the disaster emergency fund, created in section 24-33.5-706, C.R.S. The commissioner is authorized to accept assistance, services, facilities, and grants tendered by federal or local governmental units or other persons.

35-4-110.5. Declaration of quarantine emergency. (1) The commissioner shall notify the governor of the necessity for declaring a quarantine emergency if all of the following conditions are met:

(a) The commissioner has declared a quarantine pursuant to section 35-4-110 (1) or (2) or both.

(b) The commissioner has determined that the pest which is the subject of the quarantine is being or may be spread.

(c) The commissioner has determined that the pest poses a serious threat of economic harm to any segment of the agricultural or horticultural industry of this state.

(2) Upon being so notified by the commissioner, the governor may declare a state of quarantine emergency to be in effect. Such state of emergency shall be in effect for no more than one hundred eighty days and may be renewed for successive periods of no more than one hundred eighty days upon certification by the commissioner to the governor that the threat from the pest continues to exist and continues to justify the emergency enforcement measures.

(3) When the governor declares a quarantine emergency, the governor is authorized to accept assistance, services, facilities, and grants tendered by federal and local governmental units or other persons.

(4) (Deleted by amendment, L. 96, p. 321, § 4, effective April 16, 1996.)

35-4-111. Inspections - certificates - remedial measures. (1) Should any owner or bailee request an inspection of crops, plant material, or other articles or premises for pests, the commissioner shall provide such inspection and issue a certificate setting forth the facts of said inspection and shall charge the owner or bailee adequate fees to cover the cost of such inspections and certificates. The commissioner has authority to impound and prohibit movement, sale, or disposal of such crops, plant material, or other articles until such fees are paid. The release of such crops, plant material, or other articles shall also be dependent on meeting all inspection requirements.

(2) The commissioner may conduct inspections and issue phytosanitary and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country. The commissioner may collect inspection and certification fees, in an amount established by the agricultural commission, to cover the direct and indirect costs of providing such services. All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the phytosanitary inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(3) The commission may enter into compliance agreements with producers and distributors of nursery stock, agricultural crops, and other plant materials for the purpose of certifying such plant materials as pest-free for export certification. At any time after entering into such an agreement, if the commissioner has reason to believe that the producer or distributor of the plant material that is the subject of the agreement has failed to comply with all of the terms of the agreement, the commissioner may terminate the agreement by giving the producer or distributor written notice of such termination and the grounds therefor.

35-4-112. Right of entry. Except as provided in section 35-4-107, the commissioner and any authorized agent thereof and county pest inspectors employed under this article, together with such help as they may need in the prosecution of their work, are authorized upon consent or upon obtaining an administrative search warrant, during reasonable business hours, to enter upon or into any premises, land, buildings, or other places of business for the purpose of carrying out the provisions of this article.

35-4-113. Authority of commissioner to enter into agreements. (1) The commissioner may enter into agreements with other agencies of this state or of other states or any agency of the federal government and delegate authority to representatives thereof when such agencies or representatives may assist in carrying out the provisions of this article.

(2) The commissioner may enter into agreements with any agency of the federal government for the purposes of inspecting sites and plants and monitoring compliance with post-entry quarantine as required by the federal "Plant Protection Act", 7 U.S.C. sec. 7712, as

amended, and the rules promulgated pursuant thereto. The actual costs to offset the cash funds expended by the commissioner pursuant to such agreement, including, but not limited to, promulgating any rules necessary for the administration and enforcement of such agreement and conducting inspections of sites and plants shall be recovered from the persons who have signed post-entry quarantine growing agreements covering the sites where the articles are grown or, if no such agreement exists, from the owners of the articles at the growing sites.

(3) The commissioner may enter into cooperative agreements with any other state or federal agency for the purpose of conducting inspections and issuing phytosanitary certificates pursuant to section 35-4-111.

35-4-113.5. Delegation of duties. The commissioner, in his discretion, may delegate his authority to an employee to execute the provisions of this article.

35-4-114. Penalties. Except for sections 35-4-107 and 35-4-110.5, any person who violates any of the provisions of this article commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The commissioner or a board of county commissioners may refer such cases to the district attorney of the county in which such violation is alleged to have occurred for such action as may be deemed necessary. The conviction of a violation of any of the provisions of this article shall be cause for revocation of any certificate, permit, or appointment issued under this article.

35-4-114.5. Civil penalties. (1) Any person who violates any provision of this article or any rule or quarantine declared pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed 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 any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit in any court of competent jurisdiction to recover such amount plus costs and attorney fees.

(4) Before imposing any civil penalty, the commissioner may consider the financial hardship such penalty may cause to the business of the person charged.

(5) Any civil penalty recovered pursuant to this section shall be credited to the general fund.

35-4-115. Reports. (Repealed)

35-4-116. Rules and regulations. The commissioner may promulgate such rules and regulations as he deems necessary for the administration and enforcement of this article. Such rules and regulations shall be promulgated in accordance with article 4 of title 24, C.R.S.

35-4-117. County pest inspectors - weed and rodent control. Subject to the direction of the board of county commissioners, a county pest inspector may exercise the powers and duties granted to, and perform the duties of, a county in accordance with articles 5.5 and 7 of this title.

ARTICLE 4.5

Pest Control Compact

35-4.5-101. Pest control compact. (1) The general assembly hereby approves the pest control compact, which is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them

in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V (e) of this Compact.

Article III

The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the

Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

i. Assist in the coordination of activities pursuant to the Compact in his state; and

ii. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

i. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.

ii. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

i. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.

ii. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

iii. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

iv. Proof that the expenditures being made or budgeted as detailed in item iii do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item iii constitutes a normal level of pest control activity.

v. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

vi. Such other information as the Governing Board may require consistent with the provisions of this Compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting

at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and

recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its

judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this Compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

(1) This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

(2) Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

(3) Pursuant to Article IV (h) of the Compact, copies of bylaws and amendments thereto shall be filed with the commissioner of agriculture.

(4) The Compact administrator for this state shall be the commissioner of agriculture appointed by the Governor. The duties of the Compact administrator shall be deemed a regular part of the duties of this office.

(5) Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the commissioner of agriculture whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

(6) The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account, in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

(7) As used in this Compact, with reference to this state, the term "executive head" shall mean the Governor.

35-4.5-102. When compact effective. This article and the compact contained herein shall take effect on July 1, 2007.

ARTICLE 5

Pest Control Districts

35-5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "APHIS" means the United States department of agriculture animal and plant health inspection, plant protection, and quarantine programs.

(1.5) "Commissioner" means the commissioner of agriculture.

(2) "County" includes a city and county.

(3) "District" means an area as provided for in section 35-5-104.

(4) "District advisory committee" means the committee appointed as provided in section 35-5-105.

(5) "Insect pest", as determined by the commissioner, means any of the small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, and which, upon investigation by the commissioner, are found to be in epidemic proportions.

(6) "Inspector" means a county pest inspector.

(7) "Landowner" means a person who owns five or more acres of land within the boundaries of the proposed district.

(7.1) "Lessee" means a person leasing five or more acres of state-owned land controlled by the state board of land commissioners within the boundaries of the proposed district.

(8) "Noxious weeds", as determined by the commissioner, means those weeds which are especially troublesome and detrimental and which may cause damage or loss to a considerable portion of the land or livestock of a community.

(9) "Person" includes person, firm, corporation, or association.

(10) "Pest", as determined by the commissioner, means a noxious, destructive, or troublesome plant, insect, or plant disease, when found to be in epidemic proportions and of sufficient economic importance to threaten the public welfare.

(11) "Plant diseases", as determined by the commissioner, means injurious action caused by the continuous or intermittent damage of all plants by any causal agent and expressed through symptoms.

(12) "Resident landowner" means a person who owns five or more acres of land within the boundaries of the proposed district and has his legal residence within the county where the proposed district is located or within an adjacent county.

(12.1) "Resident lessee" means a person leasing five or more acres of state-owned land controlled by the state board of land commissioners within the boundaries of the proposed district and having his legal residence within the county where the proposed district is located or within an adjacent county.

35-5-102. Duty to control weeds. It is the duty of all persons owning land or any interest therein in the district, the department of transportation, the boards of county commissioners, school boards, the governing authorities of incorporated towns and cities and of railroads and ditch companies, and those persons supervising state-owned lands to use reasonable means to control the noxious weeds if the same are likely to be materially damaging to the land of

neighboring landowners.

35-5-103. Methods of control - rules and regulations. The commissioner is empowered to designate the methods to be used for the control or eradication of the various noxious weeds, insect pests, and plant diseases and to publish such methods and make and publish such reasonable rules and regulations as are proper and necessary to carry into effect the provisions of this article. The commissioner is authorized to enter into agreements with any landowner, lessee, district, city, or town, or with federal, state, or county agencies for cooperation and for cost-sharing in the control and eradication of noxious weeds, insect pests, or plant diseases located upon land that they control or administer within the district in keeping with the provisions of this article. The commissioner, with the approval of the governor, is authorized to advance funds, which may be appropriated for this purpose subject to reimbursement, to carry into effect the provisions of this article.

35-5-104. Pest control district - procedure to establish. (1) Whenever twenty-five percent of the resident landowners and resident lessees within a contiguous territory desire to form a pest control district, as defined in this subsection (1), they may file a petition for that purpose with the board of county commissioners of the county in which the land is located. Such petition shall be addressed to the board of county commissioners of such county, and shall contain a description of the boundaries of the proposed district and a description of the land of each person signing such petition, and shall state that the said proposed district has been invaded, or is in danger of being invaded, by noxious weeds, insect pests, or plant diseases injurious to agricultural crops, trees, fruits, or pasture, and shall name the specific pests or diseases against which said petitioners desire to be protected, and shall state the termination date of the proposed district. Such petition shall be signed by each resident landowner and resident lessee joining in the petition by his proper signature, together with his address, and the date of the petition shall be the date of its filing in the office of the board of county commissioners. Any petitioner may revoke and cancel his signature to such petition at any time before said petition is filed, but not after such filing has been made.

(2) Such petition shall be filed with the board of county commissioners during a regular or special session of the board, and shall be verified under oath by at least one of the persons signing it, setting forth that the said petition was signed within ninety days last preceding the making of said verification, and that all matters and things stated in said petition are true to the best of the knowledge and belief of the affiant, and that all signers have had an opportunity to read said petition.

(3) After examination of the petition, if the board of county commissioners finds the petition in order and properly signed by twenty-five percent of the resident landowners and resident lessees within the proposed district, the board shall, within fifteen days after receipt of the petition, mail ballots to all landowners and lessees in the proposed district, to the addresses as shown by the records of the county assessor or state board of land commissioners, stating that said ballots are to be returned to the board's office within ten days from date of mailing. If, after a

tally of the votes has been made, the board finds that sixty-six and two-thirds percent of the landowners and lessees voting have voted in favor of the district, and the landowners and lessees voting own or lease fifty percent of the land in the proposed district, the board shall declare the district established. Acreage owned by the federal government or acreage owned by the state government not subject to a lease shall not be considered in determining the percentage of land voted.

(4) Such petition may, in addition to the matters set forth in this section, request the board of county commissioners to take charge of and supervise the work in connection with the control or eradication of the pests named. The board, if a pest control district is created upon the petition in accordance with this article, shall proceed during the existence of said district, through the county pest inspector, to control or destroy such pests at the times and in the manner and by the aid of such means and additional help as the commissioner and county pest inspector recommend, and the board may enter into contracts to have the necessary work done in the district where noxious weeds, insect pests, or plant diseases occur in epidemic proportion. Such contracts shall be let through competitive bidding, and the board may pay for the work and materials expended. Said contracts may be let for periods not to exceed one year and may be renewed if necessary. The board of county commissioners also may enter into contracts with landowners and lessees in which the landowners and lessees are obligated for their share of the total cost of control operations.

(5) If the owner or lessee of any lands adjoining an established pest control district desires to have such lands included within the district, he may petition the board of county commissioners of the county in which the district is located and to which district annexation of his land is desired. The petition shall contain a description of the boundaries of the lands so desired to be annexed and shall be signed by the petitioner. The board shall act on said petition within ten days after the receipt thereof. If the board finds that the petition is in order, that the boundaries of the lands described in the petition are accurate, that the lands adjoin the established district, and that the petition is properly signed, it shall, by order, declare that the lands petitioned to be annexed to the district shall be included as a part of the district. Within ten days after such action upon the petition, the board shall notify the petitioner, the county assessor, the district advisory committee of the district in which such lands are to be included, and the department of agriculture of its action. Two or more owners and lessees of lands adjoining an established pest control district may join in and sign a single petition for annexation of their adjoining lands to an established district in the manner prescribed in this subsection (5).

(6) The district advisory committees of two or more adjoining pest control districts may petition the board of county commissioners of the county in which such districts are located, requesting the consolidation of such districts. The board shall schedule a public hearing on the petition within ten days after the receipt thereof. The public hearing shall be held within thirty days after receipt of the petition. If, after such hearing, the board determines that through such consolidation the districts could be more economically and efficiently operated, the board shall immediately, by order, declare the dissolution of the districts to be consolidated and the establishment of the consolidated new district, and shall thereupon notify the county assessor and district advisory committees of the dissolved districts of the termination of their respective committees, and shall appoint a new five-member district advisory committee for the

consolidated district.

(7) When a pest control district which was established for the control and eradication of specified pests desires to extend the termination date of the district, the district advisory committee shall petition the board of county commissioners of the county in which such district is located, requesting the extension of the termination date. Upon receipt of said petition, the board of county commissioners shall set a date for a hearing on the matter and shall publish notice thereof in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. If, after notice and hearing, the board of county commissioners determines that such extension of the termination date is advisable and is needed for adequate pest control in the district, the board of county commissioners shall immediately declare the extension of the termination date and shall so inform the district advisory committee, the county assessor, and the state board of land commissioners.

(8) When a pest control district which was established for the control and eradication of specified pests desires to add additional pests to be controlled within the district, the district advisory committee shall petition the board of county commissioners of the county in which such district is located, requesting that a stipulated pest or pests should be added to the pests to be controlled in the district. The board of county commissioners shall act on the petition within ten days after receipt thereof. If the board of county commissioners determines that such pests should be controlled within the district, said board shall submit the question to all landowners and lessees of the district by causing to be mailed to each landowner and lessee, to the address as shown by the records of the county assessor or state board of land commissioners, a ballot requesting his vote for or against the addition of the stipulated pests to be controlled within the district and the return of such ballot within ten days to the board. If fifty-one percent of the landowners and lessees voting in the district vote in favor of the inclusion of said pests within those to be controlled, the board shall immediately declare that the stipulated pests shall be controlled within the district and shall so inform the district advisory committee.

35-5-105. Advisory committee. After the formation of a pest control district and before any weed or pest control program has been initiated by the county pest inspector, the board of county commissioners shall appoint an advisory committee of five or more members, who shall serve at the pleasure of the board of county commissioners. Should a vacancy occur, the board of county commissioners shall fill the vacancy by appointment within thirty days. The committee members may be resident landowners or resident lessees and, insofar as is practical, shall have a practical knowledge of weed and pest control and shall geographically represent the district.

35-5-106. Pest inspector, deputies, and employees. The board of county commissioners of the county concerned may appoint a qualified person, subject to the approval of the commissioner and district advisory committee, as county pest inspector. It is the duty of said inspector to carry out his duties as provided in this article under the direction of the board and the commissioner. The inspector, with the approval of the board, may employ such deputies and employees as are necessary to perform his duties under this article. The salary of the inspector

and of his deputies and employees shall be determined by the board.

35-5-107. Duties of pest inspector. (1) The inspector shall cooperate with the commissioner in locating infestations of noxious weeds, insect pests, or plant diseases; make an annual report of known infestations of noxious weeds, insect pests, or plant diseases and compile data on areas controlled, eradicated, or under treatment; submit reports thereon to the commissioner, the district advisory committee, and the board of county commissioners by December 1 of each year; consult with the commissioner and the extension service and advise upon all matters pertaining to the best and most practical methods of noxious weed, insect pest, or plant disease control and eradication; and render every possible assistance to obtain the most effective control or eradication of noxious weeds, insect pests, or plant diseases within the district.

(2) The commissioner or the inspector, or their deputies, having jurisdiction, together with such assistants as they may need in the prosecution of their work, are authorized during reasonable business hours to enter upon or into any premises, lands, or places within any pest control district in this state where they may suspect that pests occur which may be determined by the commissioner to be injurious to the welfare of the community for the purpose of inspecting, controlling, or eradicating the same or otherwise carrying out the provisions of this article.

35-5-108. Control or eradication methods and procedures - notice - assessments - protests. (1) The county pest inspector shall give notice by radio, newspaper, or any other means of communication to the owner, lessee, agent, or occupant of any lands within a district on which noxious weeds, insect pests, or plant diseases are found, advising them of their presence and naming the noxious weed, insect pest, or plant disease, giving both common and scientific names. Such notice shall specify the best available methods of controlling or eradicating such noxious weeds, insect pests, or plant diseases and shall require that such methods be used for control or eradication thereof. Failure to receive such notice shall not constitute a defense to the assessment of a lien against the property, as provided in this section, for the expense for the control or eradication of such pests.

(2) In case any such landowner, lessee, agent, or occupant refuses to comply with the requirements of the county pest inspector for the control or eradication of such noxious weeds, insect pests, or plant diseases, or causes the same to be done, it is the duty of the inspector to provide access to sprayers or other equipment needed and to enter upon such lands with the approval of the board of county commissioners and, as provided in this article, to effect the control or eradication of such noxious weeds, insect pests, or plant diseases.

(3) Upon completion of the work, the board of county commissioners shall notify or cause to be notified said landowner, by certified mail, at the address shown on the records of the county assessor, or by one publication in a newspaper having general circulation within the county, as to the amount due, furnishing an itemized statement of the expense of the treatment of such noxious weeds, insect pests, or plant diseases (the amount paid the inspector shall not be included), and stating that, if the amount of said statement is not paid to the county treasurer of

the county wherein the real estate is located within thirty days from the date of said notice, the amount thereof will be assessed as a lien upon said real estate, but no lien shall be in excess of the valuation for assessment of said real estate.

(4) If any landowner within the district is dissatisfied with the itemized statement of expense, he may, within thirty days from the mailing or publication of the account showing such charge, file a written protest with the board of county commissioners. Not later than ten days after the filing of such protest, the board of county commissioners shall fix a time and place for hearing on the protest filed, to be held not less than ten days nor more than thirty days from the date of notice of the hearing, and immediately after such hearing the board of county commissioners shall make written findings and such changes in the assessment as may be determined to conform with such findings.

(5) A copy of said final statement of expenses shall be filed with the county assessor. If the amount of the statement is not paid within thirty days of said notice or if a protest is filed, within thirty days after the findings or determination of such protest, the county assessor shall extend the amount upon the assessment rolls, and said assessment shall thereon become a part of the general taxes and constitute a lien against the entire contiguous tract owned by such person of which the portion so treated is all or a part. The assessment shall thereafter become due in the same manner and be collected in the same manner as the general ad valorem property tax; but not more than five percent of the total valuation for assessment of the entire contiguous tract of land of which the portion so treated is all or a part shall be spread on the tax rolls against said land in any one year. Any amount in excess of the five percent limitation and remaining unpaid may be carried over and charged on the tax roll of the succeeding years, and any unpaid balance so carried over shall bear interest at the rate of six percent per annum until paid. All of the provisions of the general laws for the enforcement of the collection of taxes shall be applicable thereto after the extension by the county assessor. Such assessments may be paid in full at any time before general taxes become due and payable.

(6) (a) Upon completion of the work, the board of county commissioners shall notify or cause to be notified said lessee, by certified mail, at the address shown on the records of the state board of land commissioners, or by one publication in a newspaper having general circulation within the county, of the amount due, furnishing an itemized statement of the expense of the treatment of such noxious weeds, insect pests, or plant diseases (the amount paid the inspector shall not be included), and stating that, if the amount of said statement is not paid to the county treasurer of the county wherein the leased property is located within thirty days from the date of said notice, the amount thereof will be assessed as a lien upon any improvements located upon the leased property and owned by the lessee. The county shall institute civil proceedings in a court of competent jurisdiction to recover the amount of the assessment. In the event the value of said improvements is less than the amount of the assessment, the county may recover the difference by execution on such personal property of the lessee that is not exempt, as provided by law.

(b) If any lessee within the district is dissatisfied with the itemized statement of expense, he may file a written protest with the board of county commissioners as provided by subsection (4) of this section.

(c) A copy of the final statement of expense shall be filed with the county assessor. If the

amount of the statement is not paid within thirty days of said notice or if a protest is filed, within thirty days after the findings or determination of such protest, the county assessor shall extend the amount upon the assessment rolls, and said assessment shall thereon become a part of the general taxes and constitute a lien against any improvements located upon the tract and owned by the lessee. If a judgment in favor of the county is not satisfied as the result of execution on the property, the county shall seek to satisfy the judgment by levying upon any personal property held by the lessee which is not exempt, as provided by law.

35-5-109. Owner or lessee refuses action. When noxious weeds, insect pests, or plant diseases are found on a property not listed on the tax rolls of the county and the owner or lessee of the property refuses or fails to take the necessary action to control or eradicate such noxious weeds, insect pests, or plant diseases, after notice as prescribed in section 35-5-108, the county pest inspector shall treat the same as though listed on the tax rolls, and the expense thereof may be recovered by the county in an action therefor in any court of competent jurisdiction. The control or eradication of noxious weeds, insect pests, or plant diseases on county property may be contracted for by the inspector, with the approval of the board of county commissioners, at county expense.

35-5-110. Public nuisance - abatement. Any noxious weeds, insect pests, or plant diseases with respect to which a control district has been proclaimed, and any and all stages thereof, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith within such area are declared to be a public nuisance, subject to all laws and remedies relating to the prevention and abatement of nuisances. The inspector, under the supervision and direction of the commissioner and with the approval of the board of county commissioners, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in his discretion seems necessary. The remedies of this section shall be cumulative with all other remedies provided in this article.

35-5-111. Reports of acreage infested - county tax levy - fund - allocation. (1) The commissioner is directed, and it is his duty, to ascertain each year, from reports of the inspectors and other sources, the approximate amount of land and highways infested with the most troublesome noxious weeds, insect pests, or plant diseases, and their location, and transmit such information tabulated by counties, not later than July 1 of each year, to the board of county commissioners of each county affected by such infestation. On the basis of such information, the board of county commissioners of each county may make a tax levy each year on real property for the purpose of paying the cost of noxious weed, insect pest, or plant disease control or eradication in a district of the county as provided by this section, but such levy shall not exceed two mills in any one year.

(2) Moneys collected from such levy shall be set apart as a pest control fund, and moneys derived from a particular district shall be used only in that district, and moneys derived on a

countywide basis shall be used for the whole county. Vouchers shall be drawn against said fund by the board for items of expense incident to the control or eradication of noxious weeds, insect pests, or plant diseases in the county or in any such district. Such expenditures and accounts shall be audited annually.

35-5-112. Pest control district on public lands - notice - charges. (1) When an area designated as a pest control district by the board of county commissioners of any county contains public lands, it is the duty of the commissioner to notify the proper state departments which control or supervise the public lands within the area so designated that such a district has been formed. It is the duty of any such department so notified to control or eradicate all noxious weeds, insect pests, or plant diseases on any lands under its jurisdiction, and included within the boundaries of the district and for which the district was organized, using the methods prescribed by the commissioner.

(2) In case such department fails to so control or eradicate such pests, it is the duty of the inspector in the county where the infestation is located to enter upon such lands and undertake the control or eradication of such noxious weeds, insect pests, or plant diseases, or cause the same to be done, the expense thereof to be a proper charge against the department which has jurisdiction over the lands. If not paid, such charge may be recovered in an action therefor by the county in any court of competent jurisdiction; except that it is permissible for any such state department which controls or supervises lands in the designated pest control district to enter into a contract with the board of county commissioners of the county wherein the land is situated to authorize the county pest inspector to undertake the control or eradication of all noxious weeds, insect pests, or plant diseases, as provided in this article, on state-controlled land in the district on terms and conditions satisfactory to both parties.

(3) In the case of lands controlled by the state board of land commissioners, which land is included within a district and leased to a lessee, the costs incurred in controlling or eradicating noxious weeds, insect pests, or plant diseases, which would be chargeable to the owner of the land if privately owned, shall be paid by the lessee.

(4) All park land in the state, except that owned by the United States, shall be excluded from charges provided for in this article, and the board of county commissioners of the county in which any such park is located shall be billed for any and all assessments on such park lands.

35-5-113. Deputy or agent may exercise power. Whenever any power or authority is given by any provisions of this article to any person, it may be exercised by any deputy or agent duly authorized by him.

35-5-114. Liberal construction. This article, being necessary to secure and preserve the public health, safety, convenience, and welfare, and for the security of public and private property, shall be liberally construed to effect the purpose of this article.

35-5-115. Dissolution of district. The district may be dissolved by the same procedure as the district was created on petition of twenty-five percent of the resident landowners of the district upon a vote of sixty-six and two-thirds percent of those owning the land in the district under similar procedure to that of organizing the district, if a program is not in effect. On and after July 1, 1990, a district may also be dissolved when such question is presented to the resident landowners by the board of county commissioners and more than fifty percent of said landowners voting on the issue vote to dissolve the district; except that no vote is required when two or more districts are being consolidated pursuant to section 35-5-104 (6).

35-5-116. Major grasshopper and range caterpillar infestations. Authority is hereby granted the governor of the state of Colorado to declare a major grasshopper or range caterpillar infestation and to declare an emergency resulting from said major infestation. Upon said declaration, funds from the governor's agricultural emergency and disaster fund shall be made available for grasshopper or range caterpillar control.

35-5-117. Emergency measures. (1) When the governor determines and declares an emergency resulting from a major grasshopper or range caterpillar infestation, he shall specify the area or areas of the major infestation. Within such area or areas, he is authorized to direct that such emergency measures be taken as he deems necessary to alleviate conditions which gravely jeopardize property and resources.

(2) In directing that emergency measures be taken, the governor is hereby authorized to:

(a) Utilize equipment, supplies, facilities, personnel, and other like available resources belonging to the state of Colorado in possession of any state agency;

(b) Enter into contracts for the acquisition, rental, or hire of equipment, services, materials, and supplies;

(c) Accept assistance, services, and facilities tendered by federal and local governmental units or private agencies;

(d) Accept on behalf of the state the provisions and benefits of acts of congress designated to provide for assisting states.

35-5-118. Right of entry. All persons authorized to carry out emergency measures directed under the provisions of this article shall have free access to all public and private lands, premises, and buildings within the areas specified and are authorized to enter thereon and to perform such work and take such measures as directed without the consent of the owners thereof if the entry is reasonably necessary to actually alleviate or prevent the disaster.

35-5-119. Procedure for establishing grasshopper and range caterpillar control districts. (Repealed)

35-5-120. Grasshopper and range caterpillar control. (1) The board of county commissioners of each county in which the governor has declared an emergency resulting from a major grasshopper or range caterpillar infestation is hereby authorized and directed to establish a system of priorities for any operation involving the control of grasshoppers or range caterpillars in infested areas. Such board of county commissioners shall certify to the commissioner any area within a county which has established a grasshopper or range caterpillar control district in areas infested with grasshoppers or range caterpillars and in which sixty-six and two-thirds percent of the landowners and lessees have agreed to pay a proportionate share of the cost per acre for grasshopper or range caterpillar control, as determined by the commissioner, as a contribution to pay the cost of controlling the grasshoppers or range caterpillars which are infesting said area.

(2) Upon receipt by the commissioner of a certification of such an area, and upon deposit with the commissioner of the landowner's and lessee's projected share of the cost of control for grasshoppers or range caterpillars, the commissioner shall immediately direct operations to commence to control the grasshoppers or range caterpillars in such area.

(3) In attempting to control grasshoppers or range caterpillars in established control districts, the commissioner shall not be required to conduct control operations on other than range acreage.

(4) If the commissioner, with approval of the district advisory committee as established in section 35-5-105, determines at any time that control operations would not significantly reduce the grasshopper or range caterpillar populations in the established control districts, he may order that said operations be suspended or terminated.

35-5-121. Immunity. Neither the state or its agencies, officers, or employees nor the officers, agents, employees, or representatives of any governmental or private concern shall be liable for any claim based upon the exercise or performance or the failure to exercise or perform a function prescribed under the provisions of sections 35-5-116 to 35-5-121.

35-5-122. Costs of control operations. (1) The costs of grasshopper or range caterpillar control operations shall be borne as follows:

(a) Landowners and lessees in grasshopper or range caterpillar control districts shall assume one-third of the cost in those instances where the commissioner enters into an arrangement with APHIS whereby APHIS agrees to pay one-third of such costs.

(b) Landowners and lessees in grasshopper or range caterpillar control districts shall assume two-thirds of the costs in those instances where the commissioner is unable to enter into a cost-sharing arrangement with APHIS.

(c) One-third of the costs shall be paid from the governor's agricultural emergency and disaster fund.

(d) The money deposited by the landowners and lessees to control grasshoppers or range caterpillars shall be available to the commissioner to administer the control of such infestations.

35-5-123. Rules and regulations. (1) The commissioner is authorized, after opportunity for hearing and in accordance with article 4 of title 24, C.R.S., to promulgate appropriate rules and regulations concerning:

(a) Payment of costs by landowners and lessees, APHIS, and the governor's agricultural emergency and disaster fund;

(b) Procedures for awarding contracts for grasshopper and range caterpillar control operations, which procedures shall follow as nearly as practicable the procedures for awarding contracts of the department of personnel, the terms and conditions of such contracts, bonding requirements, and qualifications of those contracting to do the control work;

(c) Methods and materials of control to be used in grasshopper and range caterpillar control operations;

(d) Protection of the environment, businesses, and industries located in grasshopper and range caterpillar control districts.

(2) The commissioner is further empowered to make and publish such reasonable rules and regulations as are proper and necessary to put into effect the provisions of this article.

35-5-124. No weed districts. (Repealed)

35-5-125. Cooperation between districts. (1) When pests may be more economically, completely, or satisfactorily managed, two or more boards of county commissioners may contract with one another to manage and control pests, including, but not limited to, sharing costs and employees. A board of county commissioners shall not contract to share resources, including costs or employees, with another such board unless both boards and both district advisory committees of such boards authorize such sharing.

(2) A contract created pursuant to subsection (1) of this section shall be in writing and contain the purposes, rights, powers, responsibilities, and financial obligations of each contracting county.

(3) If other law has requirements applicable to special types of intergovernmental contracts or cooperative agreements, such law shall control.

ARTICLE 5.5

Colorado Noxious Weed Act

35-5.5-101. Short title. This article shall be known and may be cited as the "Colorado

Noxious Weed Act".

35-5.5-102. Legislative declaration - rule of construction. (1) In enacting this article the general assembly finds and declares that there is a need to ensure that all the lands of the state of Colorado, whether in private or public ownership, are protected by and subject to the jurisdiction of a local government empowered to manage undesirable plants as designated by the state of Colorado and the local governing body. In making such determination the general assembly hereby finds and declares that certain undesirable plants constitute a present threat to the continued economic and environmental value of the lands of the state and if present in any area of the state must be managed. It is the intent of the general assembly that the advisory commissions appointed by counties and municipalities under this article, in developing undesirable plant management plans, consider the elements of integrated management as defined in this article, as well as all appropriate and available control and management methods, seeking those methods which are least environmentally damaging and which are practical and economically reasonable.

(1.5) The general assembly hereby finds and declares that:

(a) Noxious weeds have become a threat to the natural resources of Colorado, as thousands of acres of crop, rangeland, and habitat for wildlife and native plant communities are being destroyed by noxious weeds each year;

(b) An organized and coordinated effort must be made to stop the spread of noxious weeds and that such an effort can best be facilitated by a state coordinator who will assist in building local coalitions and coordinate the efforts of state, federal, local, and private landowners in developing plans for the control of noxious weeds without unnecessarily disrupting the development of such lands;

(c) The designation and classification of noxious weeds into categories for immediate eradication, containment, and suppression will further assist the state in coordinating efforts to stop the spread of noxious weeds;

(d) Because the spread of noxious weeds can largely be attributed to the movement of seed and plant parts on motor vehicles, and because noxious weeds are becoming an increasing maintenance problem on highway right-of-ways in this state, additional resources are needed to fight the spread of noxious weeds; and

(e) The use of moneys in the noxious weed management fund to assist local governing bodies and affected landowners in the eradication, containment, or suppression of noxious weeds best serves the citizens of Colorado.

(2) This article is in addition to article 5 of this title and is intended to be an expansion of, not a substitution for, the provisions of said article 5.

35-5.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(2) "Alien plant" means a plant species that is not indigenous to the state of Colorado.

(3) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(4) "Commissioner" means the commissioner of the department of agriculture or his or her designee.

(4.5) "Department" means the department of agriculture.

(5) "District" means a local governing body's geographic description of a land area where noxious weeds are to be managed.

(6) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(7) "Federal agency" means each agency, bureau, or department of the federal government responsible for administering or managing federal land.

(8) "Federal land manager" means the federal agency having jurisdiction over any federal lands affected by the provisions of this article.

(9) "Integrated management" means the planning and implementation of a coordinated program utilizing a variety of methods for managing noxious weeds, the purpose of which is to achieve specified management objectives and promote desirable plant communities. Such methods may include but are not limited to education, preventive measures, good stewardship, and the following techniques:

(a) "Biological management", which means the use of an organism to disrupt the growth of noxious weeds.

(b) "Chemical management", which means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.

(c) "Cultural management", which means methodologies or management practices that favor the growth of desirable plants over noxious weeds, including maintaining an optimum fertility and plant moisture status in an area, planting at optimum density and spatial arrangement in an area, and planting species most suited to an area.

(d) "Mechanical management", which means methodologies or management practices that physically disrupt plant growth, including tilling, mowing, burning, flooding, mulching, hand-pulling, hoeing, and grazing.

(10) "Landowner" means any owner of record of federal, tribal, state, county, municipal, or private land.

(10.5) "Local advisory board" means those individuals appointed by the local governing body to advise on matters of noxious weed management.

(11) "Local governing body" means the board of county commissioners of a county, the city council of a city and county or statutory or home rule city, the board of trustees of a statutory town or home rule town, or the board of selectmen or city council of a territorial charter municipality, as the context so requires.

(11.4) "Local noxious weed" means any plant of local importance that has been declared a noxious weed by the local governing body.

(11.6) "Management" means any activity that prevents a plant from establishing, reproducing, or dispersing itself.

(11.7) "Management objective" means the specific, desired result of integrated management efforts and includes:

(a) "Eradication" which means reducing the reproductive success of a noxious weed species or specified noxious weed population in largely uninfested regions to zero and

permanently eliminating the species or population within a specified period of time. Once all specified weed populations are eliminated or prevented from reproducing, intensive efforts continue until the existing seed bank is exhausted.

(b) "Containment" which means maintaining an intensively managed buffer zone that separates infested regions, where suppression activities prevail, from largely uninfested regions, where eradication activities prevail.

(c) "Suppression" which means reducing the vigor of noxious weed populations within an infested region, decreasing the propensity of noxious weed species to spread to surrounding lands, and mitigating the negative effects of noxious weed populations on infested lands. Suppression efforts may employ a wide variety of integrated management techniques.

(d) "Restoration" which means the removal of noxious weed species and reestablishment of desirable plant communities on lands of significant environmental or agricultural value in order to help restore or maintain said value.

(12) "Management plan" means the noxious weed management plan developed by any person or the local advisory board using integrated management.

(13) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(14) "Municipality" has the meaning set forth in section 31-1-101 (6), C.R.S.

(15) "Native plant" means a plant species that is indigenous to the state of Colorado.

(16) "Noxious weed" means an alien plant or parts of an alien plant that have been designated by rule as being noxious or has been declared a noxious weed by a local advisory board, and meets one or more of the following criteria:

(a) Aggressively invades or is detrimental to economic crops or native plant communities;

(b) Is poisonous to livestock;

(c) Is a carrier of detrimental insects, diseases, or parasites;

(d) The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

(16.2) "Noxious weed management" means the planning and implementation of an integrated program to manage noxious weed species.

(17) "Person" or "occupant" means an individual, partnership, corporation, association, or federal, state, or local government or agency thereof owning, occupying, or controlling any land, easement, or right-of-way, including any city, county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, gas and oil pipeline, high voltage electrical transmission line, or right-of-way for a canal or lateral.

(18) "Plant growth regulator" means a substance used for controlling or modifying plant growth processes without appreciable phytotoxic effect at the dosage applied.

(18.5) "State noxious weed" means any noxious weed identified by the commissioner by rule after notifying and consulting with the state noxious weed advisory committee created in section 35-5.5-108.7.

(18.6) "State weed coordinator" means the state weed coordinator under contract with or appointed by the commissioner pursuant to section 35-5.5-117.

(19) and (20) (Deleted by amendment, L. 96, p. 764, § 5, effective May 23, 1996.)

(21) "Weed" means any undesirable plant.

35-5.5-104. Duty to manage noxious weeds. It is the duty of all persons to use integrated methods to manage noxious weeds if the same are likely to be materially damaging to the land of neighboring landowners.

35-5.5-104.5. Intentional introduction, cultivation, or sale of noxious weeds - costs. (1) (a) It shall be unlawful to intentionally introduce, cultivate, sell, offer for sale, or knowingly allow to grow in violation of this article or any rule promulgated hereunder in this state any noxious weed designated pursuant to section 35-5.5-108 (2) (a); except that this prohibition shall not apply to:

(I) Research sanctioned by a state or federal agency or an accredited university or college;

(II) Activities specifically permitted by the commissioner;

(III) Noxious weed management plans that are part of an approved reclamation plan pursuant to section 34-32-116 (7) or 34-32.5-116 (4), C.R.S.;

(IV) Noxious weed management activities that are conducted on disturbed lands as part of an approved reclamation plan pursuant to section 34-33-111 (1), C.R.S.; or

(V) Noxious weed management activities that are part of activities conducted on disturbed lands pursuant to section 34-60-106 (12), C.R.S.

(b) It shall not be a violation of this section for a person to knowingly allow to grow a state noxious weed that is being properly managed in accordance with the rules promulgated by the commissioner.

(2) Any entity or person that violates the provisions of this section shall be responsible for the costs associated with remediation of the noxious weeds. In assessing the cost of remediation, the commissioner may include both actual immediate and estimated future costs to achieve specified management objectives.

35-5.5-105. Noxious weed management - powers of county commissioners. (1) The board of county commissioners of each county in the state shall adopt a noxious weed management plan for all of the unincorporated lands within the county. Such plan shall include all of the requirements and duties imposed by this article. Guidelines may be included that address no pesticide noxious weed management plans. In addition to and not in limitation of the powers delegated to boards of county commissioners in section 30-11-107 and article 15 of title 30, C.R.S., article 5 of this title, and elsewhere as provided by law, the board of county commissioners may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the county, subject to the following limitation: No county ordinance, rule, resolution, other regulation, or exercise of power pursuant to this article shall apply within the corporate limits of any incorporated municipality, nor to any municipal

service, function, facility, or property, whether owned by or leased to the incorporated municipality outside the municipal boundaries unless the county and municipality agree otherwise pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) (a) The board of county commissioners shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of all or part of the management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation. Costs associated with the administration of the noxious weed management plan shall be paid from the noxious weed management fund of each county.

(b) Subject to the direction of the board of county commissioners, an agent of the county appointed or employed under this subsection (2) may exercise the powers and duties granted to, and perform the duties of, a county pest inspector in accordance with articles 4 and 5 of this title.

(3) The board of county commissioners may cooperate with other counties and municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

35-5.5-106. Noxious weed management - municipal authority. (1) The governing body of each municipality in the state shall adopt a noxious weed management plan for all lands within the territorial limits of the municipality. In addition to and independent of the powers elsewhere delegated by law, the governing body of a municipality may adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the municipality, subject to the following limitation: No municipal ordinance, resolution, rule, other regulation, or exercise of power pursuant to this article shall apply to unincorporated lands or facilities outside the corporate limits of the municipality, except such lands or facilities which are owned by or leased to the municipality, unless the municipality and the county otherwise agree pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(2) The governing body of the municipality shall provide for the administration of the noxious weed management plan authorized by this article through the use of agents, delegates, or employees and may hire additional staff or provide for the performance of all or part of the noxious weed management plan through outside contract. Any agent, delegate, employee, staff, or contractor applying or recommending the use of chemical management methods shall be certified by the department of agriculture for such application or recommendation.

(3) The governing body may cooperate with counties and other municipalities for the exercise of any or all of the powers and authorities granted by this article. Such cooperation shall take the form of an intergovernmental agreement pursuant to part 2 of article 1 of title 29, C.R.S., or article 20 of title 29, C.R.S.

(4) To the degree that a municipality has, upon enactment of this article, or subsequent to that date, adopted an ordinance or ordinances for the management of noxious weeds, the

adoption of such an ordinance or ordinances shall be deemed to satisfy the requirement for the adoption of a noxious weed management plan imposed by this article.

35-5.5-107. Local advisory board - formation - duties. (1) The governing body of each county and municipality shall appoint a local advisory board. The local governing body, at its sole option, may appoint itself, or a commission of landowners, to act as the local advisory board for that jurisdiction. The members of each local advisory board shall be residents of the unincorporated portion of the county or residents of the municipality, as the case may be, and in the case of a county, at least a majority of the members of the local advisory board shall be landowners of over forty acres.

(2) In the event a county or municipality elects to cooperate with another county or municipality for any of the purposes set forth in this article, the membership of the local advisory board shall be determined by the governing bodies of such cooperating local governments.

(3) Each local advisory board shall annually elect a chairman and secretary. A majority of the members of the board shall constitute a quorum for the conduct of business.

(4) Local advisory boards shall have the power and duty to:

(a) Develop a recommended management plan for the integrated management of designated noxious weeds and recommended management criteria for noxious weeds within the area governed by the local government or governments appointing the local advisory board. The management plan shall be reviewed at regular intervals but not less often than once every three years by the local advisory board. The management plan and any amendments made thereto shall be transmitted to the local governing body for approval, modification, or rejection.

(b) Declare noxious weeds and any state noxious weeds designated by rule to be subject to integrated management;

(c) Recommend to the local governing body that identified landowners be required to submit an individual integrated management plan to manage noxious weeds on their property.

(5) The local governing body shall have the sole and final authority to approve, modify, or reject the management plan, management criteria, management practice, and any other decision or recommendation of the local advisory board.

(6) The state weed coordinator shall review any recommendations of a local advisory board appointed pursuant to article 5 of this title and note any inconsistencies between the recommendations of the state weed coordinator or the commissioner and any such local advisory board.

35-5.5-108. Designated noxious weeds - legislative declaration. (1) The general assembly hereby finds and declares that the noxious weeds designated by rule are a present threat to the economic and environmental value of the lands of the state of Colorado and declare it to be a matter of statewide importance that the governing bodies of counties and municipalities include plans to manage such weeds as part of their duties pursuant to this article.

(2) (a) The state list of plant species that are designated as noxious weeds shall be

designated by rule and shall be managed under the provisions of this article. On and after August 6, 2003, the commissioner shall classify noxious weeds into one of a minimum of three categories, including:

(I) "List A", which means rare noxious weed species that are subject to eradication wherever detected statewide in order to protect neighboring lands and the state as a whole;

(II) "List B", which means noxious weed species with discrete statewide distributions that are subject to eradication, containment, or suppression in portions of the state designated by the commissioner in order to stop the continued spread of these species;

(III) "List C", which means widespread and well-established noxious weed species for which control is recommended but not required by the state, although local governing bodies may require management.

(b) A local governing body may adopt eradication, containment, or suppression standards that are more stringent than the standards adopted by the commissioner.

(2.1) The commissioner shall review and revise, as necessary, the state noxious weed list at least once every three years.

(2.3) The commissioner shall develop and implement by rule state noxious weed management plans for noxious weed species classified as list A or list B species. For each noxious weed species, each management plan shall designate the management objectives for all lands of the state appropriate to achieve the stated purpose of the species classification.

(2.5) The commissioner shall prescribe integrated management techniques to achieve specified management objectives for each listed species after consulting with the state noxious weed advisory committee. The prescribed management techniques shall be mandatory techniques for list A species and populations of list B species designated for eradication. The commissioner shall develop management techniques pursuant to science-based methodologies, peer reviewed studies, or any other method that is based on credible research.

(2.6) The classifications made pursuant to paragraph (a) of subsection (2) of this section shall primarily reflect the known distribution of the designated species, the feasibility of current control technologies to achieve specified management objectives, and the costs of carrying out the prescribed state weed management plan.

(2.7) (a) The commissioner shall also adopt rules for granting compliance waivers to local governing bodies and landowners; except that a waiver may not be granted to the affected landowner when a landowner has wilfully or wantonly violated the provisions of this section or section 35-5.5-104.5 or 35-5.5-108.5 attempts to delay eradication of a species without just cause.

(b) Such rules shall include:

(I) A process by which a local governing body or an affected landowner may petition the commissioner to change the management objectives specified in a state noxious weed management plan;

(II) The criteria used to evaluate such petitions; and

(III) Time frames in which the commissioner shall grant or deny such petitions.

(c) Actions sufficient to implement the management objective for a noxious weed species shall continue until the commissioner grants a waiver pursuant to this subsection (2.7).

(3) The board of county commissioners or governing body of a municipality may declare

additional noxious weeds, within its jurisdictional boundaries, after a public hearing with thirty days prior notice to the public. Any declaration of additional noxious weeds pursuant to this subsection (3) shall include the management objectives for all affected landowners.

35-5.5-108.5. Responsibilities related to eradication of designated noxious weeds - commissioner - local governing bodies - affected landowners. (1) This section shall apply to noxious weeds that have been classified as list A species and to populations of list B species designated for eradication pursuant to section 35-5.5-108 (2) (a). This section shall govern the responsibilities of the commissioner, local governing bodies, and affected landowners.

(2) **Duties of commissioner.** (a) The commissioner may enforce the provisions of this section as necessary to ensure the cooperation of local governing bodies and affected landowners.

(b) The commissioner shall provide:

(I) Educational resources to local governing bodies and affected landowners regarding the eradication of list A species and populations of list B species designated for eradication. Such education shall include an explanation of why the species has been listed for eradication, the prescribed techniques for eradication in the most cost-effective manner, and the duties of the local governing body and affected landowner regarding such eradication.

(II) Financial or in-kind resources to local governing bodies or affected landowners to eradicate list A species and populations of list B species designated for eradication from the available moneys in the noxious weed management fund created in section 35-5.5-116. Such financial or in-kind resource allocation shall be determined by the commissioner according to the identified benefits to the citizens of Colorado, the surrounding community, and the affected landowners.

(III) The inventory and mapping infrastructure necessary to facilitate the classification of state noxious weeds and the development and implementation of state noxious weed management plans.

(3) **Duties of local governing bodies.** (a) In compliance with the rules promulgated by the commissioner, a local governing body shall initiate and maintain communications with landowners who are affected by list A species and populations of list B species designated for eradication by the commissioner.

(b) In addition to the existing powers and duties of a local governing body provided in this article a local governing body shall:

(I) Provide affected land owners with technical assistance for the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(II) Carry out sufficient measures, including project oversight and enforcement, as may be necessary to ensure the eradication of list A species and populations of list B species designated for eradication by the commissioner;

(III) Provide the commissioner with assistance in disseminating financial resources to affected landowners and mapping data pursuant to rules promulgated by the commissioner; and

(IV) Determine the cost of eradication to be borne by affected landowners.

(c) Local governing bodies may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(d) If the commissioner determines, in consultation with the local governing body, that the most cost-effective manner to eradicate designated noxious weeds is for the commissioner to implement an eradication program, the commissioner may implement the eradication program directly.

(4) **Duties of affected landowners or occupants.** Except as provided pursuant to section 35-5.5-104.5 (1) (a), an affected landowner or occupant whose property may be affected by list A species or by populations of list B species designated for eradication shall allow the commissioner or local weed control officials access to such property for the purpose of immediate inspection and eradication when at least one of the following events has occurred:

(a) The affected landowner or occupant has requested the inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government or commissioner has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(5) (a) If verbal permission to inspect the land by the affected landowner is not obtained, no entry upon any premises, lands, or places shall be permitted until the local governing body has notified the affected landowner that such inspection is pending by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. Where possible, inspections shall be scheduled and conducted with the concurrence of the affected landowner or occupant. A local governing body may notify an affected landowner in an electronic format, in addition to notice by certified mail.

(b) (I) If, after ten days with no response from the affected landowner or upon denial of access before the expiration of ten days, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body of an affidavit stating:

(A) The information that gives the inspector reasonable cause to believe that any provision of this section, section 35-5.5-104.5, or section 35-5.5-108, is being or has been violated;

(B) The affected landowner has failed to respond or the landowner or occupant has denied access to the inspector; and

(C) A general description of the location of the affected land.

(II) No affected landowner or occupant shall deny access to an authorized agent of the local governing body or the commissioner in possession of an inspection warrant.

(6) An affected landowner shall notify a lessee or occupant of affected lands of all notices of inspection and eradication efforts on such lands as soon as practicable.

(7) The local governing body of the county or municipality having jurisdiction over private and public lands on which list A species or populations of list B species designated for eradication are found shall notify the affected landowner or occupant of such lands by certified mail if the landowner's mailing address is within the United States or mailed in a comparable manner to a landowner whose mailing address is outside of the United States. The notice shall

name the noxious weeds, identify eradication as the required management objective, advise the affected landowner or occupant to commence eradication efforts within a specified period or condition, and state the integrated weed management techniques prescribed by the commissioner for eradication. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the eradication of noxious weeds on the premises or land.

(8) Within five days after the local governing body mails notification, the landowner shall comply with the terms of the notification or submit an acceptable plan and schedule for the completion of the management objective.

(9) (a) In the event the affected landowner or occupant fails to comply with the notice to eradicate the identified noxious weeds and implement an appropriate eradication program, the local governing body having authority over the public or private land shall:

(I) Provide for and complete the eradication of such noxious weeds at such time, upon such notice, and in such manner consistent with achieving the management objective as the local governing body deems appropriate; and

(II) Do one of the following:

(A) Assess the whole cost of the eradication, including up to one hundred percent of inspection, eradication, and other incidental costs in connection with eradication, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as a part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be utilized in furtherance of the local governing body's weed management efforts.

(B) In the event the state board, department, or agency fails to comply with the notice to eradicate the identified noxious weeds, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done. The expenses associated with inspection and eradication shall be paid by the state board, department, or agency that has jurisdiction over the lands. An agreement for reimbursement shall be reached within two weeks after the date such statement of expense for eradication is submitted by the local governing body. Such reimbursement agreement shall be in writing. If no reimbursement agreement has been reached or the amount reflected in the agreement is not paid upon presentation, the amount in the agreement shall be submitted to the state controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved or such charge may be recovered in any court with jurisdiction over such lands. The expense associated with eradication may be recovered in any court with jurisdiction over such infested land.

(b) No local governing body shall provide for or compel the eradication of list A species and populations of list B species designated for eradication or list B noxious weeds on private or public property pursuant to this subsection (9) without first applying the same measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the property.

(10) The local governing body, through its delegates, agents, or employees, shall have the right to enter upon any premises, lands, or places during reasonable business hours for the purpose of ensuring compliance with the requirements of this section concerning noxious weed eradication.

(11) No agent, employee, or delegate of a local governing body shall have a cause of action against an affected landowner or occupant for personal injury or property damages while on private or public land for purposes of eradication of noxious weeds except when such damages were the result of gross negligence, recklessness, or intentional action by the landowner.

(12) If, in the opinion of the commissioner, any local governing body fails to adequately perform any of the duties set forth in this section, the commissioner is authorized to conduct any of the functions or duties of a local governing body pursuant to this section.

(13) The commissioner or the local governing body may require the affected landowner to pay a portion of the costs associated with eradication of the noxious weeds.

(14) An affected landowner may apply to the commissioner for a waiver of compliance with an eradication designation pursuant to section 35-5.5-108 (2.7).

(15) For the purposes of this section, an "occupant" shall not include the owner of an easement or right-of-way.

35-5.5-108.7. State noxious weed advisory committee - repeal. (1) (a) (I) There is hereby created the state noxious weed advisory committee, referred to in this section as the "state advisory committee". The state advisory committee consists of seventeen members. Fifteen members are appointed by the commissioner and serve without per diem compensation or expenses. Of the fifteen members:

(A) At least one member represents private and public landowners or land managers;

(B) At least two members represent weed management professionals from the federal, state, or local levels;

(C) At least one member represents public or private weed scientists;

(D) At least two members represent local governing bodies;

(E) Four members must be agricultural producers, as defined in section 35-1-102; and

(F) At least three members represent knowledgeable resource specialists or industries, including environmental organizations.

(II) The remaining two members are:

(A) One nonvoting member who is appointed by the Colorado department of transportation with the approval of the commissioner; and

(B) One nonvoting member who is appointed by the department of natural resources with the approval of the commissioner.

(III) Representation on the state advisory committee must reflect the different geographic areas of the state equally, to the greatest extent possible. Members of the state advisory committee that represent the various stakeholders and regions shall solicit input from similar stakeholders within each member's area of expertise and region of the state. Members of the state advisory committee shall communicate the committee's recommendations to the region and stakeholders represented by each member.

(b) Staggered appointments shall be made so that not more than eight members' terms expire in any one year, and thereafter appointments shall be for terms of two years each. Appointees shall be limited to two full terms each. Each state advisory committee member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed.

(c) In the event of a vacancy on the state advisory committee, the commissioner shall fill such vacancy promptly to allow a quorum of the state advisory committee to function.

(d) The commissioner may remove any member of the state advisory committee for misconduct, incompetence, or neglect of duty.

(e) A quorum of the state advisory committee shall elect or appoint annually a chairman and a vice-chairman.

(f) A quorum of the state advisory committee shall be a majority of the members appointed to the state advisory committee.

(g) The state advisory committee shall meet at least quarterly.

(2) The state advisory committee shall make recommendations to the commissioner concerning the:

(a) Designation of state noxious weeds;

(b) Classification of state noxious weeds;

(c) Development and implementation of state weed management plans;

(d) Prescribed techniques for eradication, containment, and suppression of state noxious weeds; and

(e) Management of noxious weeds on surface waters and public lands.

(3) Recommendations of the state advisory committee shall be made by a majority vote of the members of the state advisory committee.

(4) The state advisory committee shall periodically assess the progress made to implement the provisions of sections 35-5.5-104.5, 35-5.5-108.5, 35-5.5-108.7, and 35-5.5-108 (2) (a); measure the results and effectiveness of endeavors to eradicate, contain, and suppress noxious weeds within this state; and recommend to the commissioner ways to enhance statewide efforts to stop the spread of noxious weeds.

(5) This section is repealed, effective September 1, 2023. Prior to the repeal, the state noxious weed advisory committee is reviewed under section 2-3-1203, C.R.S.

35-5.5-109. Private lands - management of noxious weeds - charges. (1) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one of the following circumstances has occurred:

(a) The landowner or occupant has requested an inspection;

(b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(c) An authorized agent of the local government has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(2) (a) No entry upon any premises, lands, or places shall be permitted until the landowner or occupant has been notified by certified mail that such inspection is pending. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

(b) If after receiving notice that an inspection is pending the landowner or occupant denies access to the inspector of the local governing body, the inspector may seek an inspection warrant issued by a municipal, county, or district court having jurisdiction over the land. The court shall issue an inspection warrant upon presentation by the local governing body, through its agent or employee, of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being or has been violated; that the occupant or landowner has denied access to the inspector; and a general description of the location of the affected land. No landowner or occupant shall deny access to such land when presented with an inspection warrant.

(3) The local governing body of the county or municipality having jurisdiction over private lands upon which noxious weeds are found shall have the authority, acting directly or indirectly through its agent or staff, to notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of noxious weeds. Said notice shall name the noxious weeds, advise the landowner or occupant to manage the noxious weeds, and specify the best available control methods of integrated management. Where possible, the local governing body shall consult with the affected landowner or occupant in the development of a plan for the management of noxious weeds on the premises or lands.

(4) (a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the landowner or occupant shall either:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The landowner or occupant shall be entitled to challenge any one member of the panel, and the local governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(5) (a) In the event the landowner or occupant fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body has the authority to:

(I) Provide for and compel the management of such noxious weeds at such time, upon such notice, and in such manner as the local governing body shall prescribe by ordinance or resolution; and

(II) Assess the whole cost thereof, including up to twenty percent for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located; except that no local governing body shall levy a tax lien against land it administers as part of a public right-of-way. Such assessment shall be a lien against each lot or

tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the county treasurer of the county in which the property is located and collected and paid over in the same manner as provided for the collection of taxes. Any funds collected pursuant to this section shall be deposited in the local governing body's weed fund or any similar fund.

(b) No local governing body shall provide for or compel the management of noxious weeds on private property pursuant to this subsection (5) without first applying the same or greater management measures to any land or rights-of-way owned or administered by the local governing body that are adjacent to the private property.

(c) No local governing body shall assess the cost of providing for or compelling the management of noxious weeds on private property until the level of management called for in the notice or the management plan developed by the arbitration panel has been successfully achieved.

(6) The local governing body, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands, or places, whether public or private, during reasonable business hours for the purpose of ensuring compliance with the requirements of this article concerning noxious weed management and any other local requirements.

(7) No agent, employee, or delegate of a local governing body shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with this article except when such damages were willfully or deliberately caused by the landowner.

35-5.5-110. Public lands - control of undesirable plants - charges. (1) It is the duty of each state board, department, or agency that administers or supervises state lands to manage noxious weeds on any lands under its jurisdiction using the methods prescribed by the local governing body in whose jurisdiction such state lands are located. The local governing body may give notice to any such state board, department, or agency advising of the presence of noxious weeds and naming them. Such notice shall specify the best available methods of integrated management that are not in conflict with federal law or contractual restrictions included in federal land conveyances to the state. Wherever possible, the local governing body shall consult with the affected state board, department, or agency in the development of a plan for the management of noxious weeds on the premises or lands.

(2) (a) Within a reasonable time after receipt of notification, which at no time shall exceed ten days, the state board, department, or agency shall do one of the following:

(I) Comply with the terms of the notification;

(II) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance;

(III) Request an arbitration panel to determine the final management plan.

(b) The arbitration panel selected by the local governing body shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The state board, department, or agency shall be entitled to challenge any one member of the panel, and the local

governing body shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(3) In the event the state board, department, or agency fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the local governing body in whose jurisdiction the infestation is located may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done, the expense thereof to be a proper charge against said state board, department, or agency which has jurisdiction over the lands. An agreement for payment shall be reached within two weeks after the date such an expense is submitted, with respect to the amount of reimbursement to be paid. Such agreement shall be in writing. If no agreement has been reached and if the charge is not immediately paid, such charge shall be submitted to the controller, who shall treat such amount as an encumbrance on the budget of the state board, department, or agency involved, or such charge may be recovered in any court with jurisdiction over such lands. Any state board, department, or agency may enter into a contract with the local governing body to authorize the management of noxious weeds on state-administered land on terms and conditions satisfactory to both parties.

(4) In addition to the requirements of subsection (3) of this section, the division shall enter into agreements with local governing bodies for the control of weeds on any property the division owns in fee title or has effective surface control over pursuant to a long-term lease or easement agreement. For purposes of this subsection (4) and subsection (5) of this section, "long-term lease or easement agreement" means any lease or easement agreement that exceeds ten years. Agreements between the division and local governing bodies for weed control shall describe the terms and conditions of weed control, provide an annual estimated budget for such weed control, and identify specific weed control responsibilities for the division and the property owner, if different than the division. Weed control agreements required pursuant to this subsection (4) shall be executed on or before July 1, 1997.

(5) Any weed control expense incurred by a local governing body pursuant to subsection (3) of this section on any lands held by the division in fee title or by long-term lease or easement agreement, as described in subsection (4) of this section, and for which a weed control agreement as described in subsection (4) of this section has been signed, and which costs are in accordance with that long-term agreement, shall be deemed correct and final and shall be paid by the division pursuant to section 33-1-110 (6.5), C.R.S.

35-5.5-111. Cooperation with federal and state agencies. The local governing bodies of all counties and municipalities in this state are hereby authorized to enter into cooperative agreements with federal and state agencies for the integrated management of noxious weeds within their respective territorial jurisdictions.

35-5.5-112. Public rights-of-way - management of noxious weeds - charges. It shall be the duty of each local governing body and each state board, department, or agency to confirm that all public roads, public highways, public rights-of-way, and any easements appurtenant

thereto, under the jurisdiction of each such entity, are in compliance with this article, and any violations of this article shall be the financial responsibility of the appropriate local governing body or state board, department, or agency.

35-5.5-113. Public nuisance - abatement. All noxious weeds, at any and all stages, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith may be declared to be a public nuisance by the local governing body having jurisdiction over the lands upon which said noxious weeds are situated. Once declared, such nuisances are subject to all laws and remedies relating to the prevention and abatement of nuisances. The local governing body, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in its discretion appears necessary. The remedies of this section shall be in addition to all other remedies provided by law.

35-5.5-114. Review of compliance on federal land. (Repealed)

35-5.5-114.1. Survey of compliance on federal land. On or before January 1, 1998, the state weed coordinator shall survey those counties that include significant amounts of federal land to determine the level of cooperation and compliance by the federal government with this article.

35-5.5-115. Rules. The commissioner shall promulgate rules as necessary to carry out the purposes of this article, which rules shall include a designation of state noxious weeds.

35-5.5-116. Noxious weed management fund - creation - allocation of funds. (1) There is hereby created in the office of the state treasurer the noxious weed management fund. The fund shall consist of any civil penalties collected pursuant to section 35-5.5-118; any gifts, donations, and grants received pursuant to section 35-1-104 (1) (cc); and any moneys approved by the general assembly for the purpose of funding noxious weed management projects. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The general assembly shall annually appropriate moneys in the fund to the department of agriculture for the purposes specified in subsection (2) of this section.

(2) The interest earned on moneys in the noxious weed management fund and appropriated to the department of agriculture shall be expended for costs incurred by the department of agriculture in administering this article, and any moneys appropriated that exceed the amount needed for such costs may be expended for noxious weed management projects in accordance with this section.

(3) The department may expend moneys through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management

projects.

(4) The department may expend moneys for the following purposes:

(a) Noxious weed management programs with local weed control districts, if expenses are shared with such districts;

(b) With the approval of the agricultural commission, the department may make special grants to local weed control districts to eradicate or contain state noxious weeds, which grants may be issued without matching funds from the district;

(c) Administrative expenses incurred by the department;

(d) Any project the agricultural commission determines will significantly contribute to the management of noxious weeds within the state;

(e) With the approval of the agricultural commission, grants to the Colorado state university cooperative extension service, the Colorado state university experiment station, and universities for weed management research, evaluation, and education;

(f) Employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures shall be shared with such organizations.

(5) If a new and potentially harmful noxious weed is discovered growing in the state and its presence is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, the department is authorized to allocate up to fifty thousand dollars of the principal in the noxious weed management fund to government agencies for emergency relief to manage or confine the new noxious weed species.

35-5.5-117. The state weed coordinator. (1) There shall be designated in the department of agriculture a state weed coordinator, who shall be under contract with or appointed by the commissioner.

(2) The state weed coordinator shall:

(a) Develop a recommended management plan for the integrated management of designated noxious weeds within state-owned lands;

(b) Facilitate cooperation between federal, state, and local land managers in the formation of a memorandum of understanding;

(c) Provide guidance and coordination for local governmental weed managers.

35-5.5-118. Civil penalties. (1) (a) Any person who violates this article or any rule adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner. The penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined that the person has violated the provision or rule more than once. No civil penalty shall be imposed unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) In addition to any civil penalties assessed pursuant to paragraph (a) of this subsection (1), any person who violates the provisions of section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5,

or any rule adopted to implement these sections, shall, upon an order of the commissioner, pay the cost of inspection and eradication of list A or list B noxious weed species, including, but not limited to, any immediate remediation costs, the estimated cost of future eradication, any administrative costs, and any court cost and attorney fees incurred by the commissioner in enforcing section 35-5.5-104.5, 35-5.5-108, or 35-5.5-108.5, or any rule adopted to implement these sections. The commissioner may not enforce such order unless and until the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S. All moneys due and owing pursuant to this paragraph (b) shall be payable to the department for the payment and reimbursement of enforcement and costs associated with such enforcement and are hereby continuously appropriated to the department for such purpose.

(2) If the commissioner is unable to collect a civil penalty, payment of costs imposed pursuant to subsection (1) of this section, or if the person fails to pay all or a specified portion of such penalty or payment, the department may bring suit in any court of competent jurisdiction to recover such amount plus costs and attorney fees.

(3) Before imposing any civil penalty or payment of costs, the commissioner may consider the effect of such penalty or payment of costs on the ability of the person charged to stay in business.

(4) All civil penalties and payment of costs collected pursuant to this section shall be deposited in the noxious weed management fund created in section 35-5.5-116.

35-5.5-119. County funding. The board of county commissioners is authorized to levy a special tax, subject to the approval of the voters, upon every dollar of valuation of assessment of taxable property within the county for the purpose of creating a county fund to control noxious weeds; except that the amount raised from such levy in any one year shall not exceed the amount raised by five mills.

ARTICLE 6

Pest and Plant Quarantine

35-6-101 to 35-6-108. (Repealed)

ARTICLE 7

Rodents and Predatory Animals - Control

PART 1

RODENT CONTROL

35-7-101. Legislative declaration. Whereas, in many large areas of this state certain destructive rodent pests, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, and rats, have become so numerous and such a grave and immediate menace to the agricultural, horticultural, and livestock industries of the state that large numbers of the inhabitants engaged in such industries in the localities so infested are in great and imminent danger of being impoverished and reduced to want by the destruction of their crops; and, whereas, the situation is so serious and the emergency so urgent that public necessity demands that prompt, efficacious, and summary action be taken under the police power of the state to control, suppress, and eradicate the rodents in the areas infested by them; now, therefore, it is declared that in all fields, orchards, places, localities, and areas in the state infested with any such rodents in sufficient numbers as to materially injure agricultural or horticultural crops therein, such infestation is a public nuisance and subject to suppression and abatement as such under the provisions of this part 1.

35-7-102. Agreement with the federal government. To the end that the situation may be speedily remedied, it is the duty of the department of agriculture, referred to in this part 1 as the "department", to enter into written agreements on behalf of the state with the federal agency in charge of rodent control matters, referred to in this article as the "federal agency", such agreements to define such procedure, in accordance with the provisions of this part 1, as they deem advisable and proper for the purpose of cooperating with the federal agency in the control and eradication within this state of the rodent pests mentioned in section 35-7-101.

35-7-103. Rodent pest control fund - creation. (1) For the purpose of carrying out the provisions of this part 1, there is hereby created the rodent pest control fund. To insure continuity of contractual relations with the federal agency, said fund shall be permanent, and the same, together with all appropriations and all reimbursements or accretions thereto, from whatever source derived, is appropriated to carry out the purposes of this part 1.

(2) All disbursements from the fund shall be by warrants drawn by the controller upon itemized vouchers certified by the federal agency as to correctness and approved by the department which shall approve the vouchers for all lawful expenses incurred in carrying out the purposes of this part 1 and in accordance with the terms of any cooperative agreements entered into by the department with the federal agency.

35-7-104. Cooperative agreements. Operations under the provisions of this part 1 for

the control and eradication of rodent pests shall be in accordance with the approved procedure of the federal agency and in accordance with the terms of such agreements as shall be entered into by the department and the federal agency. To enable the department to carry out any such agreement or to perform the duties devolved upon the department in carrying out the purpose of this part 1, the department is authorized to enlist and pay the necessary expenses of volunteer agents and to employ and pay the salary and necessary expenses of such other agents as may be required to act in their behalf. To further enlarge and accelerate operation for the control of such rodent pests, the department, acting in conjunction with the federal agency, may enter into cooperative agreements with boards of county commissioners or with associations, corporations, or individuals owning land subject to or menaced by such infestations.

35-7-105. Boundaries of infested areas defined. For the purpose of carrying out this part 1, the respective boards of county commissioners have the power to define the boundaries of such rodent-infested areas within their jurisdictions and to put into operation such cooperative agreements for such areas in the manner as in their discretion may be deemed advisable.

35-7-106. Government lands. On lands which are a part of any national forest, Indian reservation, or other national reserve or public domain of the United States, or of any state reservation, or of any unoccupied or leased state lands, the control of such rodent pests shall be carried on so far as possible at the expense of the federal government on federal lands and at the expense of the state government on unoccupied or leased state lands with such cooperation with occupants, lessees, licensees, or adjacent landowners as may be available.

35-7-107. Land under contract of purchase. On state land sold under contract of purchase whereunder patent has not been issued, the control shall be prosecuted, so far as possible, on a cooperative basis, pursuant to such terms as may be agreed upon with the contract holder.

35-7-108. Private lands. Upon privately owned lands, the control of rodent pests under this part 1 shall, so far as possible, be based on voluntary cooperation of owners, lessees, or occupants. If a private landowner enters into a cooperative agreement with the county pursuant to which the county agrees to control rodent pests on the landowner's real property, the private landowner shall reimburse the county for actual expenses incurred by the county in connection with such rodent pests control operations.

35-7-109. Agreements with landowners. Owners of private lands may arrange, under written cooperative agreements with the department and the federal agency in charge of operations, for the control and eradication of rodent pests on their lands.

35-7-110. State reimbursed for actual cost. All poisons or other materials for such control furnished by the state to such cooperators shall be supplied at actual cost, and the state shall be reimbursed by such cooperators, landowners, lessees, or contract holders for the actual cost of materials and labor, other than supervision, expended by the state in such treatment under cooperative agreements with them. Such reimbursement shall be made by each owner, lessee, or contract holder in the proportion that the number of acres of land treated for him or her bears to the total acreage treated in the area designated for treatment or according to such equitable proportion or plan as shall be provided for in the agreement. Any such agreement shall require full reimbursement to be made to the state within thirty days after presentation by the department, or its agents, of an itemized account therefor.

35-7-111. County to appropriate funds. It is the duty of boards of county commissioners in all counties where any such infestation exists or is imminent to appropriate from the general fund such money as may be necessary to carry out the provisions of this part 1 within their respective counties. In counties where pest control districts have been created, or are about to be created, it is the duty of the board of county commissioners to appropriate from the county general fund such money as shall be necessary to establish and maintain a fund for the payment of all accounts charged or chargeable against them under the terms of this part 1.

35-7-112. Eradication contracts required - procedure without contracts. (1) In case a majority of resident landowners in a prescribed district have signed a cooperative agreement to destroy rodents on their lands, public notice may be given by publication by the boards of county commissioners wherein the lands are located at least once in a newspaper of general circulation in the counties affected to the effect that lands within the boundaries of such prescribed area, lying in one or more counties, are infested by said pests, or some kind thereof, in such numbers that in the opinion of the said department the same are liable to materially injure and imperil agricultural or horticultural crops within such area, and that such lands are about to be treated, under the provisions of this part 1, for the control and eradication of the pests. If, within thirty days after the publication of such notice, any owner of lands infested by the pests within the prescribed area fails to destroy the same, or to enter into a cooperative agreement for their control or eradication, then, at the time operations are instituted on such lands, it is the duty of the department, or its agents, to enter upon the lands and to destroy the pests thereon at the expense of the owner of such lands.

(2) If the owner, after ten days' written notice to him in person or by mail to his last known post office address, fails, neglects, or refuses to reimburse the department, or its agents, in the amount of such expenses, the department shall certify an itemized statement thereof, together with a description of such lands sufficient to identify the same to the board of county commissioners of the county wherein the same is situated. Thereupon, such an account shall be audited, allowed, and paid in like manner as provided in section 35-7-110. Public notices in this

section provided for shall designate as accurately as may be the boundaries of the area to be treated; shall make specific reference to this statute and shall call upon all owners, known or unknown, of lands within the prescribed area to proceed at once to destroy the pests mentioned in such notice or to enter into cooperative agreements for their control or eradication; and shall designate reasonable times and places within or near such area where and when the federal agency, or other agents, and the department, or its agents, will be present for the purpose of entering into such cooperative agreements and proceeding with their execution.

35-7-113. Itemized accounts. The department shall keep itemized accounts of the actual expenses of materials and labor in connection with the control and eradication of rodent pests, whether such work is done under cooperative agreements with owners, lessees, or contract holders or otherwise.

35-7-114. Charges against landowner - lien rights. Whenever any county has been required to pay any expense charged against any landowners, under a cooperative agreement or otherwise, on account of such pest control operations conducted upon or for the benefit of his or her lands, such county shall have a lien upon such lands for the amount so paid or for such lesser amount as such landowner shall be adjudged to pay after a hearing before the board of county commissioners.

35-7-115. Enforcing collection - hearing. Upon payment by any county of any such bill of expenses so charged against any landowner, lessee, or contract holder, the board of county commissioners shall make demand and notice in writing, upon such landowner, lessee, or contract holder, in person or by mail addressed to him or her at his or her last known place of residence twenty days prior to the published meeting date, for reimbursement to the county in the amount of such expenses. Such written notice shall inform such person that he or she may appear before the board on the published meeting date and be heard as to the amount and accuracy of the claim. If such claim, as originally demanded by the board or as adjusted upon the hearing, is not paid, then, in the case of a private landowner, the board of county commissioners shall certify the claim to the county assessor who shall add the amount thereof to any taxes due or to become due upon his or her lands, and said lands shall be sold for the satisfaction thereof at the same time and in the same manner as is provided by law for the sale of real estate for delinquent taxes. In cases where such accounts are payable by a lessee or contract holder, suit may be maintained in behalf of the county in any court of competent jurisdiction for the recovery of such accounts and costs of suit. All such accounts when collected by the county shall be paid into the general fund thereof or into the fund used by the county to meet its obligations under this part 1.

35-7-116. Collections paid to treasurer. All reimbursements to the state, whether made by individuals, counties, or other cooperators pursuant to this part 1, shall be turned over to the

state treasurer and by him credited to the rodent pest control fund referred to in section 35-7-103.

35-7-117. Record of poison purchased. The department, when acting in cooperation with the federal agency in rodent control operations through its officers, members, or authorized agents, may purchase and sell to landowners, lessees, contract holders, boards of county commissioners, and other cooperators strychnine and other poisons and supplies for rodent control. The department or its agents shall make and keep a record of all such sales made by showing the name and address of purchaser, date of purchase, and kind and amount of poison or rodent supplies purchased.

PART 2

RODENTS AND PREDATORY ANIMALS

35-7-201. Control and eradication of rodents. (1) The boards of county commissioners of the several counties of this state are authorized to purchase materials and equipment and to employ one or more suitable persons to destroy jackrabbits, prairie dogs, ground squirrels, or other injurious rodents within the limits of their respective counties. Any materials and equipment so purchased and compensation for such services shall be paid out of the general fund or a specially designated fund of such county.

(2) The boards of county commissioners of the several counties of this state are authorized to levy such taxes as are necessary to pay the obligations for rodent control work as authorized under this section and to put into operation any plan of procedure for the eradication of such rodent pests within their jurisdictions as in their discretion is deemed advisable; except that control operations under the provisions of this section shall be in accordance with the approved procedure of the federal agency. The boards of county commissioners may solicit cooperation from the state board of stock inspection commissioners and the federal agency for the conduct of such rodent control work and may enter into cooperative agreements with the board of stock inspection commissioners and the federal agency for the furtherance of the rodent control work authorized under this section.

35-7-202. Control and eradication of predatory animals. (1) The boards of county commissioners of the several counties of the state are authorized to purchase materials and equipment and to employ one or more suitable persons to control coyotes or other injurious predatory animals within the limits of their respective counties. Any materials and equipment so purchased and compensation for such services shall be paid out of the general fund or a specially designated fund of such county.

(2) The boards of county commissioners of the several counties of the state are authorized to levy such taxes as are necessary to pay the obligations for such predatory animal

control work as authorized by this section and to put into operation any plan of procedure for the eradication of such predatory animals within their jurisdictions as in their discretion is deemed advisable.

(3) Control operations under the provisions of this section shall be in accordance with the approved procedure of the federal agency. The boards of county commissioners may solicit cooperation from the state board of stock inspection commissioners and the federal agency for the conduct of such predatory animal control work and may enter into cooperative agreements with the state board of stock inspection commissioners and the federal agency for the furtherance of the predatory animal control work authorized under this section.

35-7-203. Release of destructive rodent pests - definitions. (1) No person shall release destructive rodent pests into a county unless the person complies with all requirements for such release imposed by the parks and wildlife commission and obtains both the prior approval of the commission and the prior approval, by resolution duly adopted, of the board of county commissioners of such county. A person need not obtain such prior approval before:

(a) Transporting destructive rodent pests through a county without releasing such destructive rodent pests; or

(b) Confining destructive rodent pests indoors or in cages or similar enclosures and using such destructive rodent pests for scientific purposes or as food for human or animal consumption; or

(c) Keeping destructive rodent pests indoors or in cages or similar enclosures as pets; or

(d) Releasing destructive rodent pests into the county in which such destructive rodent pests were originally taken into captivity.

(2) For purposes of this section, "destructive rodent pests" means one or more rodents, including but not limited to prairie dogs, ground squirrels, pocket gophers, jackrabbits, and rats, that pose a threat to agricultural, horticultural, or livestock concerns or to human health.

(3) The board of county commissioners of any county into which a person releases destructive rodent pests without the prior approval of such board may, at its discretion:

(a) Require the person who released the destructive rodent pests to eradicate the destructive rodent pests or remove the destructive rodent pests from the county; or

(b) Impose a fine upon the person who released the destructive rodent pests in an amount sufficient to compensate the county for the cost of eradicating the destructive rodent pests or removing the destructive rodent pests from the county.

ARTICLE 8

Weeds

35-8-101 to 35-8-107. (Repealed)

ARTICLE 9

Pesticide Act

35-9-101. Short title. This article shall be known and may be cited as the "Pesticide Act".

35-9-102. Legislative declaration. The general assembly hereby finds and declares that the intent of this article is to regulate, in the public interest, the refilling, registration, labeling, transportation, distribution, storage, use, and disposal of any pesticide and of certain devices. The general assembly further finds and declares that it is the intent of this article to assure the dissemination of accurate information regarding the proper and prohibited uses of any pesticide or device. The provisions of this article are enacted to protect the public health, safety, and welfare of the people of this state.

35-9-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(b) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" refers to:

(a) Any pesticide whose strength or purity deviates from the professed strength or purity stated on its labeling or under which it is sold; or

(b) Any pesticide whose components or their relative proportions differ from those stated on its labeling; or

(c) Any substance which has been substituted wholly or in part for a pesticide; or

(d) Any pesticide from which any valuable constituent has been wholly or partly abstracted; or

(e) Any pesticide in which any contaminant is present in an amount which is determined by the commissioner to be a hazard.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Dealer" means any person who distributes to any other person any restricted-use pesticide.

(5) "Device" means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.

(6) "Distribute" means to advertise, offer for sale, hold for sale, sell, barter, or supply in any fashion any pesticide in this state.

(7) "EPA" means the environmental protection agency.

(8) "Inert ingredient" means an ingredient which is not active.

(9) "Limited-use pesticide" refers to any pesticide so designated by the commissioner.

(10) "Pest" means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.

(11) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.

(11.4) "Refill" means to transfer a pesticide for sale or distribution to a refillable container without changing the composition, formulation, or EPA registration number of the pesticide.

(11.5) "Refillable container" means a container that is intended to be filled more than once with a pesticide for sale or distribution.

(11.6) "Refiller" means a person that engages in refilling.

(12) "Restricted-use pesticide" means any pesticide designated as a restricted-use pesticide by the commissioner or the administrator of the environmental protection agency.

35-9-104. Exemptions. (1) The provisions of this article shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide or device within this state, if such carrier, upon request, permits the department of agriculture or its designated agent to copy all records showing the transactions regarding and the movement of the pesticide or device;

(b) Public officials of this state and the federal government engaged in the performance of their official duties except as specifically required by this article; or

(c) The manufacturer or shipper of a pesticide for experimental use only by or under the

supervision of any agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

(2) No pesticide or device shall be deemed in violation of this article when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all provisions of this article shall apply.

35-9-105. Exclusive jurisdiction. Jurisdiction in all matters pertaining to the distribution and sale of pesticides and devices, including removal of pesticide residue from containers prior to refilling or disposal, is vested exclusively in the department of agriculture.

35-9-106. Pesticide registration required - exemptions. (1) Except as provided in subsection (2) of this section, every pesticide that is distributed in this state shall be registered with the commissioner as provided by this article and any rules adopted under this article.

(2) The commissioner may exempt certain pesticides from the registration requirement consistent with the "Federal Insecticide, Fungicide, and Rodenticide Act", 7 U.S.C. sec. 136 et seq., as amended, and rules promulgated by the EPA under the "Federal Insecticide, Fungicide, and Rodenticide Act".

35-9-107. Pesticide registration - application - fees - expiration - rules. (1) Each applicant for registration of a pesticide shall file with the commissioner, in the form and manner the commissioner shall designate:

(a) The name and address of the applicant and, if it is different, the name and address of the person whose name will appear on the pesticide label;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for its use, including directions and precautions for use;

(d) A complete statement of each active ingredient and its percentage of the whole and, if requested by the commissioner, each inert ingredient and its percentage of the whole, which inert ingredient information shall be kept confidential as provided in section 35-9-109;

(e) If requested by the commissioner, a full description of all tests made and the results thereof, including, but not limited to, efficacy and hazard data upon which the claims are based;

(f) If requested by the commissioner, analytical standards and methods of analysis for each formulation of said pesticide and analytical methods for determining any residues of said pesticide at levels suspected harmful to plants, animals, or the environment; and

(g) Any other information required by the commissioner.

(2) Each applicant shall pay, at the time the application is submitted, an annual application fee in an amount to be determined by the commissioner.

(3) Repealed.

(4) (a) Repealed.

(b) On and after January 1, 2011, registration of a pesticide shall expire each year on a date specified by the commissioner by rule.

35-9-108. Registration - review and evaluation - criteria - state limited-use or restricted-use pesticide - cancellation - summary suspension. (1) The commissioner shall review the information provided with respect to each pesticide to determine if it meets the claims made for it and if the pesticide and its labeling and other materials comply with the provisions of this article and the rules and regulations adopted pursuant thereto.

(2) If the commissioner determines that the pesticide, labeling, or any other materials submitted with the application do not comply with the provisions of this article, he shall notify the applicant of the particulars in which there is a lack of compliance.

(3) The commissioner shall not register the pesticide until the applicant has made the necessary corrections or amendments as specified in the notice. The applicant may request a hearing to appeal an adverse determination pursuant to section 24-4-104, C.R.S.

(4) The commissioner shall consider the following criteria to determine if a pesticide qualifies for registration:

(a) Its composition is such as to warrant the proposed claims for it;

(b) When used in accordance with generally accepted practices, it will not cause unacceptable, adverse effects on the environment;

(c) Its labeling and any other material required to be submitted pursuant to section 35-9-107 comply with the provisions of this article and any rules and regulations adopted pursuant thereto.

(5) The commissioner, in his discretion, may, at the time of registration, designate the pesticide as a state restricted-use or limited-use pesticide and may restrict or limit the distribution or use of such pesticide. The commissioner may include in said restriction the time and conditions under which the pesticide may be distributed or used and may impose any or all of the following additional requirements:

(a) The pesticide shall be purchased, possessed, or used only under permit of the commissioner;

(b) The pesticide shall be purchased, possessed, or used only under the supervision of the commissioner; and

(c) The permittee shall maintain records as to the use of such pesticide in the form and manner the commissioner shall designate.

(6) After a pesticide is registered, the commissioner may cancel the registration of said pesticide pending notice and an opportunity for hearing if he determines that:

(a) The pesticide or its labeling or packaging does not comply with the provisions of this article or any rules or regulations adopted thereunder; or

(b) The pesticide registration has been cancelled or suspended by the EPA.

(7) If the commissioner has reasonable grounds to believe and finds that the registrant has been guilty of deliberate and willful violation of use or distribution restrictions imposed pursuant to this article or that the public health, safety, or welfare imperatively requires

emergency action, he may summarily suspend the registration pending proceedings for suspension or cancellation of the registration.

35-9-109. Confidentiality of inert ingredients. (1) Except as provided by this section, no inert ingredient information required by section 35-9-107 (1) (d) shall be released to any person by the commissioner.

(2) A registrant may authorize the commissioner to disclose any inert ingredient information required by section 35-9-107 by filing a signed authorization for release of information with the commissioner.

(3) When a treating physician or the poison control service provider selected pursuant to section 25-32-105, C.R.S., determines that a medical emergency exists and information submitted to the commissioner concerning inert ingredients pursuant to section 35-9-107 (1) (d) is necessary for emergency or first-aid treatment, the commissioner may immediately disclose the information necessary to that treating physician or to such poison control service provider. The commissioner shall require such treating physician or such poison control service provider to submit to the commissioner a statement of need for the information and a confidentiality agreement, in the form and manner the commissioner shall designate, as soon as circumstances permit.

(4) If the treating physician or the poison control service provider, after receiving confidential information regarding a pesticide, determines that there is a need to disclose the information to another health professional, including a physician or a toxicologist, due to an immediate health emergency, whether public or individual, the treating physician or the poison control service provider shall so inform the commissioner. The commissioner shall require confidentiality from any such health professional to whom the confidential information is disclosed.

35-9-110. Device registration - required. (1) Every device which is sold in this state and which is subject to the provisions of this article shall be registered with the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner shall designate the classes of devices which are subject to this article.

35-9-111. Device registration - application - fees - expiration - rules. (1) Each applicant for registration of a device shall file with the commissioner, in the form and manner he shall designate:

(a) The name and address of the applicant and, if different, the name and address of the person whose name will appear on the device;

(b) The name of the device;

(c) A complete copy of the labeling accompanying the device, including its packaging, directions, and precautions for use, and a statement of all claims being made for the device;

(d) If requested by the commissioner, a complete description of all tests made and the results thereof, including, but not limited to, efficiency and hazard data upon which the claims are based; and

(e) Any other information required by the commissioner.

(2) Each applicant shall pay, at the time the application is submitted, an annual application fee in an amount to be determined by the commissioner.

(3) Repealed.

(4) (a) Repealed.

(b) On and after January 1, 2011, registration of a device shall expire each year on a date specified by the commissioner by rule.

35-9-112. Renewal of pesticide and device registration. (1) A registrant of either a pesticide or a device shall submit a renewal application in the form and manner designated by the commissioner on or before the expiration date of the registration and shall pay a renewal fee in an amount determined by the commissioner.

(2) If an application for renewal of a pesticide or device registration is not received on or before the expiration date of the registration, the registration shall expire. An expired registration may be renewed within two years after the expiration date of the registration upon payment of all late fees and any other penalties or sums assessed pursuant to this article, if the applicant satisfies the commissioner that the requirements of section 35-9-107 have been met.

(3) The commissioner may require the applicant to submit any additional information he deems necessary, including, but not limited to:

(a) A full description of all tests made of the pesticide or device, and the results thereof, including, but not limited to, efficacy and hazard data upon which any claims for the pesticide or device are based; and

(b) With respect to any pesticide, the analytic standards and methods of analysis for each formulation of said pesticide and the analytic methods used to determine any residues of the said pesticide at levels suspected harmful to plants, animals, or the environment.

(4) The commissioner, at the time of such renewal, may, in his discretion, designate any such pesticide as a state restricted-use or limited-use pesticide in the same manner as set forth in section 35-9-108 (5).

35-9-113. Misbranded. (1) The term "misbranded" shall apply:

(a) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) To any pesticide:

(I) If it is an imitation of or is offered for sale under the name of another pesticide;

(II) If its labeling bears any reference to registration under the provisions of this article unless such reference is required by this article or rules or regulations adopted pursuant thereto;

(III) If any word, statement, or other information required by this article or rules adopted under this article to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(IV) If the label does not bear:

(A) The name and address of the manufacturer, registrant, or person for whom manufactured;

(B) The name, brand, or trademark under which the pesticide is sold;

(C) An ingredient statement on that part of the immediate container of the retail package which is presented or displayed under customary conditions of purchase and on the outside container or wrapper thereof, if there is one and if the ingredient statement on the immediate container cannot be clearly read through such outside container or wrapper; except that the commissioner may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(D) Directions for use and a warning or caution statement which are necessary and, if complied with, adequate to protect the public and to prevent injury to the public, including living people, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land;

(E) The weight or measure of the content, subject to the provisions of article 14 of this title; and

(F) Any registration number or establishment number issued by the EPA;

(V) If the pesticide contains any substance or substances in quantities highly toxic to people, unless the label bears, in addition to any other matter required by this article:

(A) The skull and crossbones;

(B) The word "poison" prominently in red on a background of distinctly contrasting color; and

(C) A statement of a practical treatment in case of poisoning by the pesticide;

(VI) If the pesticide container does not bear a label or if the label does not contain all the information required by this article or rules adopted pursuant thereto.

35-9-114. Pesticide dealer license - required. (1) Effective January 1, 1992, any person who acts as a pesticide dealer must possess a valid pesticide dealer license issued by the commissioner in accordance with this article and any rules or regulations adopted pursuant thereto.

(2) Each business location, including branch offices, and each business name must be licensed.

35-9-115. Pesticide dealer license - requirements - application - fees -

expiration. (1) Each applicant for a pesticide dealer license shall make application to the commissioner providing all information in the form and manner the commissioner shall designate.

(2) Each applicant for a pesticide dealer license shall pay a fee in an amount determined by the commissioner.

(3) Each pesticide dealer license shall expire on January 1 of each year.

(4) Each licensee shall report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

35-9-116. Renewal of pesticide dealer license. (1) Each pesticide dealer shall make an application to renew its license on or before the first working day of January for the year of renewal. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal of any pesticide dealer license is not received on or before the first working day of January for the year of renewal, a penalty fee of ten percent of the license fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If a pesticide dealer license renewal application is not received by February 1 of the renewal year, the license shall not be renewed and the dealer must apply for a new license.

35-9-117. Dealer and refiller records and reports - rules. (1) Licensed pesticide dealers shall keep records of designated sales in the form and manner designated by the commissioner.

(2) Such records shall be kept at the address designated on the license application or on a change report as required by section 35-9-115 (4) for a period of two years from the date of the sale of such pesticide.

(3) Licensees shall submit such additional reports as may be required by the commissioner.

(4) Refillers shall keep and maintain records in the form and manner specified by the commissioner by rule.

35-9-117.5. Refillable container residue removal requirements - rules. A refiller shall comply with refillable container residue removal requirements established by the commissioner by rule.

35-9-118. Powers and duties of the commissioner - rules. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) Declaring to be a pest any form of plant or animal life or virus which is injurious to plants, animals, or persons, or to land or any inanimate objects, or to the environment;

(b) Determining that certain pesticides are highly toxic to people; except that, in making this determination, the commissioner shall be guided by the criteria set forth in 40 CFR 156.62, as amended;

(c) (I) Adopting a list of restricted use pesticides or limited use pesticides for the state or designated areas within this state if the commissioner determines that such pesticides require rules restricting their distribution or use. The commissioner may include in the rule the time and conditions of distribution or use of such restricted use or limited use pesticides and may require that any such pesticide be purchased, possessed, or used only under permit of the commissioner and under his supervision. The commissioner may require all persons issued such permits to maintain records regarding the use of such pesticides.

(II) Nothing in this paragraph (c) shall require the commissioner to adopt a list of pesticides which are registered by the EPA pursuant to section 18 or 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended, or are restricted by the EPA pursuant to section 3 of said act.

(d) Determining standards for denaturing any pesticides, including, but not limited to, any arsenicals, fluorides, or fluosilicates by color, taste, odor, or form;

(e) The collection and examination of samples of pesticides or devices;

(f) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers; except that, with respect to the adoption of rules or regulations concerning the transportation of pesticides or the disposal of pesticides and their containers, such rules shall be promulgated in concert with, and shall not be duplicative of, rules adopted by the department of transportation and the department of public health and environment, respectively;

(g) Restricting or prohibiting the use of certain types or sizes of containers or packages for specific pesticides; except that the commissioner shall be guided by federal regulations concerning pesticide containers;

(h) Determining labeling requirements for all pesticides required to be registered under the provisions of this article and any rules or regulations adopted pursuant thereto;

(i) Classifying or subclassifying any pesticide registration, device registration, or pesticide dealer license.

(2.5) (a) The commissioner shall expedite, to the extent practicable and efficient, the processing of applications for the issuance of a special local needs registration made pursuant to section 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended.

(b) Notwithstanding section 35-9-113 (1) (b) (IV) (D), the commissioner shall not deny registration of a pesticide product pursuant to this article for which a special local needs registration has been issued pursuant to section 24 (c) of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended, for the reason that a contract between a grower or grower's group and a manufacturer or seller includes contractual provisions limiting liability of the manufacturer

or seller.

(3) (a) The commissioner shall promulgate rules, pursuant to article 4 of title 24, C.R.S., to determine the annual registration fee for each pesticide registered. For the purpose of funding the department of agriculture's groundwater protection efforts, any such fee shall include an increment as approved by the agricultural commission, which increment, along with the remainder of the fee, shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(b) The commissioner shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., to determine the amount of any licensing, renewal, or penalty fee authorized under this article.

(4) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivisions of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal registration and licensing agreements.

(4.5) Repealed.

(5) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(6) The commissioner is authorized to conduct hearings required under sections 35-9-121 and 35-9-122 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

35-9-119. Investigations - access - subpoena. (1) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(2) (a) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(I) To all buildings, yards, warehouses, and storage facilities in which any pesticides are kept, stored, handled, processed, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(II) To all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee or registrant.

35-9-120. Prohibited acts. (1) It is unlawful and a violation of this article for any person:

(a) To distribute within the state or deliver for transportation in intrastate commerce or transport between points within this state through any point outside this state any of the following:

(I) Any pesticide or device which has not been registered pursuant to the provisions of this article and any rules and regulations adopted pursuant thereto;

(II) Any pesticide or device if any of the claims made for it or any of the directions for its use or any other labeling differs from the representations made in connection with its registration or reregistration; except that, at the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(III) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container a label bearing the information required in this article and the rules adopted pursuant to this article, and, if there is an outside container or wrapper of such retail package through which the required information cannot be clearly read, there is an additional label on such container or wrapper containing such information;

(IV) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(V) Any pesticide in any container which violates rules adopted pursuant to this article or in any container which is unsafe due to damage;

(b) To distribute any pesticide to any person who is required by law or rules adopted under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered; except that, subject to conditions established by the commissioner, such permit may be obtained immediately prior to sale or delivery from any person so designated by the commissioner;

(c) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this article or rules adopted pursuant thereto, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article or the rules adopted pursuant thereto;

(d) To use or cause to be used any pesticide contrary to the rules and restrictions adopted pursuant to section 35-9-118 (2) (c);

(e) To use for the person's own advantage or to reveal, other than under the authority of section 35-9-109, any information relative to formulas of products acquired by authority of section 35-9-107 (1) (d);

(f) To perform any of the acts or to hold oneself out as being qualified to perform any of the acts for which licensure as a pesticide dealer is required without possessing a valid license to do so;

(g) (I) To make false, misleading, deceptive, or fraudulent representations through any media regarding:

(A) Pesticides or any aspect of their use, including, but not limited to, representations regarding their safety and effectiveness; or

(B) Devices or any aspect of their use, including, but not limited to, representations regarding their safety and effectiveness.

(II) It is a false representation to make claims as to the safety of any pesticide or device or their components or ingredients, including, but not limited to, such claims as "safe", "noninjurious", "harmless", or "nontoxic to humans and pets", with or without such qualifying phrases as "when used as directed" and "when properly applied".

(h) To refuse or neglect to comply with the provisions of this article;

(i) To refuse or neglect to comply with any rule adopted under this article, or any lawful order of the commissioner;

(j) To impersonate any state, county, or city inspector or official;

(j.5) To make a false statement in any invoice, record, report, or application required under this article or any rule promulgated under this article; or

(k) To make any fraudulent statements in any confidentiality agreement authorized pursuant to section 35-9-109 or to violate any of the provisions of said agreement.

(2) It is unlawful and a violation of this article for any pesticide dealer:

(a) To store pesticides in a manner inconsistent with labeling directions, except as provided by law, or in a fraudulent, faulty, unsafe, or negligent manner;

(b) To dispose of empty pesticide containers or unused materials inconsistent with labeling directions or in a negligent or unsafe manner;

(c) To permit the use of his license by persons to whom the license was not issued;

(d) To fail to maintain records and file reports as required by this article or rules adopted pursuant thereto;

(e) To fail to notify the commissioner of any change of address within thirty days after said change of address;

(f) To make a false statement of fact in any invoice or any record, report, or application required by this article or by any rule adopted pursuant thereto; or

(g) To sell a pesticide without having an appropriately licensed pest control consultant supervising said sale.

(2.5) It is unlawful and a violation of this article for any refiller:

(a) To fail to maintain any records or reports required under this article or any rule promulgated under this article;

(b) To make a false statement of fact in any record or report required by this article or any rule promulgated under this article; or

(c) To fail to clean a refillable container in accordance with residue removal procedures specified by the commissioner by rule.

(3) Any violation of paragraph (a), (c), (f), or (g) of subsection (1) of this section is a

deceptive trade practice and is subject to the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

35-9-121. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) (I) At any time after service of the order to cease and desist, the person may request, at his discretion, an immediate hearing or a hearing not more than ten days, excluding Saturdays, Sundays, and legal holidays, after such request to determine whether a violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(II) The registrant shall pay a penalty fee of one hundred dollars, in addition to any other assessed penalty, if the commissioner determines that the registrant has violated this article or any rule promulgated under this article after a hearing is held pursuant to subparagraph (I) of this paragraph (b).

(c) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(d) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(e) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(3) Whenever the commissioner possesses evidence satisfactory to him that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule adopted under 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.

35-9-122. Denial - suspension - revocation. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition, or deny, refuse to renew, suspend, or revoke any pesticide or device registration or any pesticide dealer license if the applicant, holder of the registration, or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to conduct regulated by this article;

(c) Has used fraud or deception in the procurement or attempted procurement of any registration or license authorized under this article, or the renewal thereof;

(d) Has failed to comply with a lawful order of the commissioner;

(e) Has had an equivalent registration or license cancelled, denied, revoked, or suspended by any authority;

(f) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that a consent decree entered into with the environmental protection agency shall not be considered a violation of such act unless an order from the regional administrator of the environmental protection agency or the consent decree shall specifically state that a violation has occurred;

(g) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(h) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee or holder of a registration from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) No licensee whose license has been revoked may apply or reapply for a license under this article until two years from the date of such revocation.

35-9-123. Embargo. (1) This section shall apply whenever the commissioner finds or has reasonable cause to believe that any pesticide or device:

(a) Is adulterated or misbranded;

(b) Has not been registered under the provisions of this article;

(c) Fails to bear on its label the information required by this article; or

(d) Is in violation of any provision of this article or any rule made pursuant to this article.

(2) If any of the conditions specified in subsection (1) of this section apply, the commissioner may affix to such pesticide or device a tag or other appropriate marking giving notice thereof and stating that the pesticide or device has been detained or embargoed and warning all persons not to remove or dispose of such pesticide or device by sale or otherwise until permission for removal or disposal is given by the commissioner or a court of competent jurisdiction.

(3) Any person who removes or disposes of such detained or embargoed pesticide or device by sale or otherwise, without prior permission, or removes or alters the tag or marking commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition, such person may be subjected to appropriate administrative proceedings.

(4) When a pesticide or device detained or embargoed under subsection (2) of this section has been found by the commissioner to be in violation of any provision of this article or any rule promulgated pursuant to this article and if the violation has not been resolved in thirty

days, the commissioner may petition a court of competent jurisdiction for a condemnation of such pesticide or device. When the commissioner has found that a pesticide or device so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(5) If the court finds that a detained or embargoed pesticide or device is in violation of this article or rules adopted thereunder, such pesticide or device shall after entry of the decree be destroyed at the expense of the owner, claimant, or custodian thereof, under the supervision of the commissioner, and all court costs and attorney fees and storage and other proper expenses shall be assessed against the owner, claimant, or custodian of such pesticide or device or his agent. However, if the adulteration or misbranding can be corrected by proper labeling or processing of the pesticide or device, the court, after entry of the decree and after such costs, attorney fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such pesticide or device be delivered to the owner, claimant, or custodian thereof for such labeling or processing under the supervision of the commissioner. The expense of such supervision shall be paid by the owner, claimant, or custodian. The pesticide or device shall be returned to the owner, claimant, or custodian of the pesticide or device on the representation to the court by the commissioner that the pesticide or device is no longer in violation of this article and that the expenses of such supervision have been paid.

35-9-124. Civil penalties. (1) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed five thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed 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 any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

35-9-125. Criminal penalties. (1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-9-120 (1) (a), (1) (b), (1) (e), (1) (f), (1) (j), (1) (k), or (2) (c).

(2) Any person who violates any of the provisions of section 35-9-120 (1) (a), (1) (b), (1) (c), (1) (e), (1) (f), (1) (h), (1) (j), (1) (k), (2) (a), (2) (b), (2) (c), or (2) (g) or 35-9-123 (3) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any person who violates section 35-9-120 (1) (g), (2) (d), or (2) (f) commits a class 2

misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) Any person who violates any of the provisions of section 35-9-120 (2) (e) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-9-126. Pesticide fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the pesticide fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 316, § 5, effective July 1, 2009.)

35-9-127. Advisory committee. An advisory committee, as established pursuant to article 10 of this title, shall assist the commissioner as set forth therein and in developing rules and regulations to carry out the provision of this article.

35-9-128. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to pesticides and conduct workshops for the purpose of informing pesticide dealers of new developments in the field of pesticides.

ARTICLE 10

Pesticide Applicators' Act

35-10-101. Short title. This article shall be known and may be cited as the "Pesticide Applicators' Act".

35-10-102. Legislative declaration. The general assembly hereby finds and declares that pesticides perform a valuable function in controlling insects, rodents, weeds, and other forms of life which may be injurious to crops, livestock, and other desirable forms of plant and animal life, to structures, and to individuals. The general assembly further finds and declares that pesticides contain toxic substances which may pose a serious risk to the public health and safety and that

regulation of pesticide use is necessary to prevent adverse effects on individuals and the environment.

35-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Certified operator" means an individual who applies any restricted-use pesticides for a commercial applicator, registered limited commercial applicator, or registered public applicator, without the on-site supervision of a qualified supervisor and that should be licensed pursuant to section 35-10-114.

(2) "Commercial applicator" means any person, other than a private applicator, who engages in the business of applying pesticides for hire or operating a device for hire that is designated by the commissioner as requiring licensure for use under this article.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Department" means the department of agriculture.

(5) "Device" means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.

(6) "EPA" means the United States environmental protection agency.

(7) "General-use pesticide" means any pesticide so designated by the commissioner or the administrator of the EPA.

(8) "Limited commercial applicator" means any person engaged in applying pesticides in the course of conducting a business other than the production of any agricultural commodity; except that such application shall be only in or on property owned or leased by the person or the person's employer.

(8.5) "Local government" means a county, home rule county, city, town, city and county, home rule city, special district, or other political subdivision of the state.

(9) "Pest" means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.

(10) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.

(11) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof; except that "plant regulator" shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, "plant regulator" shall not be required to include any of those nutrient mixtures or soil amendments which are commonly

known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, which are not for pest destruction and which are nontoxic and nonpoisonous in the undiluted packaged concentration.

(11.5) "Private applicator" means any person who uses or supervises the use of a pesticide for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(12) "Public applicator" means any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision which applies pesticides.

(13) "Qualified supervisor" means any individual who, without supervision, evaluates pest problems or recommends pest controls using pesticides or devices that require licensure under this article for use; mixes, loads, or applies any pesticide; sells pesticide application services; operates devices that require licensure under this article for use; or supervises others in any of these functions.

(14) "Restricted-use pesticide" means any pesticide designated as a restricted- or limited-use pesticide by the commissioner or as a restricted-use pesticide by the administrator of the EPA.

(15) (a) "Technician" means any individual who:

(I) Uses, under the supervision of a qualified supervisor, a device that requires licensure under this article for use;

(II) Mixes, loads, or applies general-use pesticides under the supervision of a qualified supervisor, mixes or loads restricted-use pesticides under the supervision of a qualified supervisor, or applies restricted-use pesticides under the on-site supervision of a qualified supervisor; or

(III) Evaluates pest problems, recommends products or treatments for pest problems, or sells application services under the supervision of a qualified supervisor.

(b) "Technician" does not include any individual whose duties are solely clerical or janitorial or otherwise completely disassociated from pest control.

(16) "Under the on-site supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor who is present at the work site at the time the work is being performed.

(17) "Under the supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor, even if the qualified supervisor is not physically present at the work site at the time the work is performed.

(18) "Use" means all aspects of the handling of pesticides, including but not limited to the mixing, loading, application or administration, spill control, and disposal of a pesticide or its container.

35-10-104. Scope of article. (1) Any person who uses or supervises the use of any pesticide or device in the state of Colorado shall be subject to this article and to any rules adopted

pursuant thereto.

(2) (Deleted by amendment, L. 2006, p. 1260, § 2, effective January 1, 2007.)

35-10-105. Commercial applicator - business license required. Any person acting as a commercial applicator must possess a valid commercial applicator business license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto. A commercial applicator business license may only be issued for the class or subclass of pesticide application in which the qualified supervisor employed or otherwise retained by the commercial applicator is licensed.

35-10-106. Commercial applicator - license requirements - application - fees. (1) As requisites for licensure, the applicant for a commercial applicator business license shall:

(a) Obtain liability insurance in the minimum amount of four hundred thousand dollars with the provision that such policy shall not be cancelled unless written notice is provided to the commissioner at least ten days prior to such cancellation; except that liability insurance policies containing a so-called "pollution exclusion" shall satisfy this paragraph (a);

(b) Employ or secure the services by documented agreement of a qualified supervisor who is licensed in the class or subclass of pesticide application or device use performed by the business;

(c) Provide verifiable training to all technicians in his employ according to standards adopted by the commissioner;

(d) Identify all pesticide application equipment in the form and manner prescribed by the commissioner;

(e) If it engages in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for a commercial applicator business license shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that the applicant has complied with subsection (1) of this section.

(3) (a) If a commercial applicator operates under more than one business name from a single location, the name of each such business providing services related to pesticide application shall be listed with the commissioner in the form and manner he shall designate. The commissioner may require that a separate fee be paid for each business name so listed.

(b) No additional commercial applicator business license shall be required for such additional business names.

(c) If a commercial applicator operates under more than one business name from a single location, the applicator must maintain separate pesticide application records pursuant to section 35-10-111 and separate business records for each such business name.

(4) Each applicant for a commercial applicator business license shall pay a license fee in

an amount determined by the commissioner.

(5) The expiration date of each commercial applicator business license shall be determined by the commissioner, but the duration of such license shall not exceed three years.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

35-10-107. Commercial applicator business license - renewals. (1) Each commercial applicator shall make an application to renew its business license on or before the expiration date of the license. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If the application and fee for renewal are not postmarked on or before the thirtieth day following the expiration date of the license, the business license shall not be renewed, and the commercial applicator shall apply for a new license.

35-10-108. Commercial applicators - invoice notice. Commercial applicators shall include a statement in conspicuous type on each customer invoice that indicates that commercial applicators are licensed by the department. Said statement shall be exactly prescribed by rule adopted by the commissioner.

35-10-109. Limited commercial and public applicators - no business license required. No business license shall be required for limited commercial or public applicators; except that the commissioner shall require such applicators that apply restricted-use pesticides to register with the department. The commissioner shall determine the form and manner of the registration, as well as the amount of any administrative fees associated with such registration. A limited commercial or public applicator may register voluntarily, regardless of whether such applicator applies restricted-use pesticides, by submitting a request in the form and manner specified by the commissioner.

35-10-110. Registered limited commercial and registered public applicators - requirements for operation. (1) For each class or subclass of pesticide application a registered limited commercial or registered public applicator applies, the applicator shall employ at least one qualified supervisor who is licensed in that class or subclass of pesticide application or shall secure the services of such qualified supervisor by documented agreement.

(2) Notwithstanding subsection (1) of this section, no registered public applicator shall be required to pay licensing or certification fees for any qualified supervisor or certified operator

whom the applicator may employ.

(3) Every registered limited commercial or registered public applicator shall provide verifiable training to all technicians in its employ according to standards adopted by the commissioner. Such standards shall be identical to those adopted by the commissioner with respect to commercial applicators pursuant to section 35-10-106 (1) (c).

(4) If the commissioner, pursuant to section 35-10-109, establishes a registry of limited commercial and public applicators, he or she may also require that each registered applicator report, in the form and manner the commissioner shall designate, any change to the information provided by such applicator to the registry or in any such reports previously submitted, within fifteen days after said change.

35-10-111. Record-keeping requirements. Each commercial, registered limited commercial, licensed private, and registered public applicator shall keep and maintain records of each pesticide application in the form and manner designated by the commissioner. Such records shall be retained for a period of three years after the date of the pesticide application and shall be kept at the address specified in the application for the commercial applicator's business license or, in the case of registered limited commercial and registered public applicators, at the address specified in the registry authorized in section 35-10-109 or, in the case of licensed private applicators, at the address of record on file with the commissioner.

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption - rules. (1) (a) The commissioner shall promulgate rules for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry if they can provide proof of medical justification by a physician licensed in Colorado in the form and manner prescribed by the commissioner. The proof of medical justification shall be updated every two years. The registry shall be updated at least annually, and the published registry shall be made readily accessible, in a form and manner prescribed by the commissioner, to all commercial, registered limited commercial, and registered public applicators on record with the commissioner.

(b) The commissioner shall provide standardized notification signs to any person accepted for the registry for such person to post on his property. These signs shall be designed, manufactured, and distributed solely by the department.

(c) (I) A commercial, registered limited commercial, or registered public applicator, prior to applying a pesticide in any turf or ornamental category, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any pesticide-sensitive person whose name is on the published registry and:

(A) Who resides on the property to be treated;

(B) Resides on property that abuts the property to be treated; or

(C) Resides in a multi-unit dwelling that abuts a common area to be treated.

(II) If two property sites would be considered to be abutting but for the fact that such sites are separated by an alley, for the purposes of this section such sites are deemed to be

abutting.

(d) A commercial, registered limited commercial, or registered public applicator in the wood-destroying organism pest control, residential or commercial pest control, or interior plant pest control categories, prior to making a structural pesticide application to a multi-unit dwelling, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any pesticide-sensitive person whose name is on the published registry and who resides at that multi-unit dwelling.

(e) The commissioner may establish rules to further clarify the circumstances and manner in which notice shall be given to pesticide-sensitive persons.

(2) (a) Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any turf or ornamental category shall, at the time of application, post a sign or signs notifying the public of the application. Such signs shall be posted at any conspicuous point or points of entry to the property receiving the application.

(b) Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any aquatic category shall post, at the time of application, a sign or signs notifying the public of the application. Such signs shall be posted in the manner designated by the commissioner through the adoption of rules pursuant to article 4 of title 24, C.R.S.

(c) The notice-of-application signs specified in paragraphs (a) and (b) of this subsection (2) shall be water resistant and shall measure at least four inches in height and five inches in width. Each sign shall contain the following information in black lettering and symbols on a bright yellow background:

(I) The word "WARNING", in at least sixty-point bold-faced type;

(II) The words "PESTICIDES APPLIED", in at least twenty-four-point bold-faced type;

(III) The symbol of a circle at least two inches in diameter with a diagonal slash over an adult, child, and dog; and

(IV) The name of the commercial, registered limited commercial, or registered public applicator that made the application, in at least eighteen-point bold-faced type.

(d) If a commercial or registered limited commercial applicator makes a pesticide application on a commercial property site pursuant to paragraph (a) or (b) of this subsection (2) and an owner of the site or an agent of an owner of the site is not present at the site, then, in addition to the information required by paragraph (c) of this subsection (2), the notice-of-application signs posted by the applicator at the site shall also contain the following information in black lettering and symbols on a bright yellow background in at least eighteen-point bold-faced type:

(I) The telephone number of the applicator;

(II) The name of the pesticide applied; and

(III) The date the pesticide was applied.

(3) No county, city and county, municipality, home rule county, home rule city and county, or home rule municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, municipality, home rule county, home rule city and county, and home rule municipality shall retain the authority to impose any notification requirements upon

private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, municipality, home rule county, home rule city and county, or home rule municipality on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

35-10-112.5. Statewide uniformity of pesticide control and regulation - exceptions. (1) The general assembly hereby determines that the citizens of this state benefit from a system of safe, effective, and scientifically sound pesticide regulation. The general assembly further finds that a system of pesticide regulation that is consistent and coordinated, that creates statewide uniform standards, and that conforms with both state and federal technical standards and requirements is essential to the public health, safety, and welfare, and finds that local regulation of pesticides that is inconsistent with and adopts different standards from federal and state requirements does not assist in achieving these benefits. The general assembly also finds and declares that, through statute and regulation, the state has created a system of pesticide regulation based upon scientific standards that protects the citizens of this state. The general assembly expressly finds and declares that pesticide regulation is a matter of statewide concern.

(2) No local government shall adopt or continue in effect any ordinance, rule, resolution, charter provision, or statute regarding the use of any pesticide by persons regulated by this article or federal law and pertaining to:

(a) Any labeling or registration requirements for pesticides, including requirements regarding the name of the product, the name and address of the manufacturer, and any applicable registration numbers;

(b) Use and application of pesticides by persons regulated by this article or federal law, including, but not limited to, directions for use, classification of pesticides as general or restricted use, mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker specifications, container storage and disposal, required intervals between application and harvest of food or feed crops, rotational crop restrictions, and warnings against use on certain crops, animals, or objects or against use in or adjacent to certain areas;

(c) Except as specifically provided in this article, any warnings and precautionary statements, notifications, or statements of practical treatment; or

(d) Licensure, training, or certification requirements for persons regulated under this article, including any insurance and record-keeping requirements.

(3) (a) Nothing in this article may be construed to limit the authority of a local government as defined by state law to:

(I) Zone for the sale or storage of any pesticide, provide or designate sites for disposal of any pesticide or pesticide container, adopt or enforce building and fire code requirements, regulate the transportation of pesticides consistently with and in no more strict of a manner than state and federal law, adopt regulations pursuant to a storm water management program that is consistent with federal or state law, or adopt regulations to protect surface or groundwater

drinking water supplies consistent with state or federal law concerning the protection of drinking water supplies;

(II) Take any action specifically authorized or required by any federal or state law or regulation with respect to pesticides, or to take any action otherwise prohibited by this article in order to comply with any specific federal or state requirement or in order to avoid a fine or other penalty under federal or state law;

(III) Regulate the use of pesticides on property owned or leased by the local government;

(IV) Issue local general occupational licenses to persons regulated by this article.

(b) This subsection (3) may not be construed to authorize a local government to utilize the authority to zone, to provide or designate disposal sites, to adopt and enforce building and fire codes, or to regulate the transportation of pesticides as described in paragraph (a) of this subsection (3) to directly or indirectly regulate or prohibit the application of pesticides by persons regulated by this article or by federal law.

(c) Nothing in this article shall be construed to be an implicit grant of authority to a local government that is not otherwise granted by state law.

(4) Any local government that promulgates an ordinance that concerns pesticides, that is promulgated pursuant to section 31-15-707 (1) (b), C.R.S., or that is promulgated pursuant to any authority described in paragraph (a) of subsection (3) of this section concerning pesticides shall file the following with the department of agriculture:

(a) A certified copy of the ordinance; and

(b) A map or legal description of the geographic area that the local government intends to regulate under the ordinance.

35-10-113. Qualified supervisor - license required. Any individual acting as a qualified supervisor must possess a valid qualified supervisor license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-114. Certified operator - license required. Any individual acting as a certified operator shall possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-114.5. Private applicator - license required. Any private applicator who uses or supervises the use of a restricted-use pesticide shall possess a valid private applicator license issued by the commissioner in accordance with this article and any rules adopted pursuant to this article. An unlicensed private applicator may use a restricted-use pesticide under the supervision of a licensed private applicator for uses authorized by the licensed private applicator's license.

35-10-114.7. Licensed private applicators - rules - repeal. (Repealed)

35-10-115. Qualified supervisor, certified operator, and private applicator licenses - examination - application - fees. (1) Each applicant for a qualified supervisor, certified operator, or private applicator license shall:

(a) Pass a written examination in each class or subclass of pesticide application, or device use, in which he or she wishes to be licensed;

(b) Possess the degree of experience and any other qualifications which may be required by the commissioner for licensure under this section; and

(c) If he wishes to be licensed to engage in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for licensure under this section shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that such applicant has complied with subsection (1) of this section.

(3) Each licensee shall be required to report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in any such reports previously submitted, within fifteen days of such change.

(4) Each applicant for a license issued under this section shall pay a license fee in an amount determined by the commissioner, after review by the advisory committee created in section 35-10-125.

(5) The commissioner shall issue licenses to qualified private applicators on and after January 1, 2007. A license issued in Colorado by the United States environmental protection agency, issued to a private applicator before January 1, 2007, shall remain valid for purposes of this article through the expiration date of such license.

35-10-116. Qualified supervisor and certified operator licenses - expiration - renewal of licenses - reinstatement. (1) Licenses issued pursuant to section 35-10-115 shall be valid for a period determined by the commissioner, but the duration of such license shall not exceed three years.

(2) A licensee licensed pursuant to section 35-10-115 may have the option to apply to renew a license without further examination if he has completed, within the previous three years, the competency requirements established by the commissioner.

(3) A licensee shall submit a renewal application in the form and manner designated by the commissioner on or before the termination date of such license and shall pay a renewal fee in an amount determined by the commissioner.

(4) If the application for renewal of any license issued pursuant to section 35-10-115 is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total renewal fee is paid.

(5) If the application and fee for renewal of any license issued pursuant to section 35-10-115 are not postmarked on or before the thirtieth day following the expiration date of the license,

the license shall not be renewed and the licensee shall apply for a new license.

(6) Notwithstanding subsection (5) of this section, any license issued pursuant to this section that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

(7) Licenses not reinstated within one hundred eighty days after the expiration date shall not be reinstated. The former holder of such a license who wishes to be licensed shall apply for a new license.

35-10-117. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

(a) To perform any of the acts for which licensure as a commercial applicator, qualified supervisor, certified operator, or private applicator is required without possessing a valid license to do so;

(b) To hold oneself out as being so qualified to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts;

(c) To solicit, advertise, or offer to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts; to act as an agent for any principal to solicit from any person the purchase of pesticide application or pest control services from the principal when the principal does not possess a valid license to perform the services being offered; or to enter into a contract to perform such services;

(d) To refuse to comply with a cease-and-desist order issued pursuant to section 35-10-120;

(e) To refuse or fail to comply with the provisions of this article;

(f) (I) To make false, misleading, deceptive, or fraudulent representations.

(II) No claims of absolute safety shall be made for any product regulated by this article.

(g) To impersonate any state, county, city and county, or municipal official or inspector;

(h) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner;

(i) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labeling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner; or

(j) To refuse or fail to comply with any requirements of the federal worker protection standards set forth in 40 CFR part 170.

(2) It is unlawful and a violation of this article for any person acting as a commercial, registered limited commercial, or registered public applicator, or as a qualified supervisor or

certified operator:

(a) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labeling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner;

(b) To use or recommend the use of any pesticide not registered with the department pursuant to article 9 of this title or to use or recommend the use of a pesticide in any manner inconsistent with the restrictions of the commissioner or the administrator;

(b.5) To use or recommend the use of any device that requires licensure for use in any manner inconsistent with the restrictions of the commissioner or the administrator;

(c) To use any device that requires licensure for use or any pesticide, or to direct or recommend such use, without providing appropriate supervision, including, but not limited to, the application of any pesticide without providing the supervision of a qualified supervisor licensed in that class or subclass of pesticide application;

(d) To maintain or supervise the maintenance of any device that requires licensure for use or pesticide application equipment, including, but not limited to, loading pumps, hoses, or metering devices, in an unsafe or negligent manner;

(e) To fail to provide the notification required pursuant to section 35-10-112 (1) (c);

(f) To make false or misleading representations or statements of fact in any application, record, or report required by this article or any rules or regulations adopted pursuant thereto;

(g) To fail to maintain or submit any records or reports required by this article or any rules or regulations adopted pursuant thereto.

(3) It is unlawful and a violation of this article for any commercial applicator, qualified supervisor, or certified operator:

(a) To permit the use of his license by any other person;

(b) To use or supervise or recommend the use of any device that requires licensure for use, or any pesticide, which, including but not limited to generally accepted standards of practice, would be ineffective or inappropriate for the pest problem being treated;

(c) (I) To use any device that requires licensure for use or apply any pesticide or to recommend or supervise such acts in any manner that fails to meet generally accepted standards for such use or application except as provided by subparagraph (II) of this paragraph (c).

(II) If a commercial applicator receives instructions from a party contracting for such applicator's services and the commercial applicator knows or should know that using the device or applying the pesticide in the manner specified by the contracting party may not or does not meet generally accepted standards for such use or application, the commercial applicator must so inform the contracting party. If the contracting party, after being so advised, continues to require the commercial applicator to perform the application or use the device according to these instructions, the commercial applicator may follow these instructions for such application or use unless such application or use would violate any of the directions contained on the pesticide or the device or the labeling of either or would violate any provision of this article or article 9 of this title or any rule or regulation adopted pursuant to this article or article 9 of this title. If the commercial applicator complies with these requirements, the party contracting for such application of any pesticide or use of any device shall have no cause of action for damages

against the commercial applicator if the application or use causes death or injury to the contracting party or his property or is unsatisfactory in its result, unless the contracting party establishes, by a preponderance of the evidence, that such death, injury, or unsatisfactory result resulted from negligence or an intentional act not encompassed within or necessitated by the instructions provided by such contracting party.

(4) It is unlawful and a violation of this article for any commercial applicator:

(a) To operate any device that requires licensure for use, or to apply any pesticide, if the insurance required by section 35-10-106 (1) (a) is not in full force and effect at the time of such use or application, or if it does not have on file with the department, in the form and manner designated by the commissioner, verification that said insurance is in full force and effect;

(b) To fail to provide any customer with any information required to be so provided by this article or by any rules and regulations adopted pursuant thereto.

(5) It is unlawful and a violation of this article for any employee or official of the department to disclose or use for his own advantage any information derived from any applications, reports, or records, including medical records, submitted to the department pursuant to this article or to reveal such information to anyone except authorized persons, who may include officials or employees of the state, the federal government, the courts of this or other states, and physicians.

(6) The failure by any person to comply with the provisions of subsection (1) (a), (1) (b), (1) (c), (1) (f), or (4) (b) of this section is a deceptive trade practice and is subject to the protections of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

35-10-117.5. Unlawful acts for licensed private applicators. (1) It is unlawful and a violation of this article for a licensed private applicator:

(a) To make false or misleading representations or statements of fact in any license, application, record, or report required by this article or any rules adopted pursuant thereto;

(b) To fail to maintain or submit any records or reports required by this article or any rules adopted pursuant thereto; or

(c) To permit the use of a private applicator license by any person other than the person to whom the license was issued.

35-10-118. Powers and duties of the commissioner. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) The regulation of all aspects of pesticide application, including, but not limited to, the storage, use, application, and disposal of any pesticide or device that requires licensure for use by any person subject to this article;

(b) The establishment of qualifications for any applicant and standards of practice for any

of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(c) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition, other discipline through stipulation, or the restriction, probation, denial, suspension, or revocation of any license authorized under this article;

(d) The content of the examination required for the administration of this article and the amount of any examination and examination grading fee.

(3) The commissioner shall, for examinations required for any license under this article:

(a) Develop each such examination, or adopt a commercially standardized examination, required for the administration of this article and the amount of any examination and examination grading fee;

(b) Establish a passing score for each examination that reflects a minimum level of competency in the class or subclass for which the applicant is being tested;

(c) Administer each such examination or contract with a person, corporation, or other entity to administer each such examination.

(4) The commissioner shall establish standards and procedures to issue a license to any person who possesses a valid license from another jurisdiction, where the qualifications for that license are substantially similar to those adopted for a comparable license authorized under this article.

(5) The commissioner shall establish any competency requirements and standards for any individuals licensed under section 35-10-115.

(6) The commissioner is authorized to conduct hearings required under sections 35-10-119 and 35-10-120 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(7) The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing the article and any rules and regulations adopted pursuant thereto.

(8) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal licensing agreements.

(8.5) (a) The department may provide the following only to the extent of funding received pursuant to paragraph (b) of this subsection (8.5):

(I) Education programs for urban residents regarding the proper use of pesticides and regarding the dangers of misuse or overuse of pesticides; and

(II) Education programs for firefighters regarding precautions and procedures that are necessary when fighting fires that involve or are in the vicinity of pesticides or fertilizers.

(b) The commissioner may accept gifts, grants, and donations of any kind from any private or public source for the purposes of this subsection (8.5). The commissioner shall transmit all such gifts, grants, or donations to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(9) The commissioner is authorized to promulgate rules and regulations to comply with

the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that such rules and regulations shall not contravene any provision of this article, article 9 of this title, or any other provision of state law.

(9.5) The commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the commissioner, may constitute a significant risk to public health or safety.

(10) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

35-10-119. Inspections - investigations - access - subpoena. (1) The commissioner shall provide for the inspection and analysis of pesticides being used and for the inspection of equipment, devices that require licensure for use, or apparatus used for the application of pesticides, and the commissioner may require proper repairs or other changes before further use.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(4) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To any land, water, or structures thereon in which any devices that require licensure for use, pesticides, containers, rinsates, or other related materials are or have been kept, used, stored, handled, processed, disposed of, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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.

35-10-120. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any

provision of this article or any rule made 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 made 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 or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to him indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

35-10-121. Disciplinary actions - denial of license. (1) The commissioner may issue letters of admonition, impose other discipline through stipulation, or restrict, impose probation on, deny, suspend, refuse to renew, or revoke any license or registration authorized under this article if the applicant, registrant, or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has had an equivalent license or registration denied, revoked, or suspended by any authority;

(d) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended; except that a consent decree entered into with the EPA shall not be considered a violation of such act unless an order from the regional administrator of the EPA or the consent decree shall specifically state that a violation has occurred;

(e) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(f) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee, registrant, or certified person from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(2.5) Proceedings under this section shall be conducted pursuant to article 4 of title 24,

C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to such proceedings in cases of deliberate or willful violation; in cases of violation of labeling directions or requirements; or in cases in which the actions or omissions of the licensee or registrant in violation of this article have caused or threatened to cause substantial danger or harm to public health and safety, to property, or to the environment, as defined by the commissioner pursuant to section 35-10-118 (2). In such cases, no revocation, suspension, limitation, or modification of a license or registration shall be lawful unless the commissioner has given the licensee or registrant notice in writing regarding any facts or conduct that may warrant such action and has afforded the licensee or registrant opportunity to submit written data, views, and arguments with respect to such facts or conduct.

(3) No licensee or registrant whose license or registration has been revoked may apply or reapply for any license or registration under this article until two years after the date of such revocation.

(4) Any person aggrieved by a final disciplinary action taken by the commissioner may appeal such action to the Colorado court of appeals in accordance with section 24-4-106 (11), C.R.S.

35-10-122. Civil penalties. (1) Any person who violates any provision of this article or any rule or regulation 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 one thousand 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, rule, or regulation for the second time.

(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 any 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 any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the ability of the person charged to stay in business.

35-10-123. Criminal penalties. (1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (g), and (5).

(2) Any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (g), (1) (i), (1) (j), (2) (a), (2) (b), (2) (c), (2) (d), (3) (a), or (4) (a) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any person who violates any of the provisions of section 35-10-117 (1) (f), (2) (f), (2) (g), (4) (b), and (5) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-10-124. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to the use and handling of pesticides and conduct workshops for the purpose of informing the pesticide applicators of new developments in the field of pesticides.

35-10-125. Advisory committee - sunset review. (1) The state agricultural commission created by section 35-1-105 shall appoint an advisory committee of eleven members to assist the commissioner in promulgating rules and regulations to carry out the provisions of this article.

(2) The committee shall consist of the following members:

(a) A formulator, or his Colorado representative, actively engaged in the sale of pesticides in Colorado;

(b) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of agricultural crop pests;

(c) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of turf or ornamental pests;

(d) A commercial applicator, licensed under this article, who is actively engaged in the application of pesticides for the control of structural pests;

(e) A qualified supervisor, employed by a limited commercial applicator registered under this article, who is actively engaged in the application of pesticides;

(f) Two representatives from public applicators registered under this article, each of whom shall be an elected official or a designee thereof;

(g) A representative from Colorado state university agricultural experiment station or extension service;

(h) A representative from the Colorado department of public health and environment; and

(i) Two representatives from the general public, one of whom is actively engaged in agricultural production.

(3) All members of the advisory committee, with the exception of the formulator, shall be residents of this state.

(4) The appointment of the formulator, the commercial applicator engaged in the control of agricultural crop pests, and one of the representatives from a registered public applicator shall expire on January 1, 1991; and the appointment of the commercial applicator engaged in the control of turf or ornamental pests, the representative from the general public who is actively engaged in agricultural production, the qualified supervisor employed by a registered limited commercial applicator, and the representative from the department of health shall expire on January 1, 1992. The initial appointment of all other members shall be for a term of three years. Thereafter, the appointment of each member to the committee shall be for a term of three years.

(5) Members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such committee.

(6) Repealed.

35-10-126. Transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

35-10-127. Deadline for promulgation of rules and regulations for implementation of article, as amended. (Repealed)

35-10-128. Repeal of article - termination of functions. Effective July 1, 2015, this article is repealed. The regulatory functions of the commissioner of agriculture shall also terminate on July 1, 2015. Prior to such repeal and termination, the regulatory functions shall be reviewed as provided for in section 24-34-104, C.R.S., and, as part of such review, the department of regulatory agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1) (b), C.R.S., or under the police power of any political subdivision of the state.

ARTICLE 11

Colorado Chemigation Act

35-11-101. Short title. This article shall be known and may be cited as the "Colorado Chemigation Act".

35-11-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Chemical" means any fertilizer or pesticide.

(2) "Chemigation" means any process whereby chemicals are applied to land or crops in or with water through a closed irrigation system. "Chemigation" does not mean any process whereby chemicals are applied to land or crops in or with water pumped from a stock watering well, a domestic well with a diameter of two inches or less, or from a tailwater collection pond.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Contamination" means the degradation of natural water quality as a result of man's activities.

(5) "Department" means the department of agriculture.

(6) "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients.

(7) "Groundwater" means any water not visible on the surface of the ground under natural conditions.

(8) "Irrigation system" means any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of groundwater or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. "Irrigation system" does not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source and does not include stock water wells, any domestic well with a diameter of two inches or less, or a system which includes a tailwater collection pond.

(9) "Open discharge system" means a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

(10) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.

(11) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(12) "Pollution" means the man-made or man-induced alteration of the physical, chemical, biological, or radiological integrity of water.

35-11-103. Chemigation permit. (1) On and after January 1, 1990, no person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a chemigation permit from the department.

(2) On and after July 1, 1987, a person may obtain, pursuant to section 35-11-105, a provisional chemigation permit from the department for the application of chemicals to land or crops through the use of chemigation.

(3) Nothing in this section shall require a person to obtain a chemigation permit to pump or divert water mixed with any chemical to or through an open discharge system.

35-11-104. Rules and regulations. (1) The commissioner shall promulgate rules and regulations pursuant to section 24-4-103, C.R.S., to:

(a) Administer the chemigation permit program;

(b) Establish equipment or performance standards and installation requirements;

(c) Establish fees for the direct and indirect costs of administering the provisions of this article; and

(d) Establish criteria for the entry of inspectors upon lands for purposes of conducting inspections.

(2) The commissioner shall immediately notify the director of the department of public health and environment of the summary suspension of any permit, of the denial, suspension or revocation of a permit, including the specific reason thereof; and the commissioner shall also notify the director of the department of public health and environment of any criminal or civil proceeding brought pursuant to this article. The notice required herein shall contain the legal description of the location of the well which is the subject of the commissioner's action.

35-11-105. Issuance of provisional chemigation permit - fees. (1) On and after July 1, 1987, and before January 1, 1990, any person who intends to utilize chemigation may, before commencing, file with the department an application for a provisional chemigation permit for each irrigation system utilizing chemigation. Such application shall be on forms provided by the department.

(2) The applicant for a provisional chemigation permit shall, on the application, certify that the irrigation system for which he is seeking a permit includes properly installed and functioning equipment in compliance with section 35-11-107.

(3) Upon receipt of a complete application for a provisional chemigation permit, the department may issue a provisional chemigation permit to the applicant for a specific irrigation system. The permit holder shall attach, in a prominent place, the permit to the irrigation system for which the permit was issued.

(4) The fee for a provisional chemigation permit and the annual renewal permit shall be established by rule and regulation of the commissioner and shall reflect all direct and indirect costs for the administration of this article but shall not exceed fifty dollars. The inspection fee for a provisional chemigation permit shall be established by the commissioner and shall reflect all direct and indirect costs of the inspection but shall not exceed forty dollars. A provisional chemigation permit shall expire on March 31 of the year subsequent to the date the provisional chemigation permit was issued. The reinstatement fee for an expired provisional chemigation permit shall be double the amount of the fee for a provisional chemigation permit. A provisional chemigation permit shall not be assignable. The amount of indirect costs assessed under this subsection (4) shall be based on the number of FTE in the program expressed as a percentage of the total FTE in the department. In no case shall the indirect costs assessment exceed this percentage.

(5) In the event that a ground water management district contracts with the department for the enforcement of the provisions of this article pursuant to the provisions of section 35-11-113, the amount of the provisional fee and the annual renewal fee for persons utilizing chemigation within such district shall be in an amount up to twenty dollars, as established by the commissioner. There shall be no state inspection fee for inspections made within such district.

35-11-106. Issuance of chemigation permit - fees. (1) On and after January 1, 1990, any person who intends to utilize chemigation shall, before commencing, file with the department an application for a chemigation permit for each irrigation system utilizing chemigation. Such application shall be on forms provided by the department.

(2) The applicant for a chemigation permit shall, on the application, certify that the irrigation system for which he is seeking a permit includes properly installed and functioning equipment in compliance with the provisions of section 35-11-107. Upon receipt of a permit, the permit holder shall attach, in a prominent place, the permit to the irrigation system for which the permit was issued.

(3) The fee for a chemigation permit and the annual renewal fee shall be established by the commissioner through rules. Such fees shall reflect all direct and indirect costs of the department for the administration of this article. The inspection fee shall be established by rule of the commissioner and shall reflect all direct and indirect costs for the inspection. A chemigation permit shall expire on March 31 of the year subsequent to the date the chemigation permit was issued. The reinstatement fee for an expired chemigation permit shall be double the amount of the fee for a chemigation permit. The reinstatement fee shall not be assessed to any person who filed an affidavit in lieu of a permit for the year prior to the year such person seeks a permit. A chemigation permit shall not be assignable. The amount of indirect costs assessed under this subsection (3) shall:

(a) Repealed.

(b) Effective July 1, 2006, be based on the number of FTE in the program expressed as a percentage of the total FTE in the department. In no case shall the indirect costs assessment exceed this percentage.

(4) In the event that a ground water management district contracts with the department for the enforcement of the provisions of this article pursuant to the provisions of section 35-11-113, the amount of the fee and annual renewal fee, for persons utilizing chemigation within such district, shall be in an amount established by the commissioner. There shall be no state inspection fee for inspections made within such district.

35-11-107. Equipment and installation requirements. (1) An irrigation system utilizing chemigation on and after January 1, 1990, or an irrigation system which has been issued a provisional chemigation permit shall have, as component parts thereof, a properly installed and functioning:

(a) Backflow prevention check valve and vacuum relief valve between the main check valve and the irrigation pump;

(b) Inspection port to check the performance of the check valve on the irrigation pipeline;

(c) Automatic low-pressure drain placed between the main check valve and the irrigation pump so that a chemical will drain away from the source of water supply;

(d) Check valve in the chemical injection line; and

(e) Simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate.

(2) An irrigation system which would otherwise be subject to all of the requirements of subsection (1) of this section may be exempted from one or more of such requirements if the owner of such irrigation system can demonstrate that the possibility of the source of water from which the irrigation system draws its water cannot be polluted or contaminated as the result of utilizing such irrigation system for chemigation.

35-11-108. Affidavit in lieu of permit. For the calendar year beginning January 1, 1990, and for each calendar year thereafter, the owner of an irrigation system who does not intend to utilize chemigation during the calendar year shall notify the department of such intent. Notification shall be by an affidavit provided by the department.

35-11-109. Replacement or modification of equipment. Any permit holder who replaces, alters, or modifies or who authorizes the replacement, alteration, or modification of chemigation equipment for an irrigation system which has been issued a chemigation permit shall notify the department within seven days of such replacement, alteration, or modification. Such notification shall be on a form provided by the department. The permit holder shall certify that the irrigation system as replaced, altered, or modified continues to comply with the provisions of this article.

35-11-110. Failure to pass inspection - summary suspension - repair orders. (1) A permit holder operating any irrigation system which does not pass an inspection due to the failure to have installed and operating any device required by section 35-11-107 or the failure to properly install such a device shall have such permit summarily suspended by the inspector at the time of the inspection. Such summary suspension shall be subject to proceedings for suspension and revocation of the permit by the commissioner in accordance with the applicable provisions of article 4 of title 24, C.R.S. Any irrigation system which has had its permit suspended or revoked shall not be used for chemigation until such irrigation system has been inspected and a reinstatement fee paid. Such reinstatement fee shall be in an amount which is double the amount of the permit fee plus the amount of the inspection fee.

(2) A permit holder operating any irrigation system which does not pass an inspection because of a defect in any device which is properly installed shall be subject to a repair order issued by the inspector at the time of inspection. The permit holder shall remedy the defect within sixty days of the issuance of the order, and the inspector shall reinspect the irrigation system within ninety days of the issuance of the repair order. Any irrigation system subject to a repair order shall not be used for chemigation until the irrigation system is reinspected and the defect remedied. A fee may be charged or collected for the reinspection in specified circumstances described in the rules and regulations.

35-11-111. Inspections - entry upon land. (1) Each irrigation system for which a

permit has been issued may be inspected once every two years.

(2) Prior to an inspection, the inspector shall notify a permit holder of the time and date of an inspection. The inspector shall inform the permit holder that he is entitled to be present at the inspection. If a permit holder denies access to an inspector, the inspector may seek an inspection warrant issued by the district court for the district in which the permit holder's land is located. The court shall issue such inspection warrant upon presentation by the inspector of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being violated or has been violated, or the information showing that such entry and inspection is required in order to determine whether the provisions of this article are being complied with, as the case may be, that the inspector notified the permit holder of an inspection, that the inspector was denied access by the permit holder, and a general description of the location of the affected land.

(3) Each irrigation system subject to the provisions of this article which has not been issued a permit pursuant to the provisions of this article may be inspected, without prior notice, by an inspector who has information which gives him reasonable cause to believe that any provision of this article is being violated. If the landowner denies access to the inspector, the inspector may seek an inspection warrant issued by the district court for the district in which the landowner's land is located. The district court shall issue such inspection warrant upon presentation by an inspector of an affidavit stating: The information which gives the inspector reasonable cause to believe that any provision of this article is being violated or has been violated, that the landowner has denied access to the inspector, and a general description of the location of the affected land.

(4) Except as otherwise provided in section 35-11-113, inspectors shall be employees of the department.

35-11-112. Denial, suspension, or revocation of permit. (1) Pursuant to the applicable provisions of article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, or refuse to renew the permit of an applicant or permit holder, as the case may be, who:

(a) Fails to have installed and operating, or to have properly installed, any device required by section 35-11-107;

(b) Has used for chemigation an irrigation system which is subject to a repair order under section 35-11-110 (2) and which has not been reinspected and approved;

(c) Has utilized chemigation without a permit on or after January 1, 1990;

(d) Has utilized for chemigation any equipment which did not, at the time of such use, meet the requirements established by section 35-11-107 or by any rule or regulation adopted by the commissioner pursuant to this article;

(e) Has contaminated groundwater or surface water by the use of chemigation;

(f) Has violated any provision of this article or any rule or regulation promulgated by the commissioner pursuant to this article.

35-11-113. Enforcement by ground water management districts. Any ground water

management district may contract with the department to enforce the provisions of this article and the rules and regulations promulgated pursuant to this article within the boundaries of the district. Inspectors in ground water management districts which contract with the department shall be employees of the district, and the state or the department shall not be liable for the acts or omissions of such inspectors.

35-11-114. Chemigation program management fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the chemigation program management fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 317, § 8, effective July 1, 2009.)

35-11-115. Penalties. (1) On and after January 1, 1990, any person utilizing chemigation without a permit commits a class 6 felony and shall be punished as provided in section 18-1.3-401 (1) (a) (IV), C.R.S., and by a fine not to exceed one thousand dollars.

(2) Any person who violates any provision of subsection (1) of this section shall also be subject to a civil penalty assessed by the court of not less than one hundred dollars nor more than one thousand dollars for each such violation. All civil penalties collected under this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

35-11-116. Injunctive proceedings. (1) The department may, through the attorney general of the state of Colorado, apply for civil penalties and for an injunction to enjoin any person from committing any act declared to be unlawful by this article. Such application shall be heard in the district court of the county in which the grounds for the action arose.

(2) In such proceedings, if the court enters a temporary restraining order, preliminary injunction, or permanent injunction or awards civil penalties, the person against whom such injunctive order was entered or against whom such civil penalties were awarded shall pay the costs of the proceeding, including reasonable attorney fees.

35-11-117. Effective date of rules and regulations. The effective date for the initial rules and regulations promulgated pursuant to this article shall be July 1, 1989.

ORGANICALLY GROWN PRODUCTS

ARTICLE 11.5

Organic Certification Act

35-11.5-101. Short title. This article shall be known and may be cited as the "Organic Certification Act".

35-11.5-102. Legislative declaration. The general assembly declares that the purpose of this article is to provide a means for the general public to recognize and purchase organically grown agricultural products and to assist Colorado producers in the marketing of such products. The general assembly further declares that uniformity in labeling will protect both consumers and producers by providing assurance of compliance with recognized production standards.

35-11.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Agricultural products" means any agricultural, horticultural, floricultural, viticultural, or vegetable product grown or produced.

(b) Nothing in paragraph (a) of this subsection (1), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Department" means the department of agriculture.

(4) to (7) Repealed.

(8) "Secretary" means the United States secretary of agriculture or a representative to whom authority has been delegated to act in the secretary's stead.

(9) "State organic certification program" or "state certification" means the program that implements 7 U.S.C. sec. 6501 et seq. and 7 CFR part 205 in Colorado in order that the state certify organic producers pursuant to 7 U.S.C. sec. 6507.

35-11.5-104. Rules. (1) To carry out the provisions of this article, the commissioner shall adopt appropriate rules pursuant to section 24-4-103, C.R.S., concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and implementation of this article;

(b) to (i) Repealed.

(j) The provisions of 7 U.S.C. sec. 6501 et seq. and 7 CFR part 205, applicable to the certification of organic producers;

(k) Confidentiality of information and documents pursuant to section 35-11.5-105 (4);

(l) Establishment of minimum standards for the qualification of individuals who are authorized to make inspections as agents of the commissioner under this article and who are not employees of the department.

35-11.5-105. Delegation of duties - inspections - cooperative agreements - confidentiality. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), the powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(b) Inspections conducted under the state organic certification program may be performed by the commissioner or the commissioner's authorized agents.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions.

(3) The department and the commissioner shall coordinate with the secretary to implement the state organic certification program pursuant to this article.

(4) The commissioner and the commissioner's authorized representative shall maintain strict client confidentiality under the organic certification program and shall not disclose to third parties any business-related information concerning any client obtained while implementing this article; except that the secretary shall have access to such information and the following information shall be made available to the public:

(a) Certificates issued during the current calendar year and the three immediately preceding calendar years;

(b) A list of producers and handlers whose operations have been certified during the current calendar year and the three immediately preceding calendar years, including for each the name of the operation, type of operation, products produced, and the effective date of the certification;

(c) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current calendar year and the three immediately preceding calendar years; and

(d) Other business information as permitted in writing by the producer or handler.

35-11.5-106. Organic producer certification required. (Repealed)

35-11.5-107. Organic producer certification - application - fees. (Repealed)

35-11.5-108. Renewal. (Repealed)

35-11.5-109. Prohibited acts. (Repealed)

35-11.5-110. Administration and enforcement. (Repealed)

35-11.5-111. Denial - suspension - revocation. (Repealed)

35-11.5-112. Civil penalties. (Repealed)

35-11.5-113. Organic certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) All fees and penalties collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the organic certification fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(2) (Deleted by amendment, L. 2009, (HB 09-1249), ch. 87, p. 318, § 10, effective July 1, 2009.)

35-11.5-114. Advisory board. (1) Effective July 1, 2010, for the purpose of assisting the commissioner in formulating rules for carrying out the provisions of this article, there is hereby created an organic certification advisory board, to be composed of twelve members appointed by the commissioner, as follows: Nine shall represent certified organic operations; one shall be a consumer representing the general public; one shall be a representative from the Colorado cooperative extension service; and one shall be a representative from the Colorado agricultural experiment station. The nine advisory board members representing certified organic operations shall represent the following four categories of organic certification, in proportion to the number of organic operations certified in each category:

(a) Crop production;

(b) Livestock production;

(c) Processing/handling; and

(d) Wild crop handling.

(2) The members of the organic certification advisory board shall serve terms of three years and may be reappointed.

(3) Members of the advisory board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such board.

(4) (Deleted by amendment, L. 93, p. 675, § 11, effective May 1, 1993.)

35-11.5-115. Liability. The state assumes no liability for persons who misrepresent any agricultural product under the authority of this article.

35-11.5-116. Accreditation. The commissioner shall seek accreditation from the secretary and shall create and submit a plan for the establishment of a state organic certification program to the secretary for approval pursuant to 7 U.S.C. sec. 6507.

35-11.5-117. Conflict with federal law. If the secretary or a court of competent jurisdiction determines that there is a conflict between this article and any provisions of the federal "Organic Foods Production Act of 1990", 7 U.S.C. sec. 6501 et seq. or 7 CFR part 205, the provisions of the federal act and rules shall control, and the commissioner shall perform the duties and discharge the obligations contained in the federal act. If such a determination is made, the commissioner shall submit a report to the general assembly explaining the conflict.

FERTILIZERS

ARTICLE 12

Commercial Fertilizers and Soil Conditioners

35-12-101. Short title. This article shall be known and may be cited as the "Commercial Fertilizer, Soil Conditioner, and Plant Amendment Act".

35-12-102. Administration of article. This article shall be administered by the commissioner of agriculture or the commissioner's duly authorized representatives.

35-12-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Availability" means the immediate potential property of a plant nutrient to be utilized by a plant and have agronomic value when used according to directions.

(2) "Bulk fertilizer", "bulk soil conditioner", or "bulk plant amendment" means a commercial fertilizer, soil conditioner, or plant amendment, respectively, distributed in nonpackaged form or in a container containing more than one hundred pounds.

(3) "Commercial fertilizer" means a fertilizer or other substance containing one or more essential available plant nutrients that is distributed for its plant nutrient content and is designed

for use and has value in promoting plant growth. "Commercial fertilizer" does not include untreated manures, compost and treated manure distributed without commercial fertilizer labeling, soil conditioners, plant amendments, and other products exempted by rule of the commissioner.

(4) "Commission" means the state agricultural commission.

(5) "Commissioner" means the commissioner of agriculture of Colorado or the commissioner's authorized agent.

(6) "Compost" means a substance, derived from a process of biologically degrading organic materials, that contains one or more essential available plant nutrients and complies with the minimum standards specified by rule of the commissioner that regulate compost.

(7) "Custom mix" means a commercial fertilizer, soil conditioner, or plant amendment prepared expressly for, and according to specifications furnished by, a customer prior to mixing.

(8) "Department" means the Colorado department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all employees and agents of the department.

(9) "Distribute" means to import, consign, sell, offer to sell, barter, or otherwise supply a commercial fertilizer, soil conditioner, plant amendment, compost, or manure, for use in or shipment to this state.

(10) "Distributor" means any person who distributes a commercial fertilizer, soil conditioner, plant amendment, compost, or manure.

(11) "Essential" means necessary for the maintenance and growth of plants.

(12) "Fertilizer" means a substance or product that contains one or more essential available plant nutrients.

(13) "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash in the same terms, order, and percentages as in the guaranteed analysis.

(14) (a) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

. . . . . Total Nitrogen (N) percent

. . . . . Available Phosphate (P_2O_5) percent

. . . . . Soluble Potash (K_2O) percent

(b) Guarantees for plant nutrients, other than nitrogen, phosphorus, and potassium, may be permitted or required by rule of the commissioner. The guarantees for these other nutrients shall be expressed in the form, availability, and minimum quantity of the element set by rule. The sources of nutrients, salts, chelates, and similar compounds are required to be stated on the application for registration and may be included as a parenthetical statement on the label.

(c) Guaranteed analysis of a custom mix may appear as in paragraph (a) of this subsection (14) or may include the net weight and guaranteed analysis of each plant nutrient or fertilizer in the mix.

(15) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer, soil conditioner, or plant amendment.

(16) "Label" means the display of all written, printed, or graphic matter on the immediate container of, or a statement accompanying, a commercial fertilizer, soil conditioner, plant amendment, compost, or manure.

(17) "Labeling" means all written, printed, graphic, or verbal information on, accompanying, or used in promoting any commercial fertilizer, soil conditioner, plant amendment, compost, or manure, including advertisements, brochures, and posters and television, radio, and internet announcements.

(18) "Manufacturing facility" means any place where a commercial fertilizer, soil conditioner, plant amendment, or compost is manufactured, produced, compounded, mixed, blended, or in any way altered chemically or physically. Mobile units shall be considered a part of the manufacturing facility where the units are based.

(19) "Manure" means animal or vegetable manure and includes treated and untreated manure.

(20) "Official sample" means any sample of commercial fertilizer, soil conditioner, plant amendment, compost, or manure that is taken and designated as "official" by the department.

(21) "Packaged fertilizer", "packaged soil conditioner", or "packaged plant amendment" means a commercial fertilizer, soil conditioner, or plant amendment, respectively, that is distributed in a closed container and contains one hundred pounds or less of the commercial fertilizer, soil conditioner, or plant amendment.

(22) "Percent" or "percentage" means the percentage by weight.

(23) "Plant amendment and soil conditioner guaranteed analysis" means the percentage of each of the ingredients.

(24) "Plant amendments" means any devices or substances applied to the soil, plants, or seeds that are intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants. "Plant amendments" does not include commercial fertilizers, soil amendments, untreated manures, pesticides, plant regulators, compost and treated manures that are distributed without plant amendment labeling, or other materials exempted by rules promulgated by the commissioner.

(25) "Plant nutrients" means those chemical or organic forms of nitrogen (N), phosphorus (P_2O_5), potassium (K_2O), other secondary and micronutrients, calcium (Ca), magnesium (Mg), sulfur (S), boron (B), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), or zinc (Zn) that are absorbed by crops and are essential to the plants.

(26) "Product" means a commercial fertilizer, plant amendment, or soil conditioner in the form in which it is intended to be distributed. For the purposes of this article, a product that differs from another product in the name of the product, composition, labeling claims or directions for use, grade, or guaranteed analysis shall be considered a separate product that requires its own registration.

(27) "Registrant" means a person who is registered or is required to be registered to manufacture or distribute commercial fertilizers, soil conditioners, plant amendments, or compost under the provisions of this article.

(28) "Sewage sludge, sewage effluents, and biosolids" means all materials resulting from domestic wastewater treatment that contain concentrations of organic or inorganic materials.

(29) "Soil conditioner" means a substance, defined by rule of the commissioner, intended to improve the chemical or physical characteristics of the soil that is sold, offered for sale, or intended for sale. It does not include commercial fertilizers, plant amendments, untreated manures, compost and treated manures that are distributed without soil conditioner labeling claims, or any other materials that may be exempted by rule of the commissioner. Soil conditioners may be sold in package or in bulk.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, hydroponic facilities, and nurseries.

(31) "Ton" means a net weight of two thousand pounds avoirdupois.

(32) "Treated manures" means substances composed primarily of excreta, plant or animal material, sewage sludge, sewage effluents, and biosolids, or mixtures of such substances that have been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

(33) "Untreated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances that have not been treated in any manner, including mechanical drying, grinding, pelleting, or other means, or by adding other chemicals or substances.

35-12-104. Registration. (1) Each product shall be registered by the person whose name appears on the label before being distributed in, into, or for use in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee established by the commission. For each fiscal year, commencing on July 1, fifty percent of the department's direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. All registrations shall expire annually on the date specified by rule of the commissioner. Applications for renewal of registrations must be submitted on or before such date. Each application for registration or renewal of registration shall include the following information:

(a) The name and address of the registrant;

(b) The name of the product;

(c) The grade, if a commercial fertilizer;

(d) The guaranteed analysis;

(e) The sources from which the guaranteed plant nutrients, soil conditioner, or plant amendment derive; and

(f) One copy of the label used in this state for the sale of each of the products being registered.

(1.5) Repealed.

(2) The registration requirements of subsection (1) of this section shall not apply to custom mix fertilizers, untreated manure, or compost and treated manures that are distributed

without commercial fertilizer, plant amendment, or soil conditioner labeling claims.

(3) The commissioner may require proof of labeling statements and other claims made for any commercial fertilizer, soil conditioner, or plant amendment before approving any registration. If the registrant makes no claims, the commissioner may require proof of the usefulness and value of the commercial fertilizer, soil conditioner, or plant amendment. As evidence of proof, the commissioner may rely on experimental data, evaluations, or advice furnished by experts such as Colorado state university and may accept or reject additional sources of proof in evaluating any commercial fertilizer, soil conditioner, or plant amendment. In all cases, only experimental proof shall relate to those conditions in Colorado for which use the product is intended.

(4) Commercial fertilizer shall contain the minimum stipulated quantities of plant nutrients required by rules promulgated by the commissioner.

(5) The commissioner may stipulate by rule the quantities of active substances required in soil conditioners or plant amendments to be sold or distributed for use in this state.

(6) No commercial fertilizer, soil conditioner, or plant amendment shall be sold or distributed for use in this state without a current registration. Any person who fails to renew the registration of commercial fertilizer, soil conditioner, or plant amendment on or before the expiration date of the registration shall pay a late fee, as established by the commission, in addition to the registration fee.

(7) Each manufacturing facility that produces custom mixes in this state must be registered. All registrations shall expire annually on the date specified by rule of the commissioner. Applications for renewal of registrations must be submitted on or before such date.

(8) (a) Each manufacturing facility in this state producing compost that is distributed without commercial fertilizer, plant amendment, or soil conditioner claims shall register with the commissioner unless exempted by rule of the commissioner.

(b) The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee established by the commission. Any person who fails to renew said manufacturing facility registration shall pay a late fee, as established by the commission, in addition to the registration fee.

(c) At the time of registration, each manufacturing facility shall submit copies of all labels that will be affixed to or accompany the compost products it distributes.

35-12-105. Labels. (1) Any packaged commercial fertilizer distributed in this state shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The name and address of the registrant;

(b) The net weight or other measure prescribed by rule;

(c) The name of the product and grade;

(d) The guaranteed analysis in the form specified in section 35-12-103 (14) (a);

(e) The date of manufacture, processing, packaging, or repackaging, or a code that permits the determination of such date, or, if distributed in bulk, the shipment or delivery date;

(f) Directions for use as specified by rule of the commissioner.

(2) Any commercial fertilizer distributed in this state in bulk shall be accompanied by a printed or written statement showing the information required in subsection (1) of this section.

(3) Any packaged soil conditioner or plant amendment distributed in this state shall have placed or affixed on the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The name and address of the registrant;

(b) The net weight or other measure prescribed by rule;

(c) The name of the product;

(d) An accurate statement of composition, including the percent of each ingredient;

(e) The purpose of the product;

(f) The date of manufacture, processing, packaging, or repackaging, or a code that permits determination of the date, or, if distributed in bulk, the shipment or delivery date;

(g) Directions for use as specified by rule of the commissioner.

(4) Any soil conditioner or plant amendment distributed in bulk in this state shall be accompanied by a printed or written statement showing the information required in subsection (3) of this section.

(5) Any custom mix delivered in containers shall have placed on or affixed to the container a label, or if delivered in bulk, shall be accompanied by a printed or written statement, which label and statement shall set forth the following information:

(a) The name and address of the manufacturer;

(b) The net weight or measure as prescribed by rule of the commissioner;

(c) The guaranteed analysis and quantity of each registered product contained in the mix;

(d) The date on which the product was manufactured or delivered; and

(e) Directions for use as specified by rule of the commissioner.

(6) No product may be labeled, advertised, distributed, or sold as a commercial fertilizer, soil conditioner, or plant amendment unless its substance conforms to the applicable definitions prescribed in this article or in the rules promulgated by the commissioner pursuant to this article.

(7) No additional substances other than those allowed in section 35-12-103 (12) may be listed or guaranteed on a label or labeling or on a written statement accompanying the bulk distribution of commercial fertilizers, soil conditioners, or plant amendments without the permission of the commissioner. The commissioner may allow additional substances to be listed or guaranteed on the label, labeling, or written statement if satisfactory supportive data is furnished to the commissioner in order to substantiate the value and usefulness of the substance. The commissioner may rely on sources other than the department, such as Colorado state university, for assistance in evaluating the supportive data. If the commissioner permits such additional substances to be listed or guaranteed, the nature of the substances shall be determinable by laboratory methods. The substances shall be subject to inspection and analysis pursuant to methods and procedures prescribed by the commissioner by rule.

(8) The commissioner may allow or require commercial fertilizers, soil conditioners, or plant amendments to be sold and labeled by volume in addition to or instead of by weight pursuant to rules promulgated by the commissioner.

35-12-106. Distribution fees. (1) All registrants, except those who package only in containers of ten pounds or less, shall pay the commissioner a distribution fee as established by the commission for all commercial fertilizers, soil conditioners, or plant amendments distributed in this state. For the purpose of funding the department's groundwater protection efforts, an additional fee per ton of commercial fertilizer shall be paid to the commissioner as established by the commission. This increment per ton of commercial fertilizer shall be collected by the commissioner and transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3.

(2) Registrants of specialty fertilizers, soil conditioners, or plant amendments packaged in containers of ten pounds or less shall pay the commissioner a distribution fee as established by the commission, for all specialty fertilizers, soil conditioners, or plant amendments distributed in this state.

(3) Each person registering any commercial fertilizer, soil conditioner, or plant amendment and each person producing custom mixes in this state shall keep adequate records showing the pounds or tonnage distributed in this state, and the commissioner has the authority to examine such records to verify the statement of pounds or tonnage.

(4) Each registrant shall file an affidavit with the commissioner within forty-five days after the date specified by rule of the commissioner that discloses the pounds or tonnage of commercial fertilizer, soil conditioner, or plant amendment distributed in the state during the preceding twelve-month period and any other information as required by rules adopted by the department. If the affidavit is not filed and the distribution fee is not paid within the forty-five-day period, or if the report of pounds or tonnage is false, the commissioner may revoke the registration and assess a penalty established by the commission. The distribution fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant.

(5) When more than one person is involved in the distribution of a commercial fertilizer, soil conditioner, or plant amendment, the last registrant to distribute the product is responsible for reporting the annual pounds or tonnage and paying the distribution fee, unless the annual report and payment has been made by a prior distributor.

(6) Distribution fees are not required for ingredients that have already been included in the tonnage or pounds for which a Colorado distribution fee has been paid.

(7) The distribution fees required to be paid by this section shall not apply to untreated manure or compost and treated manure distributed without commercial fertilizer, soil conditioner, or plant amendment labeling claims.

(8) (a) For each fiscal year, commencing July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) Repealed.

35-12-107. County tonnage reports. (Repealed)

35-12-108. Inspection, sampling, and analysis. (1) The commissioner shall sample, inspect, make analyses of, and test commercial fertilizers, soil conditioners, plant amendments, and compost distributed within this state at such time and place and to such an extent as the commissioner deems advisable to determine whether such products are in compliance with the provisions of this article. The commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to access commercial fertilizers, soil conditioners, plant amendments, and compost subject to the provisions of this article and the rules adopted pursuant to this article.

(2) The methods of analysis and sampling shall be those adopted by the commissioner from sources including the association of official analytical chemists international or a successor organization, Colorado state university, or other authoritative sources deemed reliable by the commissioner.

(3) The commissioner, in determining whether any commercial fertilizer, soil conditioner, plant amendment, or compost violates this article, shall base such determination solely upon official samples obtained and analyzed in accordance with subsections (1) and (2) of this section.

(4) The result of an analysis of a sample of any commercial fertilizer, soil conditioner, plant amendment, or compost that indicates a deficiency shall be forwarded promptly to the registrant. Upon request within thirty days after the date the analysis report is forwarded, the commissioner shall furnish to the registrant a portion of any official sample. If, within forty-five days after forwarding of the analysis report indicating a deficiency, no adequate evidence contradicting the analysis report is made available to the commissioner, the report of the sample analysis shall become official.

35-12-109. Deviation from guaranteed analysis - penalties. (Deleted by amendment)

35-12-110. Commercial value. (Deleted by amendment)

35-12-111. Misbranding. (1) No person shall distribute a misbranded product. A commercial fertilizer, soil conditioner, plant amendment, or compost is misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If it is distributed under the name of another product;

(c) If it is not labeled as required in section 35-12-105 and in accordance with rules prescribed under this article;

(d) (I) If it purports to be, is represented as, or is represented as containing a commercial fertilizer, soil conditioner, plant amendment, or compost, unless the plant nutrient, commercial

fertilizer, soil conditioner, plant amendment, or compost conforms to the definitions of terms prescribed by this article or under the rules promulgated by the commissioner.

(II) In the adoption of such rules, the commissioner shall give due regard to commonly accepted definitions and official terms such as those issued by the association of American plant food control officials or a successor organization.

(e) If it does not conform to the ingredient form, availability, minimums, labeling, and investigational allowances set forth in the rules promulgated by the commissioner.

35-12-112. Adulteration. (1) No person shall distribute an adulterated product. A commercial fertilizer, soil conditioner, plant amendment, or compost is deemed adulterated:

(a) If it contains any deleterious or harmful substance in sufficient amount to render it injurious to human health or beneficial plant, animal, or aquatic life, when applied in accordance with directions for use on the label or normal application practices, or if adequate warning statements or directions for use, which may be necessary to protect human health or beneficial plant, animal, or aquatic life, are not shown on the label;

(b) If its composition falls below or differs from that which it is purported to possess by its labeling;

(c) If it contains unwanted crop seed or weed seed;

(d) If the concentration of any metal in the product exceeds the level established for that constituent by rule of the commissioner; or

(e) If it contains an infectious agent in sufficient amount to render it injurious to human health or beneficial plant, animal, or aquatic life.

35-12-113. Publications. The commissioner shall publish at least annually, in such form as the commissioner deems proper, information concerning the sales of commercial fertilizers, soil conditioners, and plant amendments, together with such data on their production and use as the commissioner considers advisable, and a report of the results of the analyses based on official samples of commercial fertilizers, soil conditioners, and plant amendments sold within the state as compared with the analyses guaranteed under sections 35-12-103 (14), 35-12-104, and 35-12-105. Information concerning the sale, production, and use of commercial fertilizers, soil conditioners, and plant amendments shall not identify or otherwise disclose the operations of any person.

35-12-114. Rules. The commissioner is authorized, pursuant to section 24-4-103, C.R.S., to adopt and enforce rules to implement, administer, and enforce this article. The rules shall include, but are not limited to, rules relating to sampling, analytical methods, ingredient form, availability, minimums, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling, commercial fertilizers, specialty fertilizers, soil conditioners, plant amendments, and compost, as may be necessary to carry into effect the full intent and meaning of this article. The commissioner shall not adopt any rule that is

inconsistent with a rule promulgated by a state entity for any substance governed by this article.

35-12-115. Investigations - access - subpoena. (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make any investigations necessary to ensure compliance with this article.

(2) (a) At any time during regular business hours, for the purpose of carrying out any provision of this article or any rule made pursuant to this article, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(I) To all buildings, yards, warehouses, storage facilities, vehicles, and any other public or private properties, premises, or carriers in which any commercial fertilizer, soil conditioner, plant amendment, or compost is kept, stored, handled, processed, distributed, or transported;

(II) To all business records related to the production or distribution of any commercial fertilizer, soil conditioner, plant amendment, or compost, including but not limited to any records required to be kept by this article or any rule promulgated pursuant to this article. The commissioner may also make copies of such records.

(b) The commissioner shall have full authority to administer oaths and take statements; to issue administrative subpoenas requiring the attendance of witnesses before the commissioner and the production of all books, memoranda, papers, and other documents, articles, or instruments; and to compel the disclosure by 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) Complaints of record made to the commissioner and the results of the investigations of the commissioner may, in the discretion of the commissioner, be closed to public inspection, except as permitted by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served. Any action taken by the commissioner shall be a public record as defined in section 24-72-202, C.R.S.

35-12-116. Cancellation of registration or refusal to register. (1) The commissioner may revoke or suspend the registration of or may refuse to register any commercial fertilizer, soil conditioner, or plant amendment upon a finding supported by satisfactory evidence that the registrant or person applying for registration has violated any provision of this article or any rule adopted pursuant to this article. No registration shall be refused, suspended, or revoked until the registrant has been given the notice and opportunity of a hearing required by article 4 of title 24, C.R.S.

(2) The commissioner may revoke or suspend the registration of or may refuse to register any manufacturing facility required to be registered under section 35-12-104 (7) or (8) upon a finding that the registrant or person applying for registration has submitted false information to the commissioner or has violated any provision of this article or any rule adopted pursuant to this article. No registration shall be refused, suspended, or revoked until the registrant has been given

notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

35-12-117. Stop distribution, stop use, or removal orders. (1) The commissioner may issue and enforce a written or printed stop distribution, stop use, or removal order directed to the owner or custodian of any lot of commercial fertilizer, soil conditioner, plant amendment, or compost when the commissioner finds the commercial fertilizer, soil conditioner, plant amendment, or compost is being distributed or used in violation of any of the provisions of this article. The commissioner shall release the commercial fertilizer, soil conditioner, plant amendment, or compost peat moss, or peat humus from the order when the owner or custodian has complied with requirements of this article and has paid all costs and expenses incurred in connection with the entry and enforcement of such order. Any person who has received a stop distribution, stop use, or removal order may request a hearing, pursuant to article 4 of title 24, C.R.S., to determine whether the violation occurred.

(2) In the event that a person fails to comply with a stop distribution, stop use, or removal order within twenty-four hours after the issuance of the order, the commissioner may bring suit for a temporary restraining order and injunctive relief in order to prevent any further or continued violation of such order.

(3) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(4) Whenever the commissioner possesses evidence satisfactory to the commissioner that a person has engaged or is about to engage in a violation of this article or rules 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 and rules 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.

35-12-118. Seizure, condemnation, and sale. Any lot of commercial fertilizer, soil conditioner, plant amendment, or compost that is in violation of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which the product is located. In the event the court finds the product to be in violation of this article and orders the condemnation of the product, it shall be disposed of in any manner consistent with the quality of the product and the laws of this state. In no instance shall the disposition of the commercial fertilizer, soil conditioner, plant amendment, or compost be ordered by the court without first affording the owner an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this article.

35-12-119. Civil penalties. (1) Any 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. The maximum penalty shall not exceed one thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(2) No civil penalty may be imposed 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 any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

35-12-120. Exchange between manufacturers. (Deleted by amendment)

ARTICLE 13

Anhydrous Ammonia

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

(2) The general assembly hereby declares that any violation of this article or rules promulgated pursuant to this article shall constitute a substantial danger to public health and safety.

35-13-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Anhydrous ammonia" means the compound formed by the combination of the two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume in compressed and liquefied form.

(2) "Commissioner" means the commissioner of agriculture.

35-13-103. Commissioner to promulgate rules. The commissioner shall, in addition to other relevant criteria, use as a guide to make, promulgate, and enforce rules setting forth minimum general safety standards covering the design, construction, location, installation, and

operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia fertilizer such standards as provided in American national standards institute standard K61.1-1999, or subsequent revisions thereof. Said rules shall be as are reasonably necessary for the protection of the safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the commissioner only after a public hearing thereon.

35-13-104. Condition of equipment. All equipment shall be installed and maintained in a safe operating condition and in conformity with the rules and regulations adopted under section 35-13-103.

35-13-105. Restriction of use of containers. (1) No person, firm, or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver, or permit to be delivered, or use in any manner any anhydrous ammonia storage tank, mobile transportation tank, or tank-mounted applicator for any other purpose whatsoever.

(2) No person shall fill, refill, deliver, or permit to be delivered any anhydrous ammonia storage tank, mobile transportation tank, or tank-mounted applicator that has not been registered in compliance with the provisions of this article and rules promulgated pursuant to this article.

35-13-106. Effect of rules and regulations - prohibitions. The rules and regulations promulgated pursuant to this article shall have uniform force and effect throughout the state, and no municipality or other political subdivision shall enact or enforce any ordinances, rules, or regulations which do not meet the rules and regulations promulgated pursuant to this article; except that home rule cities enforcing ordinances, rules, and regulations equal to or more stringent than those prescribed under this article may continue to perform such functions.

35-13-107. Enforcement - investigation - access to locations and records. (1) The commissioner, pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall enforce the provisions of this article and of rules promulgated pursuant to this article or section 35-1-107 (5).

(2) Upon the commissioner's own motion or upon the complaint of any person, the commissioner may make any investigations necessary to ensure compliance with this article.

(3) At any time during regular business hours, upon consent or upon obtaining an administrative search warrant and for the purpose of enforcing any provision of this article or rule promulgated pursuant to this article, the commissioner shall have free and unimpeded access to:

(a) All buildings, yards, warehouses, storage facilities, tanks, tank trailers, vehicles, and

any other public or private property, premises, or carriers in which anhydrous ammonia is kept, stored, handled, distributed, or transported; and

(b) All business records required to be kept that relate to the storage, use, transportation, or distribution of anhydrous ammonia. The commissioner may make copies of such records.

(4) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule promulgated pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing on the order involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before the commissioner and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey an administrative subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(6) Whenever the commissioner considers that a violation of any provision of this article or rule promulgated pursuant to this article has occurred or will occur, and that immediate and irreparable injury, loss, or damage will result if such violation is not immediately restrained or enjoined, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule promulgated pursuant to this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

35-13-108. Civil penalties. (1) (a) The commissioner may impose a civil penalty on any person who violates any provision of this article or any rule adopted under this article or under section 35-1-107 (5). Such penalty shall not exceed seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect, or if any person fails to pay, all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-13-109. Registration - application - fees. (1) On or before the date specified by rule of the commissioner each year, every person who owns one or more anhydrous ammonia storage tanks, mobile transportation tanks, or tank-mounted applicators within this state shall register each of such tanks or applicators with the department and shall pay a registration fee as established by the agricultural commission. A registration is not transferable. No reduction of a registration fee shall be made for a fractional part of a year.

(2) An application for registration shall state:

(a) The name of the applicant;

(b) If the applicant is a firm, the names of its members;

(c) If the applicant is a corporation, the names of its officers;

(d) The applicant's business address;

(e) The applicant's telephone number;

(f) The name and location of each fixed bulk facility; and

(g) The serial number or other identifying number of each mobile transportation tank or tank-mounted applicator.

(3) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish a fee schedule to cover all of the direct and indirect costs of administering and enforcing the provisions of this article.

(4) (a) All fees, fines, and penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) Fees established pursuant to this section shall be reported, on or before December 1 of each year, to the agriculture, natural resources, and energy committee of the senate and the agriculture, livestock, and natural resources committee of the house of representatives.

WEIGHTS AND MEASURES

ARTICLE 14

Measurement Standards

35-14-101. Short title. This article shall be known and may be cited as the "Measurement Standards Act of 1983".

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

(1) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(1.7) "Certificate of conformance" means a document issued by the national type evaluation program constituting evidence of conformance of a weighing and measuring device with the requirements of national institute of standards and technology handbook 44.

(2) "Certified scales" means scales located throughout the state which are used for public weighing and which meet the requirements of certification.

(3) "Certified weighers" means a natural person who is certified under the provisions of this article.

(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 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) "Commissioner" means the commissioner of agriculture.

(5.5) "Commodity" means any agricultural commodity, consumer commodity, or any other goods.

(6) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form but on which there is marked a selling price based on an established price per unit of weight or of measure shall be construed to be a commodity in package form. The term "package" shall be construed to mean "commodity in package form".

(7) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(8) "Correct" means conformance to all applicable requirements of this article.

(9) "Department" means the department of agriculture.

(9.5) "Grain protein analyzer" means the equipment and accessories used to determine the protein content of grain.

(10) "Grain sample" means that portion of a grain, seed, or other agricultural commodity taken from the bulk of grain, seed, or other agricultural commodity for the purpose of determining moisture content.

(11) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(12) "Inch pound system" means the United States customary system of weights and

measures as approved by the United States department of commerce.

(13) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, molded into, formed upon, embossed upon, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package; except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this article.

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

(15) "Metric system" means the "Systeme Internationale System of Weights and Measures", as adopted by the United States department of commerce.

(16) "Metrology services" means all testing and calibrating and, when necessary, the making of adjustments to weights and measures.

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

(18) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(19) "Moisture-testing device" means all equipment and accessories required for determining the moisture content in a grain sample.

(20) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(20.5) "National type evaluation program" means the evaluation program administered by the national conference on weights and measures.

(21) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(22) "Not susceptible of repair" means any weight or measure 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 or that cannot be repaired to meet the tolerance standards for such weight or measure.

(23) and (23.5) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(24) "Placing in service" means placing in use any new, used, repaired, or reconditioned weighing and measuring device.

(25) and (26) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(27) "Random-weight package" means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, as when packages of the same consumer commodity have no fixed pattern of weight.

(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) and (29) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(30) "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable procedures, and are used in the enforcement of weights and measures laws and rules.

(30.5) "Standard" means a weight or measure used as a reference to establish a measured quantity value.

(31) "Traceable" means the system of determining the value of a standard by comparison with approved standards of the national institute of standards and technology.

(31.5) and (31.6) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 323, § 6, effective April 2, 2009.)

(32) "Vehicle" means any device by which any property, produce, commodity, or article is or may be transported.

(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.

(34) "Weights" or "measures" means all weights or measures of every kind, any instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all of such instruments and devices.

35-14-103. Systems of weights and measures - customary or metric. The inch pound system and the metric system of weights and measures are jointly valid, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the national institute of standards and technology, are recognized and shall govern weighing and measuring equipment and transactions in this state.

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 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.

35-14-105. Technical requirements for weighing and measuring devices - certificate required - exception. (1) The specifications, tolerances, and other technical requirements, including user requirements, for commercial, law enforcement, data gathering, and other

weighing and measuring devices 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 or revisions to that handbook, apply to weighing and measuring devices in this state, except as modified or rejected or as otherwise specified by this article or any rule promulgated pursuant to this article. Except as provided in subsection (2) of this section, any weight or measure or any weighing or measuring instrument or device shall be issued a certificate of conformance from the national type evaluation program prior to use for commercial or law enforcement purposes.

(2) A certificate of conformance is not required for a grain protein analyzer.

35-14-106. Administration. The commissioner shall administer and enforce the provisions of this article and shall have and may exercise any and all of the administrative powers conferred upon the head of a department of the state. The commissioner is authorized to employ, pursuant to section 13 of article XII of the state constitution, such deputies and inspectors as he may deem necessary for the proper enforcement of this article, subject to the constitution and laws of the state. The powers and duties given to and imposed upon the commissioner are also given to and imposed upon the deputies and inspectors when acting under the instructions and at the direction of the commissioner.

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

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

(b) Implement and carry out the provisions of this article;

(c) Establish requirements for labeling, requirements for the presentation of cost-per-unit information, standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity;

(d) Grant any exemptions from this article or any rules promulgated pursuant to this article if in the commissioner's opinion such exemption would serve the public interest;

(e) Conduct investigations to ensure compliance with this article;

(f) Delegate to appropriate personnel any responsibilities for the proper administration of this article;

(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;

(h) Inspect and test weights and measures kept, offered, or exposed for sale, including prepackaged commodities;

(i) Inspect and test, to ascertain if they are correct, all commercial weighing and measuring devices for which the owner is required to be licensed under this article;

(j) Test all weights and measures used in checking the receipt or disbursement of supplies in every state institution if funds are appropriated for such maintenance;

(k) Approve for use, and may mark, such weights and measures as he or she finds to be correct and 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 may condemn and seize weights and measures found to be incorrect and 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 promulgated pursuant 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.

(m) Prescribe the appropriate term or unit or weight or measure to be used whenever he determines, in the case of a specific commodity, that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparison or is represented in any manner that tends to mislead or deceive any person;

(n) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice, only after the commodity has entered intrastate commerce;

(o) Promulgate such rules as are necessary for the implementation and administration of this article in accordance with article 4 of title 24, C.R.S., including rules 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;

(p) Negotiate and enter into contracts with local governments for the implementation and enforcement of this article.

(2) The commissioner may, upon request, inspect and test any weight, measure, or standard used by a governmental entity.

35-14-108. Special police powers. (1) When necessary to perform his duties or to implement the provisions of this article or the rules and regulations promulgated pursuant thereto, the commissioner or his authorized agent may:

(a) Enter any commercial premises during normal business hours; except that, in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(b) Issue stop-use, hold, or removal orders with respect to any weights and measures commercially used and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale which do not meet the

requirements of this article;

(c) Seize, for use as evidence and without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this article or any rule or regulation promulgated pursuant thereto;

(d) Stop any commercial vehicle and, after presentment of his credentials, require that the person in charge of the vehicle produce any documents in his possession concerning the contents of said vehicle, inspect the contents of such vehicle at the site, and, if necessary, require such person to proceed with the vehicle to some specified place for inspection.

(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.

35-14-109. Contract services. (Repealed)

35-14-110. Misrepresentation of quantity. No person shall sell, offer, advertise, or expose for sale less than the quantity of commodity or service he represents nor take any more than the quantity of commodity or service he represents.

35-14-111. Misrepresentation of price. No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

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.

35-14-113. Method of sale - special food products. (Repealed)

35-14-114. Method of sale - special nonfood products. (Repealed)

35-14-115. Machine vended commodities. (1) Each vending machine which dispenses commodities in package form shall indicate:

(a) Proper identity;

(b) Net quantity; and

(c) Name, address, and telephone number of the vendor or of the responsible party.

(2) The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

35-14-116. Railroad car tare weights. (1) Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:

(a) All newly stenciled or restenciled tare weights shall be accurately represented to the nearest one hundred pounds for inch pound units and to the nearest fifty kilograms for metric units, and the representation shall include the date of weighing.

(b) The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be:

(I) If in inch pounds:

(A) Plus or minus three hundred pounds for cars of fifty thousand pounds or less;

(B) Plus or minus four hundred pounds for cars over fifty thousand pounds but not over sixty thousand pounds; or

(C) Plus or minus five hundred pounds for cars over sixty thousand pounds;

(II) If in metric:

(A) Plus or minus one hundred fifty kilograms for cars twenty-five thousand kilograms or less;

(B) Plus or minus two hundred kilograms for cars over twenty-five thousand kilograms but not over thirty thousand kilograms; or

(C) Plus or minus two hundred fifty kilograms for cars over thirty thousand kilograms.

(c) Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.

(d) Tank cars, covered hopper cars, flat cars equipped with multideck racks or special superstructures, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and restenciled only by owners or their authorized representatives if the car bears no lightweight (empty weight) stenciling or if repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.

35-14-117. Unit pricing - application - inch pound or metric. (1) Except for random-weight packages unit priced in accordance with rules 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 promulgated pursuant to this article.

(2) Either metric or inch pound unit prices may be used for commodities marked in either system; except that, when unit price is changed to metric for any given type of commodity, unit pricing for all sources or suppliers of that commodity should change to metric.

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:

(a) The net quantity of the contents in terms of weight, measure, or count; and

(b) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor;

(c) The identity of the commodity in the manner specified by rule promulgated pursuant to this article.

(2) Under paragraph (a) of subsection (1) of this section, the commissioner, by regulation, shall establish reasonable variations or tolerances to be allowed and also exemptions as to small packages.

35-14-119. Misleading packages - allowances. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the commissioner.

35-14-120. Declaration of unit price on random-weight packages. In addition to the declarations required by section 35-14-118, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

35-14-121. Weigher - qualification - certification - revocation. (1) A person who has sufficiently good moral character to carry on the business stated in the application, subject to section 24-5-101, C.R.S., who has the ability to weigh accurately, make correct weight certificates, and who has received from the commissioner a certificate of certified weigher may use the title of and shall be authorized to act as a certified weigher.

(2) An application for a certificate of certified weigher shall be made upon a form provided by the commissioner. The application shall include evidence that the applicant has the qualifications required by subsection (1) of this section.

(3) The commissioner may adopt rules for determining the qualifications of the applicant for a license as a certified weigher. For the purpose of determining qualifications of the applicant, the commissioner may approve the qualifications of the applicant upon the basis of the information supplied in the application or he may examine such applicant orally or in writing or both. He shall grant certificates of certified weigher to such applicants as may be found to possess the qualifications required by subsection (1) of this section. The commissioner shall keep a record of all such applicants and of all certificates issued.

(4) The commissioner may, upon request and without charge, issue a limited certification as a certified weigher to any qualified officer or employee of a municipality or county of this state or of a state commission, board, institution, or agency authorizing such officer or employee to act as a certified weigher only within the scope of his official employment.

(5) All certificates of certified weighers in existence as of June 30, 2009, 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.

(6) The following persons shall be permitted, but shall not be required, to obtain certification as certified weigher:

(a) A weights and measures officer when acting within the scope of his official duties;

(b) A person weighing property, produce, commodities, or articles that he or his employer, if any, is buying or selling; and

(c) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal law or the laws of this state relative to warehousemen or processors.

(7) The commissioner, in accordance with section 24-4-104, C.R.S., may suspend, deny, revoke, restrict, place on probation, or refuse to renew the certificate of any certified weigher or applicant for such certificate if such certified weigher or applicant has been convicted in any court of competent jurisdiction of violating any provision of this article or if the commissioner is satisfied that the person has violated any provision of this article.

35-14-122. Public scales - requirements - weight certificates - procedures - records. (1) (a) Provision shall be made for official certified scales throughout the state for the purpose of doing public weighing if the scale owners agree to meet the requirements of this article. Such scales shall be operated only by a certified weigher. All equipment used by certified weighers shall be approved by the commissioner.

(b) The commissioner shall require the owner or operator of all certified scales to post on the outside of the scale house, where it can be conveniently observed by all persons, a sign at least twelve inches high and thirty-six inches long, stating the maximum weighing capacity of the

scale. No person shall weigh or attempt to weigh any article or load having a greater weight or suspected weight greater than the rated capacity of the scale.

(2) (a) It shall be the duty of each certified weigher to weigh upon the certified scales any load delivered at the scales for weighing when engaged to do so by any person and to issue a certificate of correct weight. The certificate of correct weight shall state the gross weight of the load, the tare weight, the net weight of the load, and the date of weighing. In addition, the weight certificate shall indicate the state license number of the vehicle, or other positive identification, a serial number, the name of the shipper or the owner of the load, the nature of the load, the name of the receiver of the load, whether the driver is off or on the scale, the name of the certified weigher, and the location of the certified scale. For issuing a certificate, the certified weigher may charge a reasonable fee; except that no charge may be made for weighing done or for certificates issued upon the demand of the commissioner or any employee acting in an official capacity under the provisions of this article.

(b) All certified weighers shall keep a daily register in which they shall enter every transaction by them as certified weighers, including the gross weight of each load, the weight of the vehicle, the net weight of the load, the license number of the vehicle, if any, the name of the dealer or owner, the name of the weigher, the name of the person for whom the weighing was done, and the date of weighing. The daily register shall be kept by the certified weigher and shall be open at all times to inspection by the supervisor of measurements standards and all other inspectors of the department and by any other person interested therein. Such daily registers shall be kept for a period of two years.

(3) A weighing made of any vehicle or combination of vehicles to ascertain the gross, tare, or net weight for commercial purposes or certification by a certified weigher shall not be determined by any procedure denominated as a split-weighing or fore-and-aft draft. The gross, tare, or net weight of any vehicle or combination of vehicles as a single unit shall be determined upon scales with platforms of sufficient size to accommodate the vehicle or combination of vehicles as one entire unit; except that the gross, tare, or net weight of a combination of vehicles may be determined upon a scale which will not accommodate the combination of vehicles as one entire unit if the same are separated and the weight of each member thereof can and is determined separately as an independent unit. In such cases, weight certificates shall be issued for each such separate weighing.

(4) The certified scales shall be available for use by the public each day of the year during all reasonable business hours. Sundays and other legal holidays are excepted.

(5) All persons, firms, and corporations which do public weighing for a fee shall keep a complete record of each such weighing for a period of two years, and at least one copy of each weighing certificate shall be retained on record at the place of weighing.

(6) (a) All commodities bought, sold, delivered, or in the process of changing ownership that use the weight of the content for final determination and settlement shall be weighed on a 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.

(b) All commodities bought, sold, delivered, or in the process of changing ownership for which a weight certificate, ticket, or invoice has been issued pursuant to paragraph (a) of this subsection (6) and which are being hauled or transported on the streets, roads, or highways of this state shall be accompanied with a weight certificate or a ticket or invoice containing the information required by subsection (2) of this section.

35-14-123. Weighing and measuring device service providers - certification - fees - placing in service - rules. (1) No person, other than the owner, may repair, service, or place in service any commercial weighing or measuring device for which 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) The commissioner shall adopt rules specifying:

(a) The categories and requirements for certification of commercial weighing and measuring device service providers; and

(b) The performance requirements for commercial weighing and measuring devices service providers.

(c) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(3) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(4) 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 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) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(6) Each commercial weighing and measuring device service provider shall at least annually submit 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 approval pursuant to section 35-14-128; except that, if such standards are annually approved in another state by that state's national institute of standards and technology-recognized metrology laboratory and evidence is shown of current approval, traceable to standards of the national institute of standards and technology, which is less than a year after date of issuance, the commissioner may exempt the service provider from obtaining a Colorado approval for the current year.

(7) Upon placing in service any commercial weighing or measuring device not exempted pursuant to section 35-14-126, the service provider shall submit a placing-in-service report to the commissioner within ten days after the placing-in-service date. The commissioner shall promulgate rules to specify the information to be included in placing-in-service reports.

(8) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

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

(10) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 331, § 18, effective April 2, 2009.)

(11) Nothing in this section shall be construed to prohibit a person from performing repairs or service on a weighing or measuring device that the commissioner has condemned or placed under work order, but such person may not remove any tag placed on any weighing or measuring device pursuant to this article.

35-14-124. Inaccurate devices - stickers - tags - wire seals - rules. (1) A blue tag indicating "Work Order" shall be placed on any commercial weighing or measuring device that in the judgment of the commissioner is out of tolerance or in need of minor repairs. Repairs shall be made within thirty days, and, if not so made, the device shall be removed from commercial use. If the 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. A wire seal 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 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 on which a "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 that are being held for resale and are not being used.

(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 does not have a license for its use, the device shall have a "no license fee paid" or "not

approved for commercial use" tag attached.

(4) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 333, § 19, effective April 2, 2009.)

(5) The commissioner shall promulgate rules to clarify the circumstances under which a blue or red tag should be issued.

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:

(a) Violated any provision of this article or of any rule adopted by the commissioner under this article;

(b) Been convicted of a felony under any state or federal law; except that, in considering a conviction of a felony, the commissioner shall be governed by section 24-5-101, C.R.S.;

(c) Committed fraud or deception in the procurement or attempted procurement of a license or certificate;

(d) Failed to comply with a lawful order of the commissioner concerning the administration of this article;

(e) Been convicted of deceptive trade practices under any state or federal law;

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

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or certificate or the placing of a licensee or certificate holder on probation shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Any previous violation of this article by an applicant or associate of the applicant shall be sufficient grounds for denial of a license. For purposes of this subsection (3), "associate" means:

(a) A person associated with the applicant in the business for which such applicant seeks to be licensed or certified;

(b) A partner, officer, director, or stockholder of more than thirty percent of the outstanding shares of a partnership or corporation, when such partnership or corporation is the applicant.

35-14-125. Household scales. (Repealed)

35-14-126. Commercial weighing device exemption - licensing - testing. (1) No license shall be required for the use of the following commercial weighing or measuring devices and such devices shall be exempt from testing:

(a) Person weighers also referred to as pennyweight scales;

(b) Any scale used as an in-plant scale to determine ingredients or other such services where the end product or service is determined by some means other than the in-plant scale;

(c) Those scales operated by the United States postal service;

(d) Postal scales used exclusively for determining postage fees and where final determination of weight is made by the United States postal service;

(e) A pharmacist's prescription scale having less than a four-ounce capacity;

(f) Any other device exempted by the commissioner by rule.

35-14-127. Licenses - fees - rules - stickers - certificates. (1) Before operating any scale, textile meter, or cordage meter for commercial purposes, except those exempted in section 35-14-126, the owner shall first procure from the department a license for the operation of the device. All such licenses shall expire on the 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 file an application with the department upon a form furnished by the commissioner, which shall contain such information as the commissioner may require. Every application for a license shall be accompanied by the proper fee. 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 the owner has been issued a license to operate at least once every twelve months or more often if necessary. 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 of 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 commission shall establish annual license fees for the operation of commercial weighing and measuring devices based on the number, capacity, and types of devices.

(II) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(a.5) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(b) The capacity of a given scale shall be determined by the manufacturer's rated capacity.

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

(5) The commission shall determine the annual license fee for textile meters, cordage meters, moisture meters, grain protein analyzers, certified weighers, persons who sell or install weighing and measuring devices, and persons who service weighing and measuring devices.

(6) to (10) (Deleted by amendment, L. 2007, p. 1905, § 8, effective July 1, 2007.)

(11) (Deleted by amendment, L. 2009, (SB 09-113), ch. 88, p. 334, § 23, effective April 2, 2009.)

(12) The fees for inspection and testing pursuant to section 35-14-107 (2) shall be as determined by the commission.

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

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), for each fiscal year, commencing on July 1, 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 one thousand pounds, belt conveyers, in-motion railroad scales, moisture-testing devices, and grain protein analyzers must be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(13) All license fees and testing fees collected by the department under this article shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

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, measures, 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 or other entity approved by the commissioner. The commissioner may establish approval periods, conditions, and limitations by rule.

(2) (a) The laboratory may require that specified weights, measures, or standards submitted for calibration be cleaned or sanded, scraped, and painted before submission. The fee for any metrology service shall be established by the commission. For each fiscal year, commencing on July 1, 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 commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(b) Repealed.

(3) The laboratory may seize any weight, measure, or standard 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 the commissioner's designated agent shall preside over such hearing, and the laboratory shall take no further action pending such hearing. If a hearing is not requested, the seized weights, measures, or standards may be destroyed after the expiration of the twenty-day period.

35-14-129. Moisture-testing devices and grain protein analyzers - specifications. (1) Before operating any moisture-testing device or grain protein analyzer for commercial use, the owner of the device or analyzer shall first procure a license for operation of the device or analyzer from the commissioner. An application for the license must be made upon a form furnished by the commissioner. A moisture-testing device or a grain protein analyzer is considered in commercial use if the results of the device or analyzer are a factor in determining:

(a) The price of the commodity tested; or

(b) For a moisture-testing device, the drying or other processing charge based upon moisture content of the commodity.

(2) to (6) Repealed.

35-14-130. Stop sale order. (1) The commissioner may issue warning notices to anyone who has not complied with 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 promulgated by the commissioner be taken off sale.

35-14-131. Civil penalties. (1) 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.

(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 that is not approved by the commissioner or the commissioner's designated agent, 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 rule;

(d) Remove, break, or deface, contrary to law or rule, any tag, seal, or mark placed on any weight or measure pursuant to 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 that is so positioned that its indications may not be accurately read and the weighing or measuring operation observed from some position 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 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 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 provider without being so certified.

(6) A civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit 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. 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.

35-14-132. Criminal penalties. (1) Any person who willfully makes, installs, sells or offers to sell, or uses or allows to be used on his or her weights or measures any counterfeit seal, or seal of the commissioner without proper authority, commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) The commissioner shall inform the district attorney of the proper district of any criminal violation of this article. It is the duty of each district attorney to whom the commissioner presents satisfactory evidence of any violation of this article to cause appropriate proceedings to be commenced and prosecuted in a court of competent jurisdiction. If the district attorney fails to so act within a reasonable time, the commissioner may notify and be represented by the attorney general.

(3) All criminal fines imposed and collected for violations of the provisions of this article shall be paid into the county treasury for the use of the people of the county in which the offense was committed.

35-14-133. Enforcement. (1) The commissioner or the commissioner's designee shall enforce this article.

(2) 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.

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 (5) (d), (5) (j), and (5) (m) are repealed, effective July 1, 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.

CENTRAL FILING SYSTEM

ARTICLE 15

State Central Filing System Board

35-15-101 to 35-15-110. (Repealed)

POULTRY AND RABBITS

ARTICLE 20

Poultry and Rabbits

35-20-101 to 35-20-110. (Repealed)

ARTICLE 21

Eggs

35-21-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Candling" means examining the interior of an egg by use of transmitted light sufficient to view the interior of the egg.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture.

(4) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 224, § 7, effective July 1, 2009.)

(5) "Consumer" means any person who buys eggs for household consumption and not for resale.

(6) "Dealer" means any person who is engaged in selling eggs.

(7) "Department" means the department of agriculture.

(8) "Edible eggs" means eggs which are free from mold, blood ring, blood spot, bloody whites, filth, stuck yolk, black rot, white rot, mixed rot, or any other inedible quality as defined by the United States department of agriculture.

(9) (Deleted by amendment, L. 95, p. 699, § 15, effective May 23, 1995.)

(10) and (11) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 224, § 7, effective July 1, 2009.)

(12) Repealed.

(13) "Manufacturer" means any person engaged in the business of manufacturing or preparing any product intended for sale for human consumption in which eggs in any form or part are used.

(14) "Person" means a person, partnership, association, or corporation.

(15) "Poultry eggs", "shell eggs", or "eggs" means shell eggs of the domesticated chicken.

(16) "Producer" means any person engaged in producing eggs in this state.

(17) "Restaurant" means any person engaged in the business of catering or furnishing meals to the public.

(18) and (19) Repealed.

(20) Where applicable, the singular includes the plural; the plural, the singular; and the masculine, the feminine.

35-21-102. Importation, classification, and grades. (1) All shell eggs shall be edible eggs, and shall be candled and graded into Colorado consumer grades.

(2) The consumer grades and weight classes for shell eggs, and standards for quality of individual shell eggs, shall be based on the United States department of agriculture grades and weight classes for shell eggs and standards for quality of individual shell eggs. The commission may adopt regulations as applicable and necessary to conform to current United States department of agriculture regulations for shell eggs.

(3) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 225, § 8, effective July 1, 2009.)

(4) A copy of the United States department of agriculture regulations governing the grading of shell eggs and United States standards, grades, and weight classes for shell eggs shall be kept on file in the office of the commissioner and shall be open to public inspection during normal business hours.

35-21-103. Refrigeration - transportation.

(1) Repealed.

(2) All eggs shall be kept under adequate refrigeration. The refrigeration shall be such that the temperature of the eggs does not exceed the temperature established in rules adopted by the commissioner pursuant to section 35-21-106 (1).

(3) Every vehicle used to transport eggs shall be maintained in a sanitary condition and shall be enclosed to protect eggs from extreme heat or cold.

(4) to (9) (Deleted by amendment, L. 95, p. 699, § 16, effective May 23, 1995.)

35-21-104. Licenses - application - fees - rules. (1) Every person selling poultry eggs within this state shall obtain from the department a dealer's license for each place where such business is conducted. A license is not transferable. The license shall expire and may be renewed in accordance with rules promulgated by the commissioner. No reduction of license fee may be made for a fractional part of a year.

(2) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)

(3) An application for a license shall state:

(a) The name of the applicant;

(b) If the applicant is a firm, the names of its members;

(c) If the applicant is a corporation, the names of its officers;

(d) The location of the business;

(e) The telephone number of the business;

(f) Any ownership information concerning the application that the commissioner may require; and

(g) Any contact information that the commissioner may require.

(4) (a) (Deleted by amendment, L. 2009, (SB 09-127), ch. 63, p. 223, § 5, effective July 1, 2009.)

(b) (I) The license categories shall be established by rule by the commissioner based on the average number of cases of eggs (thirty dozen per case) sold per week during the previous twelve months.

(II) The commission may establish a late fee for a license renewed after it has expired.

(III) Fees for each license category shall be as established by the commission.

(IV) The applicant for a license shall keep such records as may be necessary to indicate accurately the quantity of eggs sold per week during the year and shall allow the commissioner to examine these records in determining the quantity of eggs sold. A licensee shall retain such records of quantity sold for a period of two years.

(c) and (d) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)

(e) Repealed.

(f) to (i) (Deleted by amendment, L. 95, p. 700, § 17, effective May 23, 1995.)

(j) For the fiscal year commencing on July 1, 2007, and for each subsequent fiscal year, the agricultural commission shall establish a fee schedule to cover all of the direct and indirect costs of administering and enforcing the provisions of this article.

(5) All license fees shall be deposited with the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

35-21-105. Exemption. (1) Except as provided in subsection (2) of this section, a person who produces and sells, only on the premises at which the eggs were produced, at a farmers' market, or through a community-supported agricultural organization, less than two hundred fifty dozen eggs per month is exempt from this article; except that such a producer may apply for a dealer's license and, upon compliance with this article, be issued a dealer's license.

(2) A person transporting eggs for sale at a farmers' market or similar venue under subsection (1) of this section shall:

(a) Comply with the transport requirements of section 35-21-103 (3) and any rules, including rules requiring refrigeration, promulgated under this article regarding the safe transport and washing of eggs; and

(b) Affix to the egg package a label containing the address at which the eggs originated and the date on which the eggs were packaged. Any eggs not treated for salmonella must also include the following statement on the package: "Safe Handling Instructions: To prevent illness from bacteria, keep eggs refrigerated, cook eggs until yolks are firm, and cook any foods containing eggs thoroughly. These eggs do not come from a government-approved source."

35-21-106. Rules - commissioner to enforce - procedure. (1) The commissioner is authorized to formulate rules relating to licensing, transporting, processing, labeling, sale, storage, inspection, and record-keeping as the commissioner may deem proper and necessary for the furtherance and enforcement of this article. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(2) (a) The commissioner is responsible for enforcing this article. The commissioner or the commissioner's designee shall have access during regular business hours to business premises, facilities, vehicles, and records pertinent to activities regulated under this article.

(b) If the commissioner determines that the provisions of this article or the rules promulgated for its enforcement are being violated, the commissioner may cause "stop sale notices" to be placed on all eggs being sold or offered for sale in violation of this article or said rules. No person may sell or otherwise dispose of eggs upon which a "stop sale notice" has been issued until such "stop sale notice" has been cancelled by the commissioner or a duly authorized agent.

(3) (a) It is unlawful for any person to refuse to submit any eggs or egg products or to refuse to stop any vehicle transporting eggs or egg products for inspection by any authorized person of the department.

(b) Any authorized agent of the department may, while enforcing the provisions of this article, seize and hold as evidence any carton or container of eggs received, packed, stored, delivered for shipment, loaded, or in transit in violation of any provisions of this article.

35-21-107. Penalty. (1) Any person who violates any of the provisions of this article is guilty of a misdemeanor. It is the duty of the commissioner to notify the district attorney of the judicial district in which a violation occurs, and the district attorney of said district shall conduct such proceedings as may be necessary with the cooperation of the commissioner. Upon conviction in any court of competent jurisdiction, any person in violation of any of the provisions of this article shall be punished by a fine of not more than five hundred dollars. Each calendar day on which such a violation occurs shall constitute a separate violation. Fines and penalties imposed under this article shall be collected and remitted as provided by law.

(2) After proper hearing as provided in article 4 of title 24, C.R.S., the commissioner may deny an application for licensure, place a licensee on probation, or restrict, suspend, revoke, or refuse to renew the license of a person who violates any of the provisions of this article or any rule adopted under this article. Such restriction, revocation, or suspension of or refusal to renew a license may be in addition to, or in lieu of, any penalties or fines imposed in subsection (1) of this section.

35-21-107.5. Civil penalties. (1) (a) 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 seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) (a) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) Upon a finding that the commissioner did not have probable cause to impose a civil penalty, the person charged may recover from the department such person's costs and attorney fees.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

35-21-108. Repeal of sections - review of functions. Sections 35-21-104 and 35-21-107 (2) are repealed, effective July 1, 2020. Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

ARTICLE 22

Branding of Turkeys

35-22-101 to 35-22-113. (Repealed)

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

ARTICLE 23

Fruits, Vegetables, and Other
Agricultural Products

35-23-101. Legislative declaration. The purpose of this article is to provide the means whereby producers, shippers, carriers, buyers, and sellers of fruits, vegetables, and such other agricultural products as may be mutually agreed upon, on application, may secure prompt and efficient inspection and classification of such products. The standardization of the produce industry by means of the proper classification and grading of fruits, vegetables, and other agricultural products is recognized to be beneficial to the producer, carrier, shipper, buyer, seller, and consumer. Prompt and efficient inspection, under competent authority, furnishes the producer and the shipper prima facie evidence of quality and condition of products; it guarantees the carrier and the receiver as to the quality and condition of products carried and received by them; and it assures the ultimate consumer of the quality and condition of products purchased.

35-23-102. Responsible officer. The inspection in this state of fruits, vegetables, and other agricultural products, and the classification of grades thereof, shall be under the direction and control of the commissioner of agriculture.

35-23-103. Federal cooperation. The commissioner is empowered to enter into such agreements with the United States department of agriculture as he may determine to be necessary or advisable for the establishment of a joint state and federal inspection service in Colorado for fruits, vegetables, and other agricultural products.

35-23-104. Employees of inspection service. Pursuant to section 13 of article XII of the state constitution, the commissioner shall employ and discharge such supervisors, deputies, inspectors, and employees as the needs of the inspection service require. Inspectors shall be

experienced in the inspection of fruits, vegetables, and other agricultural products, and in commercial packing practices, and shall hold, at the time of appointment, a federal inspector's license.

35-23-105. Authority to enter business places. In carrying out the provisions of this article, the commissioner and his deputies, inspectors, and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, or other building or place where fruits, vegetables, or other agricultural products are kept or stored by any person engaged in the shipping of fruits, vegetables, or other agricultural products, or to stop or inspect at any time any automobile, truck, trailer, or other vehicle transporting or containing any such fruits, vegetables, or other agricultural products.

35-23-106. Establishment of regulations and grades. The commissioner is empowered to establish and enforce such grades, grading rules, and regulations in addition to those established by this article, in no event less than the minimum requirements prescribed by this article, as he may deem necessary on fruits, vegetables, and other agricultural products, which shall not conflict with any provisions of this article, after a thorough investigation has been made of the needs of the particular fruit, vegetable, or other agricultural product for which grades, grading rules, and regulations are contemplated; but, whenever it is deemed advisable by the commissioner, such grades shall be the same as the grades promulgated by the United States department of agriculture. Such grades, grading rules, and regulations, before they become effective, shall be submitted for approval at one or more public meetings called for that purpose and attended by representative growers and shippers of the localities interested in the industry affected. Such meetings shall be advertised at least once in a newspaper published in such localities, one week or more prior to the meeting. Said meeting shall be presided over by the commissioner or any of his duly authorized deputies and, insofar as possible and practicable, shall be conducted at such places as can be conveniently reached by representatives of the affected industry. Grades, grading rules, and regulations, established in accordance with the provisions of this section, shall not be modified during the current shipping season of the fruit, vegetable, or other agricultural product for which they are established. In like manner the commissioner may provide for standard packages for all fruits, vegetables, and other agricultural products, but no standard packages shall be eliminated or changed without two years' notice to the industry involved.

35-23-107. Appeal to change regulations and grades. On receipt of a written appeal by representative growers or shippers representing at least fifty-one percent of the acreage of the commodity for which grades, grading rules, regulations, or standard packages have been established by the commissioner under the provisions of this section and section 35-23-106, protesting against the grades, grading rules, regulations, or standard packages so established, the commissioner shall call a hearing. Due notice shall be given by the commissioner to all interested

parties of the date and place of such hearing, and the grades, grading rules, regulations, or standard packages shall be sustained, modified, or revoked, in the discretion of the commissioner on the basis of the evidence presented. If such grades, grading rules, regulations, or standard packages are not changed or modified by the commissioner, in accordance with the provisions of this section and section 35-23-106, they shall continue to be in full force and effect. Grades, grading rules, regulations, and standard packages, established under the provisions of this section and section 35-23-106, shall be promulgated by the commissioner and published at least once in one or more newspapers or farm journals of general circulation in the state.

35-23-108. Power of regulation. The commissioner, with the concurrence of the state agricultural commission, is authorized to promulgate such rules and regulations relative to the proper marking of containers, the issue of certificates of inspection, the tagging of the vehicle of transportation, and such other rules and regulations as he deems necessary for the improvement of the quality of marketing of all fruits, vegetables, or other agricultural products.

35-23-109. Engaging in trade prohibited. The commissioner and his deputies, inspectors, and employees are each prohibited, during their respective terms of employment or office, from engaging in this state or elsewhere, either directly or indirectly, in the business of buying or selling fruits, vegetables, or other agricultural products or in dealing in the same on commission.

35-23-110. Malfeasance of inspectors - penalty. Any inspector employed under this article who knowingly makes a wrong or improper inspection of any fruit, vegetable, or other agricultural product, or knowingly and improperly certifies that the grade, quality, or condition of a fruit, vegetable, or other agricultural product does or does not conform to the standards established under this article, or fails to bring action to prosecute any violators of this article, or accepts money or other consideration directly or indirectly for an incorrect or improper performance of his duty, and any person who improperly influences any such inspector in the performance of his duty, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

35-23-111. Inspection made mandatory. It is unlawful for any person, firm, corporation, or other organization to ship potatoes in excess of one thousand pounds, except those destined for commercial processing, unless they have first been inspected by a duly authorized inspector who shall issue a certificate of inspection showing the grade or other classification thereof.

35-23-112. Appeal of inspection. Any interested party, who is dissatisfied with any classification of grades of any fruits, vegetables, or other agricultural products made as the result of inspection under this article, within such time after the inspection and in such manner as shall be prescribed by the commissioner, may appeal to the commissioner, and the commissioner is directed to promulgate rules and regulations governing the time and manner of such appeal. Upon such appeal to him being regularly taken, the commissioner shall cause such investigation to be made and such tests to be applied as he may deem necessary to determine the true grade or classification in the particular case in question and shall issue a finding determining the true grade or classification in the particular case. Whenever an appeal to the commissioner is taken, he shall fix and assess, and collect or cause to be collected, the established fee for an original inspection for each such appeal, which shall be uniform and which shall be refunded to the person paying the same, if the findings of the commissioner on appeal are to the effect that the grade or classification as determined and certified on the original inspection was erroneous and a new or different grade or classification is determined by the commissioner. Any reinspection certificate issued as the result of an appeal shall supersede the original inspection certificate.

35-23-113. Issuance of certificate of inspection. A certificate evidencing that official inspection has been made and designating the classification of the grades of fruits, vegetables, or other agricultural products so inspected shall be issued by the inspector and delivered to the applicant. A certificate so issued shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such fruit, vegetable, or other agricultural product at the time of inspection.

35-23-114. Inspection fees - agricultural products inspection cash fund. (1) The state agricultural commission, after conferring with interested industry groups, is authorized to fix, assess, and collect fees for the inspection and issuance of certificates of inspection on fruits, vegetables, and other agricultural products.

(2) (a) Such fees shall be uniform for the particular service rendered. The amount of such fees for services rendered under the provisions of this article shall be determined by the commission as nearly as may be to the end that such fees shall pay at least fifty percent of the operational cost of the inspection service mandated by section 35-23-111, but appropriations from the general fund shall be fifty percent of the operational cost of such mandatory inspection or two hundred thousand dollars, whichever is the lesser amount, and one hundred percent of the operational costs of all other inspection services provided pursuant to this article. Such fees shall be paid by the person, firm, corporation, or other organization requesting the service at the time such service is rendered or as otherwise provided and authorized by the commission.

(b) (Deleted by amendment, L. 93, p. 353, § 1, effective April 12, 1993.)

(3) (a) Fees for inspections mandated by section 35-23-111 and fees for all other inspection services provided pursuant to this article and collected under the provisions of this section shall be deposited in the state treasury and credited to the agricultural products inspection cash fund, which fund is hereby created. All interest derived from the deposit or investment of

moneys credited to the agricultural products inspection cash fund shall also be credited to the fund. All moneys credited to the agricultural products inspection cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund. All moneys in said fund are to be appropriated by the general assembly to the department of agriculture to be used for inspection services provided pursuant to this article. Moneys in the agricultural products inspection cash fund may be used:

(I) Repealed.

(II) For the department's direct and indirect costs; except that, effective July 1, 2006, no more than five percent of said moneys shall be used for the department's indirect costs.

(b) Repealed.

(4) Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the mandatory fruit and vegetable inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the agricultural products inspection cash fund.

35-23-115. Information confidential. All information obtained as the result of any inspection made under the provisions of this article shall not be open to inspection by the public; except that the commissioner shall prepare and certify to any financially interested party a copy of the original inspection certificate of any inspection upon the payment to him of his fees therefor. The commissioner is authorized to prescribe rules and regulations governing the issuance of such certificates.

35-23-116. Penalty. Any person, firm, corporation, or other organization which violates any of the provisions of this article or willfully interferes with the commissioner or his deputies, inspectors, or employees in the performance or on account of the execution of his duties as provided by this article is guilty of a misdemeanor. Any person convicted under this article shall be punished by the revoking of his license by the commissioner and by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

ARTICLE 23.5

Controlled Atmosphere Storage of Apples

35-23.5-101. Short title. This article shall be known and may be cited as the "Controlled Atmosphere Storage of Apples Act".

35-23.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Controlled atmosphere storage" means the storage of apples under conditions which comply with the provisions of this article and the rules and regulations adopted pursuant to the provisions of this article.

35-23.5-103. Voluntary inspection of facility - rules - fee. The commissioner may inspect a controlled atmosphere storage facility upon request by the operator or under conditions set forth in rules adopted by the commissioner pursuant to sections 24-4-103, C.R.S., and 35-23.5-104. The commissioner may fix, assess, and collect fees in amounts that cover actual costs associated with inspection and the issuance of certificates of inspection.

35-23.5-104. Commissioner to develop rules. The commissioner shall develop reasonable rules concerning the voluntary inspection of apples stored pursuant to this article and the controlled atmosphere storage of apples, including, among other factors, the following: Storage facility regulations; record keeping and reports; length of storage time, including the maximum time allowed to reach prescribed atmospheric conditions of temperature, oxygen, and carbon dioxide; quality regulations; and labeling and marketing.

35-23.5-105. Storage in another state. (1) When apples have been grown and stored in another state which has laws governing controlled atmosphere storage of apples similar to the provisions in effect in this state, and the apples have been stored in compliance with those provisions, such apples may be represented as having been exposed to controlled atmosphere storage when sold in this state if the state in which they were stored permits apples which are stored in this state and in compliance with the laws of this state to be represented as having been exposed to controlled atmosphere storage when sold in that state.

(2) When apples have been grown and stored in another state which does not have laws governing controlled atmosphere storage of apples similar to provisions in effect in this state, but the apples have been stored in facilities and under conditions comparable to that required under this article and the rules adopted pursuant thereto, they may be represented as having been exposed to controlled atmosphere storage when sold in this state.

35-23.5-106. Suspension or revocation. (Repealed)

35-23.5-107. Penalty. (1) It is unlawful for any person to:

(a) Operate a facility for the storage of apples that is represented as being a controlled atmosphere storage facility unless it meets the standards set pursuant to rule by the commissioner

under the provisions of this article;

(b) Sell, exchange, offer for sale, advertise, label, or otherwise represent that apples have been exposed to controlled atmosphere storage, unless such apples have been stored in a facility that meets the standards set pursuant to rule by the commissioner under provisions of this article.

(c) Repealed.

(2) Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each such offense. Each day of violation shall be deemed a separate offense.

(3) The commissioner may initiate an action in the proper court for injunctive relief to prevent or restrain any violation of this article or the rules adopted pursuant thereto.

35-23.5-108. Repeal - review of functions. (Repealed)

ARTICLE 24

Dairy Products

35-24-101 to 35-24-208. (Repealed)

ARTICLE 24.5

Aquaculture

35-24.5-101. Short title. This article shall be known and may be cited as the "Colorado Aquaculture Act".

35-24.5-102. Legislative declaration. (1) The general assembly finds and declares that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to promote agricultural diversification, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the land and water resources of the state, and provide other benefits to the state.

(2) The general assembly further finds and declares that aquaculture shall be considered an agricultural enterprise as defined in the "Colorado Agricultural Development Authority Act", article 75 of this title, and, for property tax assessment purposes, shall be classified pursuant to section 39-1-102 (1.6) (b), C.R.S.

35-24.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Aquaculture" means the controlled propagation, growth, and harvest of, and subsequent commerce in, cultured aquatic stock, including but not limited to fish and other aquatic vertebrates, mollusks, crustaceans, and algae and other aquatic plants, by an aquaculturist.

(2) "Aquaculture facility" means any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes.

(3) "Aquaculturist" means an individual, partnership, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof.

(4) "Aquatic disease" means any departure from a normal state of health of aquatic organisms caused by disease agents.

(5) "Aquatic organism" means an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, or aquatic insect or other aquatic invertebrate. "Aquatic organism" includes the viable gametes (eggs or sperm) of an aquatic organism.

(6) "Board" means the aquaculture board.

(7) "Commercial aquaculturist" means an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes.

(8) "Commission" means the state agricultural commission.

(9) "Commissioner" means the commissioner of agriculture.

(10) "Cultured aquatic stock" means aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms; except that "cultured aquatic stock" does not include state-owned fish, crustaceans, amphibians, or mollusks lawfully taken and used or sold for bait only.

(11) "Department" means the department of agriculture.

(12) "Division" means the division of parks and wildlife in the department of natural resources.

35-24.5-104. Aquaculture board. (1) There is hereby created and established in the department an aquaculture board, which shall consist of the following:

(a) The five persons who make up the fish health board as established in section 33-5.5-101, C.R.S.; and

(b) Two additional members, to be appointed by the commissioner, who are familiar with the commercial marketing or processing of aquatic organisms and their products or with the financing of commercial aquaculture.

(2) The term of office of the two additional members shall be three years. Each of these members shall serve until his or her successor has been appointed and qualified, and either member shall be eligible for reappointment. They shall serve without compensation except for actual and necessary traveling expenses.

(3) The board shall annually select a chairman and a vice-chairman, who may be the same as the chairman and vice-chairman of the fish health board.

(4) A majority of the board shall constitute a quorum, and, if a quorum is present, in person or by telephone, the board may act upon a vote of a majority of those present.

(5) The board shall constitute a "public entity" and each member and employee of the board shall constitute a "public employee" within the meaning of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(6) The board shall exercise its powers and perform its duties and functions specified in this article under the department and the executive director thereof as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

35-24.5-105. Duties of the board. (1) The board shall consider, initiate, and recommend rules, not inconsistent with law, to the commissioner concerning the regulation of the aquaculture industry and its markets, except for rules that regulate, control, or otherwise relate to fish health, to the spread of aquatic disease, or to the importation into the state or the distribution and management of any exotic aquatic species, all of which subjects are within the jurisdiction of the parks and wildlife commission.

(2) The board shall develop appropriate programs to assist in the protection, growth, and promotion of the aquaculture industry of the state and shall recommend policies and procedures to the commissioner and the commission for the accomplishment of such a plan.

(3) The board shall review any suspensions or revocations of aquaculture facility permits and any orders for the destruction of aquatic organisms or for quarantine of aquaculture facilities which last beyond thirty days, and all such suspensions, revocations, and orders shall be conditioned upon the board's approval; except that destruction orders may be approved by the commissioner upon a determination that a situation exists which threatens imminent danger to existing aquatic populations or to human health and safety and that no more reasonable means exist to control the situation. Destruction of aquatic organisms or quarantines shall be done in accordance with applicable regulations of the department.

(4) The board shall review aquaculture facility permitting procedures and shall make recommendations to the department concerning such procedures and any related fees and charges.

35-24.5-106. Rules. (1) To carry out the provisions of this article, the board is

authorized to consider and recommend to the commissioner appropriate rules to be promulgated pursuant to section 24-4-103, C.R.S., including but not limited to rules concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article;

(b) Standards applicable to products of cultured aquatic stock offered for sale; and

(c) The establishment of standards for and certification of private aquaculture facilities, which may include standards for commercial aquaculturists.

(2) Nothing in this section diminishes or supersedes the authority of the division or the parks and wildlife commission to regulate or manage wild populations of aquatic organisms in the waters of the state or in facilities controlled or managed by the division or by the United States fish and wildlife service.

35-24.5-107. Powers and duties of the commissioner. (1) To carry out the provisions of this article, the commissioner is authorized to adopt appropriate rules pursuant to section 24-4-103, C.R.S., including but not limited to rules concerning the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article and article 5.5 of title 33, C.R.S.;

(b) Standards applicable to products of cultured aquatic stock offered for sale; and

(c) The establishment of standards for and certification of private aquaculture facilities, which may include standards for commercial aquaculturists.

(2) Nothing in this section diminishes or supersedes the authority of the division or the parks and wildlife commission to regulate or manage wild populations of aquatic organisms in the waters of the state or in facilities controlled or managed by the division or by the United States fish and wildlife service.

(3) The commissioner shall institute appropriate programs to assist in the protection, growth, and promotion of the aquaculture industry in the state.

(4) The commissioner shall provide facilities and support to the board for use in carrying out its duties.

(5) The commissioner shall provide for the issuance of permits for aquaculture facilities and shall establish permit fees to offset the costs of regulating the aquaculture industry.

(6) The commissioner shall enforce all rules and regulations concerning aquaculture except those which relate to fish health, or to the spread of aquatic diseases, or to the importation into the state or the distribution and management of any exotic aquatic species, all of which rules and regulations shall be enforced by the division.

(7) The commissioner may contract for the services of any certified aquatic disease laboratory or certified aquatic disease specialist in this state or in any other state, or with any other government agency, through intergovernmental agreement, contract, or memorandum of understanding to implement and enforce the rules and regulations of the commissioner.

(8) The commissioner may quarantine aquaculture facilities subject to the review of the

aquaculture board pursuant to section 35-24.5-105 (3).

(9) Nothing in this section shall be construed to conflict with or to supersede the authority of the Colorado department of public health and environment to regulate the growing, harvesting, and shipping of molluskan shellfish or any other processed fish or seafood products intended for human consumption.

35-24.5-108. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(2) After thorough consultation with the board, the department may receive and expend grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any agency of this state or its political subdivisions for the purposes of this article.

35-24.5-109. Facility permit required. (1) On or after January 1, 1992, no person shall operate a fish production facility for the purpose of propagating, selling, trading, or transporting live fish or viable gametes unless such fish production facility possesses a valid and current aquaculture facility permit issued by the commissioner.

(2) One or more satellite stations of a fish production facility may operate under one aquaculture facility permit if all such satellite stations are listed on such facility permit.

(3) Each person seeking to obtain an aquaculture facility permit shall make application to the commissioner on forms prescribed and furnished by the commissioner.

(4) An annual facility permit fee in an amount to be established by the commissioner, not to exceed one hundred eighty dollars, shall accompany the application.

(5) No aquaculture facility permit shall be required for persons to obtain and possess live fish for aquaria or private ponds so long as such aquaria or ponds are hydrologically closed systems and are not connected to state waters and so long as live fish which have been held in such aquaria or ponds are not released into state waters.

(6) No aquaculture facility permit shall be required of any federal, state, or county agency or of any person possessing a valid scientific collecting permit who is conducting research or educational activities with lawfully acquired fish, nor shall such permit be required of any zoo accredited by the American association of zoological parks and aquariums; except that such persons and entities must adhere to all other division of parks and wildlife regulations including record-keeping and importation requirements.

(7) Any person who operates or uses an aquaculture facility, whether as owner, operator, lessee, or pursuant to any contract, or who otherwise buys, sells, trades, or acts as a broker of live fish or viable gametes, shall be subject to all applicable regulations including record-keeping and importation requirements.

35-24.5-110. Civil penalties - disciplinary actions. (1) (a) Any person that violates any

of the provisions of this article or any rule or regulation promulgated by the commission pursuant to this article may be punished upon a finding of such violation by the commissioner as follows:

(I) In any first administrative proceeding, a fine of not less than one hundred dollars nor more than one thousand dollars;

(II) In any subsequent administrative proceeding against the same person, a fine of not less than one thousand dollars nor more than five thousand dollars.

(b) If the commissioner is unable to collect such civil penalty or if any 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 any court of competent jurisdiction.

(2) In addition to the penalties provided in subsection (1) of this section, the commissioner may withhold, deny, suspend, or revoke the aquaculture facility permit of any aquaculturist if the commissioner finds that such person has committed any of the following:

(a) Fraud or material deception in the obtaining or renewal of a permit;

(b) Failure to comply with any provision of this article or rules promulgated by the commissioner or any lawful order of the commissioner pursuant thereto;

(c) Failure to comply with any provision of section 33-6-114.5 (1) to (6), C.R.S., or with any rule or regulation of the division, or with any statutory provision relating to fish health, the spread of aquatic diseases, or the importation into the state, distribution, or management of any exotic aquatic species;

(d) Contracting with or assisting unlicensed persons to perform services or operate in a manner for which a license is required under this article.

(3) Any revocation or suspension of a permit by the commissioner shall be subject to review by the board pursuant to section 35-24.5-105 (3); except that the commissioner may issue an order to cease and desist from doing any act which is determined to present an immediate danger to other aquatic stock pending such review by the board. For the purpose of enforcing any such cease-and-desist order, the commissioner has, in addition to any other powers conferred by statute, the power to exercise such physical control over property and persons as may be necessary to protect the health of such aquatic stock or of the public.

(4) Whenever the commissioner possesses sufficient evidence satisfactory to the commissioner indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

35-24.5-111. Aquaculture fund created. All fees and penalties collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the aquaculture cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the direct and indirect costs of the

administration of this article.

ARTICLE 25

Colorado Bee Act

35-25-101. Short title. This article shall be known and may be cited as the "Colorado Bee Act".

35-25-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advisory committee" means that committee appointed by the commissioner pursuant to the provisions of section 35-25-104.

(1.5) Repealed.

(2) "Apiary" or "beeyard" means a hive or hives of bees in close proximity to one another.

(2.5) Repealed.

(3) "Beekeeper" means any person producing or causing to be produced bees or bee products.

(4) "Bees" means honey-producing insects of the genus apis, including all life stages.

(5) "Beeswax" means the wax produced by the honeybee.

(6) Repealed.

(7) "Brood" means bees in any stage of development preceding emergence as adults.

(8) "Certificate of inspection" means a document issued by the commissioner indicating the health conditions of the colony or apiary.

(9) "Colony" means one group of bees established in a place acceptable to said bees for the rearing of young and the storage of honey.

(10) "Comb" means any structure acceptable to bees for the storage of honey and pollen and the rearing of brood.

(11) "Commissioner" means the commissioner of agriculture.

(12) "Contagious disease" means any disease produced by disease agents or parasitic agents to bees or beekeepers which shall be determined by the commissioner as being hazardous to the beekeeping industry in this state.

(13) "Entry permit" means a document issued by the commissioner permitting entry of bees, equipment, or appliances into the state of Colorado, accompanied by a health certificate from the originating state indicating the number of colonies and county of destination.

(14) "Equipment" means any object that is attached to or made a part of a hive.

(15) "Frame" means any device designed to receive single sheets of wax foundation and in which bees are encouraged to draw comb.

(16) "Hive" means any structure containing bees and designed to receive movable frames of comb.

(16.5), (17), and (18) Repealed.

(19) "Person" means any body politic, individual, partnership, association, corporation, company, joint stock association, or organized group of persons whether incorporated or not and includes any trustee, receiver, or assignee. "Body politic" means any agency of this state or of the federal government or any unit of local government including any county, city, town, school district, local improvement or service district, special district, or other governmental unit having authority under the law to tax or impose assessments, including special assessments.

35-25-102.5. Licensing functions subject to periodic review. (Repealed)

35-25-103. Enforcement. (1) The commissioner or his authorized agents are authorized and directed to enforce the provisions of this article.

(2) (a) If it appears to the commissioner after examination of the facts that a violation of any provision of this article has occurred, he may refer the facts to the district attorney for the county in which the violation occurred.

(b) Nothing in this article shall be construed as requiring the commissioner to report for prosecution minor violations of this article or rules and regulations when the commissioner believes that the public interest will best be served by a suitable notice of warning in writing.

(3) Each district attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted in any competent court without delay.

(4) The commissioner may, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this article.

(5) (a) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person being charged has been given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the commissioner is found to have lacked substantial justification to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the state treasurer, who shall credit the same to the bee inspection fund.

(f) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all

books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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.

35-25-104. Advisory committee and districts. (1) There is hereby created an advisory committee to be nominated by the beekeeping industry and composed of seven members to be appointed by the commissioner. The members shall meet with and advise the commissioner concerning the needs of the beekeeping industry and shall assist in formulating rules and regulations pertaining to the administration of this article. The members shall be as follows:

(a) A beekeeper from the area of the Colorado river drainage basin, to be known as district 1;

(b) A beekeeper from the area of the Rio Grande river drainage basin and all of Chaffee county, to be known as district 2;

(c) A beekeeper from the area of the Arkansas river drainage basin, except Chaffee county, to be known as district 3;

(d) A beekeeper from the area of the Platte and Republican rivers drainage basin, to be known as district 4;

(e) The president of the Colorado beekeepers association;

(f) The extension entomologist;

(g) One member who is a beekeeper at large.

(2) Members of the advisory committee shall receive no compensation.

(3) Repealed.

35-25-105. Rules and regulations. (1) The commissioner is authorized to adopt rules and regulations pursuant to the provisions of article 4 of title 24, C.R.S., for the administration of this article.

(2) The powers and duties of the commissioner under this article may be delegated by the commissioner to employees of the department of agriculture designated by him.

35-25-106. Examination of apiaries. (1) The commissioner, when he has reason to suspect disease in any apiary, may examine all reported or suspected apiaries. If any contagious disease is present, he may examine all apiaries in the same locality and ascertain whether or not any contagious disease exists in the apiaries. If satisfied of the existence of any such contagious disease, the commissioner may burn, sterilize, or medically treat said apiary in strict compliance with rules and regulations pertaining thereto, or the commissioner may require the beekeeper to burn, sterilize, or medically treat said apiary.

(2) If a dispute arises as to the diagnosis of the disease, a sample shall be taken and

mailed to the nearest bee disease and investigation laboratory for positive identification. Should the occasion arise, the commissioner may preserve from destruction diseased colonies for experimental purposes.

35-25-107. Inspection of beehives for interstate movement. Any beekeeper or person requesting an inspection of beehives for contagious disease for the purpose of interstate movement shall be liable for all costs of such inspection. The beekeeper or his agent shall accompany and assist the inspector in making the inspection.

35-25-108. Beehives equipped with movable combs - certificate - permit. (1) Beehives shall be equipped with movable combs.

(2) Bees on combs and used beekeeping appliances or equipment entering Colorado must be accompanied by a certificate declaring the apiaries from which the bees, appliances, or equipment originated to be free from contagious diseases. This certificate shall be from a duly authorized inspector of the state of origin.

(3) Anyone desiring to move bees on combs or used bee equipment into the state of Colorado shall be required to secure an entry permit from the commissioner. Application for this permit shall be accompanied by a timely certificate of inspection, as defined by the commissioner, issued from the state apiary inspection agency of the state of origin, showing freedom from contagious disease, the number of colonies to be moved, and the county to which the owner or operator desires to move. The owner or operator of the bees or equipment shall notify the commissioner upon arrival in the state.

35-25-109. Labeling of adulterated or artificial products - enforcement. (Repealed)

35-25-110. Authority to enter premises. The commissioner is authorized, during reasonable business hours, to enter upon or into any premises, lands, buildings, or places where bees or beekeeping appliances are kept for carrying out the provisions of this article.

35-25-111. Penalties. In addition to civil penalties which may be imposed pursuant to section 35-25-103 (5), any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for the first offense and, for any offense thereafter, is guilty of a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-25-112. Injunctive relief. The commissioner may institute an action to enjoin any violation of this article or any rule or regulation promulgated under this article. A violation of

this article or any rule or regulation promulgated pursuant thereto is declared to constitute a public nuisance. Such action for injunction may be maintained notwithstanding the existence of other legal remedies and notwithstanding the pendency or successful completion of a criminal prosecution. 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.

35-25-113. Agreements. The commissioner may enter into agreements with any municipal, county, federal, or other state agencies and delegate authority to representatives thereof when such agencies or representatives may assist in carrying out the provisions of this article.

35-25-114. Exemption. (Repealed)

35-25-115. Alfalfa leaf-cutter bees - importation - possession - enforcement - penalties. (Repealed)

35-25-116. Bee inspection fund - transfer of moneys to plant health, pest control, and environmental protection cash fund. All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the bee inspection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

35-25-117. Emergency powers. If, at any time, the commissioner determines the existence of any imminent hazard inimical to the beekeeping industry in this state, the commissioner may take appropriate action, including but not limited to: Inspecting any public or private place; establishing and enforcing quarantines; issuing and enforcing orders and rules for the control and eradication of said hazard; and taking such other action as may seem advisable and not contrary to law as the commissioner is empowered with pursuant to this title. The commissioner is hereby authorized to seek reimbursement from the general assembly for any funds expended in the exercise of these emergency powers.

ARTICLE 26

Colorado Nursery Act

35-26-101. Short title. This article shall be known and may be cited as the "Colorado Nursery Act".

35-26-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advertisement" means the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property.

(1.5) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(1.7) "Body politic" means any agency of this state or of the federal government, or any unit of local government, including any county, city, town, school district, local improvement or service district, or special district, or any other governmental unit having authority under the law to tax or impose assessments, including special assessments.

(2) "Botanical name" means that name used in the binomial system of nomenclature consisting of the genus and the species of a particular plant and, if there be one, the variety name of the species.

(3) "Collected nursery stock" means any nursery stock removed from its original native habitat.

(4) "Collector" means any person who collects nursery stock for sale purposes.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Common name" means the name of any plant which is in common and widest use in the state, to designate the kind and variety of a plant.

(7) "Dead or dying condition" means a condition in which a plant is without living tissue, or is weakened to a point that it is unlikely to grow with reasonable vigor when given reasonable care.

(8) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(9) "Department" means the department of agriculture.

(9.5) "Grown within Colorado" means propagated from seed or cuttings or by budding or grafting in Colorado, or grown as a native stand of trees or shrubs or other stock growing on property owned or leased in Colorado by the nursery who intends to collect and sell such stock.

(10) "Insect pests" means the small invertebrate animal in the phylum anthropoda comprising the class insecta which generally have segmented bodies, are six-legged, and are usually winged, such as beetles, bugs, bees, and flies, including a similar class of arthropods whose members are wingless and generally have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice which are injurious to nursery stock.

(11) "Landscape contractor" means a person who provides nursery stock for compensation or value as part of a site development or landscaping service.

(12) "Nursery" means any grounds or premises on or in which nursery stock is

propagated, held, or grown for sale purposes.

(13) "Nurseryman" means any person owning, leasing, or managing a nursery. All persons engaged in the operation of a nursery are farmers and are engaged in agriculture for all statutory purposes.

(14) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines; turfgrass sod, seedlings, perennials, biennials; and buds, cuttings, grafts, and scions thereof, grown or collected or kept for propagation, sale, or distribution; except that it does not mean dormant bulbs, tubers, roots, corms, rhizomes, pips, field, vegetable, or flower seeds, bedding plants, annual plants, and florists' greenhouse plants, flowers, or cuttings commonly known as greenhouse stock.

(15) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)

(16) "Orchard plants" means trees, shrubs, and vines which are grown solely for their fruit or other products.

(17) "Person" means any firm, partnership, association, corporation, society, individual, or combination of individuals.

(18) "Place of business" means each separate nursery, store, stand, sales ground, lot, or any location from which nursery stock is being sold, offered for sale, or distributed.

(19) "Plant diseases" means the pathological condition in nursery stock caused by fungi, bacteria, nematodes, viruses mycoplasmas, or parasitic seed plants.

(20) "Stop-sale order" means a written order prohibiting the sale of nursery stock.

(21) "Turfgrass sod" means a strip or section of one or more grasses or other plants acceptable for lawn plantings which, when severed from its growing site, contains sufficient plant roots to remain intact, and does not contain weeds in excess of the amounts specified by the commissioner.

(22) "Weed" means any plant which grows where not wanted.

35-26-103. Inspections. (1) (a) Except as otherwise provided in this section, premises in this state on which nursery stock is kept for sale or offered for sale and all areas in this state that are sources of collected nursery stock may be inspected by the commissioner or the commissioner's authorized agents using a risk-based approach. If any person requests an inspection of crops, plant material, or other articles or premises for pests, the commissioner shall provide such inspection and issue a certificate setting forth the facts of said inspection. Inspections may also be made by the commissioner or the commissioner's authorized agents at any time deemed appropriate by the commissioner based on information known to the commissioner or based on any complaint received by the commissioner alleging failure to comply with any provision of this article or any rule promulgated pursuant to this article.

(b) Any nursery that only sells nursery stock that is grown within Colorado and does not export such stock outside of Colorado is exempt from the inspection requirements specified in paragraph (a) of this subsection (1); except that such nursery may be inspected upon request if the required inspection fee is paid.

(2) No person shall sell in this state any nursery stock except from sources available for

inspection.

(3) The commissioner may promulgate rules establishing minimum standards for the qualification of individuals who are authorized to make inspections as agents of the commissioner under this article and who are not employees of the department. The commissioner may charge an annual fee for qualifying such individuals as inspectors pursuant to this subsection (3). Such fee shall be in an amount sufficient to defray the costs of qualifying inspectors pursuant to this subsection (3).

(4) On an annual basis, the commissioner shall make public the results of such inspections in order to inform the public as to the major sale sources of nursery stock found not to be of the quality permitted to be sold, and the location where such nursery stock was offered for sale. Publication of such reports shall be as provided for in sections 35-1-107 (3) and 24-1-136, C.R.S.

35-26-104. Labeling. (1) There shall be securely attached to each item of nursery stock when offered for sale or delivered, or to each bundle or lot when sold as a single lot of the same kind, grade, size, and variety, a label showing the correct botanical or accepted common name and the grade or size of such nursery stock.

(2) The grade or size shall meet the specifications established by rules or regulations after public hearing and publication by the commissioner.

(3) The labeling required in subsection (1) of this section shall not apply to turfgrass sod. Each and every lot of turfgrass sod sold shall be labeled by stating on the sales contract, invoice, or bill of lading such information as required by the commissioner.

35-26-105. Prohibited acts - removal from sale - advisory alerts. (1) No person shall sell or offer for sale:

(a) Nursery stock in a dead or dying condition;

(b) Nursery stock infested or infected with insect pests or plant diseases; or

(c) Nursery stock in violation of any other provision of this article or any rules or regulations promulgated pursuant to this article.

(2) The commissioner or his authorized agents shall issue a stop-sale order to any person offering nursery stock for sale in violation of any provision of this article or any rules or regulations promulgated pursuant to this article. Any person receiving a stop-sale order shall remove such stock from sale immediately.

(3) Failure to comply with any stop-sale order may result in penalties as set forth in section 35-26-109.

(4) If the commissioner makes a finding, after notice and opportunity for a hearing, that substandard plant material is being sold by a nursery outside of Colorado to any nursery in this state, the commissioner may ban any products from said nursery from sale or distribution in Colorado and any further shipments of nursery stock from said nursery may be seized and destroyed. Upon such banning, the commissioner shall issue an alert to all persons registered under this article setting forth the commissioner's finding and advising registrants that the

purchase of plant material from such offending nursery constitutes a violation of this article.

35-26-106. Colorado nursery fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) A person shall not engage in the business of selling nursery stock in this state, nor shall he advertise with the intent and purpose of selling nursery stock in this state, without having first obtained a registration issued by the commissioner. Such registration shall expire on December 31 of each year. Application for registration shall be submitted on a form prescribed by the commissioner. The commissioner shall, by rule or regulation, establish a registration fee for each place of business. Such fee shall not exceed one hundred dollars. Applicants for a registration who were registered at any time during the calendar year immediately preceding the year for which application is made shall apply for a registration by March 1 or pay an amount double the registration fee. No registration is transferable. All registrants shall inform the commissioner in writing of any change of address prior to any such change of address. All registrants shall meet the requirements of this article and the rules and regulations promulgated pursuant to this article.

(2) Collectors shall produce upon demand, written evidence of authorization to have collected any and all nursery stock held or offered for sale. Such evidence of authorization shall provide information as required by rule and regulation promulgated pursuant to this article.

(3) A charge for the actual cost incurred in making inspections shall be collected to defray the costs of inspections made pursuant to this article. The commissioner shall, by rule or regulation, establish a minimum charge per inspection, and shall determine the actual cost incurred in making inspections and establish the charge therefor.

(4) All fees and charges collected pursuant to this article shall be transmitted to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the Colorado nursery fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

35-26-107. Advisory committee - sunset review. (Repealed)

35-26-108. Access to locations and records - administrative subpoena - complaints and investigations. (1) (a) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all buildings, yards, warehouses, and storage facilities owned or operated by a registrant in which any nursery stock is kept, stored, handled, processed, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this article.

35-26-109. Penalties. (1) Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who violates any provision of this article, or any rule or regulations made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(3) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(4) If the commissioner is unable to collect such civil penalty or if any person fails to pay all of the civil penalty or a set portion as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(5) Before imposing any civil penalty under this section, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) (Deleted by amendment, L. 91, p. 155, § 12, effective July 1, 1991.)

35-26-110. Out-of-state nurseries. (1) The commissioner shall require out-of-state nurseries selling nursery stock in the state of Colorado to deliver to the commissioner a certified copy of the "state of origin" certificate of inspection of the nursery. This requirement may be satisfied by delivering to the commissioner a list of inspected and certified nurseries from the "state of origin" in lieu of individual certificates of inspection from each nursery. Each shipment of nursery stock entering the state of Colorado shall be accompanied by a certificate of inspection which states that the nursery stock has the appearance of freedom from insect pests and plant diseases.

(1.5) An out-of-state nursery advertising and selling nursery stock in Colorado and having no duly appointed resident agent in this state upon whom process may be served as provided by law shall be deemed to have appointed the secretary of state as the agent of said nursery upon whom service of process may be had in the event of any suit against said nursery. Service on the secretary of state of any such process shall be made by delivering to and leaving with him or with his deputy, an assistant, or a clerk two copies of such process. The secretary of state shall also require a statement which contains the name and address of the nonresident's home or home office. After receipt of such process the secretary of state shall forward to the defendant a copy of the process by registered mail, return receipt requested. The person so serving the secretary of state shall immediately send or give to the commissioner a notice of such service and a copy of the process. The secretary of state shall collect at the time of any service of process on him as resident agent a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(2) (Deleted by amendment, L. 91, p. 156, § 13, effective July 1, 1991.)

35-26-111. Rules and regulations. The commissioner is hereby authorized and directed to promulgate such rules and regulations as he may deem necessary and proper for the furtherance and enforcement of the provisions of this article. Such rules and regulations shall be promulgated in accordance with applicable provisions of article 4 of title 24, C.R.S.

35-26-112. Delegation of duties. The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

35-26-113. Bodies politic. (1) All growing fields and all other premises in this state on which nursery stock is being grown or held by bodies politic for the purpose of planting on public or private grounds shall be inspected at least once each year by the commissioner or his authorized agents.

(2) A body politic shall not plant nursery stock infested with insect pests or infected by plant diseases on public or private grounds.

(3) A body politic shall be subject to the inspection fees set forth in section 35-26-106 (3).

35-26-114. Enforcement. (1) After an investigation, the commissioner may, through the attorney general, institute and prosecute the proper proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the department, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the commissioner or the department.

(2) The commissioner may deny, suspend, or revoke a registration if the applicant or holder thereof does not engage in the sale of nursery stock.

(3) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(4) The commissioner shall have full authority to administer oaths and take statements,

to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey an administrative subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(5) Whenever it appears to the commissioner, upon sufficient evidence satisfactory to the commissioner, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or of any order promulgated under this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order promulgated under 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.

(6) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a registrant.

(7) The commissioner may deny, revoke, or suspend any registration for any of the following:

(a) If the party has violated any provision of this article or any rules promulgated pursuant to this article;

(b) If the party has had a felony conviction related to the conduct regulated by this article;

(c) If there has been fraud or deception in the procurement or attempted procurement of a registration;

(d) If the party has failed to comply with a lawful order of the commissioner;

(e) If the party has knowingly misrepresented information on his application;

(f) If the party has had an equivalent registration or license revoked or suspended by any authority; and

(g) If the party has forged or otherwise falsified a certificate of inspection.

35-26-115. Termination of function - repeal of article. (Deleted by amendment)

ARTICLE 27

Colorado Seed Act

35-27-101. Short title. This article shall be known and may be cited as the "Colorado Seed Act".

35-27-102. Legislative declaration. The general assembly hereby finds and declares that truth in the labeling of seed is of paramount importance to the citizens of Colorado because the distribution and subsequent use of poor quality seed caused by inaccurate or misleading labeling of such seed can result in severe economic hardship due to low crop yields, poor crop quality, and the spread of noxious weed seed. It is the intent of the general assembly in enacting this article to prevent the distribution and use of poor quality seed through the regulation of the labeling, the labelers, and the sellers of seed for propagation in Colorado.

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

(1) "Advertisement" means all representations commercial and otherwise, other than labeling, disseminated in any manner or by any means by the seller of seed as such representations relate to such seed.

(2) "Bean" means all species of genus phaseolus, vigna, and cicer.

(3) "Certified seed" means seed certified by a seed certifying agency pursuant to this article and includes foundation and registered seed.

(4) "Certifying agency" means the seed certification service of the Colorado state university authorized by the board of governors of the Colorado state university system or the authorized seed certifying agency of another state.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Conditioning" means drying, cleaning, scarifying, sizing, or any other operation which could change the purity or germination of seed.

(7) "Custom seed conditioner" means any person in Colorado who engages in the business of conditioning seed by either a stationary or portable seed cleaner, if ownership of such seed is retained by the customer.

(8) "Department" means the department of agriculture.

(9) "Disease of beans" means a bacterial, viral, or fungal disease of beans. The term includes any of the following diseases and any variations or new strains of the following diseases which are recognized as pathogenic or a potential threat to seed bean production:

(a) Anthracnose (collectotrichum lindemuthianum);

(b) Bean bacterial wilt (corynebacterium flaccumfaciens ssp. flaccumfaciens);

(c) Strains of brown spot (pseudomonas syringae pv. syringae);

(d) Common bean blight (xanthomonas campestris pv. phaseoli);

(e) Halo blight (pseudomonas syringae pv. phaseolicola); and

(f) BCMV (bean common mosaic virus).

(9.5) "Dormant seeds" means viable seeds, other than hard seeds, that fail to germinate when provided the specific germination conditions for the kind of seed in question.

(10) "Farmer seed labeler" means any person who labels only seed produced for sale on property owned or rented by such person or such person's employer in Colorado.

(11) "Germination" means the emergence and development from the seed embryo of those essential structures that, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(11.5) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(12) "Inert matter" means matter which is not seed, including broken seed, sterile florets, chaff, fungus bodies, and stones, as defined by the commissioner.

(13) "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, including corn, oats, alfalfa, timothy, and western wheatgrass.

(14) "Labeling" means all labels, tags, and other written, printed, or graphic representations, in any form, accompanying and pertaining to specific seed whether in bulk or in containers and includes invoices; except that labeling does not include advertisements as defined in this section.

(15) "Lot" means a definite quantity of seed identified by a lot number or other mark. Every portion or bag of any such lot shall be uniform within recognized tolerances for the factors which appear in the labeling of such lot.

(16) "Noxious weed seed" means the seed produced from plants which are especially troublesome and detrimental and which may cause damage or loss to a considerable portion of the land or livestock of a community. Noxious weed seed are divided into two classes: "prohibited noxious weed seed" and "restricted noxious weed seed" and are defined as follows:

(a) "Prohibited noxious weed seed" means the seed of perennial, biennial, and annual weeds which are highly detrimental and especially difficult to control. The presence of prohibited noxious weed seed in seed precludes the sale of seed for propagation. Prohibited noxious weed seed includes the seed of any weed so designated by the commissioner.

(b) "Restricted noxious weed seed" means the seed of weeds which are very objectionable in fields, lawns, and gardens but which can be controlled by good cultural practices. Restricted noxious weed seed includes the seed of any weed so designated by the commissioner.

(17) "Origin" means the state or foreign country in which seed is grown.

(18) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

(19) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, substance, or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any substance that is a "new animal drug" as designated by the United States food and drug administration.

(20) "Record" means any information which relates to the origin, treatment, germination, purity, kind, and variety of each lot of seed sold in this state. Such information includes seed samples and documents showing declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(21) "Retail seed dealer" means any person who engages in the business of selling seed at

retail in Colorado.

(22) "Screenings" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seed in any kind of cleaning procedure.

(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.

(24) "Seed labeler" means a person who engages in the business of labeling seed for sale in Colorado and whose name and address appears on the label of such seed.

(25) "Tolerance" means:

(a) For "seed", the allowable deviation, as prescribed in the rules and regulations adopted pursuant to this article, from any figure used on a label including but not limited to those figures used to designate the percentage of any fraction of the lot in question, the percentage germination, or the number of noxious weed seeds present;

(b) For "bean", in addition to the requirements of paragraph (a) of this subsection (25), the deviation from minimum levels of seed-borne pathogens and the diseases of beans allowed by the commissioner.

(26) "Treated" means that the seed has received an application of a substance or that it has been subjected to a procedure for which a claim is made.

(27) (a) "Variety" (cultivar) means a division of a kind which is distinct, stable, and uniform.

(b) For purposes of this subsection (27):

(I) "Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties publicly known.

(II) "Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(III) "Uniform" means that variations in essential and distinctive characteristics are describable.

(28) "Weed seed" means the seed of plants detrimental to agriculture and generally recognized as weeds within this state and includes noxious weed seed.

35-27-104. Scope of article. (1) This article does not apply to:

(a) Seed not intended for propagation; except that screenings are subject to the requirements of section 35-27-113 (1) (e);

(b) Seed in storage in or consigned to a seed conditioning establishment for conditioning or for sale outside the state; except that:

(I) Disclosure of information concerning the holding, sale, and transportation of such seed shall be provided:

(A) On the labels attached to such seed; or

(B) Upon request; and

(II) All labeling and advertisements made regarding such seed are subject to this article;

(c) Seed sold or consigned to a merchant, if such seed is to be recleaned before it is sold for propagation; except that the seller or consignor of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(d) Seed of a variety not protected by the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, sold on a grower's premises and delivered to a purchaser, if such seed is: Grown on such grower's premises, not delivered by common carrier or by mail, and not commercially advertised in any way; except that such seed shall be subject to the noxious weed provisions of section 35-27-113 (2), and the grower of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(e) Seed brought into the state by the Colorado agricultural experiment station for experimental purposes or for storage in the USDA-ARS national center for genetic resources preservation;

(f) Any person who produces seed for such person's own use on property owned or rented by such person or such person's employer;

(g) Seed held for wholesale transactions; except that such seed shall be subject to the labeling requirements of section 35-27-105;

(h) Seed potatoes as defined in section 35-27.3-103.

(2) Any person who acts as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state shall be subject to this article.

35-27-105. Label requirements. (1) (a) Except as otherwise provided in this article, every container of seed which is sold, offered or exposed for sale, bartered, or distributed within this state for propagation shall conspicuously bear a legible and plainly written or printed label or tag in English which shall provide all information required by the commissioner. A label shall not bear false or misleading information.

(b) For purposes of this subsection (1), a lot of seed sold at wholesale or at bulk shall be categorized as a sale in a single container.

(2) All labels made pursuant to this section shall include arbitration information required pursuant to section 35-27-123.

35-27-106. Tolerances. (1) Tolerances shall be recognized between:

(a) The percentages or rates of occurrence found by analysis, test, or examination; and

(b) The percentages or rates of occurrence prescribed by the commissioner.

(2) In prescribing tolerances the commissioner shall use as guides:

(a) The tolerances defined in the "Federal Seed Act", 7 U.S.C. secs. 1551 to 1610, as amended; and

(b) Rules for testing seed adopted by the association of official seed analysts.

35-27-107. Sales from bulk lots. (1) If seed is sold, offered or exposed for sale, bartered, or distributed in or from a bulk lot, a label required pursuant to section 35-27-105 shall

be furnished to each purchaser of such seed; except that such label shall not be required to be furnished for sales otherwise exempted.

(2) No label required pursuant to subsection (1) of this section shall be required for bulk lot seed if such seed is:

(a) Sold, offered or exposed for sale, bartered, or distributed in a lot of less than five pounds directly to a consumer; and

(b) Taken from a container in such consumer's presence.

35-27-108. Seed shipped into state. (1) No seed shall be brought into the state unless such seed:

(a) Has been tested and has passed all such required tests as required by the commissioner pursuant to rule and regulation; and

(b) Is in a container which meets the labeling requirements of section 35-27-105; and

(c) Meets all other requirements of this article.

(2) Tests required pursuant to paragraph (a) of subsection (1) of this section shall be developed by the commissioner through rule and regulation.

35-27-109. Seed beans - approval. (1) (a) For seed beans, the commissioner shall establish tolerances of seed-borne pathogens, inspection procedures and standards, and approval procedures for those seed beans which are found to be within allowable tolerances.

(b) The commissioner may designate those areas of the state in which the provisions of this section shall apply.

(2) (a) The commissioner shall establish reasonable fees for inspections performed pursuant to this section.

(b) Fees established pursuant to this subsection (2) shall be:

(I) Sufficient to offset the actual direct and indirect costs incurred by the commissioner in administering the provisions of this section; and

(II) Paid by the person selling, bartering, or distributing seed beans.

(3) The commissioner may, by contractual agreement, retain qualified persons to act as agents of the commissioner for the performance of inspections pursuant to subsection (1) of this section.

35-27-110. Seed records and samples. Each person whose name appears on a label on a seed container as a handler of the seed in such container shall keep complete records as prescribed by the commissioner concerning the origin, sale, shipping, and disposition of such seed and shall keep or arrange to have kept a file sample of such seed for a period of at least two years after final disposition of such seed. All such records and samples shall be accessible for inspection by the commissioner or the commissioner's agent during customary business hours. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-112.

35-27-111. Registration of custom seed conditioners, farmer seed labelers, retail seed dealers, and seed labelers - form - fees - renewal. (1) After January 1, 1994, no person shall act as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state, except as provided in this article, if such person is not registered with the department.

(2) (a) A person may register as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler by submitting information on the form and with the registration fee prescribed by the commissioner.

(b) (I) Each registration completed pursuant to this section shall be effective on the first day of the month following the month it was submitted to the department and shall expire on the last day of the month twelve months from the date it became effective.

(II) Notwithstanding subparagraph (I) of this paragraph (b), registrations renewed between March 1, 2000, and February 1, 2001, shall expire February 28, 2001. Effective March 1, 2001, all registrations shall be effective March 1 of each year and shall expire the last day of February of each year.

(c) A registrant shall report any change in the information provided in such registrant's registration form or in any report submitted to the department pursuant to this article within fifteen days of such change in the manner prescribed by the commissioner.

(3) The following persons shall be exempt from the provisions of subsections (1) and (2) of this section:

(a) Any person registered as a custom seed conditioner, farmer seed labeler, or seed labeler shall not be required to register as a retail seed dealer to sell seed at retail in Colorado;

(b) Any person registered as a seed labeler shall not be required to register as a custom seed conditioner in Colorado;

(c) Any person registered as a farmer seed labeler shall not be required to register as a custom seed conditioner if such person is only cleaning or conditioning such person's own seed; and

(d) Any person acting as a retail seed dealer selling only prepackaged seed in containers of one pound or less shall not be required to register as a retail seed dealer if the seed labeler supplying such prepackaged seed is properly registered.

(4) (a) The commissioner shall establish registration fees; except that registration fees for:

(I) Custom seed conditioners and seed labelers shall not exceed three hundred dollars; and

(II) Farmer seed labelers and retail seed dealers shall not exceed seventy-five dollars.

(b) The commissioner shall establish fees for each additional separate registration location according to the class of registrant; except that the fee for:

(I) Custom seed conditioners and seed labelers shall not exceed seventy-five dollars for each such additional separate location; and

(II) Farmer seed labelers and retail seed dealers shall not exceed twenty-five dollars for each such additional separate location.

(5) (a) Any person registered pursuant to this article may renew such person's registration

within one year of its expiration. No registration shall be renewed if it is not renewed within one year of expiration.

(b) A registration may be renewed by a registrant by submitting a completed registration renewal form and the requisite renewal fee before such registrant's current registration expires. Such renewal forms and fees shall be prescribed by the commissioner.

(c) If a registrant does not complete the renewal process in compliance with paragraph (b) of this subsection (5), such registrant shall be required to pay a fee of an amount double the prescribed renewal fee.

(d) No renewal shall be effective until the requisite fee is received by the department.

35-27-112. Record-keeping requirements. Every person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state registered pursuant to this article shall keep and maintain certain records. Records shall be maintained as specified by the commissioner for a period of two years at the registrant's address. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-110.

35-27-113. Prohibitions. (1) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state, if such seed:

(a) Has not been tested to determine the percentage of germination of such seed within the previous thirteen months, except for certain cool season grasses as determined by the commissioner by rule, if such seed has not been tested within the previous sixteen months, and except that, for seed stored in hermetically sealed containers, if such seed has not been tested within the previous twenty-four months. For labeling purposes, a tetrazolium test may not be used in place of a germination test except as specifically authorized by the commissioner by rule.

(b) Has been treated with a material which is poisonous to humans or livestock unless there is a conspicuous warning in the labeling which gives the commonly accepted or abbreviated chemical name of the poisonous substance;

(c) Is not labeled in accordance with this article;

(d) Is or has been the subject of false or misleading advertisements or statements by the person, or such person's agent, who is selling, exposing or offering for sale, bartering, or distributing such seed;

(e) Is sold in the form of screenings, but is not labeled and invoiced as "screenings for processing, not for seeding";

(f) Is officially labeled or advertised as certified or registered, and if such seed has not been produced, conditioned, and packaged in conformity with the standards of purity as to kind and variety in compliance with the rules and regulations of the certifying agency. For purposes of this paragraph (f), labeling or advertising guarantees that seed is certified if such labeling or advertising uses the word "certified", "foundation", or "registered" in any manner.

(g) (I) Is sold by a variety name but is not certified by an official seed certifying agency if such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as

amended, requires sale only as a class of certified seed.

(II) Notwithstanding subparagraph (I) of this paragraph (g), seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(h) Is sold by a variety name when such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, has been granted or for which an application for a certificate of plant variety protection has been sought.

(2) (a) It is a civil violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state if such seed contains:

(I) More than two percent of weed seed by weight or such other standard established by the commissioner;

(II) Prohibited noxious weed seed; or

(III) (A) More restricted noxious weed seed per pound than the amount declared on the label attached to the container of such seed, if the amount declared meets the standards established by the commissioner; or

(B) More restricted noxious weed seed per pound than the amount allowed by the standards established by the commissioner.

(b) Any person who violates paragraph (a) of this subsection (2) shall be subject to a civil penalty pursuant to section 35-27-118.

(3) It is unlawful and a violation of this article for any person within this state to:

(a) Detach, alter, deface, or destroy any label or tag completed pursuant to section 35-27-105, if such person is not the ultimate consumer;

(b) Alter or substitute seed or other material in a manner that may defeat the purposes of this article;

(c) Disseminate any false or misleading advertisement concerning a specific lot of seed in any manner or by any means;

(d) Intentionally hinder or obstruct in any way any authorized person in the performance of such person's official duties as such duties pertain to this article;

(e) Perform, or hold oneself out as being authorized to perform, any of the acts for which registration is required without registering pursuant to section 35-27-111;

(f) Solicit, advertise, or offer to perform any of the acts for which registration is required without being registered;

(g) Refuse or fail to comply with a cease-and-desist order issued pursuant to section 35-27-116;

(h) Refuse or fail to comply with the provisions of this article;

(i) Make false, misleading, deceptive, or fraudulent advertisements concerning a specific lot of seed;

(j) Impersonate any state, county, city and county, or municipal official or inspector authorized pursuant to this article;

(k) Refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner.

(4) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute, for other than propagation purposes, within the state, any seed that has been treated unless it is sold separately from untreated seed or grain and is accompanied by an affidavit, certificate, label, or tag stating that the seed has been chemically treated and cannot be used for food, feed, or oil purposes.

(5) It is unlawful and a violation of this article for any person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler to:

(a) Make false or misleading representations or statements of fact in any application, record, or report submitted to the department pursuant to this article;

(b) Fail to maintain or submit any records or reports required by this article;

(c) Permit the use of a registration by any person other than the registrant.

(6) A person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., when such person:

(a) Sells, offers or exposes for sale, barters, or distributes within the state:

(I) Any seed beans which have not been approved in accordance with section 35-27-109;

(II) Any seed subject to the provisions of this article if such person fails to comply with or violates the provisions of this article;

(b) (I) Removes or disposes of any detained or embargoed seed without prior permission from the commissioner or a court of competent jurisdiction or removes or alters any labeling on such seed.

(II) Any person violating this paragraph (b) may be subject to civil penalties assessed in accordance with section 35-27-118.

(7) The failure by any person to comply with the provisions of subsection (3) (e), (3) (f), or (3) (i) of this section is a deceptive trade practice and is subject to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

(8) It is the duty of the several district attorneys of the state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the attorney general to advise the commissioner in all legal matters and to represent the commissioner or the commissioner's agents in all actions brought by or against the commissioner or the commissioner's agents.

35-27-114. Powers and duties of commissioner. (1) In addition to any other duties in this article, the commissioner shall:

(a) Administer and enforce the provisions of this article;

(b) Adopt rules and regulations necessary for the administration and enforcement of this article including but not limited to rules and regulations which:

(I) Set forth the methods to inspect, sample, analyze, and test seed, including defining the tolerances to be followed during such processes pursuant to section 35-27-106;

(II) Amend the lists of prohibited and restricted noxious weed seed;

(III) Establish procedures and standards including defining allowable tolerances to be used for the inspection and approval of seed beans that are within allowable tolerances pursuant to section 35-27-109;

(IV) Establish standards for the sale of any seed including but not limited to standards for the acceptable content of pathogens, biotic contaminant, insects, plant pests, and endophytes in such seeds;

(V) Establish procedures and standards to embargo seed pursuant to section 35-27-119;

(VI) Establish procedures for the reinstatement of any registration authorized pursuant to this article;

(VII) Enforce any disciplinary actions authorized pursuant to this article including but not limited to letters of admonition or the denial, suspension, or revocation of any registration;

(VIII) Establish the amounts of the registration fees pursuant to section 35-27-111;

(c) Promptly notify any person who transported, sold, bartered, or distributed the seed or offered or exposed the seed for sale which does not test in compliance with the provisions of this article;

(d) Inspect, sample, analyze, and test seed pursuant to this article.

(2) In addition to any other powers conferred in this article, the commissioner may:

(a) Inspect, sample, analyze, and test seed pursuant to paragraph (d) of subsection (1) of this section at such time and place and to such extent as the commissioner deems necessary to determine compliance with this article;

(b) Appoint such qualified employees of the department as necessary to carry out the provisions of this article;

(c) Cooperate with the United States department of agriculture to enforce federal seed law;

(d) (I) Conduct any hearings required by this article pursuant to article 4 of title 24, C.R.S.; or

(II) Repealed.

(III) Subject to appropriations made to the department, employ administrative law judges on a full- or part-time basis to conduct such hearings;

(e) Conduct investigations pursuant to section 35-27-115.

(f) Repealed.

35-27-115. Inspections - access - investigations - subpoena. (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make an investigation necessary to determine compliance with this article or to investigate a complaint for arbitration.

(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:

(I) Enter any building, yard, warehouse, or storage facilities in which seed or any other related material is kept, used, stored, handled, conditioned, disposed of, or transported; and

(II) Inspect any records required to be kept pursuant to this article.

(b) The commissioner is authorized to make copies of any record inspected pursuant to subparagraph (II) of 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 duces tecum 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 any 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) is 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.

35-27-116. Enforcement. (1) The commissioner, pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall enforce the provisions of this article. After an investigation, the commissioner may, through the attorney general, enforce any of the provisions of this article, including recovering any money due the department or any penalty assessed pursuant to this article, and defend any suit or action brought against the commissioner or the department under this article.

(2) (a) If the commissioner has reasonable cause to believe a violation of this article is occurring and determines that immediate action is necessary, the commissioner may issue a cease-and-desist order. Such cease-and-desist order shall be issued to the alleged violator and shall set forth the alleged violation, the facts which constitute such violation, and an order that all such violative conduct immediately cease.

(b) If a person fails to comply with a cease-and-desist order within twenty-four hours after being served with such order, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further violation of such order.

(c) No stay of a cease-and-desist order shall be issued before a hearing has been held at which both parties have had an opportunity to appear.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the calendar of the court.

(3) (a) If the commissioner determines that a person has engaged in or is about to engage in any act or practice violating any provision of this article, any rule or regulation, or any order issued under this article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain such person or enjoin the violative practice.

(b) In any action taken pursuant to paragraph (a) of this subsection (3), the court shall not require the commissioner to:

(I) Plead or prove irreparable injury or inadequacy of a remedy at law; or

(II) Post a bond.

(4) (a) Any lot of seed which is sold, offered or exposed for sale, bartered, or distributed

in violation of this article shall be subject to embargo on complaint of the commissioner to a court of competent jurisdiction for the area in which such lot of seed is located.

(b) If the court finds, pursuant to paragraph (a) of this subsection (4), seed to be in violation of this article and orders the embargo and condemnation of such seed, such seed shall be, pursuant to court order, conditioned, denatured, destroyed, relabeled, or otherwise disposed of in a manner consistent with the quality of such seed.

35-27-117. Disciplinary actions - denial of registration. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, or revoke any registration authorized under this article if the registrant:

(a) Refuses or fails to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Is convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has a registration or license of equivalent status denied, revoked, or suspended by any registering or licensing authority of any state or foreign country;

(d) Refuses to provide the commissioner with reasonable, complete, and accurate information regarding such person's business, if requested to do so by the commissioner; or

(e) Falsifies any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction, either foreign or domestic, if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) (a) All disciplinary actions taken by the commissioner pursuant to this article shall be deemed final for purposes of judicial review.

(b) Any person aggrieved by any disciplinary action taken by the commissioner shall appeal to the Colorado court of appeals.

(4) No registrant whose registration has been revoked may apply or reapply for registration under this article within two years after the date of such revocation.

35-27-118. Civil penalties. (1) (a) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner.

(b) (I) Before imposing any civil penalty, the commissioner shall consider the severity of the violation, the amount of harm caused by such violation, the presence or absence of a pattern of similar violations by the registrant, the effect of the proposed penalty on the ability of the registrant to continue to conduct business, and any other factors deemed relevant.

(II) The commissioner may request advice from the arbitration council in assessing a fine pursuant to this section.

(c) The maximum penalty imposed by the commissioner shall not exceed two thousand five hundred dollars per violation.

(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 is authorized to retain the attorney general pursuant to section 35-27-116 to bring suit to recover such penalty. In any action brought pursuant to this section the commissioner shall be entitled to recover costs and reasonable attorney fees.

35-27-119. Embargo. (1) (a) This section shall apply if the commissioner finds or has reasonable cause to believe that any seed is:

(I) (A) Adulterated or misbranded; or

(B) Not labeled pursuant to this article; and

(II) (A) In violation of any provision of this article or any rule or regulation adopted pursuant to this article;

(B) From an unregistered seed labeler;

(C) For sale or has been sold by an unregistered retail seed dealer; or

(D) Has been distributed by an unregistered custom seed conditioner.

(b) The commissioner shall conduct an investigation to determine if a violation of paragraph (a) of this subsection (1) has occurred.

(2) If paragraph (a) of subsection (1) of this section applies, the commissioner shall affix to the seed in question labeling to give notice that:

(a) The seed violates this article; and

(b) The seed is embargoed; and

(c) No person may remove or dispose of such seed by sale or otherwise until permission for removal or disposal is given by the commissioner or a court of competent jurisdiction.

(3) If the commissioner determines that embargoed seed is not adulterated or mislabeled, the commissioner shall remove the labeling attached pursuant to subsection (2) of this section.

(4) The owner of seed embargoed under this section may correct any violation found by the commissioner within thirty days after the embargo of such seed. If the violation is not corrected within thirty days, the commissioner may petition a court of competent jurisdiction to condemn such seed.

(5) (a) If a court finds that embargoed seed is in violation of this article, such seed shall, after entry of such court's decree, be destroyed at the expense of the owner, claimant, or custodian thereof, under the supervision of the commissioner, and all court costs, attorney fees, storage fees, and other reasonable and proper expenses shall be assessed against the owner, claimant, or custodian of such seed.

(b) If adulteration or mislabeling of embargoed seed may be corrected by proper conditioning or labeling, the court, after entry of such court's decree and if costs, attorney fees, storage fees, and expenses are paid and a good and sufficient bond is secured by the owner, claimant, or custodian of such seed, may order that such seed be delivered to the owner, claimant, or custodian for corrective labeling or conditioning. Any such corrective labeling or conditioning shall be conducted under the supervision of the commissioner. The expense of such supervision

shall be paid by such owner, claimant, or custodian. The seed shall be returned to its owner, claimant, or custodian when the seed no longer violates this article and the expenses of such supervision have been paid. The commissioner shall inform the court of compliance by the owner, claimant, or custodian of the seed.

35-27-120. Reports - bulletins. Except as provided for in section 35-27-115 (4), the commissioner may publish bulletins or press reports setting forth results of any examination, analysis, or test conducted pursuant to this article. Bulletins may include the names of persons who have had seed lots examined, analyzed, or tested. The commissioner may also publish bulletins or press reports which set forth information on seed. Any such report or publications intended for circulation outside the executive branch shall be published and circulated in accordance with the provisions of section 24-1-136, C.R.S.

35-27-121. Advisory committee - repeal. (Repealed)

35-27-122. Arbitration council - procedures. (1) (a) The commissioner shall appoint an arbitration council for each case composed of three members. The following shall each recommend one member:

(I) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)

(II) The dean of the college of agriculture, Colorado state university;

(III) The president of the Colorado seedsmen's association; and

(IV) The president of any organization of farmers in the state as the commissioner determines to be appropriate.

(V) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)

(b) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)

(c) The council shall elect a chair from its membership. The chair shall conduct the deliberations of the council and shall direct all of its other activities. The commissioner shall serve as staff to the council and shall keep accurate records of all such deliberations and shall perform such other duties for the council as the chair directs.

(d) The council shall conduct the arbitration for the case.

(2) (a) A buyer of seed shall request arbitration by filing a verified complaint with the commissioner together with a filing fee of ten dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. The commissioner shall serve a copy of the complaint upon the seller of such seed by certified mail or personal service.

(b) Within five working days after receipt of a copy of the complaint, the seller shall file a verified answer to the complaint with the commissioner, who shall serve a copy of the answer

upon the buyer by certified mail.

(c) The commissioner shall investigate the allegations in the complaint. In conducting such investigation, the commissioner may employ the services of any expert that he or she deems appropriate. Upon completion of the investigation, the commissioner shall refer the complaint to the council along with a report of the results of the investigation.

(d) Upon referral of a complaint for investigation, the council shall conduct an arbitration hearing in accordance with the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., and shall report its findings and recommendations to the commissioner in an arbitration report. Such arbitration report shall be filed with the commissioner within sixty days after the conclusion of the arbitration hearing or a later date if the parties agree.

(e) The arbitration report of the council shall include findings of fact, conclusions of law, and recommendations as to costs, if any, including but not limited to costs of any investigation conducted by the commissioner.

(f) In the course of his or her investigation, the commissioner may:

(I) Examine the buyer, the seller, and any other person who may have relevant information;

(II) Grow a representative sample of the seed through the facilities of Colorado state university to production; and

(III) Conduct any other investigative activities that he or she deems necessary to obtain information relevant to the allegations in the complaint pursuant to his or her authority in section 35-27-115.

(g) (Deleted by amendment, L. 2007, p. 643, § 6, effective April 26, 2007.)

(h) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for actual and necessary expenses.

(i) After the council has filed its arbitration report with the commissioner, the commissioner shall promptly transmit such arbitration report by certified mail to all parties.

35-27-123. Requirement and effect of arbitration. (1) (a) If a buyer of seed suffers damage because such seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seller, the buyer shall submit such buyer's claim to arbitration pursuant to this section and section 35-27-122. Such submittal shall be a prerequisite to such buyer's right to maintain any legal action against the seller of such seed. Any statute of limitations shall be tolled until ten days after the filing of the arbitration report.

(b) No claim may be asserted as a counterclaim or defense in any action brought pursuant to paragraph (a) of this subsection (1) by a seller against a buyer, if the buyer has not submitted such claim to arbitration. After the buyer files a written notice of intention to assert a claim as a counterclaim or defense in such action, accompanied by a copy of the buyer's complaint filed under section 35-27-122 (2) (a), the statute of limitations shall be tolled for such claim until ten days after the filing of the arbitration report pursuant to section 35-27-122 (2) (d).

(2) (a) Every label required pursuant to section 35-27-105 shall include clear language that arbitration is required for claims arising out of the sale of seed; except that arbitration shall not be required if the notice required pursuant to this paragraph (a) is not included.

(b) A notice in the following form or equivalent language shall be sufficient to comply with paragraph (a) of this subsection (2):

NOTICE OF REQUIRED ARBITRATION

UNDER THE "COLORADO SEED ACT", ARTICLE 27 OF TITLE 35, COLORADO REVISED STATUTES, ARBITRATION IS REQUIRED AS A PREREQUISITE TO CERTAIN LEGAL ACTIONS, COUNTERCLAIMS, OR DEFENSES AGAINST A SELLER OF SEED. INFORMATION ABOUT THIS REQUIREMENT MAY BE OBTAINED FROM THE COLORADO COMMISSIONER OF AGRICULTURE.

(3) (a) An arbitration report filed pursuant to section 35-27-122 (2) (d) shall be binding upon all parties to the extent agreed upon in any contract governing the sale which was the subject of the arbitration.

(b) In the absence of an agreement to be bound by arbitration, a buyer may bring legal action against a seller or assert such claim as a counterclaim or defense in any action brought by the seller at any time after the arbitration report has been filed.

(c) During litigation involving a complaint which has been arbitrated pursuant to this section, any party who was subject to such arbitration may introduce the arbitration report as evidence of the facts found in the report if the party against whom the report is offered was also subject to the arbitration. The court may give such weight to the council's findings and conclusions of law and recommendations as to damages and costs as the court sees fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council of any failure of any party to cooperate in such arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim or answer upon the ability of the arbitration council to determine the facts of the case.

35-27-124. Seed cash fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. The fees and fines imposed by this article shall supplement any general fund appropriation appropriated for the purposes of this article. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the seed cash fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

35-27-125. Repeal of article - termination of functions. This article is repealed, effective July 1, 2020. Prior to such repeal, the registration functions of the commissioner of agriculture shall be reviewed as provided for in section 24-34-104, C.R.S.

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.

ARTICLE 27.5

Forage Crop Certification

35-27.5-101. Short title. This article shall be known and may be cited as the "Weed Free Forage Crop Certification Act".

35-27.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized inspector" means a person qualified to identify noxious weeds according to standards adopted by the commissioner pursuant to section 35-27.5-103.

(2) Repealed.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Crop" means any agricultural forage crop product whether cultivated or not cultivated, irrigated or nonirrigated, planted or naturally occurring.

(5) "Department" means the department of agriculture.

(6) "Noxious weeds" means those weeds, including any weed seed or propagative plant parts, designated by the commissioner as noxious and which are prohibited pursuant to section 35-27.5-103.

(7) "Person" means any association, corporation, firm, individual or combination of individuals, partnership, or society.

(8) "Qualified employee" means an employee of the department designated as qualified who is trained to identify noxious weeds in accordance with standards adopted by the commissioner pursuant to section 35-27.5-103.

(9) "Weed free" means any crop certified as free of noxious weeds by the commissioner pursuant to this article.

(10) "Weed free certification" means crops inspected and certified as free of noxious weeds by the commissioner pursuant to this article.

35-27.5-103. Rules and regulations. (1) The commissioner shall adopt reasonable and necessary rules and regulations to carry out the provisions of this article in compliance with section 24-4-103, C.R.S., and subject to the requirements of section 35-27.5-107.

(2) Rules and regulations adopted pursuant to subsection (1) of this section shall include

but shall not be limited to rules and regulations concerning the following:

(a) Designation of weeds as noxious and prohibited;

(b) Procedures for certification of weed free crops;

(c) Qualification standards for persons seeking designation as authorized inspectors or as qualified employees;

(d) Crop inspection procedures;

(e) Treatment procedures for the eradication of viable noxious weeds from crops; and

(f) Procedures for identifying and tracking certified weed free crops.

35-27.5-104. Delegation of duties - cooperative agreements. (1) (a) The commissioner may delegate any powers vested in the commissioner pursuant to this article to qualified employees of the department who are designated as qualified employees pursuant to standards adopted in accordance with section 35-27.5-103.

(b) The commissioner may delegate any powers vested in the commissioner pursuant to this article that are related to the duties of authorized inspectors to persons who are designated as authorized inspectors pursuant to standards adopted in accordance with section 35-27.5-103.

(2) The commissioner may enter into cooperative agreements with Colorado state university for the purpose of training authorized employees and qualified inspectors in the identification of those plants designated as noxious weeds by the commissioner pursuant to section 35-27.5-103.

(3) For purposes of carrying out the provisions of this article and subject to any other law of this state, the commissioner may accept grants-in-aid from any agency of the federal government and may cooperate and enter into agreements with any federal agency, any agency of any other state, and any agency of this state or its political subdivisions.

35-27.5-105. Administration and enforcement. (1) The commissioner shall administer and enforce the provisions of this article.

(2) Upon the motion of the commissioner or upon the motion of any other person, the commissioner may make any investigations necessary to ensure compliance with or determine whether there has been a violation of this article.

(3) The commissioner shall have reasonable access during regular business hours to all pertinent documents concerning any person who has requested that a crop be inspected for purposes of certification of such crop or who has had a crop certified as weed free.

(4) (a) The commissioner may, after notice and a hearing in compliance with the provisions of article 4 of title 24, C.R.S., resulting in a finding of a violation of this article or any rule or regulation promulgated pursuant to this article, rescind any weed free certification of a crop.

(b) For purposes of paragraph (a) of this subsection (4), any action taken by the commissioner following a hearing shall be deemed final.

(c) A person aggrieved by a final decision made by the commissioner pursuant to this subsection (4) may appeal such decision to the Colorado court of appeals pursuant to section 24-

4-106 (11), C.R.S.

(d) The commissioner may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings.

35-27.5-106. Inspections. (1) Any crop for which weed free certification is sought shall be inspected in the field of origin and such inspection shall include an inspection of any ditches, fence rows, roads, easements, rights-of-way, and buffer zones, as applicable, surrounding such field of origin.

(2) Crops which contain any weeds which have been designated as noxious pursuant to section 35-27.5-103, may be certified if certain conditions established pursuant to section 35-27.5-103 are met.

35-27.5-107. Penalties. Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to section 35-27.5-103 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-27.5-108. Colorado weed free crop certification fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) The commissioner shall set fees for the certification of weed free crops pursuant to this article in amounts adequate to cover all costs, direct and indirect, of the department in the administration and enforcement of this article.

(2) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit such fees to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the Colorado weed free crop certification fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

MARKETING AND SALES

ARTICLE 28

Marketing Act of 1939

35-28-101. Short title. This article shall be known and may be cited as the "Colorado Agricultural Marketing Act of 1939".

35-28-102. Legislative declaration. (1) It is declared that the marketing of agricultural commodities in Colorado, in excess of reasonable and normal market demand therefor; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of agricultural commodities; unfair methods of competition in the marketing of such commodities; and the inability of individual producers to develop new and larger markets for Colorado grown agricultural commodities, result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate food supplies for the people of this and other states, and prevent agricultural producers from obtaining a fair return from their labor, their farms, and the agricultural commodities which they produce. As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations. Colorado agricultural producers are thereby prevented from maintaining a proper standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this state.

(2) These conditions vitally concern the health, peace, safety, and general welfare of the people of this state. It is declared to be the policy of this state to aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities, to develop more efficient and equitable methods in the marketing of agricultural commodities, and to aid agricultural producers in restoring and maintaining their purchasing power at a more adequate, equitable, and reasonable level.

(3) The marketing of agricultural commodities is declared to be affected with a public interest. The provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

35-28-103. Purposes of article. (1) The purposes of this article are:

(a) To enable agricultural producers of this state, with the aid of the state, more effectively to correlate the marketing of their agricultural commodities with market demands therefor;

(b) To establish orderly marketing of agricultural commodities;

(c) To provide for uniform grading and proper preparation of agricultural commodities for market;

(d) To provide methods and means for the development of new and larger markets for agricultural commodities produced in Colorado;

(e) To eliminate or reduce unfair competition and economic waste in the marketing of agricultural commodities;

(f) To restore and maintain adequate purchasing power for the agricultural producers of this state.

35-28-104. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Agricultural commodity" means any agricultural, horticultural, floricultural, viticultural, and vegetable products, livestock and livestock products, wheat, hay, corn, bees and honey, poultry and poultry products, and milk and milk products, either in their natural state or as processed, including any marketable agricultural product, but does not include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice milo, and other feed grains. These exceptions shall be the sole exemptions, irrespective of any other exemptions provided by law, and particularly as set forth in section 35-28-122.

(b) Nothing in paragraph (a) of this subsection (1), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(2) "Commissioner" means the commissioner of agriculture or his duly authorized representative.

(3) "Distributor" means any person engaged in the operation of selling, offering for sale, marketing, or distributing an agricultural commodity which he has produced, purchased, or acquired from a producer, handler, or other distributor, or which he is marketing in behalf of a producer, handler, or other distributor, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as defined in this section except a retailer who purchases or acquires from, or handles on behalf of any producer, handler, or other distributor an agricultural commodity not theretofore subject to regulation by the marketing order covering such commodity.

(4) "Grade" means the official United States or Colorado terminology applied to agricultural commodities as determined by the presence or absence of certain quality and other factors.

(5) "Handler" means any person engaged in the operation of purchasing, packing, grading, selling, offering for sale, or marketing any marketable agricultural product; or any person who, as the producer, owner, agent, or otherwise, ships or causes an agricultural product to be shipped; or any governmental entity that obtains from a producer any interest in an agricultural commodity covered by a marketing agreement or order in connection with a governmental agricultural commodity program. The commissioner shall have the power to determine or specify who is a "handler" with respect to an agricultural commodity under a marketing agreement or order.

(6) "Marketable agricultural product" is a product which meets the requirements for regulation under any marketing order, marketing agreement, or regulation in effect in the area in which the same is produced, handled, or distributed.

(7) "Marketing agreement" means a voluntary agreement between producers, handlers, processors, or distributors and the commissioner of agriculture in which the producers, handlers, processors, or distributors who sign such agreement agree to follow certain rules set forth by the agreement.

(8) "Marketing order" means an order issued by the commissioner of agriculture pursuant to this article, prescribing rules and regulations governing the processing, distributing, sale of, or

handling in any manner of any agricultural commodity in Colorado during any specified period or periods.

(9) "Person" means an individual, firm, corporation, association, or any other business unit.

(10) "Processor" means any person engaged in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural product for the purpose of marketing such commodity, but shall not include a person engaged in manufacturing from an agricultural commodity, so changed in form, another and different product.

(11) "Producer" means any person engaged within this state in the business of producing, or causing to be produced for market, any agricultural commodity.

(12) "Product" means an agricultural commodity which has been placed in condition for sale or distribution.

(13) "Retailer" means any person who purchases or acquires any agricultural commodity for resale at retail to the general public at a fixed business location in the state for consumption off such premises, but such person shall also be included within the definition of distributor, as set forth in this section, to the extent that he engages in the business of a distributor as defined in this section.

(14) "To distribute" means to engage in the business of a distributor as defined in this section.

(15) "To handle" means to engage in the business of a handler as defined in this section.

(16) "To process" means to engage in the business of a processor as defined in this section.

(17) "Unfair competition" means the use of unfair methods of competition and unfair or deceptive practices in business for the purpose of, or having the natural and probable effect of, eliminating or injuring competition, and shall include, but not be limited to: Sales below cost, except those made in good faith to meet a legal price of a competitor; discriminatory pricing; discriminatory discounting and rebating, either direct or indirect; unreasonable extensions of credit; subsidizing of customers; misleading labeling or advertising; and solicitation by misleading or false statements.

35-28-105. Administration of article. (1) The commissioner of agriculture shall administer and enforce the provisions of this article and shall have all of the administrative powers conferred upon the head of a department of the state. In order to effectuate the declared purposes of this article, the commissioner of agriculture is authorized to issue, administer, and enforce the provisions of marketing orders.

(2) Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this article with respect to any agricultural commodity, either upon his own motion or upon application of any producer or handler of such commodity, he shall give due notice of and an opportunity for a public hearing upon a proposed marketing order.

(3) Due notice of any hearing called for such purpose shall be given to all persons, who

may be directly affected by any action of the commissioner pursuant to the provisions of this article, and whose names appear upon lists to be filed by such agricultural industry with the commissioner. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commissioner at his office.

(4) In order to effectuate the declared policy of this article, the commissioner has the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, distributors, handlers, producers, and others engaged in the handling of any agricultural commodity, regulating the preparation, sale, and handling of such agricultural commodity, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no matter affect the issuance, administration, or enforcement of any marketing order provided for in this article. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in this article.

35-28-106. Marketing order issued - when. (1) After such notice and hearing the commissioner may issue a marketing order if he finds and sets forth in such marketing order that such order will tend to:

(a) Reestablish or maintain prices received by producers for such agricultural commodity at a level which will give to such commodity a purchasing power, with respect to the articles and services which farmers commonly buy, equivalent to the purchasing power of such commodity in the base period. The base period shall be such period in which the commissioner finds that the volume of production of such commodity was adequate to supply the requirements of consumers thereof and the net returns to producers thereof were sufficient to provide an adequate standard of living to the farm operator and his family.

(b) Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for such commodity;

(c) Prevent the unreasonable or unnecessary waste of agricultural wealth because of improper preparation of such agricultural commodity for market, lack of uniform grading and inspection, or excessive shipments to markets;

(d) Protect the interests of consumers of such commodity, by exercising the powers of this article only to such extent as is necessary to effectuate the declared purposes of this article;

(e) Eliminate unfair competition.

(2) In making the findings set forth in subsection (1) of this section, the commissioner shall take into consideration all facts available to him with respect to the following economic factors:

(a) The quantity of such agricultural commodity available for distribution;

(b) The quantity of such agricultural commodity normally required by consumers;

(c) The cost of producing, processing, distributing, and marketing such agricultural commodity as determined by available statistics and surveys;

(d) The purchasing power of consumers as indicated by reports and indices;

(e) The level of prices of commodities, services, and articles which the farmers commonly buy;

(f) The level of prices of other commodities which compete with or are utilized as substitutes for such agricultural commodity.

35-28-107. Board of control. (1) Any marketing order pursuant to this article shall provide for the establishment of a board of control to administer such order in accordance with its terms and provisions. The members of the board shall be appointed by the commissioner from nominations submitted by the industry and shall hold office until the expiration of their term or until such appointment is withdrawn by the commissioner for cause. All nominations for board members submitted by the industry affected by the marketing order affecting wheat shall be submitted to the commissioner prior to the beginning of the fiscal year for such industry established pursuant to section 35-28-113 (4) or by rule. If the marketing order affects directly only producers of a particular commodity, the members of the board shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the board shall be handlers. If the marketing order affects directly both producers and handlers of a particular commodity such board shall be composed of both producers and handlers. The number of producers or handlers upon any such board shall be such number of producers or handlers as the commissioner finds is necessary to properly administer such order.

(2) No member of any such board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties authorized in this article. The commissioner may authorize such board to employ necessary personnel, including an attorney approved by the attorney general, fix their compensation and terms of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as provided in sections 35-28-113 and 35-28-114, as the commissioner may deem necessary and proper to enable such board properly to perform such of its duties as are authorized in this article. The duties of any such board shall be administrative only and may include only the following:

(a) Subject to the approval of the commissioner to administer such marketing agreement or order;

(b) To recommend to the commissioner administrative rules and regulations relating to the marketing agreement or order;

(c) To receive and report to the commissioner complaints of violations of the marketing agreement or order;

(d) To recommend to the commissioner amendments to the marketing agreement or order;

(e) To submit to the commissioner for his approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of this article and also to submit for approval a method of assessing and collecting such funds, as the commissioner may find necessary for the administration of such marketing agreement or order;

(f) To assist the commissioner in the collection of such necessary information and data as the commissioner may deem necessary to the proper administration of this article;

(g) To cooperate with colleges and universities, other research institutions, or groups for the purpose of seeking methods of greater utilization of wheat and wheat products.

35-28-108. Contents of marketing order. (1) In accordance with the provisions, restrictions, and limitations set forth in this article, any marketing agreement or order issued by the commissioner pursuant to this article may contain any of the following provisions for regulating, within this state, the handling, sale, and operations of processing or distributing by producers, handlers, or distributors of any agricultural commodity, but no others:

(a) Provisions for determining the existence and extent of the surplus of any agricultural commodity, or of any grade, size, species, or other classification or quality thereof, for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers, processors, distributors, or other handlers affected;

(b) Provisions for limiting the total quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, which may be processed, distributed, or otherwise handled by any persons engaged in such processing, distributing, or handling during any specified period. The total quantity of any such commodity so regulated and permitted to be processed, distributed, or otherwise handled shall not be less than the quantity which the commissioner finds is reasonably necessary to supply the market demand of consumers for such commodity.

(c) Provisions for allotting the quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality thereof, which each handler may purchase or acquire from or handle on behalf of any producers thereof during any specified period under a uniform rule, applicable to all handlers so regulated, based upon the amounts produced or sold by such producers in a prior period which the commissioner finds to be representative, or upon the current season's production or sales of such products, or both, to the end that the total quantity of such commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, so purchased or handled shall be apportioned equitably among the producers thereof;

(d) Provisions for allotting the quantity of any agricultural commodity, or of any grade, size, species, or other classification, or quality or portions or combinations thereof, which each handler may process, distribute, or handle under a uniform rule, applicable to all handlers so regulated, based upon quantities of such commodity or of any grades, size, species, or other classification, or quality thereof, of the current season's crop which each such handler has available for such processing, distribution, or handling, or upon the quantities of such commodity or of any grade, size, species, or other classification, or quality thereof, so processed, distributed, or handled by each such handler in a prior period which the commissioner finds to be representative, or based upon both, to the end that the total quantity of such commodity, or any grade, size, species, or other classification, or portion or combinations or quality thereof, processed, distributed, or handled during any specified period shall be equitably apportioned among all such handlers thereof;

(e) Provisions regulating the period during which any agricultural commodity, or any grade, size, species, or classification, or quality or portions or combinations of such commodity, may be processed, distributed, or otherwise marketed;

(f) Provisions for the establishment of surplus or reserve pools of any agricultural commodity, or of the representative value of such commodity, or of any grade, size, species, or other classification, or quality, or portions, or combination thereof, and providing for the sale of such surplus commodity and the equitable distribution, among the persons interested therein, of the net returns derived from the sale of such commodity or such commodity or such distribution of the representative value of such commodity;

(g) Provisions for the establishment of uniform grading and inspection of any agricultural commodity delivered by producers to handlers, processors, distributors, or others engaging in the handling, processing, or distributing thereof and for the establishment of grading standards of quality, condition, size, or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading standards so established. Such grading standards for any such commodity shall not be established below any minimum standards now prescribed by law for such commodity. All inspections made necessary by such provisions shall be performed by the federal-state inspection service or by such other agent as designated by the commissioner.

(h) Provisions for the establishment of plans for advertising and sales promotion to create new or larger markets for agricultural commodities grown in the state of Colorado. The commissioner is authorized to prepare, issue, administer, and enforce plans for promoting the sale of any agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the commissioner which makes use of false or unwarranted claims on behalf of any such product, or disparages the quality, value, sale, or use of any other agricultural commodity.

(i) Provisions for price posting; but any grade, size, species, or other classification, quality, portion, or combinations thereof of any marketable agricultural product shall be sold by producers, handlers, or distributors thereof only at prices filed by such producers, handlers, or distributors in the manner provided for in such order;

(j) Provisions for requiring the labeling, marking, or branding of any agricultural commodity to be in conformity with the regulations specified in any marketing agreement or order issued under authority of this article;

(k) Provisions for establishing convenient stations for inspection, weighing, and receiving payment for any agricultural commodities sold or delivered by producers or distributors in conformity with any marketing agreement or order issued under authority of this article, and providing for the collection of expenses of operating such stations;

(l) Provisions allowing a board of control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of this article;

(m) Provisions for requiring the packaging of any agricultural commodity to be in containers, and setting standards for such containers, or pack thereof, in conformity with the regulations or authority contained in any marketing agreement or order issued, adopted, or promulgated under the authority of this article;

(n) Provisions for the establishment of programs in the field of research for the improvement of production, control of insects or disease, harvesting, storing, transporting, marketing, handling, processing, or any other phase of research work which would benefit any agricultural commodity produced in Colorado;

(o) Provisions for establishing processing plants or necessary arrangements with persons or companies for the processing of agricultural products, which processing would tend to effectuate the purposes of the article;

(p) Provisions establishing methods whereby agricultural commodities and products other than marketable products may be disposed of and prohibiting dispositions thereof except as so provided;

(q) Provisions for the limitation and prevention of unfair methods of competition in the marketing of agricultural products.

(2) Notwithstanding any other provisions of law, whenever a marketing order issued by the commissioner pursuant to this article contains any terms or conditions regulating the handling, processing, or distribution of any agricultural commodity that may be marketed in the area covered by such order, the importation into the area of any such commodity shall be prohibited unless the handler, processor, or distributor of such commodity complies with such terms and conditions.

35-28-109. When marketing order effective. (1) No marketing agreement or amendments thereto, directly affecting handlers, issued pursuant to this article, shall become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers engaged in the operation covered by the marketing agreement who handle not less than fifty percent of the volume of the commodity covered thereby which is processed or distributed within the area defined in such agreement and by not less than fifty percent of the number of such handlers engaged in the operation covered by such agreement.

(2) (a) No marketing order or amendments thereto directly affecting producers shall become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least two-thirds of the producers who participated in a referendum on the question of its approval, and who, during such representative period, have produced for market the commodities specified therein in commercial quantities within the production area specified in such marketing agreement or order, and who, during such respective period, have produced at least two-thirds of the volume voted of such commodity sold within the marketing area specified in such marketing agreement or order. This paragraph (a) shall not apply to marketing orders which contain provisions for refunds of assessments as provided in section 35-28-113.5.

(b) Except as provided in section 35-28-113 (3) and notwithstanding paragraph (a) of this subsection (2), no marketing order or amendments thereto directly affecting producers of wheat shall become effective unless or until the commissioner determines that the issuance of such order is approved and favored by at least two-thirds of the producers of wheat who participated in a referendum. For purposes of this provision, a "producer of wheat" means a person who harvested or intends to harvest in any manner in excess of fifteen acres of wheat and who is

entitled to share in the proceeds of such wheat crop as owner-operator, cash tenant, standing rent or fixed rent tenant, landlord of a share tenant, share tenant, or sharecropper in the calendar year determined by the commissioner to be representative for purposes of voting approval. Wheat acreage placed in the federal soil bank program shall be regarded as wheat acreage for this purpose.

(c) Repealed.

(3) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers of more than fifty percent of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the commissioner of agriculture, with the approval of the governor, determines:

(a) That the refusal or failure to sign a marketing agreement, by the handlers of more than fifty percent of the volume of the commodity or product thereof specified therein which is produced or marketed within the production or marketing area specified therein, tends to prevent the effectuation of the declared policy of this article with respect to such commodity or product; and

(b) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during a representative period determined by the commissioner, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the marketing area specified in such marketing agreement or order; and by producers who, during such representative period, have produced for market at least two-thirds of the volume voted of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume voted of such commodity sold within the marketing area specified in such marketing agreement or order.

(c) Notwithstanding paragraph (b) of this subsection (3), approval of a marketing order affecting wheat must be approved or favored by at least two-thirds of the producers of wheat who participated in a referendum on the question of its approval. For purposes of this paragraph (c), a "producer of wheat" means a person who harvested or intends to harvest in any manner in excess of fifteen acres of wheat and who is entitled to share in the proceeds of such wheat crop as owner-operator, cash tenant, standing rent or fixed rent tenant, landlord of a share tenant, share tenant, or sharecropper in the calendar year for purposes of voting approval. Wheat acreage placed in the federal soil bank program shall be regarded as wheat acreage for this purpose.

(4) In finding whether such order is assented to pursuant to the provisions of this article, the commissioner may consider the expression of any nonprofit agricultural cooperative marketing association which is authorized by its members to so express the approval or disapproval of the producers who are members of, or stockholders in, such nonprofit agricultural cooperative marketing association.

35-28-110. Orders regulating processing. Subject to the provisions, restrictions, and limitations imposed in this article, the commissioner may issue marketing orders regulating within this state the processing, distributing, or handling in any manner of agricultural commodities by all persons engaged in such processing, distributing, or handling of such commodities.

35-28-111. Termination of marketing order. The commissioner shall suspend, amend, or terminate any marketing order, or any provision of any marketing order, whenever he finds that such provision or order does not tend to effectuate the declared purposes of this article within the standards and subject to the limitations and restrictions imposed in this article, but such suspension or termination shall not be effective until the expiration of the current marketing season. If the commissioner finds that the termination of any marketing order is requested in writing by more than fifty percent of the producers, who are engaged within the designated production area in the production for market of the commodity specified in such marketing order, or who produce for market more than fifty percent of the volume of such commodity produced within the designated production area for market, the commissioner shall terminate or suspend for a specified period such marketing order or provision thereof, but such termination shall be effective only if announced on or before such date, as may be specified in such order.

35-28-112. Notice of issuance. Upon the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the commissioner in his office and a copy of such notice shall be published in a newspaper of general circulation published in the capital of the state and in such other newspapers as the commissioner may prescribe. No order and no suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication. It is also the duty of the commissioner to mail a copy of the notice of said issuance to all persons, directly affected by the terms of such order, suspension, amendment, or termination, whose names and addresses may be on file in the office of the commissioner and to every person who files in the office of the commissioner a written request for such notice.

35-28-113. Budgeting and collection of fees. (1) For the purpose of providing funds to defray necessary expenses, the board of control shall prepare a budget for the administration and operating costs and expenses, including advertising and sales promotion when same are requested in any marketing agreement or order executed under this article, which budget shall be approved by the commissioner. The collection of such necessary fees and the times and conditions of payment, in no case to exceed five percent of the gross dollar volume of such sales, or five percent of the gross dollar volume of purchases or amounts handled, distributed, or

processed, shall become a part of any marketing order upon adoption as provided in this article.

(2) Every person engaged in the production, processing, distributing, or handling of any marketable agricultural product produced, sold, or marketed in this state and directly affected by any marketing order issued pursuant to this article for such commodity shall pay, or collect and pay, to the commissioner at such time and in such manner as prescribed by the order as adopted an assessment covering the budget provided by this article, which assessment shall be the percentage of the gross dollar volume or amount per unit of such sales, or percentage of the gross dollar volume of purchases or amounts handled, distributed, or processed, of any commodity affected by such marketing order, as is necessary to defray the expenses of the enforcement of this article, but in no case to exceed five percent of the gross dollar volume.

(3) Except as provided in section 35-28-113.5, whenever the board of control deems it necessary to raise the amount collected under the provisions of this section for a marketing order involving wheat, the commissioner shall ask for approval of the raise by a referendum on the question of the raise, which must be favored and approved by at least two-thirds of the producers who participate in the referendum.

(4) The fiscal year for the marketing order issued pursuant to section 35-28-106 affecting wheat shall be the period so established by the commissioner by rule and regulation after consideration of recommendations by the board of control of such order.

(5) (a) Notwithstanding any other provision of this article, if requested by a board of control affecting wheat, corn, or dry edible beans, the commissioner may amend a marketing order as described in this article to require the first handler of such commodity or product in this state to pay, or collect and pay, to the commissioner an assessment at such time and in such manner as shall be prescribed by the commissioner if the commissioner, with the approval of the governor, determines that:

(I) Wheat, corn, or dry edible beans produced in another state and shipped into this state for sale or distribution tends to prevent the effectuation of the declared policy of this article with respect to such commodity or product produced in this state; and

(II) The effectuation of the declared policy of this article would be furthered by collection of assessments on such commodity or product shipped into this state.

(b) Any assessment authorized pursuant to this subsection (5) shall be equivalent to the assessment required by the provisions of the marketing order.

35-28-113.5. Refunds of assessments - request by producer. (1) Marketing orders issued after July 1, 1987, as well as amendments to such marketing orders and amendments to marketing orders in existence prior to July 1, 1987, which marketing orders and amendments are issued pursuant to the provisions of this article and which directly affect producers, may contain provisions for refunds of assessments or for refunds of portions of assessments. Any marketing order or amendment which contains such a provision shall not become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least a simple majority of the producers who participated in a referendum on the question of its approval and who, during such representative period, have produced for market the commodities specified therein in commercial quantities within the production area specified in such marketing

agreement or order. Only the assessment or assessment raise or raises approved by a simple majority of the producers as provided in this subsection (1) or that portion of the assessment or assessment raise which is actually levied by the commissioner shall be subject to the provisions of this section.

(2) A producer may request a refund of assessments or a refund of a portion of assessments within thirty days after payment of such assessments. The commissioner shall promulgate such rules and regulations as are necessary for the implementation of this section.

35-28-114. Disposition of funds. (1) Any moneys collected by the commissioner pursuant to this article shall be deposited in a bank or other depository approved by the state treasurer, allocated to each marketing order under which they are collected, and disbursed by the commissioner only for the necessary expenses incurred by the board of control and the commissioner and approved by the commissioner with respect to each such separate marketing order. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the commissioner. All such expenditures by the commissioner shall be audited at least annually and a copy of such audit shall be delivered within thirty days after the completion thereof to the governor and the commissioner of agriculture.

(2) Any moneys remaining in such fund, allocable to any particular agricultural commodity affected by a marketing order, at the discretion of the commissioner, may be refunded at the close of any marketing season, upon a pro rata basis, to all persons from whom assessments were collected, or such portion of such moneys as may be recommended by the board of control and approved by the commissioner may be carried over into the next succeeding marketing season whenever the commissioner finds that such moneys may be required to assist in defraying the cost of operating such marketing order in such succeeding season. Upon termination by the commissioner of any marketing order, any moneys remaining, and not required by the commissioner to defray the expenses of such marketing order, shall be returned by the commissioner, upon a pro rata basis, to all persons from whom assessments were collected. If the commissioner finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the commissioner may use the moneys in such fund to defray the expenses incurred by him in the formulation, issuance, administration, or enforcement of any subsequent marketing order for such commodity.

35-28-115. Limitation of marketing orders. (1) Marketing orders issued by the commissioner under this article may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective. No marketing order shall be issued by the commissioner unless it embraces all persons of a like class in a given area who are engaged in a specific and distinctive agricultural industry or trade within this state.

(2) Within the terms of this article, production or marketing areas as to peaches shall be classified as early maturing, which shall be at altitudes of less than five thousand feet, and late maturing, which shall be at altitudes of more than five thousand feet, and such areas shall be

separate and distinct classes for all purposes under this article insofar as peaches are concerned.

35-28-116. Administration and enforcement. (1) The commissioner of agriculture shall be responsible for the administration and enforcement of this article.

(2) Every person who violates any provision of this article or any provision of any marketing order duly issued by the commissioner under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment. Each day during which any such violations continue constitutes a separate offense.

(3) Upon the filing of a verified complaint charging violation of any provisions of this article or of any provision of any marketing order issued by the commissioner under this article, and prior to the institution of any court proceeding authorized in this section, the commissioner in his discretion may refer the matter to the attorney general or any district attorney of this state for action pursuant to the provisions of this article or call a hearing to consider the charges set forth in such verified complaint. In such case, the commissioner shall cause a copy of such complaint, together with a notice of the time and place of hearing of such complaint, to be served personally, or by mail, upon the person named as respondent therein. Such service shall be made at least three days before said hearing date. The hearing shall be held in the city or town in which is situated the principal place of business of the respondent, or in which the violation complained of is alleged to have occurred, or in the nearest office of the department of agriculture, at the discretion of the commissioner. At the time and place designated for such hearing, the commissioner or his agents shall hear the parties to said complaint and shall enter in the office of the commissioner at Denver his findings based upon facts established at such hearing.

(4) If the commissioner finds that no violation has occurred he shall forthwith dismiss such complaint and notify the parties to such complaint.

(5) If the commissioner finds that a violation has occurred he shall so enter his findings and notify the parties to such complaint. Should the respondent thereafter fail, neglect, or refuse to desist from such violation, within the time specified by the commissioner, the commissioner may thereupon file a complaint against such respondent in a court of competent jurisdiction as set forth in this section.

(6) Each district attorney of this state may upon his own initiative and shall upon any complaint of any person, if, after investigation he believes a violation has occurred, bring a criminal action in the proper court in his district in the name of the people of this state in any court of competent jurisdiction in the state of Colorado against any person violating any provision of this article or of any marketing order duly issued by the commissioner under this article.

(7) (a) Any person who violates any provision of this article or of any marketing order or rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or by the commissioner. The penalty shall not exceed one thousand 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, marketing order, or rule on

at least one prior occasion occurring after March 23, 1995.

(b) 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.

(c) If the commissioner is unable to collect the civil penalty, or if any 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 any court of competent jurisdiction.

(d) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(e) All penalties collected pursuant to this section shall be transmitted to the general fund.

(8) (a) The commissioner shall enforce the provisions of this article.

(b) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any marketing order or rule issued pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. 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 immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(c) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any marketing order or rule issued under 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 marketing order, rule, or order under 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.

(9) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff reasonable costs of such suit including attorney's fees incurred by an advisory board in the prosecution of such action.

(10) Any such action may be commenced either in the county where defendant resides or where any act or omission or part thereof complained thereof occurred.

(11) The penalties and remedies prescribed in this article with respect to any violation mentioned in this article shall be concurrent and alternative, and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any other civil, criminal, or administrative rights, remedies, forfeitures, or penalties provided or allowed by law with respect to any such violation.

(12) Any handler or processor located outside of this state who processes products which are marketed or distributed in this state on a continuing basis, whether directly or indirectly, shall be considered to be engaged in the transaction of business within this state and shall be subject to the jurisdiction of the courts of this state pursuant to the provisions of section 13-1-124, C.R.S.

Any action to enforce any provision of this article or any marketing order issued pursuant to this article against such out-of-state handler or processor by the commissioner shall be considered to have arisen from the transaction of business in this state and shall subject the handler or processor to the jurisdiction of the courts of this state.

35-28-117. Assessment a personal debt. Any assessment levied in such specified amount as may be determined by the commissioner pursuant to the provisions of section 35-28-113 shall constitute a personal debt of every person so assessed and shall be due and payable to the commissioner when payment is called for by the commissioner. In the event of failure of such person to pay any such assessment upon the date determined by the commissioner, the commissioner may file a complaint against such person in a state court of competent jurisdiction for the collection thereof, as provided in section 35-28-116.

35-28-118. No personal liability. The members of any such board of control, including employees of such board, shall not be held responsible individually in any way whatsoever to any producer, processor, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of such board. The liability of the members of such board shall be several and not joint and no member shall be liable for the default of any other member.

35-28-119. Records - information - hearings. (1) The commissioner may require all processors or distributors subject to the provisions of any marketing order issued pursuant to this article to maintain books and records reflecting their operations under said marketing order, and to furnish to the commissioner or his duly authorized or designated representatives such information as may be from time to time requested by them relating to operations under said marketing order, and to permit the inspection by said commissioner, or his duly authorized or designated representatives, of such portions of such books and records as relate to operations under said marketing order.

(2) Information obtained by any person under this article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same, or any attorney employed to give legal advice thereupon, or by court order.

(3) To carry out the purposes of this article, the commissioner may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind. Upon failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court.

(4) No person shall be excused from attending and testifying or from producing

documentary evidence before the commissioner in obedience to the subpoena of the commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued by him; except that no natural person so testifying shall be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

35-28-120. Deposit to defray expenses. (1) Prior to the issuance of any marketing order by the commissioner, he may require the applicants therefor to deposit with him such amount as the commissioner may deem necessary to defray the expenses of preparing and making effective such marketing order. Such funds shall be received, deposited, and disbursed by the commissioner in accordance with the provisions as set forth in section 35-28-114.

(2) The commissioner may reimburse the applicant in the amount of any such deposit from any funds received by the commissioner pursuant to the provisions of section 35-28-114.

35-28-121. General provisions. (1) In the event the commissioner finds that it tends to effectuate the declared purposes of this article within the standards prescribed in this article, the commissioner may issue a marketing order, applicable to the marketing of any agricultural commodity containing like terms, provisions, methods, and procedures as any license or order regulating the marketing of such commodity issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting the members of any board or other advisory agency under such marketing order, the commissioner shall utilize, insofar as practicable, the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel.

(2) The commissioner is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders. Said commissioner is authorized to conduct joint hearings and issue joint or concurrent marketing orders for the purposes and within the standards set forth in this article, and he may exercise any administrative authority prescribed by this article to effect such uniformity of administration and regulation.

(3) Nothing in this article applies to any order, rule, or regulation issued or issuable by the public utilities commission with respect to the operation of common carriers.

(4) In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this article or a marketing order issued under this article and in furtherance of the purposes and provisions of this article shall be a complete defense to such action or proceeding.

35-28-122. Application of article. The provisions of this article shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engaged in the processing or distribution of agricultural commodities as defined in this article; but all persons acting as producers, handlers, processors, or distributors shall conform with all the provisions of any applicable marketing order, marketing agreement, or regulations issued pursuant to this law before shipping or causing to be shipped any agricultural commodity.

35-28-123. Other laws superseded. It is the legislative intent that the provisions of this article shall control, to the exclusion of any general law of this state in conflict therewith, and specifically shall supersede the provisions of article 23 of this title, if said article is in conflict herewith.

35-28-124. Agricultural commodities - preferences - promotion - task force - legislative declaration - repeal. (Repealed)

ARTICLE 29

Colorado Seal of Quality

35-29-101. Legislative declaration. The purposes of this article are to provide a means whereby the general public purchasing certain Colorado agricultural products may be assured of the quality and grade of such products; to assure Colorado producers a better return from the sale of higher quality products; to establish a method of labeling and identification of such Colorado products so that purchasers may easily recognize them; to set up standards for quality, condition, packaging, and distribution of Colorado agricultural products so that the highest quality will be maintained until the product reaches the consumer; and to extend in every practicable way the production and sale of higher quality Colorado-produced agricultural products.

35-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Colorado agricultural products" means any agricultural, horticultural, viticultural, or vegetable products or poultry or poultry products grown or produced in the state of Colorado.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Consumer" means any person who buys Colorado agricultural products for personal use and not for resale.

(4) "Container" means any box, carton, crate, bag, wrap, or other process or device used to hold and protect Colorado agricultural products. "Subcontainer" means any container being used within another container.

(5) "Deceptive arrangement" or "deceptive display" means any bulk lot, arrangement, or display of products which has in the exposed surface products which are in quality, size, condition, or any other respect so superior to those which are concealed as to materially misrepresent the bulk lot, arrangement, or display.

(6) "Deceptive pack" means any container or subcontainer which has in the outer layer or any exposed surface any products which are in quality, size, condition, or any other respect so superior to those in the interior of the container or subcontainer or in the unexposed portion as to materially misrepresent the contents.

(7) "Department" means the department of agriculture.

(8) "Distributor" means any person selling, marketing, or distributing Colorado agricultural products.

(9) "Packer" means any person engaged in processing, packing, or preparing Colorado agricultural products for market.

(10) "Person" means any individual, firm, association, corporation, or partnership.

(11) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market any agricultural commodity.

(12) "Retailer" means any person buying Colorado agricultural products from producers, packers, or distributors and selling to consumers.

(13) "Seal of quality" means the design approved by the commissioner, as provided in section 35-29-103 (2), as the Colorado "seal of quality" and which, when imprinted or affixed on labels, packages, or products or used in advertising or in any manner, shall signify the standards of quality provided in section 35-29-104.

35-29-103. Administration - seal of quality. (1) The commissioner and the representatives of the department under the direction of the commissioner shall administer and enforce this article; and, in such administration, the commissioner has and may exercise any or all the administrative powers conferred upon him as head of the department.

(2) (a) The commissioner shall produce or cause to be produced a suitable design or drawing, which shall be known as the Colorado seal of quality, to be used in the marketing of Colorado agricultural products.

(b) The title to the seal of quality shall at all times remain in and be reserved to the department of agriculture.

(c) The seal of quality, or any reproduction, copy, or facsimile thereof, may not be used in any advertising, display, labeling, or identification without prior written permission from the department.

(3) When any producer, packer, distributor, or retailer has complied with the provisions of this article and the regulations pursuant thereto, he shall be permitted to use the seal of quality in advertising, labeling, or marketing his product.

(4) The seal of quality may not be used on any agricultural product unless such product was produced in the state of Colorado.

35-29-104. Standards of quality. (1) The department shall establish minimum standards of quality for all agricultural products to be marketed under the seal of quality.

(2) The quality standards may be changed from time to time by the department, but any producer, packer, distributor, or retailer affected by the changes shall be notified by the department at least thirty days prior to the effective date of the changes in standards.

(3) The seal of quality shall not be used in the marketing of any agricultural product which does not meet the minimum standards established by the department.

(4) The commissioner shall prescribe methods and procedures of sampling, inspecting, and grading Colorado agricultural products.

(5) Inspectors or representatives of the department shall use such methods and procedures in sampling, checking, and inspecting products to determine the grade, quality, or condition of the product being marketed under the seal of quality.

(6) Any product being marketed under the seal of quality which does not meet the standards of quality established by the department shall be immediately removed from sale until the seal of quality has been removed from the product, label, or container. The department shall be the authority in making the decision to remove the product from sale. Any person refusing or failing to remove the seal of quality from a product, label, or container after being notified by the department shall be deemed in violation of this article.

35-29-105. Authority to enter, inspect, and take samples. Any authorized representative of the department may enter and inspect any place where products being marketed under this article are being sold or offered for sale and take such samples as may be necessary to determine the grade, quality, or condition of the product.

35-29-106. Authority to make rules and regulations. The department is granted power to make rules and regulations concerning standards for grade, size, quality, and condition of agricultural products being marketed under the seal of quality.

35-29-107. Financing. To defray the expense of establishing the seal of quality program, the department is authorized to produce and sell labels, decals, stamps, mats, streamers, plates, or other forms of identification or advertising containing the seal of quality to be used by those persons marketing Colorado agricultural products under the seal of quality program. Any moneys received shall be placed in a revolving fund and shall only be used to replenish supplies and for advertising the seal of quality program, but the total net assets of the revolving fund, including accounts receivable, inventories, and cash balances, shall not exceed ten thousand dollars. Any net assets in excess of the limit established in this section for the revolving fund on hand at the

close of each fiscal period shall be transferred to the general fund.

35-29-108. Unlawful acts. (1) It is unlawful for any person:

(a) To sell or offer for sale any Colorado agricultural product identified by the seal of quality which does not meet the minimum standards established by the department;

(b) To sell or offer for sale any agricultural product in any used container on which the seal of quality is printed, stamped, or affixed unless the seal of quality identification has been completely removed or obliterated;

(c) To sell or offer for sale Colorado agricultural products bearing the seal of quality label in any container which does not meet the standards established by the department;

(d) To sell or offer for sale any Colorado agricultural product in a deceptive pack or in a deceptive arrangement or deceptive display, as defined in section 35-29-102 (5) and (6);

(e) To refuse to submit any Colorado agricultural product or container for inspection, sampling, or grading.

35-29-109. Penalties. Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

ARTICLE 29.5

Colorado Wine Industry Development Act

35-29.5-101. Short title. This article shall be known and may be cited as the "Colorado Wine Industry Development Act".

35-29.5-101.5. Legislative declaration. The general assembly hereby finds, determines, and declares that Colorado has a substantial interest in promoting the development of a viable and stable wine industry in this state. The general assembly further finds, determines, and declares that grape cultivation is closely related to fruit cultivation carried out in various parts of Colorado; that grape cultivation and wine production are a logical supplement to, and development of, existing agricultural business conducted in the state; that wine production has become a significant industry in other states because of the action of state and local governments in those areas to foster development of the industry; that a viable wine industry can enhance Colorado's tourist industry; that some aspects of wine industry development can best be

accomplished by an industry-wide approach rather than by individual producers, such as conducting scientific research and disseminating and publishing the results of such research, promoting Colorado wines as distinct from those produced in other regions, and promoting awareness of responsible consumption of wine; and that the state should aid Colorado's wine industry through research and promotion to allow the industry to realize its full potential in this state.

35-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the Colorado wine industry development board, created in section 35-29.5-103.

(1.5) "Eastern slope" means the area east of the continental divide.

(2) "Fruit product" means any juice, must concentrate, or extract from fruit whether or not partially fermented.

(2.5) "Grand valley viticultural area" means the federally defined area in Mesa county in which wine grapes are grown.

(3) "Grape product" means any juice, must concentrate, or extract made from vinifera grapes, true or hybrid, whether or not partially fermented.

(3.5) "Western slope" means the area west of the continental divide, excluding the grand valley viticultural area.

(4) "Wine" means any vinous liquor containing not more than twenty-one percent alcohol by volume and produced in all respects in conformity with the laws of the United States and the regulations of the bureau of alcohol, tobacco, and firearms of the United States department of the treasury or any of its successor agencies.

(5) "Wine-growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(6) "Wine-making" means the ownership and control of or the management of a licensed winery in this state.

35-29.5-103. Colorado wine industry development board - creation - members. (1) There is hereby established a Colorado wine industry development board in the department of agriculture for the purpose of encouraging and promoting viticultural and enological research and experimentation to develop maximum yields and quality from Colorado lands suitable to the production of grapes for commercial wine production, to promote the marketing of wines and wine grapes produced in Colorado, to promote the responsible consumption of all wines, to promote the integration of the Colorado wine industry as a component of the state's tourism program, and to serve as a resource for the entire wine industry of Colorado. The board shall exercise its powers and perform its duties and functions specified by this article under the department of agriculture as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) (a) The board shall consist of nine members appointed by the governor. In making appointments, the governor shall take into consideration any nominations or recommendations made by the wine industry organization in Colorado.

(b) (I) Five of the appointments shall be representatives of licensed wineries in the state. Of such five appointments, one shall be a representative of licensed wineries in the western slope, one shall be a representative of licensed wineries in the grand valley viticultural area, one shall be a representative of licensed wineries in the eastern slope, and two shall be at-large representatives. The appointment of at-large members shall reflect the proportion of fees and excise taxes paid by wineries in each of the three regions. At least one of the winery representatives shall also be a grower.

(II) Two appointments shall be representatives of the wholesale wine distributors in Colorado.

(III) One appointment shall be a representative of wine grape producers.

(IV) One appointment shall be a representative of the retail wine distributors in Colorado.

(c) A representative of the Colorado tourism board, a representative of Colorado state university, and a member of the public shall be invited to serve on the board in an ex officio capacity.

(d) Each member of the board shall be a resident of Colorado.

(e) Each member of the board shall be at least twenty-one years of age.

(3) Except as provided in subsection (4) of this section with respect to initial appointments to the board, members of the board shall serve for terms of four years each to continue in office until a successor is appointed and qualified; except that, in the case of a vacancy on the board, an appointment shall be for the remainder of the unexpired term. No member shall be appointed to consecutive terms; except that any member appointed for less than two years in the case of a vacancy may be appointed upon the expiration of the shorter term to serve a four-year term.

(4) Of the members of the board appointed to terms commencing on and after July 1, 1997, at least one of the representatives from the wholesale wine distributors and one of the representatives from licensed wineries shall be appointed for terms of three years. Thereafter, all appointments except those necessary to fill mid-term vacancies shall be for one four-year term.

(5) Members of the board shall receive no compensation for their service on the board, but shall be entitled to reimbursement for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

35-29.5-104. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of wine, wine-growing, wine-making, grape products, or fruit products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of wine, wine-growing, wine-making, grape products,

or fruit products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters of trade concerning the wine industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to the carrying out of the purposes of the board as authorized by this article;

(f) Make grants to research agencies for the financing of special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(g) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(h) Cooperate with and enter into contracts with any local, state, or nationwide organization or agency engaged in work or activities similar to those of the board and enter into contracts with such organizations or agencies for carrying on joint programs;

(i) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board to be beneficial to the wine industry of this state and expend funds in connection therewith if such program is compatible with the powers conferred by this article;

(j) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties; and

(k) Enter into contracts for the promotion of wine and for the development of new markets through such promotion.

(2) The board shall promote all wines produced or finished by a licensed Colorado winery.

35-29.5-105. Colorado wine industry development fund - use of moneys. (1) There is hereby created in the state treasury the Colorado wine industry development fund. The fund shall consist of moneys credited thereto pursuant to section 12-47-503 (1) (b) and (1) (c), C.R.S. All moneys in such fund are hereby continuously appropriated to the board for the expenses of the board in implementing the provisions of this article.

(2) In any fiscal year, the board shall budget from moneys in the fund at least one-third toward research and development and at least one-third toward promotion and marketing of the Colorado wine industry, including any administrative costs associated therewith. Any revenue generated by research may be deducted from the amount budgeted for research.

35-29.5-106. Use of phrase "Colorado Grown" on wine industry labeling. (Repealed)

ARTICLE 30

35-30-101. Cooperation with United States. The governor is authorized to cooperate with the government of the United States and its agents and representatives in all matters pertaining to the conservation, distribution, or production of food, insofar as he may find it possible to do so.

35-30-102. Powers of governor. The governor of the state of Colorado is vested with all police and regulatory powers regarding the production, storage, refrigeration, manufacture, distribution, handling, dealing in, or sale of foodstuffs or food products and other necessities of life, whether in the raw state or in manufactured form, or any article used or capable of use as food for man or beast, which are vested in the president or any other executive officer of the United States; but the rules, regulations, and orders promulgated by the governor in the exercise of the power conferred in this section shall not be more drastic than nor in conflict with the rules, regulations, and orders of the president and executive officers of the United States government.

ARTICLE 31

Destruction of Food Products

PART 1

PUBLIC ENFORCEMENT

35-31-101. Destruction of food prohibited. It is unlawful for any person, firm, partnership, association, or corporation or any servant, agent, employee, or officer thereof to destroy or cause to be destroyed, or to permit to decay or to become unfit for use or consumption, or to take, send, or cause to be transported out of this state so to be destroyed or permitted to decay, or knowingly to make any materially false statement, for the purpose of maintaining prices or establishing higher prices for the same, or for the purpose of limiting or diminishing the quantity thereof available for market, or for the purpose of procuring, or aiding in procuring, or establishing, or maintaining a monopoly in such articles or products, or for the purpose of in any manner restraining trade, any fruits, vegetables, grain, meats, or other articles or products ordinarily grown, raised, produced, or used in any manner or to any extent as food for human

beings or for domestic animals.

35-31-102. Applicable to unmatured foods. This part 1 shall apply to the destruction of unripe or unmatured food products or articles as well as to the destruction of the same when matured or ready for marketing.

35-31-103. Evidence. Evidence of the voluntary destruction or of the destruction, if unexplained, of any of the food products or articles mentioned in section 35-31-101, or of the voluntary and willful permitting of the same to decay, or of the taking, sending, or causing of the same to be transported out of this state to be destroyed or permitted to decay shall be prima facie proof of the violation of this part 1.

35-31-104. Penalty. (1) Any person, whether acting individually or otherwise, in such person's own behalf, or as the agent, employee, servant, director, or officer of any other person, partnership, firm, association, or corporation, or any corporation who violates any of the provisions of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(2) As a condition of any sentence imposed pursuant to subsection (1) of this section, the court shall order in addition to any other penalty, that any person convicted of a violation of this part 1 shall make restitution to any victim of such a violation. The amount and any conditions of such a restitution order shall be determined in the same manner as a restitution order imposed pursuant to the provisions of section 18-1.3-205, C.R.S.

35-31-105. Enforcement. It is the duty of the district attorneys in their respective districts and of the attorney general to enforce the provisions of this part 1. It is the duty of all citizens of this state who have knowledge or information of a violation of this part 1 to at once inform against anyone who may have violated the same.

35-31-106. Liberal construction. This part 1 shall be liberally construed to effectuate its purpose of preventing waste and of conserving and protecting the food supply available to the people of the state, to the end that the people may enjoy the benefit of any abundance or oversupply of any such food articles or products that may from time to time arise in any locality or in the state at large.

PART 2

CIVIL DAMAGES FOR THE PROTECTION
OF AGRICULTURAL PRODUCTS

35-31-201. Protection of agricultural products - damages - definitions. (1) (a) Any person who, without the consent of the owner of an agricultural product, exercises control over the agricultural product with the intent to deprive such owner of the agricultural product or who maliciously damages or destroys the agricultural product, or who encourages or conspires with another to do so, shall be liable for damages as described in subsection (2) of this section.

(b) For purposes of this section:

(I) "Agricultural product" means any product of agriculture as defined in section 35-1-102 (1).

(II) "Experimental agricultural product" means any product of agriculture, as defined in section 35-1-102 (1) that is the subject of testing or a product development program being conducted by a private entity, a federal, state, or local government agency, or an educational institution, or that has been developed through such a program.

(2) For a violation of subsection (1) of this section, a court shall award:

(a) The market value of the experimental agricultural product itself and costs directly related to research, testing, production, replacement, and development of the experimental agricultural product. The court may award treble damages.

(b) The market value of the agricultural product itself and costs directly related to production and replacement. The court may award treble damages.

(c) Reasonable attorney fees; and

(d) Litigation costs.

(3) The rights and remedies available under this section are in addition to any other rights or remedies otherwise available.

ARTICLE 32

Farmers' Chemist for Sugar Factories

35-32-101 to 35-32-107. (Repealed)

ARTICLE 33

Custom Processing
of Meat Animals

PART 1

GENERAL PROVISIONS

35-33-101. Short title. This article shall be known and may be cited as the "Custom Processing of Meat Animals Act".

35-33-102. Legislative declaration. The general assembly declares that the purpose of this article is to regulate the slaughter and processing of certain animals intended for human consumption. The general assembly finds that the production, processing, and consumption of meat animals plays an important part in the economy of this state and that to maintain the integrity of this industry and to protect the public health and welfare it is essential that the slaughter and processing of these animals occur in a safe, sanitary, and nondeceptive manner. It is therefore necessary to provide for the regulation of the slaughter and processing of meat animals.

35-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adulterated" has the meaning set forth in section 25-5-410, C.R.S.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture or his or her authorized agent.

(4) "Custom processing" means the slaughter or processing, for a fee or other compensation, of meat or meat products of an animal not owned by the person performing the slaughter or processing and not intended for sale by the owner of the animal.

(5) "Department" means the department of agriculture.

(6) "Food" means all articles used for food, drink, confectionery, or condiment by humans, whether simple, mixed, or compound, and any substance used as a constituent in the manufacture thereof.

(7) "Inedible meat" means meat or meat products derived from dead, dying, disabled, diseased, or condemned animals or from animals whose meat or meat products are otherwise unsuitable for human consumption. "Inedible meat" includes meat or meat products, regardless of origin, that have deteriorated so far as to be unfit for human consumption.

(8) "Meat or meat products" means carcasses or parts of carcasses derived from any animals used for food.

(9) "Premises" means the back, front, and side yard of property occupied by a custom processing facility; docks and areas where vehicles are loaded or unloaded; driveways, approaches, pens, and alleys; and buildings or portions of buildings that are part of any facility even though not used for custom processing.

(10) "Processing" means the slaughtering, dressing, cutting, preparing, trimming, wrapping, or packaging of an animal or of meat or meat products from an animal.

(11) "Processing facility" means any establishment where meat is slaughtered, dressed, processed, cut, trimmed, wrapped, or packaged for delivery to consumers.

(12) "Sharp freezing facility" means a facility capable of maintaining a temperature of ten degrees below zero Fahrenheit or lower on still air or contact or a temperature of zero degrees Fahrenheit or lower by forced air circulation, within a tolerance of five degrees Fahrenheit for a minimum of twelve hours after fresh food is put in such facility for freezing.

(13) "Sharp frozen" means the process of refrigeration sufficient to reduce every portion of any meat or meat product to a temperature of zero degrees Fahrenheit or less in five hours or less.

(14) "Slaughter" means any process, or the use of any process, including without limitation the process of bleeding, that causes the death of any animal intended for food.

(15) "Uninspected", in reference to any animal, meat, or meat product, means not inspected and passed by the United States department of agriculture or another authorized government agency.

35-33-104. Commissioner of agriculture - powers and duties. (1) The commissioner is hereby authorized to formulate reasonable rules and standards of construction, operation, record-keeping, and sanitation for all custom processing facilities and shall establish rules and standards pertaining to containers, packaging materials, mobile slaughter units, slaughter rooms, processing rooms, chill rooms, storage and locker rooms, sharp freezing facilities, and premises of custom processing facilities, with respect to the service of slaughtering, cutting, preparing, wrapping, and packaging meat and meat products necessary for the proper preservation of food.

(2) It is the duty of the department to enforce the provisions of this article and rules, regulations, and standards established in accordance therewith.

(3) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 511, § 6, effective April 16, 2009.)

(4) (a) The commissioner, upon consent or upon obtaining an administrative search warrant, shall have the right of access to any premises for the purpose of any examination or inspection necessary to enforce this article or the rules promulgated thereunder, including inspection and copying of any relevant records.

(b) The commissioner may administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of 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.

(5) The commissioner may, whenever immediate enforcement of any of the provisions of this article is deemed necessary for the protection of the public health or welfare, issue and

enforce a written cease-and-desist order to any person found in violation of any of the provisions of this article or the rules promulgated thereunder.

(6) When the commissioner has reasonable cause to believe that any meat or meat product is being held, slaughtered, or processed in violation of this article or the rules promulgated under this article, and when such product endangers the public health, safety, or welfare, he or she may issue and enforce a written retention order, prohibiting any person from moving or otherwise disposing of the retained product in any manner without written permission of the commissioner. Within five days after the issuance of any retention order, the commissioner shall hold a hearing to determine whether the retained product should be condemned or released to the owner. If the product is found to be adulterated, and the product cannot be brought into compliance with this article, the commissioner shall order that the retained product is inedible meat and shall be disposed of.

(7) (Deleted by amendment, L. 95, p. 31, § 2, effective July 1, 1995.)

35-33-105. Injunctive relief. Whenever the commissioner possesses sufficient evidence satisfactory to him or her indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule promulgated under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

35-33-106. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, with any other agency of this state or its political subdivisions, or with any agency of another state to further the implementation of this article, secure uniformity of regulations, prevent duplication of enforcement efforts, and facilitate the sharing of information developed in the investigation of unlawful business practices.

35-33-107. Exemptions.

(1) Repealed.

(2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 8, effective April 16, 2009.)

(3) Any person who holds an establishment number issued by the United States department of agriculture for purposes of inspection and does not engage in the custom

processing of meat animals shall be exempt from the requirements of this article.

(4) Any religious practice involving the ritual slaughter, handling, or preparation of meat animals is exempt from the provisions of this article except section 35-33-203 governing methods of slaughter.

(5) (Deleted by amendment, L. 95, p. 31, § 3, effective July 1, 1995.)

35-33-108. Operators not warehousemen. (Repealed)

PART 2

CONSTRUCTION AND OPERATION
OF PROCESSING FACILITIES

35-33-201. Custom processing facilities - operation. (1) Each custom processing facility licensed under this article must be operated and maintained in a manner sufficient to prevent the creation of unsanitary conditions and to ensure that meat or meat products are not adulterated.

(2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(3) All persons coming in contact with meat or meat products shall wear clean garments and a suitable head covering and shall keep their hands clean. No person with infected cuts or a communicable disease shall be allowed to handle meat or meat products.

(4) and (5) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(6) Unpackaged or uncovered meat or meat products shall not be moved through the slaughter, holding, or refuse rooms or areas.

(7) and (8) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 513, § 10, effective April 16, 2009.)

(9) (a) Adulterated or inedible meat shall be decharacterized so as to unequivocally preclude its use for human food and shall be disposed of by methods approved by the commissioner.

(b) Decharacterization of adulterated or inedible meat shall be accomplished by freely slashing and covering all exposed surfaces with an edible green dye, charcoal, or such other methods as may be approved by the commissioner.

(10) All meat and meat products resulting from the custom processing or slaughter of uninspected animals:

(a) Shall, as soon as is practicable, be marked or coded with the owner's name and marked "NOT FOR SALE" in letters not less than three-eighths of an inch in height;

(b) Shall, when packaged, be marked or coded with the owner's name, the date of wrapping of the package, and the package contents, and labeled "NOT FOR SALE"; and

(c) Shall be returned to the owner or decharacterized and disposed of by methods

approved by the commissioner, except for unclaimed meat from wildlife subject to the jurisdiction of the Colorado division of parks and wildlife, which shall be donated or disposed of in accordance with any applicable state or federal health or wildlife laws.

35-33-202. Record-keeping requirements. (1) (a) Every custom processor shall maintain records of each customer transaction, including, at a minimum:

(I) The date of the transaction;

(II) A description of the meat or meat products processed, including species and quantity;

(III) The name and address of the owner; and

(IV) Such other information as may be required by rule of the commissioner.

(b) The records maintained pursuant to paragraph (a) of this subsection (1) shall be kept for at least two years and made available to the commissioner on demand.

(2) (Deleted by amendment, L. 2009, (SB 09-117), ch. 123, p. 515, § 11, effective April 16, 2009.)

35-33-203. Slaughter methods. (1) No custom processor shall shackle, hoist, or otherwise bring animals into position for slaughter or shall slaughter or bleed animals except by humane methods.

(2) The commissioner may promulgate rules that conform substantially to the rules of the secretary of agriculture of the United States pursuant to the federal "Humane Methods of Slaughter Act of 1958", as amended; but the use of a manually operated hammer, sledge, or poleax shall not be permitted.

35-33-203.5. Freezing prior to delivery. Unless otherwise requested by the owner, all meat or meat products shall be sharp frozen before delivery.

35-33-204. Sale of adulterated or diseased meat. (Repealed)

35-33-205. Repeal of part. (Repealed)

35-33-206. License required - application - inspection - issuance. (1) Any person who desires to operate a custom processing facility shall first obtain a license from the department. A separate license shall be required for each custom processing facility. The application shall be in writing on forms supplied by the department, shall set forth such information as may be required by the department, and shall be accompanied by any required fees.

(2) Upon the applicant's submission of an application for a license and payment of the

required fees, the department shall inspect facilities and premises at the location to be licensed and, if it finds that the equipment, facilities, surrounding premises, and operation of such establishment comply with this article and the rules established pursuant thereto, the department shall issue a license to operate unless the department finds that there are grounds for denial or refusal to renew a license pursuant to section 35-33-208.

(3) The license shall be valid for the period from the date of issuance until the expiration date established by the commissioner by rule and, except for good cause shown, shall be renewed annually thereafter.

(4) A license shall not be transferable to a new owner or location.

(5) Any person who operates a custom processing facility without a valid license therefor commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-33-207. License fees. (1) The fee for each license under this article shall be established by the commission. There shall be no reduction of a license fee for any fractional part of a year. The fee schedule shall cover all direct and indirect costs associated with the licensing, inspection, and regulation of custom processors.

(2) Any 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) All fees collected pursuant to this section shall be deposited in the state treasury and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

35-33-208. Disciplinary actions - grounds. (1) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, refuse to renew, or place on probation the license of any applicant or licensee who:

(a) Makes a false statement or misrepresentation on an application for a license or renewal;

(b) Has had a previous license or any equivalent authorization to engage in activities regulated under this article revoked, suspended, or denied by any authority authorized to grant such license or authorization in this or any other state;

(c) Has failed to comply with or violated any provision of this article or any rule promulgated by the commissioner pursuant to this article; or

(d) Fails to obey any lawful order of the commissioner.

PART 3

ADVERTISING AND SALE

35-33-301 to 35-33-305. (Repealed)

PART 4

LICENSES - FEES - PENALTIES

35-33-401. License required - application. (Repealed)

35-33-402. Inspection - issuance of license. (Repealed)

35-33-403. License fees - evidence of financial responsibility. (Repealed)

35-33-404. License - denial - suspension - revocation. (Repealed)

35-33-405. Violations - civil penalties - disposition. (1) In addition to the criminal penalty prescribed in section 35-33-406, any person who violates this article or any rule promulgated under this article shall also be subject to a civil penalty of not more than seven hundred fifty dollars per violation for each day of violation.

(2) Any person who violates this article or any rule promulgated under 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.

(3) 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.

(4) If the commissioner is unable to collect such civil penalty or if any 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 any court of competent jurisdiction.

(5) Before imposing any civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the business.

(6) Any penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-33-406. Violations - criminal penalty. Any person who violates this article or any rule promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-33-407. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

ARTICLE 33.5

Sale of Meat

PART 1

GENERAL PROVISIONS

35-33.5-101. Short title. This article shall be known and may be cited as the "Sale of Meat Act".

35-33.5-102. Legislative declaration. The general assembly declares that the purpose of this article is to regulate the sale of meat intended for human consumption. The general assembly finds that the sale of meat plays an important part in the economy of this state and that to maintain the integrity of this industry and to protect the public welfare it is essential that the sale of meat occurs in a nondeceptive manner. It is therefore necessary to provide for the regulation of the sale of meat.

35-33.5-103. Scope - applicability. (1) This article shall apply to all sales of regulated products or advertisements containing an offer to sell regulated products:

(a) In bulk or as a bundle; or

(b) On credit, or subject to an installment or other payment plan or as part of a home food service plan including cut and packaged meats intended for storage in a home freezer or other cold storage facility.

35-33.5-104. Definitions. As used in this article, unless the context otherwise requires:

(1) "Advertisement" means a communication, by or through any medium, intended to solicit or promote the sale of any product or service:

(a) Regulated by this article;

(b) Produced or provided by any person regulated by this article; or

(c) The production or provision of which is regulated by this article.

(2) "Bulk meat" means meat consisting of whole carcasses, or parts thereof, of commercial size and requiring further cutting into cuts of retail size for individual consumption.

(3) "Bundle" means individually wrapped cuts of meat packaged together for sale as a single unit.

(4) "Commission" means the state agricultural commission.

(5) "Commissioner" means the commissioner of agriculture or his or her authorized agent.

(6) "Department" means the department of agriculture.

(7) "Food" and "food products" means all articles used for food, drink, confectionery, or condiment by humans, whether simple, mixed, or compound, and any substance used as a constituent in the manufacture thereof.

(8) "Home food service plan" means an arrangement for the sale and delivery of food to a consumer, whether or not the consumer is required to pay a membership fee or similar charge and whether or not any nonfood item, including durable consumer goods or services, is included with the food, if:

(a) The arrangement is made by means of a personal meeting at the consumer's home; and

(b) The food consists of or includes any meat or meat products.

(9) "Meat or meat products" means carcasses or parts of carcasses derived from any animals used for food.

(10) "Regulated product" means any meat or meat products sold as bulk meat or in a bundle; any food that is sold or given away as an incentive or bonus connected with the sale of meat or meat products; any food product intended for human consumption that is sold or given away as a part of any home food service plan.

(11) "Represent" or "representation" refers to the use of any oral or written statement, advertisement, label, display, picture, illustration, or sample.

(12) "Sharp frozen" means the process of refrigeration sufficient to reduce every portion of any meat or meat product to a temperature of zero degrees Fahrenheit or less in five hours or less.

35-33.5-105. Commissioner of agriculture - powers and duties. (1) The commissioner is hereby authorized to establish rules and standards pertaining to the sale of meat or meat products and for home food service plans to the end of protecting the public from deception, fraud, or unethical sales practices and record-keeping requirements.

(2) It is the duty of the department to enforce this article and the rules and standards established in accordance with this article.

(3) (a) The commissioner, upon consent or upon obtaining an administrative search warrant, shall have the right of access to any premises for the purpose of any examination or inspection necessary to enforce this article or the rules promulgated thereunder, including

inspection and copying of any relevant records.

(b) The commissioner may administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of 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.

(4) The commissioner may, whenever immediate enforcement of any of the provisions of this article is deemed necessary for the protection of the public health or welfare, issue and enforce a written cease-and-desist order with respect to any person found in violation of any of the provisions of this article or the rules promulgated thereunder.

35-33.5-106. Injunctive relief. Whenever the commissioner possesses sufficient evidence satisfactory to him or her indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule promulgated under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

PART 2

SALES PRACTICES

35-33.5-201. Method of sale. All regulated products shall be sold, as specified in rules of the commissioner.

35-33.5-202. Advertisements. (1) No advertisement shall be subject to change without notice unless so stated in the advertisement.

(2) Any comparison with products other than those advertised shall be with products of the same grade or quality.

(3) The price of any bulk meat shall be quoted per pound.

(4) Any service charge incidental to the preparation of a regulated product for sale that is not included in the price per pound of the product shall be clearly identified as an extra and separate charge. This shall apply, without limitation, to any membership fee or any charge or fee for cutting, freezing, wrapping, storage, or delivery.

(5) No advertisement shall represent that any person employed by or acting for or on

behalf of the seller is a nutritionist or home economist unless such person has obtained any applicable government certification or license, or, where no certification or license is applicable, has completed specialized training in such fields or is otherwise technically qualified by experience or training.

(6) No advertisement shall represent that any type or quantity of any regulated product offered for sale is sufficient to meet any nutritional or dietary requirements without disclosing the source of the standards according to which such regulated product is determined to be sufficient.

(7) No advertisement shall represent that any regulated product or service has been approved by any better business bureau, chamber of commerce, service club, financial institution, government agency, or any other civic organization or any official or employee thereof or that the seller is a member of such organization, unless the seller has written documentation to substantiate the claim, which documentation shall be made available upon demand to any buyer or to any agent of the department.

(8) Any representation in any advertisement of the grade or yield of any regulated product offered for sale shall conform to United States department of agriculture standards for the designation of meat grades. The designation "U.S." shall not be used with reference to any product not graded by the United States department of agriculture; except that the term "U.S. Inspected" may be used when the product has been so inspected.

(9) Any advertisement offering to sell meat as a "side", "half", "quarter", or similar unit shall contain the following warning in capital letters: "Meat sold by weight determined before processing. Actual yield will be less."

(10) Any advertisement offering for sale a "side", "quarter", or "half" of beef and containing a list of cuts purportedly from such "side", "quarter", or "half" shall list only cuts that are anatomically correct components of the indicated part of the carcass.

(11) A person shall not use an advertisement that constitutes all or part of a deceptive trade practice as defined in section 6-1-105 (1) (e), (1) (i), (1) (j), (1) (l), or (1) (n), C.R.S., in connection with regulated products or services subject to this article.

(12) Any person violating this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(13) Nothing in this section shall be construed to limit or preempt the application of article 1 of title 6, C.R.S.

35-33.5-203. Documentation of sales. (1) Any sale of bulk meat or a home food service plan shall be documented in a written contract, which shall contain, at a minimum:

(a) The full name and address of the seller;

(b) The name and address of the buyer;

(c) The date of the sale;

(d) Weight and pricing information as required by rule;

(e) The total price to be paid by the buyer, including, without limitation, any applicable charges for cutting, freezing, wrapping, packaging, delivery, freezer or locker rental, insurance, and any interest, finance charge, service charge, or membership charge;

(f) The total weight of all regulated products, including separately itemized weights for each regulated product;

(g) A separate itemization of all nonfood charges;

(h) The make, model number, and cubic-foot capacity of any locker, freezer, or other appliance or facility sold or rented under the contract;

(i) The signature of the buyer; and

(j) Such other information as may be required by rule of the commissioner.

(2) Every person who sells bulk meat or a home food service plan shall maintain a copy of each contract required by subsection (1) of this section for at least two years.

(3) Any sale of a regulated product not subject to subsection (1) of this section shall be documented in a writing that contains, at a minimum:

(a) The full name and address of the seller;

(b) The total price paid, or to be paid, by the buyer;

(c) Weight and pricing information as required by rule;

(d) A separate itemization of all nonfood charges;

(e) Such other information as may be required by rule of the commissioner; and

(f) The date of the sale.

35-33.5-204. Limitations on contract - delivery. (1) Upon execution of a sales contract, the seller shall deliver to the buyer a full and complete copy of such contract together with copies of any warranty, rental, insurance, or other collateral agreement incorporated by reference into the sales contract and a complete written statement of the rules, terms, or conditions applicable to any membership acquired or to any gift or prize for which the buyer has qualified or may in the future qualify by virtue of his or her execution of the sales contract.

(2) No contract shall use the terms "side", "quarter", "half", or any similar term to describe meat delivered under the contract unless all the meat delivered is from the indicated portion of the same carcass or the contract expressly provides that meat purchased in such a unit will not be cut from the same carcass. Any meat delivered as a "side", "quarter", "half", or similar unit, if not from the same carcass, shall all be of the same grade or quality.

(3) No contract shall contain any provision whereby the buyer agrees to waive any warranties, rights, or defenses he or she may have under article 2 of title 4, C.R.S., or the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S.

(4) No provision of this section shall be construed to relieve the seller of any obligation he or she may otherwise have under article 1 of title 6, C.R.S.

(5) Any contract made in violation of this article shall be unenforceable against the buyer.

35-33.5-205. Freezing prior to sale. Unless otherwise requested by the purchaser, all regulated products shall be sharp frozen before delivery.

PART 3

35-33.5-301. License required - application - inspection - issuance. (1) A person who desires to sell a home food service plan shall first obtain a license from the department. A separate license shall be required for each business location. The application shall be in writing on forms supplied by the department, shall set forth such information as may be required by the department, and shall be accompanied by any required fees.

(2) Upon the applicant's submission of an application for a license, or for the renewal thereof, evidence of the bond required by section 35-33.5-303, and payment of the required fees, the department shall review the applicant's operations and, if it finds that such operations comply with this article and the rules established pursuant thereto, the department shall issue a license to operate unless the department finds that there are grounds for denial or refusal to renew a license pursuant to section 35-33.5-304.

(3) The license shall be valid for the period from the date of issuance until the expiration date established by the commissioner by rule and, except for good cause shown, shall be renewed annually thereafter.

(4) A license shall not be transferable to a new owner or location.

(5) Any person who sells a home food service plan without a valid license therefor commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-33.5-302. License fees. (1) The fee for each license under this part 3 shall be established by the commission. There shall be no reduction of a license fee for any fractional part of a year. The fee schedule shall cover all direct and indirect costs associated with the licensing, inspection, and regulation of sellers of home food service plans.

(2) Any 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) All fees collected pursuant to this section shall be deposited in the state treasury and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

35-33.5-303. Evidence of financial responsibility - action on bond. (1) Before any license is issued to the seller of a home food service plan, or before the reinstatement of any license suspended or revoked for violations of this article or of a rule or order issued pursuant to this article resulting in financial loss suffered by any buyer, the applicant shall execute and deliver to the commissioner a surety bond in an amount determined by the commissioner, not to exceed fifty thousand dollars. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be conditioned upon compliance with all requirements of this article, the faithful fulfillment of all contracts, and the rendering of any service in connection with the sale, advertising, or soliciting of any home food service plan. The bond shall be to the state of Colorado in favor of every

consumer purchasing a home food service plan.

(2) If, after a hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner determines that a bonded licensee has violated any provision of this article or of a rule or order issued pursuant to this article, the commissioner may demand payment on the bond on behalf of any consumer injured as a result of such violation. If the surety company refuses to pay upon such demand, the commissioner shall bring an action on the bond on behalf of the consumer.

(3) Any consumer purchasing a home food service plan and claiming to be injured by the fraud, deceit, or willful negligence of any bonded licensee or by the licensee's failure to comply with any provision of this article or of a rule or order issued pursuant to this article may, with the prior written consent of the commissioner, bring an action upon said bond against both the principal and surety in any court of competent jurisdiction to recover damages caused thereby. Upon the commencement of any such action, the commissioner may require the filing of a new bond.

(4) Whenever the commissioner determines that a previously approved bond is insufficient, the commissioner may require the licensee to execute and deliver an additional bond. Failure by the licensee to comply with such order within thirty days shall constitute grounds for the suspension or revocation of the license.

35-33.5-304. Disciplinary actions - grounds. (1) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commissioner may deny, suspend, revoke, restrict, refuse to renew, or place on probation the license of any applicant or licensee who:

(a) Makes a false statement or misrepresentation on an application for a license or renewal;

(b) Has had a previous license or any equivalent authorization to engage in activities regulated under this part 3 revoked, suspended, or denied by any authority authorized to grant such license or authorization in this or any other state;

(c) Has failed to comply with or violated any provision of this article or any rule promulgated by the commissioner pursuant to this article;

(d) Has allowed any bond required by section 35-33.5-303 to expire, lapse, or be cancelled and has failed to provide evidence of a new bond within ten days; or

(e) Fails to obey any lawful order of the commissioner.

35-33.5-305. Civil penalties - disposition. (1) Any person who violates any provision of this article or of a rule promulgated 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 this amount may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the statute 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 the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty assessed under this section or if any person fails to pay all or part of such civil penalty, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing a civil penalty upon a person under this section, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the person's business.

(5) Penalties collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-33.5-306. Criminal penalties. Any person who violates this article or any rule promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-33.5-307. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

ARTICLE 34

Frozen Desserts

35-34-101 to 35-34-112. (Repealed)

ARTICLE 35

Grain Inspection

35-35-101. System of grading. Any person, firm, company, association, or corporation, foreign or domestic, who makes a business of buying grain, wheat, corn, barley, oats, or rye from

the producer shall be required to buy the same on the basis of federal grades, and the purchasing agent of each person, firm, company, association, or corporation dealing in grain shall inspect and grade all grain purchased in accordance with the federal grades in effect at the time of said inspection.

35-35-102. Selling grain by sample. When grain is offered for sale by sample and when it can be agreed between the buyer and seller as to value, it shall be lawful to purchase or sell grain by sample.

35-35-103. Screenings delivered to seller. Every corporation, partnership, association, or individual who engages in the business of buying, selling, and milling wheat, oats, rye, barley, or other cereal products and who screens such products, unless otherwise agreed upon between the seller and purchaser, shall deliver all such screenings to the seller of such cereal products free of charge upon request being made therefor by such seller.

35-35-104. Penalty. Any corporation, partnership, association, or individual violating any of the provisions of this article, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

35-35-105. Right of action for damages. In addition to the penalties provided for in section 35-35-104, a right of action is hereby given to every such seller of cereal products, as damages from any purchaser of such cereal products, the value of all such screenings so wrongfully detained by any such corporation, partnership, association, or individual.

ARTICLE 36

Grain Warehouses

35-36-101 to 35-36-119. (Repealed)

ARTICLE 38

Farm Equipment Dealerships

35-38-101. Short title. This article shall be known and may be cited as the "Colorado Farm Equipment Fair Dealership Act".

35-38-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Dealer agreement" means an oral or written contract or agreement of definite or indefinite duration between a supplier and an equipment dealer that prescribes the rights and obligations of each party with respect to the purchase or sale of equipment.

(2) (a) "Equipment" means a machine designed for or adapted and used for agriculture, horticulture, floriculture, livestock, grazing, light industrial, utility, and outdoor power equipment. "Equipment" does not include earthmoving and heavy construction equipment, mining equipment, or forestry equipment.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(3) "Equipment dealer" or "dealer" means any person, partnership, corporation, association, or other form of business enterprise that is primarily engaged in the retail sale of equipment.

(4) "Net cost" means the price the equipment dealer pays to the supplier for equipment, including the freight costs from the supplier's location to the equipment dealer's location, minus all applicable discounts allowed by the supplier.

(5) "Net price" means the price listed for repair parts in the supplier's price list or catalog in effect at the time the dealer's agreement terminates.

(6) "Superseded part" means any part with a discontinued part number already purchased from the supplier that has not been modified or improved and can perform the same function as a part currently available for purchase from such supplier's stock.

(7) (a) "Supplier" means any person, partnership, corporation, association, or other business enterprise that is engaged in the manufacturing, assembly, or wholesale institution of equipment or repair parts, or both, and includes any successor in interest. "Supplier" includes a purchaser of assets or a surviving corporation that results from a merger, liquidation, or reorganization of the original supplier.

(b) "Supplier" does not mean any person, partnership, corporation, association, or other business enterprise, that is not otherwise a supplier, that engages in the manufacture or wholesaler distribution of nonmoving parts that are not equipment but that may be used to enhance the operation or comfort of equipment.

35-38-103. Prohibited acts. (1) It is a violation of this article for a supplier to:

(a) Coerce or compel an equipment dealer to enter into a written or oral agreement that is

supplementary to an existing dealer agreement with the supplier unless that agreement is imposed on all other similarly situated dealers in this state;

(b) (I) Refuse to deliver, within a reasonable time after receipt of an order, equipment covered by the dealer agreement specifically represented by the supplier to be available for immediate delivery, if such equipment is available in reasonable quantities.

(II) This paragraph (b) shall not apply if failure is due to any of the following:

(A) Restrictions on the extension of credit by the supplier to the equipment dealer;

(B) A breach of or a default under the agreement by the equipment dealer;

(C) An act of God;

(D) Work stoppage or delay due to a strike or labor difficulty;

(E) A bona fide shortage of materials; or

(F) Other causes over which the supplier has no control.

(c) Terminate, cancel, or fail to renew a dealer agreement or to substantially change the competitive circumstances of the dealer agreement without cause;

(d) Require as a condition of renewal or extension of a dealer agreement that the dealer complete substantial renovation to the dealer's place of business or to acquire new or additional space to serve as the dealer's place of business unless the supplier provides:

(I) At least one year's written notice of such condition;

(II) All of the grounds supporting this condition; and

(III) A reasonable period of time in which to complete the renovation or acquisition after the one-year notice period expires;

(e) (I) Discriminate in the prices charged for equipment of like grade and quantity sold by the supplier to similarly situated dealers in this state.

(II) Nothing in this paragraph (e) shall be construed to:

(A) Prevent the use of differentials that result from the differing quantities in which equipment is sold or delivered and does not prevent a supplier from offering a lower price in order to meet a competitor's equally low price or the services or facilities furnished by a competitor; or

(B) Apply to sales to an equipment dealer for resale to a unit or agency of the United States government, this state or its political subdivisions, a major fleet account, or an organization for testing or demonstration purposes.

(f) Prevent, by any means, an equipment dealer from changing the capital structure of the equipment dealership or the means by which the dealership is financed, if the dealer meets reasonable capital standards imposed by the supplier or as otherwise agreed to between the dealer and the supplier at all times and this change does not cause a change of the controlling interest in the executive management or the board of directors or of a guarantor of the dealership;

(g) (I) Prevent, by any means, an equipment dealer or any officer, member, partner, or stockholder of a dealer from selling or transferring any part of the interest of the officer, member, partner, or stockholder to any other person.

(II) No dealer, officer, partner, member, or stockholder may sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written

consent of the supplier.

(III) If a supplier determines that the designated transferee is not acceptable, the supplier shall provide the dealer with written notice of the supplier's objection and the specific reasons for withholding its consent.

(h) Require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from complying with this article;

(i) (I) Withhold reasonable consent to the transfer of the equipment dealer's interest in the dealership to a member of the dealer's or the principal owner's family, if such equipment dealer or the principal owner of the dealership dies and the family member meets the reasonable financial, business, ability, experience, and character standards of the supplier.

(II) If the supplier determines that a family member does not meet the supplier's standards, the supplier shall provide the dealer's representative with written notice of the supplier's specific objections. A supplier has ninety days to consider a request to make a transfer.

(III) For the purposes of this paragraph (i), "family member" means a spouse, parent, sibling, child, stepchild, son-in-law, or daughter-in-law and any lineal descendant and includes an adopted child and any lineal descendant of such child.

(IV) Notwithstanding subparagraph (I) of this paragraph (i), if a supplier and dealer have executed an agreement concerning succession rights before the dealer's death and that agreement has not been revoked or otherwise terminated by either party, such agreement shall control the terms of succession.

(2) Notwithstanding paragraphs (g) and (i) of subsection (1) of this section, a supplier may withhold consent to a transfer of interest in a dealership if the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the dealer. The supplier has the burden of demonstrating this fact.

35-38-104. Dealer agreement cancellation. (1) (a) Unless one or more of the provisions found in subparagraphs (I) to (X) of paragraph (b) of subsection (2) of this section apply, a supplier shall give an equipment dealer one hundred eighty days written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or to change the competitive circumstances of such agreement.

(b) (I) Notice sent pursuant to paragraph (a) of this subsection (1) shall state the reasons for termination, cancellation, or nonrenewal and state that the dealer has one hundred eighty days in which to cure any claimed deficiency.

(II) If the dealer cures the deficiency to the supplier's satisfaction within the one-hundred-eighty-day period, the supplier may not terminate, cancel, refuse to renew, or change the competitive circumstances of the agreement for the reasons specified in the notice. The terms of the agreement shall not expire and the supplier shall not change the competitive circumstances of the agreement before the end of the one-hundred-eighty-day period without the dealer's written consent.

(2) (a) A supplier, either directly or through an agent, shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without cause.

(b) For purposes of this subsection (2), "cause" means when a dealer:

(I) Fails to comply with the terms of the agreement if these requirements are not different from those imposed on other similarly situated dealers in this state;

(II) Transfers a controlling ownership interest in the dealership without the supplier's consent; except that the supplier shall not withhold consent without good reason;

(III) Makes a material misrepresentation or falsification of a record;

(IV) Files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against him or her that has not been discharged within the sixty-day period after it was filed;

(V) Is insolvent or in receivership;

(VI) Pleads guilty to or is convicted of a felony;

(VII) Fails to operate in the normal course of business for seven consecutive business days or terminates the business;

(VIII) Relocates or establishes a new or additional equipment dealer's place of business, representing the same supplier, without the supplier's consent;

(IX) Fails to satisfy a payment obligation as it comes due and payable to the supplier;

(X) Fails to promptly account to the supplier for any proceeds from the sale of equipment or to hold such proceeds in trust for the supplier's benefit;

(XI) Consistently engages in business practices that are detrimental to the consumer or the supplier, including use of excessive pricing or misleading advertising or failing to provide service and replacement parts or perform warranty obligations;

(XII) Consistently fails to meet the suppliers market penetration requirements based on available record information and after receiving notice from the supplier of the supplier's requirements;

(XIII) Consistently fails to meet building and housekeeping requirements;

(XIV) Consistently fails to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(XV) Consistently fails to comply with the applicable licensing laws pertaining to the products and services the dealer represents for and on the supplier's behalf.

35-38-105. Surplus parts inventory - credits. (1) (a) Unless this section is specifically waived in writing by the dealer, a supplier shall allow a dealer to periodically, but no less than once every twelve months, return a portion of the dealer's surplus parts inventory for credit.

(b) The supplier shall notify the dealer of a time period during which a dealer may submit the dealer's surplus parts list and return inventory. A supplier may stagger return periods for its dealers.

(2) If a supplier has not notified its dealer of a specific time period for returning surplus parts within the preceding twelve-month period, it shall allow the dealer to return surplus parts within sixty days of receiving the dealer's request to make such return.

(3) (a) A supplier shall allow surplus-parts return on a dollar value of parts equal to ten percent of the total dollar value of all parts purchased by the dealer from the supplier during either the twelve-month period immediately preceding the supplier's notification to the dealer of the supplier's return program or, if subsection (2) of this section applies, the month the dealer

makes a return request.

(b) The dealer may elect to return a dollar value of the surplus parts equal to less than ten percent of the total dollar value of the parts the dealer purchased during the preceding twelve months.

(4) A dealer may not return obsolete parts; except that a dealer may return a part for credit if such part is found in the supplier's current returnable parts list or any superseded part that is not the subject of the supplier's parts return program as of the date of termination.

(5) A dealer shall return only new and unused parts to the supplier of such parts.

(6) The minimum credit allowed for returned parts is ninety-five percent of the net price as listed in the supplier's current returnable parts list as of the date that the supplier provides notice of its return program or, if subsection (2) of this section applies, the date that the dealer submits a request for return.

(7) A supplier shall issue credit within ninety days after receiving a return part.

(8) Nothing in this section shall be construed to prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discounted incident to the dealer's purchase of equipment.

35-38-106. Cancellation of contract - repurchase of inventory. (1) If a dealer agreement is canceled or not renewed by either party or by mutual consent, the supplier shall repurchase the dealer's remaining inventory and any specific data processing hardware and software that the supplier required the dealer to purchase, including computer systems equipment the supplier required for communications purposes. The supplier shall repurchase such equipment at its fair market value.

(2) (a) The supplier shall repurchase specialized repair tools purchased by the dealer pursuant to the supplier's requirements. Such specialized repair tools must be unique to the supplier product line and in complete and usable condition.

(b) The supplier shall repurchase specialized repair tools at a price equal to seventy-five percent of the total invoice amount charged by the supplier to the dealer.

(3) The supplier shall pay the dealer one hundred percent of the net cost of all new, unsold, undamaged, and complete equipment that is resalable. The supplier may deduct a reasonable allowance for depreciation due to the dealer's usage and deterioration caused by weather conditions at the dealer's location. The supplier may also deduct all programs and discounts it previously allowed.

(4) (a) The supplier shall pay the dealer ninety-five percent of the current net price of all new, unused, and undamaged repair parts and accessories that are listed in the supplier's effective price list or catalog.

(b) A dealer may not return obsolete parts; except that a dealer may return a part for credit if it is found in the supplier's current returnable parts list or any superseded part that is not the subject to the suppliers parts return program as of the date of termination.

(5) (a) The supplier shall pay the dealer five percent of the current net price on all new, unused, and undamaged repair parts that the dealer returns to cover the cost of handling, packing, and loading.

(b) The supplier may perform the handling, packing, and loading itself instead of paying the five percent handling fee pursuant to paragraph (a) of this subsection (5). The dealer shall make available to the supplier all equipment previously purchased by the dealer. The dealer shall make such equipment available at the dealer's place of business or at those places where the equipment is located.

(6) This section does not require a supplier to repurchase any of the following:

(a) A repair part that has a limited storage life or that is subject to deterioration;

(b) A single repair part that is priced as a set of two or more items;

(c) A repair part that, because of its condition is not resalable as a new part without being repaired or reconditioned;

(d) Inventory for which the equipment dealer is unable to furnish evidence, to the supplier's satisfaction, of good title that is free and clear of all claims, liens, and encumbrances;

(e) Inventory that the dealer wants to keep, including lease or rental equipment if the dealer has a contractual right to do so;

(f) Equipment that is not in new, unused, undamaged, and complete condition;

(g) (I) Equipment that has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives an allowance for this usage or deterioration.

(II) For purposes of this paragraph (g), previously unsold demonstrated equipment that has less than fifty hours of use and that is equipped with an hour meter is new equipment.

(h) Repair parts that are not in new, unused, and undamaged condition;

(i) Inventory that the dealer ordered on or after the date the dealer received the notification of the supplier's termination of the dealer agreement; or

(j) Inventory that the dealer acquired from any source other than the supplier or the supplier's successor in interest.

(7) If a supplier fails or refuses to repurchase inventory as required by this section, the supplier shall be liable for:

(a) One hundred ten percent of the current net price of the inventory;

(b) Any freight charges paid by the dealer;

(c) Interest at the statutory rate from the date of shipment to the supplier; and

(d) Five percent of the inventory's current net price to cover handling, packing, and loading.

35-38-107. Repurchase - title - security interest. Upon paying the equipment dealer, the title and right to possession of the repurchased inventory shall transfer to the supplier and the equipment dealer shall have a continuing perfected security interest in the inventory. Upon such payment, the security interest of the supplier shall be perfected without the filing of a financing statement for a period of six years.

35-38-108. Death or incapacitation of equipment dealer. (1) If an equipment dealer

dies or becomes incapacitated, the supplier shall repurchase the inventory from the estate pursuant to the inventory repurchase provision of section 35-38-104 as if the supplier had terminated the dealer agreement. The guardian, the executor, or, if the dealer dies intestate, the heirs shall have six months from the date of the dealers incapacity or death to submit inventory for repurchase.

(2) Nothing in this section shall be construed to require a supplier to repurchase inventory if the supplier and a dealer's family member have entered into a new dealer agreement.

(3) Nothing in this section shall be construed to entitle a guardian, heir, or personal representative of an incapacitated or deceased dealer to operate a dealership for more than six months after the dealer's incapacity or death without the consent of the supplier.

(4) This section shall be supplemental to an agreement between the dealer and the supplier that covers the return of equipment, attachments, and repair parts.

(5) Nothing in this section shall be construed to limit the right of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount pertaining to the equipment dealer's purchase of equipment.

(6) For the purposes of this section, "dealer" means an owner, an equal or majority partner, or the majority stockholder of a corporation who operates as an equipment dealer.

35-38-109. Cause of action - remedies. (1) An equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the provisions of this article. The dealer may also recover costs and reasonable attorney fees.

(2) An equipment dealer may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances.

(3) The remedies provided by this section are in addition to any other remedies permitted by law and shall not affect laws relating to product liability actions.

35-38-110. Current agreements - effect of law - void provisions. (1) Effective July 1, 1995, this article shall apply to dealer agreements at the time such agreements are extended, revised, modified, or changed in any manner and shall apply to all dealer agreements entered into or renewed on or after July 1, 1995.

(2) A provision in any contract or agreement with respect to a supplier that requires jurisdiction or venue outside of this state or requires the application of the laws of another state or country is void with respect to a claim otherwise enforceable under this article.

35-38-111. Warranties. (1) A supplier shall provide a fair and reasonable warranty agreement on any new equipment that it sells and shall fairly compensate each dealer for parts and labor used in fulfilling such warranty agreement.

(2) Any claim made by a dealer related to a warranty agreement shall be:

(a) Approved or disapproved within sixty days after receipt by the supplier; and

(b) Paid within thirty days after approval by the supplier.

(3) For disapproval of any warranty claim submitted by a dealer, such dealer shall be notified in writing of the specific reasons for the disapproval and of any action necessary for approval of the claim and shall be given a reasonable time period in which to complete such action.

(4) Warranty work performed by a dealer pursuant to this section shall be compensated at a reimbursement rate that is reasonable and customary to the industry.

(5) The supplier shall have the right to adjust for errors discovered during an audit and to adjust any claims collected in error.

ARTICLE 39

Gasohol Production and Use

35-39-101 to 35-39-106. (Repealed)

PROTECTION OF LIVESTOCK

ARTICLE 40

Predatory Animals - Control

PART 1

GENERAL PROVISIONS

35-40-100.2. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Animal" means coyotes, foxes, bobcats, bears, mountain lions, wolves, beavers, muskrats, raccoons, opossums, and striped skunks and any animals identified by rule promulgated by the commissioner and approved by the parks and wildlife commission.

(1.5) "At risk" means any depredating animal species that has been designated by the parks and wildlife commission as endangered, threatened, or at risk after:

(a) A scientific investigation by the division of parks and wildlife in the department of natural resources that is based on valid, sound, and objective data and analysis that substantiates such designation; and

(b) Presentation of scientifically valid data, analysis, or commentary by the commissioner relating to depredating animals; and

(c) Presentation of scientifically valid data, analysis, or commentary by objective professionals, mutually identified by the state agricultural commission and the parks and wildlife commission relating to depredating animals.

(2) "Board" means the Colorado sheep and wool board.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Depredating animal" means any animal, animals, or group of animals that pose a threat to an agricultural product or resource.

(5) "Pose a threat" means the threat of causing economic loss by killing or damaging an agricultural product or resource or consuming stored agricultural products. A threat shall be presumed to be posed when damage has historically occurred, is occurring, or when it is necessary to prevent depredating animals from inflicting death or injury to livestock or damaging agricultural products or resources.

35-40-101. Powers and duties of the commissioner - rules - agreements. (1) It is the duty of the commissioner to control depredating animals within the state of Colorado to reduce economic losses to agricultural products or resources, except as otherwise set forth in subsection (4) of this section. The commissioner has exclusive jurisdiction, as described in this article, over the control of depredating animals.

(2) The commissioner may take such steps as are necessary to carry out this part 1, including:

(a) Adopting rules for the control of depredating animals, in consultation with the parks and wildlife commission;

(b) Establishing lethal and nonlethal methods of controlling depredating animals;

(c) Allowing state employees and owners of agricultural products or resources and their families, employees, agents, and identified designees to control depredating animals. Any bears or mountain lions taken by identified designees shall remain the property of the state. The license requirements of section 33-6-107 (9), C.R.S., shall not apply to this article; except that the identified designee shall possess a small game or furbearer license.

(d) Allowing nonlethal methods or preventive activities such as the use of guard dogs and scaring devices.

(3) When promulgating rules for the control of depredating animals, the commissioner shall consider and encourage humane and effective methods of control.

(4) With respect to controlling depredating animals of an at-risk species, the following applies:

(a) The parks and wildlife commission must approve any rules concerning the taking of depredating animals of an at-risk species prior to the adoption of such rules by the commissioner.

(b) The commissioner, when adopting or modifying rules, shall consider any reasonably workable alternative designed to minimize the direct effect on at-risk species.

(c) The commissioner shall control depredating animals of an at-risk species only where damage is occurring.

(d) The commissioner shall notify the division of parks and wildlife in the department of natural resources when controlling depredating animals of an at-risk species.

(5) The state agricultural commission shall approve any rules necessary to carry out the provisions of this part 1 prior to their adoption by the commissioner.

(6) The commissioner may enter into written agreements on behalf of the state with the United States to define such procedure in accordance with sections 35-40-101 to 35-40-106 as said commissioner shall deem advisable and proper for the purpose of cooperating with the United States in the control in this state of coyotes, wolves, mountain lions, bobcats, and other depredating animals. The commissioner may also enter into written agreements concerning the analysis of depredation.

(7) The commissioner is authorized to enter into agreements with the division of parks and wildlife in the department of natural resources for assistance in carrying out this part 1, which assistance may include resources, including financial assistance, at the discretion of the parks and wildlife commission.

(8) The commissioner shall contact and provide information to the parks and wildlife commission as said commission sets population levels and hunting permit numbers for predators in areas where there is depredation to agriculture.

(9) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(10) Nothing in this section shall be construed to preclude the division of parks and wildlife from issuing permits pursuant to section 33-3-106, C.R.S., for the taking of wildlife causing damage.

35-40-102. Control of depredating animals. To further promote the control of depredating animals, the organized and systematic plan for such control may be extended by cooperative agreements between any person including, but not limited to, counties, associations, or corporations on the one part and the commissioner and the United States, or either of them, on the other part.

35-40-103. Disbursements from fund. (Repealed)

35-40-104. Predatory animal control license fee on sheep - predatory animal fund.

(1) and (2) (Deleted by amendment, L. 97, p. 180, § 7, effective March 31, 1997.)

(3) to (5) Repealed.

35-40-105. Furs, specimens to be sold. (Repealed)

35-40-106. Hunters - how recommended. All government hunters employed under sections 35-40-101 to 35-40-106 shall be employed by recommendation of local county livestock growers' associations.

35-40-107. Bounty on coyote, wolf. (Repealed)

35-40-108. Scalps produced, claimant. (Repealed)

35-40-109. Bounties paid by state. (Repealed)

35-40-110. Record of scalps delivered - warrant for payment. (Repealed)

35-40-111. Scalp taken out of state - penalty. (Repealed)

35-40-112. County treasurer to administer oath. (Repealed)

35-40-113. Permit system for poisoning of predators. The commissioner, after hearing and after consideration of both the needs and concerns involved, shall adopt a permit system incorporating the policies and procedures developed by the commissioner in cooperation with the division of parks and wildlife, pursuant to which annual permits shall be issued for the use of poisons by livestock operators, owners, or their authorized agents, for the control of predatory animals on lands owned or leased by them from private parties, if the point of use is at least two hundred yards from the nearest property line or public right-of-way. Such permit system shall, as practicably and reasonably as possible, provide a balance between the need to control predators and the need for protection for human beings and other forms of life. Such permit system shall specify the type of information to be set forth in the application, including the substance or device to be used, the quantity thereof, and identification of the property where the use is desired. The permit shall similarly set forth such information and shall also set forth such instructions, conditions, and restrictions as may be appropriate in the circumstances, including posting of public notice that poisons are in use.

35-40-114. Acts constituting violation. (Repealed)

35-40-115. Enforcement.

(1) to (3) Repealed.

(4) Whenever it appears to the commissioner, upon sufficient evidence satisfactory to the commissioner, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part 1 or of any rule or of any order promulgated under this part 1, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

(5) (a) Any person who violates any provision of this part 1 or any regulation made pursuant to this part 1 is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the commissioner is found to have lacked substantial justification to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the state treasurer, who shall credit the same to the general fund.

(f) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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.

PART 2

PROTECTION OF SHEEP AND CATTLE - CONTROL PROGRAMS

35-40-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Cattle" includes cattle in the field or on the range, but not in feed lots.

(2) "Owners of sheep and cattle" means the owners of sheep and cattle in the field or on the range, but shall not include the owners of sheep and cattle maintained in feed lots.

(3) "Sheep" includes sheep in the field or on the range, but not in feed lots.

35-40-202. Sheep program. For the protection of sheep against predatory animals, the board of county commissioners of any county, upon the recommendation of an association of sheep growers in the county, has power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of sheep in such county.

35-40-203. Cattle program. For the protection of cattle against predatory animals, the board of county commissioners of any county, upon the recommendation of an association of cattle growers in the county, has power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of cattle in such county.

35-40-204. Establishment of program - continuance or discontinuance - license fees. (1) (a) The owners of at least fifty-one percent of the sheep, or the owners of at least fifty-one percent of the cattle, or the owners of at least fifty-one percent of both sheep and cattle acting jointly in the county, as shown by the assessment rolls of the last preceding assessment, may petition the board of county commissioners to establish a predatory animal control program as provided for in this part 2.

(b) The petition shall be filed on or before the first of November in any year at a regularly scheduled meeting of the board of county commissioners. After examination of the petition, if the board finds the petition in order and properly signed by the owners of at least fifty-one percent of the sheep or cattle, or both, in the county, the board shall establish the predatory animal control program provided for in this part 2 to commence the following calendar year on the first of February of said year; but the license fee as fixed under the provisions of section 35-40-205 shall be assessed only against the owners of sheep if only said owners of sheep petition for the establishment of said program, and only against the owners of cattle if only said owners of cattle so petition, and against both the owners of sheep and cattle if both said owners of sheep and cattle, acting jointly, so petition.

(c) Likewise, the question of an increase or decrease in the license fee, or the question of the discontinuance of the program, as provided in subsection (2) of this section, shall be determined only by the owners of sheep if they petitioned the establishment of the program, and only by the owners of cattle if they petitioned the establishment of the program, and jointly by the owners of both sheep and cattle if they, acting jointly, petitioned the establishment of the program.

(2) The license fee to defray the cost of any program established under the provisions of this part 2, as fixed by the board of county commissioners under the provisions of section 35-40-

205, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition signed by the owners of at least fifty-one percent of the sheep, or the owners of at least fifty-one percent of the cattle, or the owners of at least fifty-one percent of both the sheep and cattle acting jointly, in the county, requesting repeal of said license fee in total and discontinuance of the program, or for an increase in said license fee, subject to the limits provided in section 35-40-205, or for a decrease in said license fee, in either of which events, the board of county commissioners shall fix a new license fee to continue from year to year and provide for the continuation of the program within the limits of the aggregate amount of the license fees as collected from year to year.

35-40-205. License fee - expenditure of funds. (1) To defray the expense of the protection afforded by a program established under the provisions of this part 2, the board of county commissioners of any county has the power to require all owners or persons in possession of any cattle, one year old or over, to pay a license fee not exceeding thirty cents per head of cattle so owned or possessed by the owner or person in the county or brought in from another county or state and herded or grazed in the county. The assessor shall ascertain, in addition to the regular assessment for taxation purposes, all cattle which will be one year old or over as of February 1 within the county in any year in which the program is in effect, and shall keep such information in a separate record from the regular assessment, and shall include any cattle that shall be brought into the county between February 1 and January 31 of the following year to be herded or grazed for any part of the year. The board of county commissioners also has the power to require all sheep owners in the county who marketed sheep during the previous calendar year to pay a license fee not exceeding one dollar per head of sheep for which such payments were received. It is the responsibility of the Colorado sheep and wool board to provide the county assessor, by October 1 of each year, with a list containing the names and addresses of such sheep owners in the county and the number of sheep marketed during the immediately preceding twelve months. Such information shall be transmitted by the county assessor to the board of county commissioners by November 1 of each year. The board of county commissioners also has the power to require all sheep owners who herded or grazed sheep in the county to pay a license fee not exceeding one dollar per head of sheep. The board of county commissioners shall then order the license fee to be levied against all such sheep or cattle, or both, and shall adjust the fee on cattle on the basis of the number of months any cattle will be herded or grazed in the county, and shall adjust the fee on sheep on the basis of the number of months the sheep were herded or grazed in the county during the previous year.

(2) Upon the order of the board of county commissioners, such license fee shall be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor, and shall be payable to and collected by the county treasurer as and when county personal property taxes are by law payable and collected, and when so levied shall be a lien upon the property of the licensee enforceable under the laws provided for the collection of taxes on personal property. When collected said fees shall be placed by the county treasurer in a predatory animal control fund of the county, and all moneys credited to said fund shall be expended on order of the board of county commissioners of the county for predatory animal

control only.

35-40-206. Other money credited to fund. All furs and skins of predatory animals taken as a result of the expenditure of the predatory animal control fund shall be sold, and the proceeds of such sale deposited in said predatory animal control fund for use in carrying out the purposes of this part 2.

35-40-207. Program to be in addition to present program. The program established by this part 2 shall be in addition to the predatory animal control program established by part 1 of this article.

LIVESTOCK

ARTICLE 41

State Board of Stock Inspection Commissioners

35-41-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the state board of stock inspection commissioners, created by this article.

(1.4) "Bovine livestock" means:

(a) All cattle and calves; and

(b) All sheep being treated as livestock at the request of the owner thereof.

(1.5) "Division" means the division of brand inspection in the department of agriculture, created in section 24-1-123 (4) (g) (I), C.R.S.

(1.7) "Equine livestock" means all horses, mules, and burros.

(2) "Feedlot" means a lot, pen enclosure, or building where cattle are fed for warm-up or fattening purposes and which is secured by gates to prevent the livestock from movement to adjoining areas outside of feedlot.

(3) "Hide" means the skin from livestock.

(4) "Licensed slaughterhouse", "butcher", or "packing establishment" means a person, association, firm, or corporation carrying on the trade or business of slaughtering cattle, horses, mules, or burros for compensation or profit, under a license issued by the state.

(5) "Livestock" means all cattle, calves, horses, mules, and burros, or sheep may be treated as livestock for purposes of this article at the request of the owner thereof.

(6) "Public livestock market" means any place, establishment, or facility commonly

known as a livestock market, conducted or operated for compensation or profit licensed in the state of Colorado, where brand inspection is normally maintained.

35-41-101. State board of stock inspection commissioners - creation - brand commissioner - enterprise - bonds. (1) There is created a state board of stock inspection commissioners, composed of five commissioners who shall be appointed by the governor, all of whom shall be actively engaged in the production or feeding of cattle, horses, or sheep, with the consent of the senate. Two of the members shall represent the nonconfinement cattle industry; two of the members shall represent the confinement cattle industry; and one shall have broad general knowledge of the Colorado livestock industry and shall represent the commodity, other than the confinement and nonconfinement cattle industries, with the largest percentage of charged fees. The members of the board shall be appointed in such manner as will at all times represent as nearly as possible all sections of the state wherein livestock is a major activity, but at no time shall any two members be residents of the same particular section of the state. The term of office of said commissioners shall be for a period of four years. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Members may be removed for cause by the governor. They shall serve without compensation except for actual and necessary traveling expenses. The board shall meet monthly unless, in case of emergency, a special meeting is deemed advisable.

(2) The board shall appoint a brand commissioner who shall be under its supervision and who, in the absence of the board, shall carry out its policies. The brand commissioner shall be subject to the state personnel system laws. His compensation shall be paid out of the brand inspection fund. The brand commissioner, certified by the state personnel director to his position on April 27, 1963, shall continue in such certified status as provided by law.

(3) The board shall make such rules and regulations, not inconsistent with law, concerning the manner of inspection of brands and livestock as it deems proper.

(4) The state board of stock inspection commissioners and the office of brand commissioner created by this section shall comprise a part of the division of brand inspection in the department of agriculture.

(5) (a) The division and the board shall constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the board retains the authority to issue revenue bonds and the board and the division receive less than ten percent of their total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this section, the division and the board shall not be subject to any of the limitations imposed by section 20 of article X of the state constitution.

(b) The enterprise created pursuant to this section shall have all the powers and duties authorized by this title with regard to the board and the division.

(c) Nothing in this section shall be construed to limit or restrict the authority of the division to expend its revenues consistent with the provisions of this article and articles 41, 41.5, 43, 44, 46, 47, 53, 53.5, 55, 57, and 57.8 of this title.

(6) (a) The board may, by resolution that meets the requirements of subsection (7) of this

section, authorize and issue revenue bonds in an amount not to exceed ten million dollars in the aggregate for expenses of the division. The bonds may be issued only after approval by both chambers of the general assembly, acting either by bill or by joint resolution, and after approval by the governor in accordance with section 39 of article V of the state constitution. The bonds shall be payable only from moneys allocated to the division for expenses of the division pursuant to section 35-41-102.

(b) All bonds issued by the board shall specify that:

(I) No holder of any bonds may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bonds do not constitute a debt or financial obligation of the state and are payable only from the net revenues allocated to the division for expenses as designated in the bonds.

(7) (a) A resolution authorizing the issuance of bonds under the terms of this section shall state:

(I) The date of issuance of the bonds;

(II) A maturity date or dates during a period not to exceed thirty years after the date of issuance of the bonds;

(III) The interest rate or rates on, and the denomination or denominations of, the bonds; and

(IV) The medium of payment of the bonds and the place where the bonds will be paid.

(b) A resolution authorizing the issuance of bonds under the terms of this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds; and

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(8) Bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the board shall advertise the sale in any manner the board deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest to the date of delivery.

(9) Notwithstanding any provision of law to the contrary, all bonds issued pursuant to this section are negotiable.

(10) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds, including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) A resolution made pursuant to this section shall be deemed a contract with the holders of the bonds, and the duties of the board under the resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

(11) Bonds issued under this section and bearing the signatures of the board members in office on the date of the signing shall be deemed valid and binding obligations regardless of whether, prior to delivery and payment of the bonds, any or all of the persons whose signatures

appear thereon have ceased to be members of the board.

(12) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net revenues pledged therefor. The board may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by the board over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

35-41-102. Brand inspection fund - estray fund. (1) All moneys coming into the hands of the board from the sale of estray animals shall constitute and be known as the estray fund, which fund is hereby created and continuously appropriated to the board, and shall be kept in an account separate and distinct from other accounts, in conformity with rules to be prescribed by said board. The estray fund is an escrow fund that the board shall keep in trust for the owner of the estray animal for six years after the date the proceeds from the sale of the animal were deposited in the fund. If the owner submits suitable proof of ownership to the board within the six-year period, the board shall pay to the owner the proceeds from the sale. If no such proof has been submitted within the six-year period, the board may expend the proceeds pursuant to this section. All other revenues coming into the hands of the board, including fees collected for the inspection of cattle, shall constitute and be known as the brand inspection fund, which shall be kept in conformity with the rules to be prescribed by the board. The board is authorized, in the administration of the brand inspection fund, to maintain an accounts receivable system for the collection of all moneys to be credited to the fund. The board is authorized to expend, of the revenues in the estray fund and the brand inspection fund:

(a) Repealed.

(b) Effective July 1, 2006, a maximum of three and six-tenths percent, or actual costs, whichever is less.

35-41-103. Revolving fund. The state board of stock inspection commissioners may establish a revolving fund from the estray fund or other available funds of the board in the amount of one thousand dollars to refund to the state treasurer or other persons for short checks deposited, duplicate collection of fees, recording fees on cancellation of brands, or other necessary refunds, and the fund shall be reimbursed from the department's funds by voucher. A quarterly report shall be made as required by law to the controller showing all transactions involving the account.

35-41-104. Board's authority to impose fees and charges - rules. (1) **Bovine livestock.** (a) The board is hereby authorized to levy and collect, through authorized brand inspectors, a per-head inspection fee in an amount determined by the board by rule on all bovine

livestock inspected; except that the charges for livestock shipped directly to a licensed slaughter plant are as follows: For the first five hundred head per owner per certificate, two cents below the set inspection fee, and for over five hundred head per owner per certificate, five cents below the set inspection fee. Such sliding scale charges shall take effect at such time as the set inspection fee exceeds thirty-four cents. The inspection fee established pursuant to this paragraph (a) shall apply when any bovine livestock are being consigned to a Colorado-licensed public livestock market.

(b) In addition, the board is authorized to levy and collect, through authorized brand inspectors, a minimum fee in an amount determined by the board by rule from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law; except that, when cattle that are owned by more than one person are inspected at one site, only one such minimum fee shall be collected. The minimum fee shall be due and payable to the inspector when the inspector arrives at the designated inspection point, whether or not an inspection of the livestock actually takes place.

(1.5) **Equine livestock.** (a) The board is hereby authorized to levy and collect, through authorized brand inspectors, a per-head inspection fee in an amount determined by the board by rule on all equine livestock inspected. The inspection fee established pursuant to this paragraph (a) shall apply when any equine livestock are being consigned to a Colorado-licensed public livestock market.

(b) In addition, the board is authorized to levy and collect, through authorized brand inspectors, a minimum fee in an amount determined by the board by rule from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law. The minimum fee shall be due and payable to the inspector when the inspector arrives at the designated inspection point, whether or not an inspection of the livestock actually takes place.

(2) It is the duty of all authorized Colorado brand inspectors to inspect all livestock, except such as are exempt by law, that are offered for sale or to be moved interstate or intrastate and to collect the fees established pursuant to subsections (1) and (1.5) of this section. The board shall determine the amount of the fees that shall be collected by authorized brand inspectors from the owner or person in charge of said livestock before issuing a certificate of brand inspection granting leave to the owner or person in charge to offer the brand inspected livestock for sale or movement interstate or intrastate. The fees so collected shall be reported and transmitted to the board at such time and in such manner as the board shall by rule require.

(3) Inspection fees as authorized in subsections (1) and (1.5) of this section shall be collected by brand inspectors from the owners or persons in charge of said livestock before issuing any certificate when:

(a) Brand inspection is required by law;

(b) Livestock are being consigned for sale at a Colorado licensed public livestock market in accordance with section 35-55-112;

(c) Livestock are consigned for slaughter to a custom meat processor licensed by the Colorado department of agriculture or a packing plant licensed by the United States department of agriculture;

(d) Livestock are offered for sale in accordance with section 35-53-105;

(e) Livestock are moved within Colorado or to another state, except as exempted by law;

(f) Livestock are being moved from pasture before being placed in a feedlot, in accordance with section 35-53-125.

(4) **Minimum fee when inspection required by law - bovine livestock.** A minimum fee in an amount determined by the board by rule shall be collected from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law; except that, when bovine livestock owned by more than one person are inspected at one site, only one minimum fee shall be collected. No minimum fee shall be required when bovine livestock are consigned for sale at a Colorado-licensed public livestock market.

(4.5) **Minimum fee when inspection required by law - equine livestock.** A minimum fee in an amount determined by the board by rule shall be collected from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law. No minimum fee shall be required when equine livestock are consigned for sale at a Colorado-licensed public livestock market.

(5) In addition to the brand inspection fee, a Colorado beef board fee up to and not in excess of one dollar per head or the amount assessed pursuant to the beef promotion and research order, 7 CFR 1260.172, as amended, whichever is greater, shall be collected on cattle and calves as a part of the brand inspection made on such animals under the same authority, at the same time and place, in the same manner, and upon the same animals which are subject to brand inspection and a brand inspection fee, except:

(a) When cattle and calves are being moved in excess of seventy-five land miles within the state for grazing purposes if no change in ownership is involved; or

(b) When any unbranded or freshly branded calves are inspected with their mothers as provided in section 35-43-129 and no change in ownership is involved; or

(c) When cattle are placed in a feedlot with no change in ownership, or when rodeo competition cattle are inspected at the headquarters ranch before the beginning of rodeo season and the cattle will not leave the state.

(6) In the case of unbranded or freshly branded calves inspected with their mothers in compliance with section 35-43-129, in addition to the inspection fee for each calf inspected, mileage expense allowed by section 35-43-129 shall also be collected.

(7) An inspection fee in an amount determined by the board by rule shall be collected for each hide inspected as provided in section 35-53-115.

(8) The board shall determine, and publish in its rules, which inspection fees can be carried on an accounts receivable basis. No such account shall be carried for a period that exceeds one month.

(9) The board shall have the authority to impose a mileage charge when brand inspection is required for investigations of estrays, investigations of theft, and other duties deemed necessary by statute or the board. The charge per mile shall be the amount allowed state officers and employees pursuant to section 24-9-104, C.R.S.

(10) In addition to the brand inspection fee authorized by this section, the assessment determined by the board of directors of the Colorado horse development authority pursuant to section 35-57.8-109 shall be collected on horses as a part of the brand inspection made on horses under the same authority, at the same time and place, in the same manner, and on the same horses

that are subject to brand inspection and brand inspection fees.

(11) Any rule adopted by the board to determine the amount of a fee authorized by this title shall be subject to article 4 of title 24, C.R.S.; except that:

(a) The board shall provide the livestock industry with thirty days' notice of any fee change proposal and of the date and location of an informational meeting at which the changes shall be discussed;

(b) At or after the next regularly scheduled board meeting after such informational meeting, the board may set the fees; and

(c) The fee change shall take effect at least ninety days after the board sets the fees.

ARTICLE 41.5

Alternative Livestock Act

35-41.5-101. Short title. This article shall be known and may be cited as the "Alternative Livestock Act".

35-41.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative livestock" means any domesticated elk or fallow deer as such are classified as alternative livestock pursuant to this article. Alternative livestock shall not be considered wildlife for purposes of this article.

(2) "Board" means the state board of stock inspection commissioners created in section 35-41-101.

(3) "Commission" means the state agricultural commission created in section 35-1-105.

(4) "Commissioner" means the commissioner of agriculture or the commissioner's designee.

(5) "Department" means the department of agriculture.

(6) "Escaped alternative livestock" means an animal not within the control or under the direction of a licensee or a licensee's designee.

(7) "License" means an alternative livestock farm license.

(8) "Licensee" means a person, company, corporation, limited liability company, or partnership.

35-41.5-103. Scope of article. (1) The following are subject to the provisions of this article and to any rules adopted pursuant thereto:

(a) Any animal classified as an alternative livestock pursuant to this article; and

(b) Any person selling, trading, giving, bartering, or otherwise transferring any alternative livestock in this state, unless specifically exempted elsewhere in this article.

(2) The provisions of this article do not apply to:

(a) Wildlife regulated by the division of parks and wildlife;

(b) Livestock as defined in section 35-41-100.3 (5); or

(c) Alternative livestock owned by or in the possession of a zoological park that is accredited by the American zoo and aquarium association; except that:

(I) The rules of the board adopted pursuant to this article regarding the transfer of alternative livestock shall apply to any transfer and movement of alternative livestock; and

(II) Any intrastate transfer and movement of alternative livestock by a zoological park accredited by the American zoo and aquarium association to any person or entity not accredited by the American zoo and aquarium association is subject to this article and to any rules adopted pursuant to this article.

35-41.5-104. Alternative livestock farm license required. Any person operating a farm or ranch at which alternative livestock are raised shall obtain a valid alternative livestock farm license issued by the board pursuant to this article and any rules promulgated pursuant thereto. Such license shall be issued for a specific class or subclass of alternative livestock.

35-41.5-105. Powers and duties of the board. (1) The board is hereby authorized to administer and enforce the provisions of this article and any rules adopted pursuant thereto.

(2) The board shall adopt any necessary and reasonable rules for the administration and enforcement of this article, including rules governing:

(a) Operating standards for an alternative livestock farm;

(b) Inspections of alternative livestock for purposes of licensing or renewing a license, changes of ownership of alternative livestock, and movement of alternative livestock, including requiring proof that alternative livestock meet the requirements of a tuberculosis surveillance plan adopted pursuant to section 35-1-106 (1) (o) and that such alternative livestock meet requirements concerning the control of infectious diseases as required by the commission, and requirements concerning genetic purity as required by the parks and wildlife commission;

(c) Establishing the form and manner of submission of records required for licensure and record keeping pursuant to this article;

(d) Establishing standards of practice for a licensee;

(e) Setting classifications and subclassifications of alternative livestock;

(f) Defining grounds for disciplinary action authorized under this article, including letters of admonition or the denial, suspension, revocation, or restriction of any license;

(g) Setting fees for licenses based upon the classification of an alternative livestock farm; and

(h) The disposition of any estray taken up by inspectors as determined to be proper and just and in the best interest of the owner of the estray.

(3) The board shall set licensing and inspection fees for each classification of alternative

livestock based on the actual cost of administering and enforcing this article and any rules adopted pursuant thereto.

(4) The board is authorized to charge a service fee to cover the cost of administrative requirements in addition to any inspection fee.

(5) The board is authorized to conduct hearings required under sections 35-41.5-112, 35-41.5-113, and 35-41.5-114 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when the use of administrative law judges would result in a net saving of costs to the board.

(6) The board is authorized to enter into cooperative agreements with and to accept grants from any agency or political subdivision of this state or any other state, or with any agency of the United States government, subject to limitations set forth elsewhere in the Colorado Revised Statutes and the state constitution, to carry out the provisions of this article.

(7) The powers and duties vested in the board by this article may be delegated to qualified employees of the department and the division of parks and wildlife.

(8) The parks and wildlife commission may review rules concerning alternative livestock proposed by the board and may make recommendations to the board concerning such rules.

(9) The board may assign a brand to an alternative livestock farm license. Such brand shall be used as directed by the board pursuant to rule.

(10) If two or more persons claim ownership of any certain alternative livestock and the true owner is not readily ascertainable, the board may:

(a) Treat the alternative livestock as an estray pursuant to article 44 of this title; or

(b) Provide for arbitration of the claim of ownership under the supervision of the board or the designee of the board.

35-41.5-106. Alternative livestock farm - license requirements - application - fees. (1) Each applicant for an alternative livestock farm license shall submit an application providing all information in the form and manner as required by the board.

(2) No license shall be issued:

(a) Unless accompanied by documentation that the alternative livestock on the farm are in compliance with the rules promulgated by the commission pursuant to section 35-1-106 (1) (o);

(b) Unless accompanied by documentation that the alternative livestock on the livestock farm have been inspected by the board;

(c) Until the board has inspected and approved the farm; and

(d) Unless accompanied by a site review and recommendation issued by the division of parks and wildlife if such site review and recommendation is completed within thirty days after the request is received from the board. If the site review and recommendation is not issued within thirty days after the request is received, the requirement for such site review and recommendation shall be deemed waived.

(3) Each separate location of a farm shall be licensed separately.

(4) (a) If an alternative livestock farm operates under more than one business name from

a single location, the name of each such operation shall be listed with the board in the form and manner required by the board. The board may require that a separate fee be paid for each business name so listed.

(b) No additional alternative livestock farm license shall be required for an additional business name.

(c) If an alternative livestock farm operates under more than one business name from a single location, the farm shall maintain separate records pursuant to section 35-41.5-108 for each such business name.

(5) Each applicant for an alternative livestock farm license shall pay a license fee in an amount determined by the board.

(6) Each alternative livestock farm license shall expire on August 31 in the year following the year of issuance.

(7) Each licensee shall report to the board, in the form and manner required by the board, any change in the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

(8) Licenses issued pursuant to this article are not transferable.

(9) Each alternative livestock farm licensee shall:

(a) Separate alternative livestock from captive wildlife as required by the board;

(b) Have the alternative livestock inspected by the board prior to any movement, sale, or slaughter;

(c) Identify in the form and manner designated by the board each alternative livestock animal in its possession;

(d) Maintain records of the alternative livestock inventory in accordance with section 35-41.5-108.

35-41.5-107. Alternative livestock farm license - renewals. (1) An alternative livestock farm licensed pursuant to this article shall make an application to renew its license on or before June 30. Said application shall be in the form and manner prescribed by the board and shall be accompanied by the renewal fee.

(2) No license shall be renewed unless accompanied by an inspection certificate showing that the alternative livestock on the alternative livestock farm have been inspected and certified by the board for health and genetic purity during the immediately preceding ninety-day period.

(3) If the application for renewal is not postmarked on or before June 30, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(4) If the application and fee for renewal are not postmarked on or before August 31, the license shall not be renewed, and a new license shall be required.

35-41.5-108. Record-keeping requirements. (1) Each alternative livestock farm licensee shall keep and maintain records in the form and manner designated by the board.

(2) Records maintained pursuant to subsection (1) of this section shall be retained at the

licensee's address of record:

(a) For a period of three years after the death or sale of an animal if such record pertains to an alternative livestock; or

(b) For a period of three years if such record does not pertain to an alternative livestock.

35-41.5-109. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person to:

(a) Perform any of the acts for which licensure as an alternative livestock farm is required without possessing a valid license;

(b) Hold oneself out as being so qualified to perform any of the acts for which licensure pursuant to this article is required without possessing a valid license;

(c) Solicit, advertise, or offer to perform any of the acts for which licensure as an alternative livestock farm is required without possessing a valid license to perform such acts;

(d) Refuse or fail to comply with the provisions of this article;

(e) Refuse or fail to comply with any rules adopted by the board pursuant to this article or to any lawful order issued by the board;

(f) Refuse to comply with a cease-and-desist order issued pursuant to section 35-41.5-112;

(g) Willfully make a material misstatement in the application for a license or in the application for renewal thereof or to the department during an official investigation;

(h) Impersonate any federal, state, county, city and county, or municipal official or inspector;

(i) Aid or abet another in any violation of this article or of any rule promulgated pursuant thereto;

(j) Hunt alternative livestock without first obtaining a hunter education certificate pursuant to section 33-6-107 (8), C.R.S.; or

(k) Ship any alternative livestock other than those described in the certificate provided by the brand inspector inspecting such alternative livestock or to remove any alternative livestock and to substitute another without the knowledge of the brand inspector.

(2) It is unlawful and a violation of this article for any alternative livestock farm to:

(a) Import or possess for the purpose of selling, trading, giving, or otherwise transferring any alternative livestock without having said alternative livestock inspected in accordance with this article; except that this paragraph (a) shall not apply to alternative livestock sold, traded, given, or transferred by an operating zoological park as defined by the parks and wildlife commission or research institution using such animals for scientific research, if the park or institution otherwise complies with this article and all rules promulgated pursuant thereto;

(b) Sell any alternative livestock in, by, to, or from any unlicensed alternative livestock farm;

(c) Sell any alternative livestock in, by, to, or from any alternative livestock farm unless such alternative livestock has been inspected in accordance with this article;

(d) Refuse to permit entry or inspection in accordance with section 35-41.5-110;

(e) Sell, offer for sale, barter, exchange, or otherwise transfer red deer or red deer hybrids

within the state of Colorado;

(f) Allow a license issued pursuant to this article to be used by an unlicensed person; or

(g) Make any misrepresentation or false promise, through advertisements, employees, agents, or otherwise, in connection with the business operations licensed pursuant to this article or for which an application for a license is pending.

35-41.5-110. Inspections - investigations - access - subpoena. (1) The board, upon its own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this article.

(2) (a) Appropriate division of parks and wildlife personnel may accompany the board on any inspection and may request an inspection of any licensed alternative livestock farm.

(b) The board shall perform any such requested inspection within seventy-two hours after receipt of such request, excluding weekends and legal holidays.

(c) If the board is unable to perform any such requested inspection within seventy-two hours after receipt of such request, excluding weekends and legal holidays, the division of parks and wildlife shall be authorized to perform such requested inspection.

(d) The actual cost for, plus mileage for, any inspection requested by the division of parks and wildlife shall be paid for by the division of parks and wildlife.

(3) Complaints of record made to the board and the results of the board's investigations may, in the discretion of the board, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on the person in interest.

(4) For purposes of carrying out the provisions of this article and rules promulgated pursuant thereto, at any reasonable time during regular business hours, the board shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant to:

(a) All buildings, yards, pens, pastures, and other areas in which any alternative livestock is kept, handled, or transported; and

(b) All records required to be kept and to make copies of such records.

(5) (a) The board shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(b) Upon failure or refusal of any witness to obey any subpoena, the board may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(6) As part of any inspection for the licensing or renewal of an alternative livestock farm, any change of ownership of any alternative livestock, and any movement of alternative livestock, the board shall require:

(a) Proof that the alternative livestock farm has maintained the purity of the alternative livestock herds by preventing the introduction of red deer or hybrid nonnative species either by

the importation of untested live animals, gametes, eggs, sperm, or other genetic material into alternative livestock herds in Colorado;

(b) Proof that each alternative livestock animal originates from a legal source; and

(c) Records to be kept and animals to be marked so as to identify individual animals.

35-41.5-111. Escaped alternative livestock. (1) Any alternative livestock not recovered by its licensed owner within seventy-two hours after escape shall be reported to the division of parks and wildlife in such manner as required by the division of parks and wildlife.

(2) Any escaped alternative livestock killed by a licensed hunter in a manner which otherwise complies with title 33, C.R.S., and any rules promulgated pursuant thereto, shall be deemed a legal killing and neither the licensed hunter, the department, nor the division of parks and wildlife shall be liable to the owner for such killing.

35-41.5-112. Enforcement. (1) The board or its designee shall enforce the provisions of this article.

(2) (a) If the board has reasonable cause to believe a violation of any provision of this article or any rule adopted pursuant to this article has occurred and immediate enforcement is deemed necessary, it may issue a cease-and-desist order, which shall require a person to cease violating any provision of this article or any rule promulgated pursuant to this article.

(b) A cease-and-desist order shall set forth the provisions alleged to have been violated, the facts constituting the violation, and the requirement that all violating actions immediately cease.

(c) (I) At any time after service of the order to cease and desist, the person for whom such order was served may request, at such person's discretion, a prompt hearing to determine whether or not such violation has occurred.

(II) A hearing held pursuant to this paragraph (c) shall be conducted in conformance with the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) If the board possesses sufficient evidence to indicate that a person has engaged in any act or practice constituting a violation of this article or of any rule adopted under this article, the board may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the board shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. The court shall not require the board to post a bond.

35-41.5-113. Disciplinary actions - denial of license. (1) The board, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or may deny, suspend, refuse to renew, restrict, or revoke any license authorized under this article if the applicant or licensee has:

(a) Refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the board;

(b) Had an equivalent license denied, revoked, or suspended by any authority;

(c) Refused to provide the board with reasonable, complete, and accurate information regarding any alternative livestock when requested by the board;

(d) Falsified any information requested by the board;

(e) Been convicted of stealing live big game wildlife; or

(f) Had a license issued pursuant to 33-1-106, C.R.S., revoked.

(2) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

35-41.5-114. Civil penalties. (1) Any 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 board. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed 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 board is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the board, the board may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the board may consider the effect of such penalty on the ability of the person charged to stay in business.

35-41.5-115. Criminal penalties. Any person who violates any of the provisions of section 35-41.5-109 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501 (1), C.R.S.

35-41.5-116. Alternative livestock farm cash fund - creation - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the alternative livestock farm 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 be a part of this 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. The general assembly shall make annual appropriations from such fund to the department to carry out the purposes of this article. The board is authorized to expend a maximum of three and six-tenths percent, or actual costs, whichever is less, of the base appropriation allocated to the brand inspection division to offset the indirect costs of the board.

35-41.5-117. Disposition of alternative livestock taken by officer. (1) (a) An inspector shall declare an alternative livestock is an estray, as defined in section 35-44-101, if during an inspection of the alternative livestock prior to shipment or removal from the state the inspector finds an alternative livestock bearing marks, identification tags, or brands different from those of the owner of the other alternative livestock in the shipment and the owner or shipper fails to exhibit a bill of sale or other authority for the possession of the alternative livestock.

(b) Upon declaring an alternative livestock an estray, a brand inspector shall take possession of the alternative livestock on behalf of the board and shall dispose of such alternative livestock in accordance with article 44 of this title and any rules promulgated thereto.

(2) Any person satisfying the board that such person is the owner of an estray alternative livestock that has been disposed of pursuant to paragraph (b) of subsection (1) of this section shall be forthwith paid the amount for which the alternative livestock was sold less any reasonable and necessary expenses.

(3) (a) All moneys in the estray fund created in section 35-41-102 derived from the disposal of estray alternative livestock by the board pursuant to paragraph (b) of subsection (1) of this section, that have been in the estray fund for six years or longer and for which no valid claim has been made, shall be credited to the brand inspection fund created in section 35-41-102.

(b) Any claim for moneys in the estray fund made by the owner of an alternative livestock sold as an estray pursuant to paragraph (b) of subsection (1) of this section shall be made within three years from the date of the sale of such estray alternative livestock or such claim shall be forever barred.

(4) A brand inspector shall refuse to issue a certificate authorizing the transport of alternative livestock or the carcasses thereof and shall seize the same if:

(a) The person in control of the alternative livestock or the carcasses thereof is not in possession of a duly executed bill of sale;

(b) The person in control of the alternative livestock or the carcasses thereof cannot furnish other satisfactory proof that such person is the lawful owner of the alternative livestock or the carcasses thereof; or

(c) The inspector has good reason to believe that the alternative livestock or the carcasses thereof are stolen.

(5) (a) A brand inspector or peace officer, as described in section 16-2.5-101, C.R.S., is authorized to stop and inspect any vehicle transporting or containing alternative livestock or the carcasses thereof.

(b) A brand inspector or peace officer may demand to see a bill of sale, permit, or certificate for the alternative livestock or the carcasses thereof from the person operating the vehicle.

(c) If the operator of the vehicle is unable to produce a bill of sale, permit, or certificate, the inspector or peace officer is authorized to:

(I) Arrest, with or without warrant, the vehicle operator;

(II) Seize the vehicle and the alternative livestock or carcasses thereof; and

(III) Retain possession of the vehicle and the alternative livestock or the carcasses thereof until:

(A) The vehicle operator can produce evidence satisfactory to the board that the vehicle

operator or the person for whom the alternative livestock is being transported is the lawful owner thereof; or

(B) The alternative livestock, or the carcasses thereof, are disposed of pursuant to paragraph (b) of subsection (1) or subsection (6) of this section.

(d) After a vehicle seized pursuant to paragraph (c) of this subsection (5) has been unloaded by the brand inspector or peace officer at the site where the seized livestock or carcasses are being held, such vehicle shall be made available for return to the owner of such vehicle.

(6) If a brand inspector or peace officer deems it necessary to sell carcasses taken pursuant to subsection (5) of this section to prevent loss by spoiling, the brand inspector or peace officer is authorized to do so. The proceeds from the sale of the carcasses shall be credited to the estray fund created in section 35-41-102.

(7) (a) If within ten days after alternative livestock or the carcasses thereof have been seized:

(I) The ownership of such alternative livestock or carcasses is shown and established, the alternative livestock, the carcasses thereof, or the proceeds from the sale of the alternative livestock or the carcasses thereof shall be delivered to the owner; or

(II) The ownership of such alternative livestock or the carcasses thereof is not shown and established, the alternative livestock or the carcasses thereof shall be disposed of pursuant to paragraph (b) of subsection (1) of this section.

(b) Any moneys derived from the sale of alternative livestock or the carcasses thereof shall be credited to the estray fund created in section 35-41-102.

(c) The facts concerning the detention and sale of any alternative livestock or the carcasses thereof shall be reported to the district attorney of the judicial district in which such alternative livestock or carcasses were detained and sold.

(8) Unless alternative livestock required to be inspected pursuant to this article are released by a brand inspector, such alternative livestock shall be inspected by a duly authorized brand inspector on arrival at any market, regardless of whether the alternative livestock has been previously inspected at the point of origin, before such alternative livestock are weighed.

ARTICLE 42

Animal Protection

35-42-101. Short title. This article shall be known and may be cited as the "Animal Protection Act".

35-42-102. Legislative declaration. The general assembly hereby finds and declares that

the protection of companion animals and livestock is a matter of statewide concern; and that it is the policy of this state that persons responsible for the care or custody of such animals be persons fit to adequately provide for the health and well-being of such animals.

35-42-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Abandon" means the leaving of an animal without adequate provisions for the animal's proper care by its owner, the person responsible for the animal's care or custody, or any other person having possession of such animal.

(2) "Accepted animal husbandry" means practices generally recognized as appropriate in the care of animals consistent with the species, breed, and type of animal.

(3) "Animal" means any living dumb creature.

(4) "Commissioner" means the Colorado commissioner of agriculture or his designee.

(5) "Companion animal" means domestic dogs, domestic cats, small pet birds, and other nonlivestock species.

(6) "Department" means the Colorado department of agriculture.

(7) "Division" means the division of animal industry of the department of agriculture.

(8) "Livestock" means cattle, swine, sheep, goats, and such horses, mules, asses, and other animals used in the farm or ranch production of food, fiber, or other products defined by the commissioner as agricultural products.

(9) "Mistreat" means every act or omission which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.

(10) "Neglect" means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal's health and well-being consistent with the species, breed, and type of animal.

35-42-104. Scope of article. (1) Nothing in this article shall affect accepted animal husbandry practices utilized by any person in the care of companion or livestock animals, or in the extermination of undesirable pests as defined in articles 7, 10, and 43 of this title.

(2) In case of any conflict between this article or regulations adopted pursuant to this article or section 35-43-126 and the wildlife statutes of the state, said wildlife statutes shall control.

(3) Nothing in this article shall affect animal care otherwise authorized by law.

(4) Nothing in this article shall affect facilities licensed under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

35-42-105. Bureau of animal protection - creation. There is hereby created the state bureau of animal protection, referred to in this article as the "bureau".

35-42-106. Powers and duties of the commissioner. The commissioner has the power

to administer and enforce the provisions of this article, appoint agents and establish the qualifications of such agents, promulgate rules and regulations, enter into contracts, and implement training, procedures, and rules and regulations of recommended standards for animal control officers.

35-42-107. Bureau personnel - appointment. (1) Subject to the provisions of section 13 of article XII of the state constitution, the commissioner shall appoint such animal protection agents as are necessary to carry out the provisions of this article.

(2) The commissioner may appoint agents who are employees of the state, nonprofit corporations, municipal corporations, counties, cities, cities and counties, or any other local governmental entity or political subdivision of the state.

(3) When agents who are employees of nonprofit corporations are appointed, the corporation shall furnish evidence of minimum liability insurance covering said agent in the amount of one hundred thousand dollars. The state shall not be liable for the actions of such agents. Agents of the bureau shall submit to training as specified by the commissioner.

(4) Agents of the bureau who have completed training as specified by the commissioner are vested with the power to issue summons and complaints to enforce the provisions of part 2 of article 9 of title 18, C.R.S., and article 80 of this title, as granted peace officers under section 16-2-104, C.R.S., and shall be designated as peace officers, as described in sections 16-2.5-101 and 16-2.5-118, C.R.S.

(5) The commissioner may, in his discretion, revoke the commission of any agent.

(6) The commissioner may in his discretion determine classifications and subclassifications for commissions of agent.

(7) Agents authorized to investigate cases involving livestock shall be employees of the division or the division of brand inspection of the department or any sheriffs when appointed and within their jurisdiction.

(8) All commissions issued by the commissioner shall expire on the anniversary date of issuance.

(9) A commission may, in the discretion of the commissioner, be renewed.

(10) All commissions shall be approved by the state agricultural commission.

35-42-108. Care of confined animal. (1) Except as authorized by law, no animal shall be confined without an adequate supply of food and water. If any animal is found to be confined without adequate food or water, it shall be lawful for any officer or agent of the bureau, a peace officer within his jurisdiction, or a licensed veterinarian to, from time to time as may be necessary, enter into any and upon any area or building where such animal is confined and supply it with adequate food and water; except that such entry shall not be made into any building which is a person's residence, unless by search warrant or court order.

(2) Such officer, agent, peace officer, or veterinarian shall not be liable in any action for such entry.

(3) Notice of the entry and care shall be given by posting such notification at an entrance to or at a conspicuous place upon such area or building where such animal is confined.

(4) In the case of companion animals, if such animal is not cared for by a person other than an agent or officer of the bureau or a peace officer or veterinarian within seventy-two hours of the posting of said notification, such animal shall be presumed to have been abandoned under circumstances in which the animal's life or health is endangered.

35-42-109. Protection of animals mistreated, neglected, or abandoned. (1) No animal shall be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered.

(2) (a) The commissioner may take charge of, provide for, or remove from the area or building where found any companion animal found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(b) Pursuant to court order, the commissioner may take charge of, provide for, or remove from the area or building where found any livestock found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(3) (a) The commissioner shall cause to be served upon the owner:

(I) If the owner is known and residing within the jurisdiction wherein the animal is found, written notice at least five days prior to the hearing of the time and place of the hearing;

(II) If the owner is known but residing out of the jurisdiction where such animal is found or if the commissioner is unable after reasonable attempts to serve the owner, written notice by any method, including posting at least five days prior to the hearing at a place provided for public notices in the jurisdiction wherein such hearing shall be held, or service of process shall be given.

(b) If the owner is not known, the commissioner shall cause to be published, in a newspaper of general circulation in the jurisdiction wherein such animal is found, notice of the hearing, and shall further cause notice of the hearing to be posted at a place provided for public notices in the jurisdiction wherein such hearing shall be held, at least five days prior to the hearing.

(4) Such hearing shall be held promptly after the date of the seizure of the animal.

(5) (a) The commissioner may, in his discretion, provide for such animal until judgment by the court.

(b) The court may order the animal sold and the proceeds deposited in the registry of the court pending a decision.

(c) The court may adjudge that the owner is a person able to adequately provide for such

animal and a person fit to own the animal, in which case the animal shall be returned to the owner after all reasonable expenses of any food, shelter, and care provided by the commissioner have been paid; except that, if such expenses are not paid within ten days of a court order adjudging the owner a person able to adequately provide for such animal and a person fit to own the animal, the commissioner may, in his discretion and without liability, dispose of the animal by selling it at public auction, placing it for adoption in a suitable home, giving it to a suitable animal shelter, or humanely destroying it as deemed proper by the commissioner.

(d) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the estray fund, created pursuant to section 35-41-102.

(e) At least six days prior to disposing of the animal, the commissioner shall provide written notice to the owner at his last-known address of the time and place of the disposition of the animal.

(6) (a) If the owner is adjudged by the court a person unable to adequately provide for the animal or a person not fit to own the animal, then the court shall order that the animal be:

(I) Sold by the commissioner at public auction;

(II) Placed for adoption in a suitable home;

(III) Given to a suitable animal shelter;

(IV) Humanely destroyed as deemed proper by the court; or

(V) Disposed of in any other manner as deemed proper by the court.

(b) In no case shall the person adjudged unable to adequately provide for the animal or unfit to own the animal be allowed to purchase directly or indirectly the animal at any sale.

(c) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, with the remaining proceeds, if any, being paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the estray fund, created pursuant to section 35-41-102.

(7) Nothing in this section shall be construed to prohibit the destruction of an animal as provided in section 35-42-110.

(8) Any officer or agent of the bureau may lawfully interfere to prevent the perpetration of an act of mistreatment, neglect, abandonment, or cruelty, pursuant to part 2 of article 9 of title 18, C.R.S., which act occurs in his presence.

35-42-110. Injured animals may be euthanized. Any agent of the bureau or peace officer, as described in section 16-2.5-101, C.R.S., may lawfully euthanize or cause to be euthanized, as defined in section 18-9-201 (2.7), C.R.S., any animal in his or her charge when, in the judgment of such agent or peace officer, and in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery. In the event a licensed veterinarian is not available, the animal may be euthanized if, by the written certificate of two persons, one of

whom may be selected by the owner if the owner so requests, called to view the animal in the presence of the agent, the animal appears to be severely injured past recovery, severely disabled past recovery, severely diseased past recovery, or unfit for any useful purpose.

35-42-111. Investigations - access - administrative subpoena. (1) The commissioner, upon his own motion or upon the complaint of any person, shall make any investigations necessary to ensure compliance with this article.

(2) (a) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access, upon consent or upon obtaining an administrative search warrant, to all buildings, yards, pens, pastures, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period.

35-42-112. Enforcement. (1) The commissioner or his designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made 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 shall require that all actions causing the violation be ceased.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of this article.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(3) Whenever it appears to the commissioner upon sufficient evidence satisfactory to the

commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted pursuant to this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule 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.

35-42-113. Animal protection fund - creation. (1) There is hereby created an animal protection fund. Any donations collected for animal protection, any net proceeds from the sale of an animal pursuant to section 18-9-202.5 (4), C.R.S., and any moneys from restitution ordered for the expenses of the department of agriculture in selling and providing for the care of and provision for an animal disposed of under the animal cruelty laws in accordance with part 2 of article 9 of title 18, C.R.S., or this article shall be transmitted to the state treasurer, who shall credit the moneys to the animal protection fund. The general assembly shall make annual appropriations from that fund to the department of agriculture to aid in carrying out the purposes of this article; except that no such appropriations may be made for personal services.

(2) All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly through legislation.

35-42-114. Local regulation. The provisions of this article shall not be construed to limit or preempt additional regulation by any city, town, or city and county. Nothing in this article shall interfere with the authority of the department of public health and environment in the enforcement of part 7 of article 4 of title 25, C.R.S., or the department of agriculture in the enforcement of article 80 of this title.

35-42-115. Dangerous dog registry - created - cash fund. (1) The bureau shall establish a statewide dangerous dog registry consisting of a database of information concerning microchip types and placement by veterinarians and licensed shelters in dangerous dogs pursuant to the provisions of section 18-9-204.5 (3) (e.5), C.R.S. The commissioner may promulgate such rules as may be necessary for the implementation of this section.

(2) A veterinarian or licensed shelter that implants a microchip pursuant to the provisions of section 18-9-204.5 (3) (e.5) (III), C.R.S., shall provide to the bureau a veterinary record of the microchip. The bureau shall maintain each veterinary record provided in a registry on a statewide database.

(3) Each person who is ordered to identify his or her dangerous dog through microchip implantation shall pay to the bureau a nonrefundable dangerous dog microchip license fee of fifty dollars, as required in section 18-9-204.5 (3) (e.5) (IV), C.R.S. The bureau shall transmit all fees collected pursuant to this subsection (3) to the state treasurer who shall credit the same to the

dangerous dog microchip licensure cash fund, referred to in this section as the "fund", which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the bureau for the costs incurred in implementing this section. The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

ARTICLE 42.5

Animal Shelters and Pounds

35-42.5-101. Duties and restrictions relating to shelters and pounds - legislative declaration. (1) (a) (I) As used in this section, unless the context otherwise requires, an animal "shelter or pound" means a nonprofit private or publicly owned facility where stray, abandoned, lost, or unwanted pet animals are held and which facility contains four or more pet animals at any given time. "Pound or shelter" does not mean a breeding facility maintained for the express and sole purpose of supplying pet animals to entities for research. Before selling, giving, lending, or in any other manner providing a dog or cat to any private or public facility for use in medical or any other kind of experimentation, a pound or shelter shall care for such dog or cat for a minimum of two weeks, during which time such dog or cat shall be made available for adoption while the pound or shelter makes a reasonable effort to establish the identity of the owner of such dog or cat and, if such owner is identified, gives such owner notice regarding the taking and impounding of such animal and an opportunity to reclaim such animal. Such reasonable effort shall include contacting the owner if the dog or cat is wearing an identification tag.

(II) Pounds and shelters shall not participate in the practice known as "red tagging", which, for the purposes of this section, means the isolation, without opportunity for adoption, of healthy, amiable dogs and cats for research animal buyers. No dog or cat shall be designated as a candidate for medical or any other kind of experimentation unless such dog or cat has been made available for adoption during the two-week period it is cared for by the pound or shelter.

(III) If a pound or shelter provides dogs or cats to facilities for experimentation, such pound or shelter shall inform an owner who is relinquishing his dog or cat to the pound or shelter of such practice. The pound or shelter may charge a reasonable fee for housing the dog or cat during the two-week period the animal is cared for by the pound or shelter.

(b) For purposes of this subsection (1), "experimentation" includes any research, or testing, or the use of an animal for the training of students or medical personnel.

(2) Any officer or agent of the state bureau of animal protection created in article 42 of this title, or any peace officer, as described in section 16-2.5-101, C.R.S., may enforce the

provisions of this section.

(3) Any person who violates the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) The general assembly finds and declares that the establishment of the standards and specifications set forth in this section are a matter of statewide concern.

ARTICLE 43

Branding and Herding

PART 1

GENERAL AND ADMINISTRATIVE PROVISIONS

35-43-101. Brands on livestock - evidence. It is lawful to mark cattle and horses with the owner's brand. When animals are brought into this state from another state or a territory in transit from beyond the boundaries of this state, the brand, or a copy thereof, duly certified to by the proper officer in each state or territory, shall be received in evidence, with like force and effect as a brand duly recorded in this state.

35-43-102. Branding - evidence of ownership - penalty. Animals which are usually branded may be branded on either side with the owner's brand. No evidence of ownership by brands shall be permitted in any court in this state unless the brands are recorded as provided in section 35-43-105. Each drove of cattle or sheep which may be driven into or through any county of this state shall be plainly branded or marked with one uniform brand or mark. The cattle shall be so branded with the distinguishing ranch or road brand of the owner as to show distinctly in such places as the owner may adopt. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the state. Any such owner or person in charge of such drove being driven into or through the state who fails to comply with the provisions of this article shall be fined not less than fifty dollars nor more than three hundred dollars.

35-43-103. Earmarks. Any stock grower of this state may adopt and use an earmark. Such earmark shall be taken in evidence, in connection with the owner's recorded brand, in all suits at law or in equity in which the title to stock is involved. The earmark shall be made by cutting and shaping the ear of the animal so marked; but in no case shall the person so marking an animal cut off more than one-half of the ear so marked; neither shall anyone mark by cutting

an ear on both sides to a point.

35-43-104. Brand distinctions - recording office. No brand shall be used by more than one person, association, or corporation, nor shall any brand be recorded in this state elsewhere than in the office of the state board of stock inspection commissioners, except as provided in section 35-43-107.

35-43-105. Fee to record brands - unlawful use - penalty. (1) Any person, association, or corporation desiring to adopt a brand, not then being the recorded brand of another person, association, or corporation, shall forward to the state board of stock inspection commissioners a facsimile of the desired brand, together with a written application to adopt such brand, and shall accompany the same with a fee in an amount determined by the board by rule. Upon receipt of the facsimile and fee, the board shall record the brand, unless the brand stands of record as or is in conflict with that of some other person, association, or corporation, in which case the board shall not record the brand but shall return the facsimile to the forwarding party.

(2) It is unlawful for any person, association, or corporation to brand or cause to be branded any livestock with a brand which has not been recorded with the state board of stock inspection commissioners, as provided in subsection (1) of this section, or with a brand which has been previously recorded by another person, association, or corporation. When any owner of a recorded brand in use in this state moves his cattle, branded with his own brand, to a new and different range or locality in this state within which territory there is in use a conflicting or similar recorded brand, the state board of stock inspection commissioners may order such recorded brand owner so moving to a new range or locality to discontinue the use of his recorded brand in that locality; and the board, at its discretion, may cancel such brand ordered to be so discontinued.

(3) Any person, association, or corporation or any employee thereof who violates any of the provisions of subsection (2) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

35-43-106. Certified copy of brand - fee. Upon the recording of any brand, the owner thereof shall be entitled to one certified copy of the record of such brand from the state board of stock inspection commissioners, the certificate to be signed by the brand commissioner or the secretary of the board. Additional certified copies of said record may be obtained by anyone upon the payment of one dollar for each copy.

35-43-107. Recording by county clerk and recorder. It is unlawful for the county clerk and recorder of any county in this state to record any brand, unless previously recorded in the

office of the state board of stock inspection commissioners.

35-43-108. Brand book. It is the duty of the state board of stock inspection commissioners, from time to time as it may be necessary, to cause to be published in book form a list of all brands on record at the time of such publication. The board, at its discretion, may cause to be issued a supplement to the brand book issued, containing the additional brands or changes in ownership of brands between the time of the last publication and the time of issuing such supplement, for the use of the department and its employees. Such brand book and supplements thereto shall contain a facsimile of every brand recorded, together with the owner's name and post-office address. Said records shall be arranged in convenient form for reference. Said books and supplements may be sold to the general public at approximate cost. The brand book and other publications circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

35-43-109. Brands personal property - recording by board - rules - effect. Any brand recorded shall be the property of the person, association, or corporation causing such record to be made and shall be subject to sale, assignment, transfer, devise, and descent as personal property. Instruments of writing evidencing the sale of such brand, assignment, or transfer shall be recorded by the state board of stock inspection commissioners, and the fee for recording such sale, assignment, or transfer shall be in an amount determined by the board by rule. The recording of such instruments of writing shall have the same force and effect as to third parties as the recording of instruments affecting real estate, and a certified copy of the record of any such instrument may be introduced in evidence the same as is provided for the certified copies of instruments affecting real estate.

35-43-110. Proof of ownership - evidence. In all suits at law or in equity or in any criminal proceeding when the title to animals is involved or proper to be proved, the certified copy provided for in section 35-43-106 shall be prima facie evidence of the ownership of such animal by the person whose brand it may be. Proof of the right of any person, association, or corporation to use such brand shall be made by a copy of the record of same, certified to by the state board of stock inspection commissioners by its secretary or the brand commissioner.

35-43-111. Earmarking sheep and hogs. Any owner of sheep or hogs may use an earmark, tag, or brand to designate ownership of and title to the same, which shall be subject to the provisions of this article in respect to brands.

35-43-112. Other animals - earmarks. Owners of animals other than sheep or hogs in this state may use earmarks, and these earmarks shall be taken in evidence in connection with the

owner's recorded brand in all suits at law or in equity or in any criminal proceedings when the title to such property is involved or proper to be proved.

35-43-113. Publication of brands and transfers. Upon the first of every month or as soon thereafter as possible, the state board of stock inspection commissioners shall cause to be exhibited in the office of the county clerk and recorder in all counties in the state and post, when permissible, in Colorado licensed livestock markets a list showing all the brands and transfers recorded for the previous calendar month. Said list shall show a facsimile of the brand, the name of the owner, and the owner's post-office address, county, and state. The list shall remain posted until the following month when the new list is posted. Complete brand records shall be kept on file for inspection by the public at the office of each county clerk and recorder, and also kept on file by all local brand inspectors. The list shall also be published in the official state livestock paper or publication required under section 35-44-109.

35-43-114. Fees - disposition - report. All fees and money collected by the state board of stock inspection commissioners shall be deposited in the brand inspection fund unless otherwise provided by law. The board shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the board.

35-43-115. Assessment of brands - rules. (1) (a) To revise and disencumber the brand records of unused brands and to provide revenues with which to publish new brand books and otherwise assist in the operational cost of the division of brand inspection, the state board of stock inspection commissioners has the authority to impose an assessment and, when applicable, a late fee in an amount determined by the board by rule on every brand recorded in the office of the board on or before January 1, 2002, to cover the five-year period beginning on January 1, 2002, and ending on December 31, 2006, and like assessments covering every five years thereafter; except that, notwithstanding any other requirement of this section:

(I) The board may temporarily change the period of a brand's assessment to one, two, three, or four years so that approximately equal numbers of brands are subsequently assessed for five-year periods in each successive five-year period; and

(II) If the period of an assessment is changed pursuant to subparagraph (I) of this paragraph (a):

(A) The fee for the shortened assessment period shall be proportionately decreased; and

(B) The subsequent assessment period shall revert to five years.

(b) It is the duty of the board to notify every owner of a recorded brand of the assessment authorized by paragraph (a) of this subsection (1) through the United States mail by letter addressed to the owner at the owner's post-office address as given in the brand records. The assessment shall be due and payable within ninety days after January 1 of the assessment year. If

any owner of a recorded brand fails or refuses to pay the assessment within the ninety days, the board may mail a second notice by certified mail and impose a late fee. If, within ninety days after the second mailing, any owner of a recorded brand fails or refuses to pay such assessment and late fee, the brand shall be cancelled from the valid registry of livestock brands in the office of the board and may be reissued and recorded as a new brand after the expiration of three years from the date of such cancellation. The board shall give a receipt for any such payment.

(2) Repealed.

(3) As to any brand recorded prior to the beginning of any assessment period, the state board of stock inspection commissioners shall require one payment of all assessments for the entire five-year period. As to any brand recorded on or after the commencement of any assessment period, the state board of stock inspection commissioners shall make the assessment for the year or fractional part of the year in which the brand is recorded and for the remaining years within that five-year period and shall require one payment of all such assessments.

(4) All moneys collected by the state board of stock inspection commissioners from brand assessments shall be credited to a separate account within the brand inspection fund to be known as the brand assessment account. All moneys credited to such account and all interest earned on investments from moneys credited to such account shall be a part of the brand assessment account and shall be available for appropriation by the general assembly for purposes provided by law.

35-43-115.5. Abandoned brands - procedure - sale - proceeds. (1) Any brand that has been cancelled for nonpayment of the assessment pursuant to section 35-43-115 (1) and that, as of June 30 of any assessment year, has remained unclaimed for at least five years since the date of cancellation shall be presumed abandoned, and all claims or interests in such brand shall be deemed forfeited.

(2) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the state board of stock inspection commissioners shall adopt rules governing the publication and sale of abandoned brands. Such rules shall include, without limitation, provisions for the publication of a notice of abandoned brands and procedures for the public sale of such brands.

(3) The purchaser of an abandoned brand at a public sale shall take all rights to the brand free and clear of all liens and encumbrances of the prior owner or of any other person. The state board of stock inspection commissioners shall provide all documents necessary to effectuate the transfer of ownership of the brand.

(4) The proceeds of the sale of an abandoned brand, net of expenses of the sale, shall be credited to the brand assessment account in the brand inspection fund.

35-43-116. Wrongful branding - penalty. If any person, association, or corporation willfully and knowingly brands, or causes to be branded, an animal which is the property of another with his or her brand or any brand which is not the recorded brand of the owner or willfully and knowingly effaces, defaces, or obliterates any brand or mark upon such an animal,

such person or any officer or director of any such association or corporation commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

35-43-117. Use of false brand - damages. Any person who brands or marks, or causes to be branded or marked, any animal which is the property of another with his brand or any brand which is not the recorded brand of the owner or effaces, defaces, or obliterates any brand or mark upon any animal is guilty of theft and, upon conviction thereof, shall be liable to the owner thereof for three times the value of the animal so branded or marked or upon which the brand or mark has been effaced, defaced, or obliterated. Payment of the forfeiture provided in this section shall not entitle the person so branding, effacing, defacing, or obliterating a brand to the property right in the animal so branded or upon which the brand was effaced, defaced, or obliterated, but such animal shall be surrendered to the proper owner.

35-43-118. Maverick defined - branding penalty. (1) All neat cattle and horses found running at large in this state without a mother and upon which there is neither mark nor brand shall be deemed a maverick and shall be sold to the highest bidder for cash at such time and place and under such rules and orders as the state board of stock inspection commissioners prescribes. Nothing in this section shall be construed to apply to domestic or blooded stock owned and kept in cities or towns or on private farms that may stray upon the open range, and all such animals that are claimed, identified, and proven may be reclaimed.

(2) Any person who marks, brands, or causes to be marked or branded, or in any way converts to his use any animal known and designated by law as a maverick, if not by law authorized to do so, or who knowingly allows such marking, branding, or conversion, as is prohibited by this section, to be done by his employee or agent in his behalf is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than three months nor more than one year.

35-43-119. Stock mixed with drove - penalty. When the stock of any resident intermixes with any drove of animals, it is the duty of any drovers or persons in charge to cut out and separate such stock from said drove immediately, except in case of sheep and horses, which shall be driven to the nearest suitable corral to be separated. Any person, either owner or drover, or otherwise connected with the management of such drove, who neglects to comply with the provisions of this section, shall be fined not more than five hundred dollars for every offense, and shall be liable to indictment for theft.

35-43-120. Trespassing on lands - injuring resident - penalty. (1) It is the duty of any person owning or having charge of any drove of cattle, horses, or sheep, who when driving the same into or through any county of Colorado of which the owner is not a resident or landowner and where the land in such county is occupied and improved by settlers and ranchers, to prevent

the same from mixing with the cattle, horses, or sheep belonging to the actual settlers and also to prevent said drove of cattle, horses, or sheep from trespassing on such land as may be the property or in the possession of the actual settler and used by him for the grazing of animals or the growing of hay or other crops or from doing injury to ditches.

(2) Any owner or person in charge of any such drove of stock who willfully injures any resident of the state by driving such drove of stock from the public highway and herding the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. The owner or person in charge of the drove so trespassing shall be liable for the damages done to the settler.

35-43-121. Herding sheep near towns. (Repealed)

35-43-122. Penalty. (Repealed)

35-43-123. Thoroughbred rams must be herded. It is the duty of any owner or agent of any owner of thoroughbred rams of any description to herd them or keep them enclosed. Any owner or agent who refuses to comply with the provisions of this section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

35-43-124. Fines paid into school fund. Any fines arising from a violation of section 35-43-123 shall be paid into the school fund of the county in which such violation occurs.

35-43-125. No hogs to run at large. No hog or swine shall be permitted to run at large, and the owner of any hog or swine trespassing on the property of any person is liable in treble the damages occasioned by such trespass and a fine of not less than five dollars nor more than ten dollars for each offense.

35-43-126. Dog worrying stock. Any dog found running, worrying, or injuring sheep, cattle, or other livestock may be killed, and the owner or harborer of such dog shall be liable for all damages done by it.

35-43-127. Skinning carcass without right. Any person who skins or removes from the carcass any part of the skin, hide, or pelt of any cattle or sheep without permission from the owner is guilty of theft and, upon conviction thereof, shall be punished in the manner provided by law for the punishment of theft. Nothing in this section shall be deemed to prevent the skinning of animals killed by railroad companies by the employees of any railroad company by

which such stock may have been killed.

35-43-128. Theft of certain animals - penalty. Any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner deprives the owner of the immediate possession of any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, or any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner applies to the person's own use any cattle, horses, mules, goats, sheep, asses, or swine, either live or slaughtered, or any portion of the slaughtered carcass thereof, the owner of which is unknown, or any person who knowingly purchases from anyone not having the lawful right to sell and dispose of the same any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, commits a class 4 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

35-43-129. Branding of calves required - exceptions. (1) It is unlawful for any person, company, or corporation to sell, offer for sale, slaughter, or move, either within the state or to a destination outside of Colorado, any calf under weaning age that is not branded with a Colorado recorded brand of the owner of the mother cow. A brand upon any calf shall be past the peeling state at the time that a calf is sold, offered for sale, slaughtered, or moved, except in the following cases:

(a) When the calf is accompanied by its branded ownership-proven mother;

(b) When the calf is accompanied by a current brand certificate issued by a duly authorized Colorado brand inspector after inspection at a time when such calf is with its branded ownership-proven mother;

(c) When the calf is a registered purebred breed or pure dairy breed, but this exception shall not apply to a crossbred calf.

(2) Any person, company, or corporation whose principal operation consists of feeding cattle for slaughter or operating a dairy may apply to the state board of stock inspection commissioners for a permit authorizing such person, company, or corporation to sell or offer for sale a calf under ten days old, which was born at the dairy or in the feed lot, without meeting the requirements of subsection (1) of this section. Such application shall be accompanied by a description of the operation. Upon determining that the applicant is qualified, the board shall issue a numbered permit to the applicant. Any calf under ten days old which is sold or offered for sale shall have affixed an eartag, supplied by the board, which bears the applicant's permit number. A calf sold under the provisions of this subsection (2) shall be accompanied by a duly executed bill of sale containing the owner's permit number and signed by the dairy owner or the feed lot owner.

(3) If a Colorado brand inspector is called to inspect an unbranded or freshly branded calf with its mother, any mileage expense shall be paid by the owner in addition to any brand inspection fee.

(4) Any person, company, or corporation who violates any of the provisions of this

section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars and by imprisonment in the county jail for not more than ninety days. For a second or subsequent violation, such person, company, or corporation shall be punished by a mandatory fine of not less than five hundred dollars and by imprisonment in the county jail for of not less than ten days.

(5) Unbranded calves subject to this article, when found by brand inspectors at public livestock markets or at shipping points, shall be handled as estrays or questionable ownership livestock according to sections 35-43-118 and 35-53-107.

35-43-130. Cattle in feedlots. (1) A Colorado brand inspector shall inspect all cattle entering a Colorado custom feedlot for feeding under a custom contract if the cattle are not accompanied by a brand certificate or valid documentation of purchase listing all brands, or no brands. In addition, all cattle entering Colorado for grazing purposes under a leased grazing agreement, owned by a nonresident, shall also be inspected by a duly authorized Colorado brand inspector. The brand inspector shall issue a certificate of inspection to the proven owner and a copy of such certificate to the custom feedlot operator or ranch manager after ownership is established and before the cattle are mixed with any other cattle or turned loose for grazing. Upon completion of the inspection, said inspector shall collect an inspection fee in the amount prescribed by the state board of stock inspection commissioners pursuant to section 35-41-104. If the cattle are carrying more than two consistent brands, the owner shall mark or brand all of his cattle with the same brand, with one of the two existing brands, with a brand of valid registry of the owner, with an ear tag specifically identifying each animal to a specific feedlot, or otherwise identify the cattle as prescribed by the board. Evidence of this brand or permanent mark shall be shown on the certificate of inspection in addition to brands or no brands found on the inspected cattle for future reference of valid proven ownership. When ear tags are utilized, each ear tag shall be legible and at least one inch in height and two inches in width.

(2) Any lessee, lessor, commercial feedlot owner, or established livestock owner who violates any of the provisions of this section commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S. For a second or subsequent violation, such person described in this subsection (2) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

PART 2

BRAND INSPECTION

35-43-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Board" means the state board of stock inspection commissioners, created in section 35-41-101.

(2) "Department" means the Colorado department of agriculture, created in section 24-1-123, C.R.S.

(3) "Livestock" means all cattle, calves, horses, mules, and donkeys.

35-43-202. Brand inspections - custom processing houses - packing plants - feedlots - acceptable forms of evidence - rules. (1) The board may, during regular business hours, inspect the records, brands, bills of sale, hides, horns, and other items related to proving ownership of or ascertaining the identity of slaughtered livestock at any custom processing house or packing plant licensed by the department or by the United States department of agriculture.

(2) Pursuant to its authority under section 35-41-101 (3), the board may adopt rules in furtherance of this part 2, including rules governing record-keeping, contact information, the contents of bills of sale and other records of transfers of livestock or carcasses, the mixing of inspected and uninspected livestock, hide retention, hide exhibition, and brand inspection.

(3) No person shall slaughter any livestock purchased in Colorado that have not been inspected for brands by an authorized Colorado brand inspector immediately prior to slaughter.

35-43-203. Requirements for slaughterer business. (1) Every person carrying on the trade or business of a slaughterer of livestock in this state:

(a) Shall maintain an established place of business;

(b) Shall not slaughter livestock on the open range;

(c) Shall require from all sellers of livestock a bill of sale that gives a complete description of each animal so sold and purchased including marks, brands, age, weight, name of person from whom it was purchased or otherwise acquired, date, and place of purchase or acquisition;

(d) Shall keep a true record of all livestock purchased or slaughtered, and of any carcass or part of a carcass purchased, in one or more special books kept for such purposes. Such records shall include a complete description of each such animal or carcass, including the approximate age and weight, breed and color, fire brands, earmarks, and any other identifying characteristics and the date of purchase and from whom such animal, carcass, or part of carcass was purchased.

(e) Shall keep the hide and horns of each animal slaughtered for inspection for a period of thirty days after it is slaughtered except when written permission for sale or destruction of the same is given by a regular or special brand inspector prior to expiration of said period. A certified copy of the bill of sale shall accompany the hide when it is offered for sale.

(f) Shall require any person from whom he or she purchases the carcass or any part thereof, not inspected by a state brand inspector immediately prior to slaughter, to exhibit the hide as provided in section 35-43-207;

(g) Shall not receive any carcass or part of a carcass for storage unless each hide has been inspected and all meat stamped, if required, by the brand commissioner. This paragraph (g) shall not apply to any person who slaughters livestock that are officially inspected by the state brand inspector immediately prior to slaughter.

(h) Shall not mix any cattle that are uninspected for brands by an authorized Colorado brand inspector with any livestock that have been inspected by a Colorado brand inspector just

prior to slaughter.

35-43-204. Investigations. The board may investigate possible violations of this part 2 on the basis of a complaint or when the board has other reasonable grounds to believe that any person has violated any such provision.

35-43-205. Exemption - limitation. Every person carrying on the trade or business of a slaughterer of livestock in this state who is exempt from section 35-43-203 (1) (g) shall not slaughter any livestock purchased in Colorado that have not been inspected for brands by an authorized Colorado brand inspector immediately prior to slaughter.

35-43-206. Records - hides - open to public view. The record provided for in section 35-43-203 (1) (d) and also the hide shall be open to the inspection of all persons for a period of thirty days, and it is unlawful for any slaughterer to refuse to permit such inspection or examination.

35-43-207. Sales by persons other than slaughterers - requirements. It is unlawful for any person to sell or offer for sale or to possess, except as specifically provided in this article or in article 33 of this title, a carcass of livestock or any portion of such carcass without first exhibiting the hide intact and exposing the brand upon the hide, if any, to the purchaser. It is the duty of any such person selling or offering for sale any such carcass of livestock to preserve the hide of the same for a period of thirty days, unless the hide from such a carcass of livestock has been previously inspected and released by a duly authorized Colorado brand inspector, and to exhibit the same for inspection upon demand of any person.

35-43-208. Person killing for own use. Unless the hide has been previously inspected and released by a duly authorized Colorado brand inspector, it is unlawful for any person to possess or to kill livestock to obtain any part of the animal for his or her own use without preserving the hide of such animal intact with a complete unskinned tail attached thereto for a period of not less than thirty days, during which period the hide shall be presented upon the demand of any person.

35-43-209. When hides admitted as evidence. If a hide is subsequently produced by or on behalf of a person who has butchered any livestock alleged to have been stolen and is claimed to be the hide of the animal killed, the hide shall be exhibited as soon as possible for inspection to the sheriff of the county in which the animal was butchered. No such hide shall be admitted in evidence nor shall evidence to identify such hide with the animal alleged to be stolen be received

until the prosecution is given such reasonable opportunity as may be fixed by court to examine the hide and compare it with the meat.

35-43-210. Inspection of hide. The sheriff or deputy sheriff of any county in this state and any regular or special brand inspector appointed by the board are hereby authorized and empowered to require any person who kills for his or her own use and consumption any livestock to produce for inspection the hide of any such livestock that has been killed within thirty days unless the livestock has been inspected and tagged prior to such demand for inspection. In the absence of the owner or proper corporate officer, the person in charge of the premises where the meat then is shall produce the hide for inspection upon demand.

35-43-211. Grounds for search warrant. If a person who, within thirty days, has killed any livestock or, in that person's absence, the person in charge of the premises where the livestock was killed fails or refuses to produce the hide of the livestock, any sheriff, deputy, or regular brand inspector may seize and take possession of the meat of such livestock and hold the meat until the hide is produced and, before or after the seizure of the meat, may seek a search warrant for the theft of livestock and the meat thereof as the property of an unknown owner. The failure to produce such hide upon demand shall be sufficient grounds upon which to base the affidavit for the search warrant, and the procedure on complaint for a search warrant shall be as provided in part 3 of article 3 of title 16, C.R.S.

35-43-212. Violations - penalties. (1) Except as otherwise provided in this part 2, any person violating this part 2 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Except as otherwise provided in this part 2, any person that violates this part 2 within three years after a previous violation of this part 2 by that same person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) A person who unlawfully butchers an animal belonging to another person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-43-213. Brand inspection - certificate - evidence. (1) Any livestock purchased for slaughter in Colorado from any source shall be inspected for brands and other identifying marks and a certificate issued by a brand inspector at the point of origin. Until the time of such inspection and certification, the person purchasing livestock shall hold the uninspected livestock separately and shall be responsible for the value of the livestock and the brand inspection fee until inspected and a certificate issued by a Colorado brand inspector.

(2) The only evidence of inspection at point of origin acceptable under this section shall be either the brand certificate issued and signed by the brand inspector who made the inspection or a current account of sale, showing the brands or other identifying characteristics carried by the

livestock and issued by a custom meat processor licensed by the department or a packing plant licensed by the United States department of agriculture. Livestock purchased by private contract in states where brand inspection is not maintained shall be accompanied by a bill of sale showing brands and other identifying characteristics signed by the seller or the seller's agent and witnessed by the buyer or the buyer's agent.

(3) Cattle fed by packers, either in their individual feed lots or in commercial feed lots, are subject to this article.

ARTICLE 44

Estrays

35-44-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Estray" means any bovine animal, horse, mule, ass, or alternative livestock as defined in section 35-41.5-102 (1) found running at large upon public or private lands in the state of Colorado whose owner is either known or unknown in the section where found or which is outside the limits of its usual range or pasture. It is unlawful for any person, corporation, or company, or any of its employees or agents, to take into its custody any such estray and retain possession of the same, except as provided in this article.

35-44-102. Taking up estrays - notice. No person shall take into his custody an estray animal unless the same is found trespassing upon lands owned, leased, or otherwise controlled by him. The state board of stock inspection commissioners or an authorized brand inspector representing said board has authority to move such estray animal to a safe and practical place within the immediate vicinity to be held during the legal advertising period. When any person takes into his custody an estray, within five days thereafter he shall make out a written description of such animal, setting forth all marks or brands appearing upon such animal and other marks of identity, such as color, age, size, sex, and possible owner, and forward the same by mail to the state board of stock inspection commissioners in Denver or notify the nearest authorized brand inspector. Any person having knowledge of any estray animal upon the public range may notify the state board of stock inspection commissioners, or any authorized brand inspector of said board, giving a description of said estray, and upon instructions from the board of stock inspection commissioners, or from an authorized inspector of the board, said estray shall be held by such person to be turned over to a duly authorized inspector of said board for disposition as the board may direct according to law.

35-44-103. When estray returned to owner. Upon receiving notice that any person has

taken into his custody any estray animal, it is the duty of the state board of stock inspection commissioners to make or cause to be made an examination of the state brand records, and if from this record the name of the owner or probable owner can be determined, it shall forthwith notify him of the taking into custody of such estray. Upon the owner proving to the satisfaction of the state board of stock inspection commissioners that the estray animal is rightfully his, the state board shall issue to him an order to receive the same upon payment of any reasonable charges which may have been incurred in the care of said animal.

35-44-104. Owner not found - advertisement. If the brand commissioner appointed by the state board of stock inspection commissioners is unable to determine from the brand records and description who is the owner or probable owner of any reported estrays, he shall cause notice showing a facsimile of the brand and other identifying characteristics carried by the estray to be posted in the offices of all county clerks and recorders, and licensed livestock markets and in other conspicuous places in the area where said estray was found. Said livestock notice shall state when and where the estray animal was taken into custody. In addition the brand commissioner shall cause a notice giving a general description of the estray to be placed in a local newspaper within the county where the estray is held, and said notice shall be carried in one regular issue only. Both notices shall state that unless the animal is claimed by the legal owner within ten days after the publication or posting of the notice, whichever is later, then the same shall be sold by the state board of stock inspection commissioners for the benefit of the owner when found.

35-44-105. Sale of estrays. If said estray animal is not claimed within ten days after the posting of estray notice, it shall be sold by the state board of stock inspection commissioners, through an authorized brand inspector of the board, in such manner as the board may direct. It is the duty of the brand inspector making such sale to give a bill of sale to the purchaser from the state board of stock inspection commissioners, signed by himself as inspector for the board, which bill of sale shall be legal evidence of the ownership of said animal by the purchaser thereof and shall be a legal and valid title to said animal.

35-44-106. Proceeds of sale - rules. The brand inspector making the sale of such estray shall return the proceeds of such sale to the state board of stock inspection commissioners, who shall pay the expenses incurred in taking into custody, holding, advertising, and selling such animal, and place the balance in the estray fund of said board, making a record of the same, showing the marks and brands and other means of identification of said animal, and giving the amount realized from the sale of same, which record shall be open to the inspection of the public. Should the owner of any estray that has been sold be found within three years after the sale of such animal, the net amount received from the sale of said estray, less a sum determined by the board by rule, for each estray, to be retained by the board, shall be paid to said owner upon the owner proving ownership to the satisfaction of the board.

35-44-107. Custody of estray - claimant. When any person takes into his custody any estray animal and sends a description of the same to the state board of stock inspection commissioners, said person shall be entitled to hold same lawfully until relieved of its custody by the state board of stock inspection commissioners. Should a claimant for said animal apply to the person who has custody of the estray for possession of the same, the said person shall at once notify the state board of stock inspection commissioners in writing of such application, and should the said board be satisfied that said applicant is the rightful owner, it shall forthwith issue an order authorizing said person in custody to deliver the estray to the owner, who may be required to pay any reasonable charges made by said person in custody. In case of a controversy as to what constitutes a reasonable charge, the state board of stock inspection commissioners shall fix the amount. The time of service for which said person may claim remuneration commences upon the date of notification made by the said person to the state board of stock inspection commissioners.

35-44-108. Who may take up estrays. It is unlawful for any person other than an authorized inspector of the state board of stock inspection commissioners to take into custody or retain possession of any estray, except as provided in section 35-44-107. Any person who takes into custody and retains possession of any estray without notifying the state board of stock inspection commissioners within the time as provided in this article is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

35-44-109. Official state livestock paper. It is the duty of the state board of stock inspection commissioners to designate a livestock newspaper, of general circulation among the cattle and horse owners of the state, as the official state livestock paper, wherein all estray notices and advertisements of estrays may be legally made. In case of a change being made in the selection of such paper, the paper then publishing these notices shall publish a notice of said change for at least thirty days.

35-44-110. Application as to municipalities. Nothing in this article shall be construed to repeal any of the laws now in effect in regard to the impounding of estray animals by municipalities.

35-44-111. Concealing estray - penalty. Any person who conceals any estray found or taken into his or her custody, or effaces or changes any mark or brand thereon, or carries the same beyond the limits of the county where found, or knowingly permits the same to be done, or neglects to notify or give information of estrays to the state board of stock inspection commissioners is guilty of a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

35-44-112. Abandoned livestock. (1) The state board of stock inspection commissioners shall have the charge and control of all livestock abandoned or neglected by the owners thereof, and any officer or agent of the state board of stock inspection commissioners may take charge of any such stock or animals found abandoned or neglected.

(2) The state board of stock inspection commissioners, upon taking charge of any such stock or animals, shall forthwith give notice to the owners thereof, if known, and shall care and provide for such stock or animals for a period of ten days from and after the mailing or giving of such notice to the owners of said animals or until the owners take charge of the same within said ten days. The expense of such care and provision shall be a lien upon such stock or animals and shall be paid by the owners to the said state board of stock inspection commissioners before the owners shall be entitled to the possession of the animals.

(3) Upon the owner's failure to pay said expense charges, said stock or animals or such a number thereof as may be necessary shall be sold to the best advantage by the state board of stock inspection commissioners in its discretion at public or private sale, and the proceeds of such sale shall be paid to the owners, after all expenses incurred for the care and provision of said animals and all costs of said sale are deducted. The purchaser at such sale shall be entitled to a bill of sale from the state board of stock inspection commissioners, by virtue of which the purchaser shall acquire a good and valid title; but no sale shall be made previous to the expiration of ten days from and after the date of said notice to the owners.

35-44-113. Publication of notice - sale - rules. If the owners of any animals or livestock found abandoned or neglected, as provided for in section 35-44-112, are unknown to the state board of stock inspection commissioners, its officers, or agents, the notice required by section 35-44-112 shall be given by publishing the same as provided for in the case of animals or livestock taken up as estrays. If the owner is not found in ten days after the date of the first publication of the notice, the animals or livestock may be sold. The proceeds, after deducting all expenses of such care, provision, and sale, less a sum determined by the board by rule, for each animal sold, to be retained by the board, shall be credited to the estray fund of the board, subject to the provisions of the law controlling the distribution of the fund. The amount determined by the board retained for each animal sold shall be credited to the brand inspection fund, subject to the provisions of the law controlling the distribution of the brand inspection fund.

35-44-114. Disputed ownership - animal deemed not alternative livestock. In any instance where the board determines that an animal is not an alternative livestock, any dispute as to ownership shall be decided by the parks and wildlife commission created in section 33-9-101, C.R.S.

ARTICLE 45

35-45-101. Determination of grazing rights. To prevent dissension and breach of the peace, the question as to the kind of livestock, whether cattle or sheep, that shall have the preferred or better right to graze upon any particular portion of the public domain within this state shall be determined according to the use made thereof during the last grazing season, whether such use was as cattle or sheep range and whether the same was used as a spring, summer, fall, winter, or other kind of range; but a single instance of grazing or herding certain kind of livestock on any such range over the protest of others in prior use and occupancy thereof, who graze a different kind of livestock, will not confer a better right.

35-45-102. Mixed range apportioned. Any range being used as a mixed cattle and sheep range may be apportioned and divided between the different classes of livestock, that is cattle or sheep, grazed thereon by the district court having jurisdiction whenever a controversy or dispute arises upon complaint of any interested party using said range. Upon final hearing, any such range shall be apportioned according to the requirements of the different kinds of livestock grazed or herded thereon and the nature of the different parts of the range to be apportioned and in accordance with the equities and rights of the owners of the different kinds of livestock using such range as a class, regard being paid to the extent of the user theretofore made by each class of livestock growers.

35-45-103. District court has jurisdiction. (1) Whenever a dispute arises as to which respective class of livestock has the better right to graze upon any particular portion of said public domain, the district court of the county wherein such disputed area or some part thereof lies has jurisdiction to determine the matters in an action in equity for an injunction to be brought by any person claiming such better right and against any person violating or threatening to violate any such alleged better right. In all actions brought under the terms of this article, service of process may be made in person or by publication, as provided by rule 4 of the Colorado rules of civil procedure, and the procedure shall be as provided by these rules. The plaintiff may proceed against all unknown defendants the same as in an action in rem and may have said disputed area established either as a cattle or sheep range, as the case may be. In such action, if any defendant disclaims or suffers a decree against him by default, no costs shall be taxed against him. The court may in its discretion grant a temporary restraining order or a temporary injunction as in ordinary cases of suits for injunctions.

(2) When such cause is at issue, the court shall in the first instance refer all questions of fact to three referees. Said referees shall be residents of the state of Colorado and two of them, if possible, shall be persons using or residing in the vicinity of the range concerning which the

dispute arises, and one of whom shall be engaged in the cattle business and one person engaged in the sheep business, if discreet persons engaged in said businesses are available. The two, immediately upon taking the oath as referees, shall designate some disinterested person to act as a third referee and, subject to such objection as may be made as provided by law, the court may appoint the third person so designated. In the event of failure to agree upon the third member of said board, the court shall have authority to name the third person.

(3) The referees shall possess the qualifications, exercise the powers and functions, and, except as otherwise provided in this section, be subject to the same objections as provided by law, and the procedure before said referees shall be as provided by the Colorado rules of civil procedure. Within ten days after the report of said referees is filed, any party to the action may file written objections to said report, specifically setting forth the objections thereto and asking that the same be modified or disapproved, as the case may be. The court shall thereupon hear and determine all said objections and either approve or set said report aside. Thereupon the court may require additional findings or may assume jurisdiction and determine all questions at issue and enter a decree accordingly. Unless objections are filed to said report, the same shall be final and a decree shall be entered thereon.

(4) Upon final hearing, either upon the report of said referees or at the conclusion of the hearing by the court, if it appears that plaintiff has the preferred or better right to the use of the public domain in question as against the defendants, the court shall enter a decree finding as definitely as may be the boundaries of such disputed area and may enjoin and restrain the defendants and their servants, agents, and employees, from interfering with such right of the plaintiff and others engaged in the same business and award such other relief as justice and equity may require.

35-45-104. Contents and posting of notice - violations - penalties. Whenever any such portion of such public domain is decreed as a sheep or cattle range or it is decreed that the same is entitled to be used by sheep or cattle owners, as the case may be, the court shall enter an order directing the clerk of the court to give notice of the establishment of such range, which notice shall describe the area or boundaries of the range involved, pursuant to the terms of the decree, and state in substance the findings of the court. Three copies of said notice shall be posted at conspicuous places upon said range by the sheriff of the county in which said range is situated and return made to the clerk of said court, and thereafter it is unlawful for any person, whether acting in his own behalf or as the agent, servant, or employee of another, to graze or herd stock not entitled to be herded or grazed thereon. Each such person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each day that any such person violates this article constitutes a separate offense.

35-45-105. Reapportionment of range. (1) If any given area has been adjudged to be subject to use either as a cattle or sheep range, any person in interest may thereafter institute a

supplemental proceeding in the same court which rendered the original decree, by filing a supplemental petition setting forth that such person has acquired livestock formerly grazed upon such range or ranch property adjacent to said range from an owner who formerly grazed or herded stock thereon. By reason of the change in ownership of such property the livestock theretofore grazed on said range, or part thereof, will no longer be herded or grazed thereon, and said petition may further show that said range can be apportioned and the original decree can be modified so as to permit the herding or grazing of different kinds of livestock upon a portion of said range without injury to or material interference with the rights and business of a majority of the persons then using said range and grazing the kind of livestock for which said range was originally allotted.

(2) All persons using said range shall be made parties to the proceeding, and if upon the final hearing it appears that said range can be further apportioned or that livestock of a different kind can be grazed or herded on a portion of said range theretofore used by a different kind of livestock without injury to the business of a majority of the persons running livestock under the original decree, then such change may be permitted by supplemental decree; but sufficient range shall be left subject to the terms of the original decree to meet the actual requirements of all persons still running livestock of the kind given the preferred or better right under the original decree. Notice of the provisions of said supplemental decree shall be given as in case of an original decree, and thereafter any person using the portion of range described in said supplemental decree in accordance therewith shall not be subject to fine or imprisonment for violation of any of the terms of this article.

35-45-106. Overstocking range. (1) It is declared the policy of this state to preserve the grasses and vegetation on the public domain and protect the wild game of this state in their natural ranges, and especially on the winter ranges, and to prevent erosion of the soil and thereby conserve the waters and water supply originating on the public domain ranges of this state, and to prevent the indiscriminate and unregulated overstocking of such ranges which tends to deplete and destroy such vegetation, increase erosion, and diminish the water supply of the streams and springs of the state of Colorado. After May 19, 1929, when any range is adjudged or decreed to be either a cattle or sheep range under the provisions of this article, any person using such range and any person having the right to use water from any stream or source of supply fed from the watersheds in any such range may apply to the court in a supplemental proceeding to establish that any such range is then overstocked or that said range is about to be overstocked with the kind of livestock which may lawfully be herded or grazed thereon and that the vegetation is being permanently destroyed or is about to be permanently destroyed and the water supply upon which any person is dependent is about to be diminished or impaired.

(2) All persons using said range shall be made parties defendant and the court shall proceed to hear testimony and fully investigate the conditions and determine the number of livestock that may be ranged thereon during the seasons when said range is customarily used for grazing purposes, and if it is fully and satisfactorily established by competent evidence that said range is then overstocked or is about to be overstocked, the court may determine the number of livestock that said range or portion of said range is capable of supporting for a period not

exceeding two years, enjoining all persons from willfully or intentionally grazing or herding any greater number upon said range. As between the users of any such range adjudged to be an overstocked range, those who have made prior continuous use of said range in accordance with the customary use thereof and those who have privately owned lands accessible to said range upon which their said livestock can be fed or grazed when not on the public range shall have the preferred right up to the allotted number fixed by decree of court, and any decree entered under the provisions of this section shall so provide.

35-45-107. How article construed. Nothing in sections 35-45-101 to 35-45-106 shall be construed to prohibit free transit over the public domain as provided by the acts of congress or to confer upon any individual as such an exclusive right to the use or occupancy of any part of the public domain.

35-45-108. Distribution of receipts. (1) All moneys received by the state treasurer as the state's share of the amounts collected by the federal government under the provisions of sections 3 and 15 of the "Taylor Grazing Act", and any act amendatory thereof, and under the provisions of Public Law 136, 82nd congress, approved August 31, 1951, shall be credited to a clearing account.

(2) Moneys received under the provisions of section 3 of the "Taylor Grazing Act" which are derived from each grazing district in the state shall be paid over to the counties in which such grazing districts are located, in the proportion that the acreage of each county lying within a particular grazing district bears to the total acreage of such grazing district, as such acreages are certified by the federal agency administering such provisions.

(3) Moneys received under the provisions of section 15 of the "Taylor Grazing Act" and under the provisions of Public Law 136, 82nd congress, shall be paid over to the several counties of the state from which such moneys were derived, as certified in reports furnished by the federal agency administering said provisions.

(4) All such payments shall be calculated by the state treasurer and shall be made to the respective county treasurers during the month of September of each year.

35-45-109. Range improvement fund - board of district advisers. (1) All moneys paid to the counties shall be deposited with the county treasurer in a special fund to be known as the range improvement fund of district no. __. The county treasurer of any county in which a district is located shall be the ex officio district treasurer and custodian of moneys received and shall be liable upon his official bond for all moneys deposited in said range improvement fund. The county treasurer, as ex officio district treasurer, shall pay out such money in said range improvement fund upon the warrant of the chairman or vice-chairman of the district grazing advisory board or a board of district advisers established pursuant to subsection (2) of this section and after consultation with the district manager of the grazing district in which county the moneys were deposited. Said district grazing advisory boards are established pursuant to Public

Law 94-579 (43 U.S.C. 1753) or its successor, as may be established by the secretary of the interior pursuant to the "Federal Advisory Committee Act", Public Law 92-463 (86 Stat. 770; Title 5, App.).

(2) (a) In the event that the grazing advisory boards cease to exist, the commissioner of agriculture shall establish and maintain a board of district advisers for each grazing district upon the petition of a simple majority of the livestock lessees and permittees within the jurisdiction of the district. The function of the board of district advisers shall be to determine the use of the range improvement fund in accordance with section 35-45-110.

(b) The number of advisers on each board and the number of years an adviser may serve shall be determined by the commissioner. Each board shall consist of livestock representatives who shall be lessees or permittees in the district under the board's jurisdiction and shall be chosen by the lessees and permittees in the district through an election prescribed by the commissioner. Each board of district advisers shall meet at least once annually.

35-45-110. Purposes of fund. The money deposited in the range improvement fund of any county shall be expended within such county for such purposes as may be directed by the board of district advisers of such grazing district or by the board of county commissioners in counties where there is no grazing district, including range improvements and maintenance, predatory animal control, rodent control, poisonous or noxious weed extermination, the purchase or rental of land and water rights, or for the purpose of the general welfare of livestock grazing within the district, or for any similar purpose.

ARTICLE 46

Fence Law

35-46-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Lawful fence" is a well-constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle, with all gates equally as good as the fence, or any other fence of like efficiency. Railroad right-of-way fences constructed in compliance with the statute in force on the date of construction and maintained in good condition shall be considered legal fences.

(2) "Livestock" includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo, but does not include "alternative livestock" as defined in section 35-41.5-102 (1).

35-46-102. Owner may recover for trespass. (1) Any person maintaining in good repair a lawful fence, as described in section 35-46-101, may recover damages for trespass and

injury to grass, garden or vegetable products, or other crops of such person from the owner of any livestock which break through such fence. No person shall recover damages for such a trespass or injury unless at the time thereof such grass, garden or vegetable products, or crops were protected by such a lawful fence. Even though such land, grass, garden or vegetable products, or other crops were not at such time protected on all sides by a lawful fence, if it is proved by clear and convincing evidence that livestock have broken through a lawful fence on one side of such land to reach such land, grass, products, or crops, recovery and the remedies under this section may be had the same as if such land, grass, products, or crops had been at such time protected on all sides by a lawful fence.

(2) Whenever any person stocks land, not enclosed by a lawful fence, on which such person has a lawful right to pasture or forage livestock, with a greater number of livestock than such land can properly support or water and any of such livestock pasture, forage, or water on the lands of another person, in order to obtain the proper amount of pasture, forage, or water or whenever any person stocks with livestock land on which such person has no lawful right to pasture or forage livestock and such livestock pasture, forage, or water on such land or on other land on which such person has no right to pasture or forage livestock, he shall be deemed a trespasser and shall be liable in damages and subject to injunction.

(3) All damages sustained on account of the foregoing trespasses may be recovered, together with costs of court and arbitration, and the livestock so trespassing may be taken up by the person damaged and held as security for the payment of such damages and costs. A court of competent jurisdiction in any proper case may issue an injunction to prevent further trespasses. In any action for trespass where the injury complained of has been aggravated and attended by a willful or reckless disregard of the injured person's rights, the board of arbitration, court, or jury may in addition to awarding actual damages include reasonable exemplary damages. Recovery may be had under this section either in a court of law or by arbitration as provided in section 35-46-103.

35-46-103. Board of arbitration. When any person is trespassed upon or damaged by any livestock or takes into his custody any livestock under section 35-46-102, the claim for damages occasioned by said livestock may be arbitrated by a board of three arbitrators, at the option of the party aggrieved selecting one, the owner of the livestock selecting a second, and the two thus chosen selecting a third. Said arbitrators so chosen shall meet and act as a board of arbitration within five days after a written application is made therefor by either party and written notice given to the other party. It is the duty of the person so taking into custody such livestock to notify in writing within five days after the taking into custody thereof the owner or person in charge of such livestock. If the owner or person in charge of such livestock is not known to the person taking the livestock into custody or cannot be found after diligent search and inquiry, then the person so taking custody of such livestock shall publish within one week a notice containing a full description of such livestock, including all marks and brands as nearly as can be ascertained, in a paper published nearest the place where the alleged damage occurred. In the event the owner of such livestock cannot be found within ten days after the date of the publication of such notice, the livestock shall be an estray and the state board of stock inspection

commissioners shall be entitled to said livestock subject to the lien for damage sustained and cost and care and feeding of the same by the person taking such livestock into custody. Such person shall deliver the same to the owner thereof whenever such owner furnishes the person so damaged by such livestock a bond in double the amount of the damage claimed, executed by two responsible persons, said bond to be satisfactory to such damaged party or approved by a county judge or district judge of such county, conditioned upon the payment to the person taking custody of such livestock all damages and costs, if any such damages or costs are awarded.

35-46-104. Finding of board - enforcement. The finding of said board of arbitration, when reduced to writing and signed by a majority of the members thereof, constitutes an obligation on the part of the person against whom the finding is made to pay to the aggrieved party the sum set forth in the finding of said board of arbitration. In the event the person against whom the finding of such board of arbitration is made fails, neglects, or refuses to pay to the aggrieved party the sum set forth in the finding of said board of arbitration, within thirty days from the date of the written findings of such board, then the finding of said board of arbitration may be filed in any court of record within the jurisdiction where the damage was sustained. The finding of such board so filed shall be deemed for the purposes of sections 35-46-101 to 35-46-110 a judgment of said court and execution may issue thereon as by law provided in judgments of said court. The costs agreed upon to be incurred in said arbitration shall follow the findings as in suits at court. If the owner of any livestock makes a tender in money of all damages to the person claiming damages, the person claiming damages shall pay all costs and expenses thereafter accruing unless he is awarded a larger amount than was tendered by the owner of such livestock.

35-46-105. Grazing on roads and in municipalities - penalty. (1) It is unlawful for the owner or any person in charge of any livestock knowingly to cause or permit such livestock to graze or run at large in any incorporated or unincorporated municipality, lane, road, or public highway if the same is separated from the land or range of such owner or person in charge by a fence or other barrier sufficient to keep livestock from reaching such municipality, lane, road, or public highway. In case any such livestock so running at large is killed or injured by any vehicle, the owner, driver, or person in charge of such vehicle shall not be liable therefor if the killing or injury is not malicious, willful, or wanton. Nothing in this section shall be applicable to livestock having a person in charge when such livestock are being driven on or through such municipalities, lanes, roads, or public highways or when range livestock being ranged on their usual range or allotments have broken through maintained drift fences or cattle guards and are on the premises unknown to the owners.

(2) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars for each offense. It is the duty of every Colorado state trooper, sheriff, or other peace officer to prefer charges against any person violating this section and take custody of such livestock and place them on feed and water. Such livestock may be placed by such officer in the custody of a

responsible person who shall care for the same pending disposition of any court action under this section. The livestock may be held in case of conviction of the owner or other person in charge for the payment of any reasonable costs of handling, care, and feed and of court and for the payment of all fines which may be levied against said owner or other person in charge. In the event such costs and fine are not paid within ten days after the entry of judgment, such court, after reasonable notice to such owner and any known persons in interest as determined by the court, may order sufficient numbers of such livestock sold to pay such costs and fine.

(3) In cases where such livestock are horses, mules, or burros of inferior quality and of the apparent value of less than thirty-five dollars per head and the owner or any other person in interest cannot be found after reasonable search and inquiry, the state board of stock inspection commissioners, or its duly authorized representative, after posting of notice at a conspicuous place at the courthouse of the county where such livestock are found for a period of ten days, may sell such livestock at private or public sale as stated in said notice, and the proceeds of such sale remaining after the payment of all reasonable costs shall be held for the owner or other person in interest when found as is provided by law for estray funds.

35-46-106. Care of stock taken into custody. It is the duty of any person who takes any animals into custody under the provisions of this article to feed and care for such animals in a reasonable, careful, and prudent manner and keep the same in as good order and condition as when so taken into custody by the said party, and he shall be liable for any damage occasioned by his failure to do so. For such feed and care such party shall be entitled to recover from the owner of such animals a reasonable compensation, to be recovered as provided for the recovery of damages sustained.

35-46-107. Unlawful to break fence or open gate. It is unlawful for any person to willfully break down or cause to be broken down any fence or gate or to leave open any gate in such fence. This section shall not apply to the owner or occupant unless such owner or occupant causes such fence or gate to be broken down or left open with malicious intent.

35-46-108. Lien for trespass and care. Any party taking into custody animals under the provisions of this article shall have a lien upon such animals for the damages occasioned by the trespass of such animals and for a reasonable compensation for their feed and care while in the possession of the party, if damages are recovered.

35-46-109. Taking into custody or release unlawful - penalty. It is unlawful for any person to take into his custody any livestock without complying with the provisions of sections 35-46-102 to 35-46-105 unless such taking be done in good faith. It is unlawful for any person, forcibly or by trickery, fraud, or deceit, or without the knowledge and consent of the person having possession of any livestock taken under such provisions, to remove the same from the

possession of such person. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

35-46-110. Public highways - railways excluded. "Public highways", as used in this article, shall not be construed to include railways of any kind or railway rights-of-way of any kind.

35-46-111. Right-of-way fences. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and subsection (4) of this section, it is the duty of the department of transportation to maintain right-of-way fences constructed as of June 1, 1994, by the department at or near the boundary of the department's highway property in agriculturally zoned areas along and adjacent to all federal aid highways where such highways are maintained by the department. The department shall make repairs to such right-of-way fences when necessary only upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(b) If the department removes a right-of-way fence in an agriculturally zoned area during a construction project, the department shall replace and maintain said fence unless the landowner and the department agree that said fence shall not be replaced.

(2) In nonagriculturally zoned areas, the department may erect a right-of-way fence where the highway has been declared a freeway pursuant to section 43-3-101, C.R.S., or in areas that the landowner and the department agree that said fence be erected. If the department erects a right-of-way fence or has previously erected a right-of-way fence where the highway has been declared a freeway, the department shall maintain and repair said fence when necessary upon actual notice to the department. Neither the department nor the landowner is liable for any damages caused by the failure to adequately construct, maintain, or repair the right-of-way fence unless actual notice is given to the department.

(3) Upon actual notice, the department shall maintain right-of-way fences constructed by the department, where highways are maintained by the department, at or near the boundary of the department's highway property adjacent to properties owned by municipalities unless otherwise agreed to in writing by the department and the municipality.

(4) If, in both agriculturally and nonagriculturally zoned areas, the landowner adjacent to an existing right-of-way fence and the department agree that said fence shall be removed, the right-of-way fence shall be removed by the department at its expense. If the landowner removes or causes the removal of the right-of-way fence without agreement by the department, the department shall not be required to reimburse the landowner for such removal, and the landowner shall be liable for any and all damages caused by the unauthorized removal of the fence.

(5) If a right-of-way fence is either removed or not replaced pursuant to subsection (1) or (4) of this section and the landowner who agreed that the fence be removed or not replaced or

any subsequent landowner of property adjacent to the right-of-way later desires to erect a right-of-way fence, said fence may be erected by the landowner at the landowner's expense, but only upon prior agreement by the department. Such right-of-way fence shall be constructed in accordance with the standards applicable to the department at the time such fence is erected, and the department is required to make repairs to such right-of-way fence upon actual notice to the department. Liability for any damages caused by failure to adequately construct the right-of-way fence shall be borne by the landowner at the time the damages are incurred.

(6) All agreements required pursuant to subsections (1) to (5) of this section shall be in writing, be recorded by the department in the office of the county clerk and recorder of each county where the real property adjacent to the right-of-way is located, and be binding upon and notice to all persons or classes of persons claiming any interest in said property.

(7) If a landowner and the department agree to either remove or not replace a right-of-way fence pursuant to subsections (1) to (5) of this section and the landowner at the time of the agreement or any subsequent landowner does not maintain livestock, as defined in section 35-46-101 (2), on the land adjacent to a highway right-of-way, any livestock that enters the highway right-of-way through that land shall not be a dangerous condition pursuant to section 24-10-106 (1) (d), C.R.S. Neither the landowner nor the department shall be liable for any damages caused by such livestock because of the absence of such right-of-way fence.

(8) If a person herds livestock along a highway adjacent to property from which a fence has been removed pursuant to this section and any of the livestock strays onto that property, the landowner may not recover damages for trespass and injury to grass, garden or vegetable products, or other crops from the owner of the livestock unless the landowner can prove the person herding the livestock allowed the livestock to enter the property without making an effort to remove the livestock. Nothing in this section is intended to change the status of open range law and statutes relating to fences in Colorado.

(9) Notwithstanding any other provision of this section, the department may erect and maintain a right-of-way fence in any area at the department's expense, in its sole discretion, but the department has no duty to erect and maintain any fence at its expense.

35-46-112. Partition fences. Where the agriculture or grazing lands of two or more persons adjoin, whether or not such lands are farmed or grazed, it is the duty of the owner of each tract to build one-half of the line fence, such fence to be a lawful fence as described in section 35-46-101. When the owner or tenant of any agricultural or grazing lands owns a previously erected lawful fence upon any line between such land and the agricultural or grazing lands of any other person, and such other person or anyone holding under such person, occupies the adjoining land, it is the duty of such owner to pay the person owning such fence one-half of its cash value.

35-46-113. Cost and repair - how recovered. Partition fences between agricultural and grazing land shall be erected and also kept in repair at the joint cost of the owners of the respective adjoining tracts, except as otherwise agreed by such owners. If after thirty days written notice, served personally or by registered mail by either the owner or tenant of one tract upon the

owner or tenant of the other tract, such other owner neglects or refuses to erect or repair one-half of the partition fence, the person giving notice may proceed to erect or repair the entire partition fence and collect by a civil action at law one-half the entire cost thereof from the other owner. Any judgment obtained against the owner of any land for the value of his share of any such partition fence or the repair thereof shall be a lien upon such owner's land to which such fence is appurtenant, and a special execution may issue and be levied upon the land to which such fence is appurtenant as in the manner now prescribed for the levying of an execution under the foreclosure of a mortgage upon real property. Such land may be sold under sheriff's sale for the purpose of satisfying such special execution in the same manner as is now provided for the foreclosure of mortgages on real property.

35-46-114. Fence may be removed - when. When any person unwittingly, or by mistake, erects a fence upon the land of another and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove such fence at any time within one year after giving or receiving notice that the line has been run; but when the fence to be removed forms any part of a fence enclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop can, with reasonable diligence, be gathered and secured.

35-46-115. Electric fences - approval by department of agriculture. (Repealed)

ARTICLE 47

Livestock - Running at Large

35-47-101. Horses and mules running at large. It is unlawful for any owner, or the agent, lessee, bailee, or employee of such owner of any horses or mules, to knowingly permit any of said animals to run at large, within a distance of ten miles from any city having one hundred thousand or more population; within a distance of five miles of any city having between five thousand and thirty thousand population; within a distance of one mile of all other cities or towns; and within a distance of one mile from the business area of any unincorporated town or village; but nothing in this article shall prevent anyone from driving any of said animals to market or from pasture to pasture or prevent the use of horses or mules for riding, driving, or drawing animal-propelled vehicles or machinery. This article shall not affect any common used solely for grazing purposes which has been established by land grant and ratified by treaty.

35-47-102. Duty of custodian - fees - recovery. Where said animals are in violation of section 35-47-101, it is the duty of every sheriff or other peace officer of the county, on complaint of any person, to take custody of such animals and place them on feed and water. He may appoint a custodian for such purpose and pay such custodian a fee of four dollars per day to be assessed as costs; and the owner or agent may give the sheriff or other officer a redelivery bond in sufficient sum for repossession of his stock, pending a court action. In cases where the owner or agent is known and has been convicted in court, the sheriff or other officer may dispose of such animals or sufficient numbers of them to pay for the fine and reasonable costs of feeding and other expenses in connection therewith, after giving ten days notice by posting three notices in public and conspicuous places. In cases where the owner of such animals is unknown, the animals shall be taken up and disposed of by the state board of stock inspection commissioners, or one of its duly authorized representatives, the same as other estrays as provided for by law.

35-47-103. Penalty. Any person who knowingly permits any of said animals to run at large is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

ARTICLE 48

Bulls, Rams, and Boars

35-48-101. Lien one year. The keepers of bulls, rams, and boars, in this state, have liens upon the get of such animals for the space of one year from the birth of same, for payment of service of such bull, ram, or boar.

35-48-102. Bona fide purchasers protected. Section 35-48-101 shall not apply to a bona fide purchaser without notice of the lien.

35-48-103. Inferior bulls or rams. (1) It is unlawful for any person, firm, or corporation to permit any inferior bull over the age of one year or any inferior ram over the age of two months to run at large in this state. Any bull shall be considered an inferior bull that is not registered or eligible for registration as a purebred animal.

(2) Any person permitting cows of which he is the owner or agent of the owner to run at large upon the public ranges of this state shall furnish during breeding season at least one registered purebred bull of one of the recognized beef breeds, not less than eighteen months of age, for every twenty-five head of cows or fraction thereof over ten head so permitted to run at

large in this state. No owner or agent of the owner shall permit any jersey, holstein, guernsey, ayrshire, or other bull not registered or eligible for registration as one of the recognized beef breeds to run at large in this state under any pretense whatever, and should any such bull break through any enclosure surrounded by a lawful fence, the owner of such animal shall be liable for all damages occasioned by such trespass.

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each offense.

35-48-104. Castration of inferior animals. It is lawful for any stock grower to castrate or cause to be castrated any inferior animal found running at large; but, if any person castrates any animal belonging to another, without permission, and on proper evidence before any competent court it is proved to the satisfaction of said court that such animal was not within the prohibition of section 35-48-103, said person so castrating such animal shall be liable for damages in three times the value of the animal so castrated and costs of suit.

ARTICLE 49

Livestock Water Tanks

35-49-101. Short title. This article shall be known and may be cited as the "Livestock Water Tank Act of Colorado".

35-49-102. Legislative declaration. It is the policy of the state of Colorado to encourage and improve range conditions for livestock within its borders through the construction of watering tanks, to provide a system of priorities of right of use thereof, and to protect adjudicated water rights and the public interest by providing an official record and reasonable public supervision of such watering tanks.

35-49-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Livestock water tanks" includes all reservoirs created by dams constructed after April 17, 1941, on watercourses, the channels of which are normally dry as determined by the state engineer, having a capacity not exceeding ten acre feet and a vertical height not exceeding fifteen feet from the bottom of the channel to the bottom of the spillway to be used for stock watering purposes.

35-49-104. Statutes inapplicable. The provisions of sections 37-87-101 to 37-87-108 and 37-87-114 to 37-87-115, C.R.S., shall not apply to livestock water tanks of the character defined in section 35-49-103.

35-49-105. Not used for irrigation. No livestock water tanks constructed under the provisions of this article shall be used for irrigation purposes, and nothing contained in this article shall be construed as conferring upon the owner of any such livestock water tank a priority of use superior to any vested water right or to an adjudicated appropriation of water pursuant to state laws. Unless built upon an intermittent or perennial main stream, dams creating such livestock water tanks shall be deemed to have a rebuttable presumption that there is no injury to adjudicated water rights when built pursuant to the specifications set forth in section 35-49-103. If used solely for watering of livestock in areas known to be deficient in windmill water, having a pumping capacity of less than five gallons per minute, dams of greater capacity than those designated in section 35-49-103 may be constructed on any ephemeral stream, but in such event, the state engineer may require the construction of drainage facilities to reduce the water impounded in the reservoir to the capacity prescribed in section 35-49-103, within a thirty-six hour period.

35-49-106. Plans submitted to state engineer. Anyone proposing to construct a dam for the creation of a livestock water tank, as described in section 35-49-103, shall submit to the state engineer for approval an application on a form provided by the state engineer showing the general location of such proposed dam with reference to section, township, and range, location and dimensions of spillway, and the number, location, and size of dams already constructed within the watersheds of the dry channel on which such dam is proposed to be built. Nothing contained in this section shall be construed to specify plans and specifications of such technical detail or nature as to require preparation by an engineer or construction of such stock water tanks under the supervision of an engineer; it being the intent and purpose of the provisions of this section that the state engineer shall be apprised by the completed application of pertinent information sufficient to enable the state engineer to ascertain the general location of the water tank, its operation in relation to tanks already constructed, its relative priority rights, its effect on existing appropriations of water, its capacity, its dam dimensions, the necessary and reasonable factors of safety, and its compliance with the provisions of this article.

35-49-107. Construction requirements. (1) The state engineer shall examine each application submitted and, if the state engineer approves the same, shall return one copy of each such application with the approval of the state engineer thereon to the person submitting the same and file the other copy at the office of the state engineer. If the state engineer disapproves such application, or any part thereof, the same shall be returned to the applicant for correction and revision. In cases where the state engineer deems it necessary, before approval thereof, the

state engineer may inspect the proposed water tank site and make such independent investigation as necessary. Whether the state engineer approves such application, or disapproves it and returns the same for correction and revision, the state engineer shall act within fifteen days after the application is submitted. Until the approval by the state engineer of an application has been obtained, the construction of such dam is prohibited.

(2) The provisions of this section and section 35-49-112 specifying approval by the state engineer and providing a fee therefor shall not apply to dams having a vertical height not exceeding five feet from the bottom of the channel to the bottom of the spillway and which impound not more than two acre feet of water.

(3) Anyone proposing to construct a dam for the creation of a livestock water tank, as described in section 35-49-103, shall comply with section 35-49-106. Every owner of a proposed reservoir for stock watering purposes who desires to obtain a priority number for such structure shall comply fully with all pertinent provisions of this article.

35-49-108. State engineer to inspect dam. When such a dam is completed the state engineer shall be notified of such completion and, thereafter, may inspect said stock water tank. If the state engineer finds that the construction fails to conform with the application approved by the state engineer, it then becomes the duty of the owner of such dam to make such change and corrections therein as the state engineer has determined to be necessary to correct such failure, and when the same have been made, the state engineer shall provide in writing approval of such structure. Approval shall be granted by the state engineer upon reasonable compliance with the approved application and standard specifications. A livestock water tank shall not be disapproved because of failure to observe technical engineering details in construction.

35-49-109. Priority determined - how. The state engineer's certificate of approval of a livestock water tank on each normally dry stream and its tributaries shall be chronologically numbered in the order of approval and in concert with any erosion control dams approved pursuant to section 37-87-122, C.R.S. Priority of right as between such tanks located on or within the watershed of each such dry stream shall be determined by such numbers seriatim, number one being first in such right.

35-49-110. Standard plans - publication. The state engineer shall prepare and keep in file at the office of the state engineer standard plans, drawings, and specifications for livestock water tanks, which shall be subject to revision by the state engineer and shall in general be used as a guide by persons proposing to construct such tanks. Publication of these plans shall be subject to the approval and control of the executive director of the department of natural resources.

35-49-111. When conduits not required. Where, in the judgment of the state engineer,

tanks upon any stream and its tributaries do not require conduits for purposes of safety or the protection of prior livestock water tank rights, it is lawful for the state engineer to approve an application not calling for conduits. Nothing in this section shall abrogate the right of any owner of a vested water right or appropriation of water to require such conduits in any case where necessary to protect such senior right.

35-49-112. Fees deposited in general fund. Each application for a livestock water tank submitted to the state engineer under the provisions of this article shall be accompanied by a fee of fifteen dollars. This fee shall be deposited by the state engineer with the state treasurer who shall credit all such fees to the general fund of the state.

35-49-113. Assignment of priority number. (Repealed)

35-49-114. Approval required for reservoir. (Repealed)

35-49-115. Penalty. The owner of any dam or reservoir failing to comply with the provisions of this article shall be subject to a penalty of not more than twenty-five dollars nor less than five dollars, to be recovered and disposed of as are fines for violations of section 37-87-114, C.R.S.

35-49-116. Appropriation - transfer of funds. The general assembly shall annually appropriate from the general fund moneys for the administration of this article.

ARTICLE 50

Livestock Health Act

35-50-101. Short title. This article shall be known and may be cited as the "Livestock Health Act".

35-50-102. Legislative declaration. The general assembly finds and declares that the diagnosis, control, and eradication of livestock diseases are matters of statewide concern. Livestock disease control is essential to the livestock industry and the health of the economy of

the state of Colorado. The provisions of this article are enacted to protect the public health, safety, and welfare.

35-50-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited veterinarian" means a veterinarian approved by the United States department of agriculture in accordance with 9 CFR 161, as may be amended from time to time.

(2) "Commission" means the state agricultural commission.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Department" means the department of agriculture.

(5) "Hold" means a temporary order issued by the state veterinarian when an infectious or contagious disease is suspected in livestock to isolate any specific livestock, premises, county, district, or section of the state; restrict the movement of livestock; and specify sanitary measures, pending completion of testing.

(6) "Infectious or contagious disease" means a reportable or emerging disease of livestock that poses a significant risk to the livestock industry of the state resulting from infectious agents, such as viruses, rickettsia, bacteria, fungi, protozoa, internal or external parasites, or prions, or any reportable or emerging communicable disease that is capable of being transmitted from one animal to another animal or to a human, whether communicated directly or indirectly through an intermediate plant or livestock host, a vector, or the environment.

(7) "Livestock" means cattle, sheep, goats, bison, swine, mules, poultry, horses, alternative livestock as defined in section 35-41.5-102 (1), and all other domesticated animals raised or kept for profit.

(8) "New or emerging disease" means an emerging livestock disease defined as a newly identified pathogen or strain of pathogen, a known pathogen in a new location, or a new presentation of a known pathogen.

(9) "Owner" means the person or entity owning the livestock or property and the owner's officers, members, employees, agents, attorneys, and representatives.

(10) "Quarantine" means an order issued by the commissioner when testing has confirmed the presence of an infectious or contagious disease in livestock, which order isolates specific livestock, premises, counties, districts, or sections of the state; restricts the movement of livestock; and specifies sanitary measures.

(11) "Reportable disease" means an infectious or contagious disease specified by rule as reportable to the state veterinarian.

(12) "State veterinarian" means the state veterinarian of the Colorado department of agriculture or his or her authorized representative.

(13) "Test" or "testing" means or applies to the diagnostic test or any other method approved by the state veterinarian for detecting infectious or contagious diseases in livestock.

35-50-104. State veterinarian and authorized representatives. (1) Subject to section 13 of article XII of the state constitution, the commissioner is authorized to employ a licensed

doctor of veterinary medicine as state veterinarian, who will be an authorized representative of the department.

(2) The commissioner may employ, as assistants and authorized representatives, accredited veterinarians who are licensed to practice in Colorado as may be necessary to assist the state veterinarian in carrying out the duties and functions set forth in this article.

(3) The commissioner may commission graduate veterinarians located in various portions of the state, to be known as commissioned state veterinarians. Such commissioned state veterinarians may be called upon by the state veterinarian to perform such special duties in all hazards arising from any livestock emergencies as may be assigned to them, and they shall report to the state veterinarian. Commissioned state veterinarians shall perform only such special duties as may be assigned to them. Such commissioned state veterinarians shall hold their commissions at the pleasure of the commissioner and may be removed at any time.

(4) The commissioner may appoint or employ competent persons to perform duties as assigned by the state veterinarian for disease control or livestock emergencies.

(5) The department shall administer an infectious or contagious disease surveillance, control, and eradication program and shall supervise or be responsible for the supervision of all personnel engaged in any county or area infectious or contagious disease control program. The service of personnel commissioned or appointed pursuant to subsections (3) and (4) of this section shall be paid for by the livestock owner unless specifically provided for by local, state, or federal funding.

(6) All persons utilized by the commissioner, the department, and the state veterinarian pursuant to this section, whether employed or volunteer, shall be deemed employees of the department for purposes of article 10 of title 24, C.R.S.

35-50-105. Powers and duties of the commissioner. (1) The commissioner is responsible for regulation related to livestock disease or other livestock emergencies among or affecting livestock in the state.

(2) The commissioner is authorized to administer and enforce the provisions of, and any rules adopted pursuant to, this article.

(3) The commissioner may adopt, subject to the commission's approval, all reasonable rules for the administration and enforcement of this article including, but not limited to:

(a) A designation of livestock diseases to be diagnosed, controlled, or eradicated;

(b) A designation of livestock diseases to be reported to the state veterinarian;

(c) The health standards for importation of livestock into the state;

(d) The standards and requirements for livestock health certificates;

(e) The standards and requirements for pet animal health certificates, as such certificates may be required pursuant to section 35-50-112 (2);

(f) The standards and requirements for testing livestock for infectious or contagious diseases;

(g) The standards and requirements for vaccinating livestock against infectious or contagious diseases;

(h) The standards and requirements for surveillance, testing, or implementation of disease control or other sanitary measures to prevent the spread of infectious or contagious livestock diseases;

(i) The standards and requirements for the disinfection of premises to prevent the spread of infectious or contagious livestock diseases;

(j) The standards and requirements for identification and traceability of livestock;

(k) The standards and requirements for euthanasia of livestock to prevent the spread of infectious or contagious livestock diseases;

(l) The standards and requirements for disposal of livestock carcasses;

(m) The standards and requirements in preparation for, response to, or recovery from livestock disease or disaster;

(n) The form and manner of disease reporting, as required by section 35-50-108;

(o) Establishment of state emergency preparedness plans related to livestock health;

(p) The standards and requirements for prevention of diseases in livestock; and

(q) Livestock disease prevention by the state veterinarian.

(4) The commissioner may conduct hearings required under sections 35-50-117 and 35-50-118 pursuant to article 4 of title 24, C.R.S., and may use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(5) The commissioner may hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties of the commissioner. Upon failure or refusal of a witness to obey any subpoena, the commissioner may petition the district court, and, upon proper showing, the court may order a witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as contempt of court.

(6) The commissioner may enter into cooperative agreements with any agency or political subdivision of this state or any other state or with any agency of the United States government for the purpose of carrying out the provisions of this article, receiving grants-in-aid, and securing uniformity of rules and regulations. This cooperative agreement may extend to the testing, condemnation, appraising, paying of indemnities, and other like purposes regarding animal disease control, as the commissioner and appropriate division of the United States department of agriculture may agree upon. When such agreement is effected, the veterinary inspectors of such division, working in cooperation with the commission, have the same power to enforce the provisions of this article as an assistant or commissioned state veterinarian. The legal authorities of any county or municipality in which the state or federal authorities take up the work of infectious or contagious disease control or eradication may appropriate, for aiding in such work, such sums as such authorities may deem adequate and necessary.

(7) The commissioner, alone or in cooperation with other agencies of the state or the federal government, may disseminate information by publication or undertake other educational efforts pertaining to livestock disease diagnosis, control, or eradication and livestock emergency preparedness.

(8) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

35-50-106. Veterinary vaccine and service fund - expenditures - rules. (1) The commissioner may promulgate such rules as are necessary to establish a fund into which the proceeds from the sale of supplies and services shall be deposited. The proceeds from this fund are specifically and continuously appropriated for personnel necessary to carry out the provisions of this article, the purchase of supplies and such other laboratory expenses, and incidental expenses, including travel directly incidental to the infectious or contagious disease control and eradication program, as may be determined by the commissioner.

(2) The moneys in the veterinary vaccine and service fund shall not be transferred or revert to the general fund or to any other fund.

35-50-107. Disease detection and prevention. Whenever the commissioner reasonably suspects that livestock are in or from an area of concentration or point of distribution where there is a potential for the spread of disease or that the livestock may have been exposed to or are suffering from an infectious or contagious disease, the commissioner may, as a sanitary measure, conduct surveillance or otherwise inspect the suspected livestock, under such rules as the commissioner may adopt.

35-50-108. Mandatory reporting. (1) Any person who knows or has reason to believe that any livestock that belongs to or is in the possession of such person, or any livestock upon such person's premises, has a reportable disease shall immediately report such disease to the state veterinarian.

(2) Whenever any veterinarian licensed in this state suspects a reportable disease in livestock of the state, such veterinarian shall immediately report such findings to the state veterinarian.

(3) Every licensed, accredited veterinarian making tests upon livestock for tuberculosis in this state, immediately after the tests are concluded, shall report the result of the tests of all such livestock tested to the state veterinarian.

(4) Diagnostic laboratories located within the state shall report all positive results of testing for reportable diseases.

(5) Every veterinarian licensed in this state shall report all positive results of any testing for reportable diseases.

(6) Any veterinarian who or diagnostic laboratory that reports, in good faith and in the normal course of business, disease test results pursuant to this section shall be immune from liability in any civil or criminal action brought against such veterinarian or diagnostic laboratory for reporting.

35-50-109. Inspection and testing. (1) Whenever it becomes known to the commissioner that an infectious or contagious disease exists among livestock of the state, the

commissioner may inspect all livestock in the state, under such rules as the commissioner may adopt.

(2) Whenever it becomes known to the commissioner that an infectious or contagious disease exists among livestock of the state, the commissioner may compel the testing of all livestock in the state, under such rules as the commissioner may adopt.

(3) Any owner whose livestock are suspected, after epidemiological investigation, of having an infectious or contagious disease shall, upon order of the commissioner, assemble such livestock and provide the necessary facilities for inspection and collection of such samples as may be deemed necessary to conduct tests of such livestock for the infectious or contagious disease, and shall render such assistance as required.

(4) All samples drawn in testing for an infectious or contagious disease shall be forwarded to the department's animal health laboratory or any other laboratory approved by the state veterinarian for testing.

(5) Whenever any livestock are tested, the livestock shall be individually identified, as specified by the commissioner in such rules as the commissioner may adopt. Official identification shall not be removed from such livestock or altered in any fashion.

(6) The owner of livestock ordered tested or treated shall be responsible for the costs of all testing or treatment, unless specifically provided for by local, state, or federal funding.

(7) If the owner of livestock ordered treated or tested, after reasonable notice as determined by the commissioner, fails to dip, spray, test, or otherwise treat such livestock as ordered by the commissioner, the commissioner may seize, or cause to be seized, dipped, sprayed, tested, or otherwise treated, such livestock and hold and sell the same, or such part of the livestock as may be necessary, to pay all costs of the inspection, seizing, caring for, dipping, spraying, testing, or other treatment, together with cost of sale. Such sale shall be made at such time and place, and in such manner, as may be prescribed by the commissioner after not less than three days' nor more than fifteen days' notice of the time, place, and purposes of such sale has been given by the commissioner to the owner of the livestock and to each secured party holding a security interest in the subject livestock, which appears in the list of effective filings as maintained by the central filing officer pursuant to the "Central Filing of Effective Financing Statement Act", article 9.5 of title 4, C.R.S. If personal service of such notice cannot be had within the county in which the livestock are being held by the commissioner, such notice may be given either by personal service outside of such county or by advertisement in the official state livestock paper. The owner of livestock so seized and held, or any secured party holding a security interest in such livestock, which appears in the list of effective filings as maintained by the central filing officer pursuant to the "Central Filing of Effective Financing Statement Act", article 9.5 of title 4, C.R.S., at any time prior to such sale, may recover possession of the livestock upon payment to the commissioner of the amount of the costs incurred by order of the commissioner against such livestock. Any sum realized from the sale of such livestock over and above the amount of the costs actually incurred against such livestock shall be returned by the commissioner to the owner of such livestock if the owner is known or can by reasonable diligence be found. Otherwise, such surplus shall be placed in the estray fund, subject to the law in effect regarding such fund.

(8) Whenever the state veterinarian finds indications of any infectious or contagious

disease among any livestock in this state and the state veterinarian is unable to determine positively the exact nature of such disease, the state veterinarian may order one of the animals so suspected slaughtered in order that a post mortem examination may be made to determine the character of the disease.

(9) Whenever the state veterinarian has good reason to believe that any disease so investigated is contagious or infectious and that such livestock are likely to communicate the disease to other livestock, the state veterinarian may at once establish a hold over such livestock and premises and may take such steps as may be deemed necessary to prevent the spread of such contagion or infection. Such hold shall be legal and binding in the same manner as a quarantine established pursuant to section 35-50-111, and any violation of such hold or order of the state veterinarian shall be considered an unlawful act pursuant to section 35-50-116.

(10) Whenever in the opinion of the state veterinarian there exists within this state a livestock disease that he or she is unable to diagnose or identify, the commissioner may call upon the veterinary department of Colorado state university to cause scientific investigation to be made to determine the exact character of such disease. Colorado state university may charge the actual and necessary direct expense of laboratory and diagnostic procedures connected therewith.

35-50-110. State livestock disease diagnostic laboratories. The rocky mountain regional animal health laboratory and the Colorado state university veterinary diagnostic laboratories, collectively known as the state livestock disease diagnostic laboratories, shall function to provide disease testing to support the department's livestock disease programs. The laboratories shall be scaled to provide testing of such volume as to meet the potential disease control, protection, and surveillance needs of the livestock industry of the state.

35-50-111. Quarantine. (1) Whenever the commissioner deems it necessary to quarantine any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of an infectious or contagious disease among the livestock within the state, the commissioner may, through the state veterinarian, call on all sheriffs or other peace officers of any county within the state to assist in maintaining such quarantine and to arrest anyone who may violate such quarantine or any rules made by the commissioner for the purpose of maintaining such quarantine. It is the duty of all sheriffs or other peace officers to act in such cases when so called upon, and they shall be allowed such recompense as is provided by statute for similar services.

(2) The commissioner may place a hold upon any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of an infectious or contagious disease when clinical signs and symptoms suggest the presence of the disease and laboratory confirmation is pending.

(3) Once testing has confirmed the presence of an infectious or contagious disease, the commissioner may quarantine any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of any infectious or contagious disease within the state, under such rules as the commissioner may adopt.

(4) Whenever the commissioner finds it necessary to quarantine any livestock, ranch, farm, premises, or portion of this state because of an infectious or contagious disease, the commissioner may hold in quarantine such ranch, farm, premises, or part of this state as the commissioner may deem necessary after all livestock have been removed therefrom, until such time as in the judgment of the state veterinarian there is no further risk of exposing livestock to disease by permitting them to inhabit such quarantined area.

(5) Held or quarantined livestock shall be treated, fed, and cared for at the expense of the owner. All expenses of a hold or quarantine shall be borne by the owner of the livestock so held or quarantined and shall constitute a lien on such livestock.

35-50-112. Importation of livestock - pet animal health certificates. (1) It is unlawful for any person, firm, or corporation to ship or drive into Colorado any livestock unless such livestock are accompanied by an official health certificate, except as may be set forth in rules promulgated by the commissioner. Such health certificate shall be in the form and manner as prescribed by the commissioner. No livestock known to be affected with, or exposed to, any infectious or contagious disease may be imported into Colorado except as authorized by rule. Livestock shall also meet all federal interstate requirements.

(2) The commissioner may promulgate rules creating and requiring pet animal health certificates. For the purposes of this section, "pet animal" means dogs, cats, rabbits, guinea pigs, hamsters, mice, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild, domestic, or hybrid animal kept as a household pet, except livestock as defined in section 35-50-103 (7).

35-50-113. Condemnation of livestock. (1) Whenever the state veterinarian reports to the commission that there exists an outbreak of contagious or infectious disease among livestock of this state of such a character as to endanger and imperil the livestock of the state, the commission, upon approval of the governor, may issue an order of condemnation to condemn and destroy any livestock so infected or any livestock that has been exposed to or is deemed by the commission capable of communicating such contagious or infectious disease to other livestock and to condemn and destroy any barns, sheds, corrals, pens, or other property that the commission may determine is necessary to be destroyed in order to prevent the spread of such contagion or infection. Such condemnation and destruction shall take place only when in the opinion of the commission and the governor an emergency exists and such action is justified and necessary for the safety and protection of the livestock of this state.

(2) Whenever the state agricultural commission finds it necessary to condemn and destroy any animals or property within this state because of any contagious or infectious disease, such animals or property shall not be destroyed until after a fair appraisal has been made of the value of such animals or property by three appraisers, one to be appointed by the state agricultural commission, one by the owner of the property to be destroyed, and the third to be selected by these two. Such appraisers shall make a report to the commission under oath as to their appraisal and the commission shall forward such appraisal to the governor with such

recommendation as to the proportion of such appraisement to be considered a just bill against the state of Colorado as the commission may think right.

(3) Any dispute or protest regarding the appraisal shall not delay destruction of the animals or property.

35-50-114. Indemnification of livestock owners. (1) To meet the emergency caused by any outbreak of contagious or infectious disease, the governor may cause to be issued the state's certificate of indebtedness with which to indemnify owners of property destroyed to pay the necessary costs and expense of exterminating and eradicating such contagion or infection. This section shall not apply to the diseases for which federal indemnity is paid to the owners. In the case of a disease for which federal indemnity is paid, combined state and federal indemnity shall not exceed actual appraised value when an appraisal is required.

(2) The commissioner, upon the recommendation of the state veterinarian, may authorize the payment of indemnity to any livestock owner whose herd, pursuant to written agreement with the state veterinarian, is sold for slaughter or destroyed because it is exposed to or diagnosed with an infectious or contagious disease; except that such indemnification, when combined with any other moneys received by the owner for the livestock, shall not exceed ninety percent of the market value for animals of comparable grade and of the same or similar type. Notwithstanding any provision of this section to the contrary, indemnity shall not be paid for brucellosis reactor livestock.

(3) There is hereby created in the state treasury the diseased livestock indemnity fund. The unexpended and unencumbered balance of moneys appropriated by the general assembly for payments for the services of commissioned or appointed personnel pursuant to section 35-50-104 shall be credited to the diseased livestock indemnity fund, upon approval of the commissioner, at the end of each fiscal year. The moneys in the fund are continuously appropriated for the purpose of making payments as provided in this section.

(4) No indemnity shall be paid when:

(a) The livestock are owned by the United States or a state, county, municipality, or other government entity;

(b) The livestock were brought into the state contrary to this article, the rules of the commissioner, or an order of the commissioner;

(c) The livestock were found to be diseased upon arrival in the state or were exposed to the disease prior to their arrival;

(d) The livestock were previously affected by any other disease that by its nature and development was incurable and necessarily fatal;

(e) The livestock were purchased at the time of a quarantine or purchased when due diligence and caution would have shown the livestock to be diseased;

(f) The owner of the livestock willfully exposed the livestock to the disease;

(g) The owner knew the livestock to be diseased or had notice of the disease at the time the livestock came into the owner's possession;

(h) The owner or the owner's agent has not used reasonable diligence to prevent disease or exposure to disease;

(i) The owner or the owner's agent has not complied with this article, the rules adopted by the commissioner, or an order issued by the commissioner;

(j) The destruction order was not complied with within the specified time period; or

(k) The owner attempted to unlawfully or improperly obtain indemnity funds.

35-50-115. Cervidae disease revolving fund - creation. (1) (a) The commission may levy an assessment on the owners of alternative livestock cervidae or captive wildlife cervidae, which shall be transmitted to the state treasurer, who shall credit the same to the cervidae disease revolving fund, which fund is hereby created. This assessment shall be determined by the commission, upon the recommendation of the captive wildlife and alternative livestock board created in section 33-1-121, C.R.S., and shall be in an amount, not to exceed eight dollars per head of cervidae per year, reflecting the direct and indirect expenses of carrying out the purposes of this section. The fund shall be maintained at a level of no more than two hundred thousand dollars and shall be administered by the commission pursuant to the recommendations of the captive wildlife and alternative livestock board. Administration of the fund shall include setting a minimum reserve level for the fund. An assessment shall not be levied or collected on cervidae owned by a zoological park that is accredited by the American zoo and aquarium association. A zoological park that does not pay into the fund is not eligible for indemnification under this section.

(b) If the fund reaches a level of two hundred thousand dollars or more, the commission shall cease making any assessments until such time as the level of the fund falls below two hundred thousand dollars and the commission determines that a levy is necessary.

(2) (a) The moneys in the fund may be used to indemnify owners of cervidae destroyed for the control of contagious and infectious diseases.

(b) Combined state and federal indemnity shall not exceed eighty percent of market value of the destroyed cervidae, as determined by the captive wildlife and alternative livestock board.

(c) The amount of indemnification payments to owners of cervidae destroyed under order of the state veterinarian for the control of contagious and infectious disease shall be determined by the captive wildlife and alternative livestock board, subject to approval by the commission.

(3) All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of 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. Moneys in the fund are hereby continuously appropriated to the commission for direct and indirect expenses incurred in carrying out the purposes of this section.

35-50-116. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

(a) To refuse or fail to comply with the provisions of this article;

(b) To refuse or fail to comply with any rules adopted by the commissioner pursuant to this article or with any lawful order issued by the commissioner;

(c) To refuse or fail to comply with a cease-and-desist order issued pursuant to section

35-50-117;

(d) To impersonate any state official or authorized representative as defined in this article;

(e) To refuse to permit the state veterinarian to inspect and test any livestock pursuant to this article or rules adopted by the commissioner pursuant this article. Each day of refusal by the owner of livestock to submit such livestock for inspection and testing shall be deemed a separate offense.

(f) To violate any provision of a hold or quarantine;

(g) To fail or refuse to identify livestock pursuant to section 35-50-109 or rules adopted by the commissioner pursuant to section 35-50-105 (3) (j) or to remove or tamper with such identification;

(h) To fail or refuse to report a disease pursuant to section 35-50-108;

(i) To knowingly permit livestock infected with or exposed to an infectious or contagious disease to run at large or come into contact with another animal, except as permitted by rule adopted by the commissioner pursuant to this article;

(j) To harbor, sell, or otherwise dispose of any livestock or livestock part infected with or exposed to a reportable disease unless specifically permitted by the state veterinarian and unless such disposal is fully disclosed;

(k) To import into the state any livestock or livestock part infected with or exposed to any infectious or contagious disease, except as permitted by rule adopted by the commissioner pursuant to this article;

(l) To harbor, sell, or otherwise trade in or import into the state any infectious agent, host, or vector, except as permitted by rule adopted by the commissioner pursuant to this article; or

(m) To alter or falsify any health certificate issued pursuant to section 35-50-112.

35-50-117. Enforcement. (1) The commission or its designee shall enforce this article.

(2) Whenever the commission or its designee 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 commission or its designee may issue an order requiring a person to cease and desist from such violation. 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 immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted in accordance with article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commission or its designee possesses satisfactory evidence that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commission or its designee 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 under this article. In any such action, the commission or its designee 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 commission or its designee to post a bond.

35-50-118. Civil penalties. (1) 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 a court of competent jurisdiction or by the commission or the commission's designee. The penalty shall not exceed one thousand 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 on at least one prior occasion occurring after March 23, 1995.

(2) No civil penalty may be imposed by the commission or its designee 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 commission or its designee is unable to collect the civil penalty, or if a person fails to pay all or a set portion of the civil penalty as determined by the commission or its designee, the commission may bring suit to recover such amount plus costs and attorney fees by action in a court of competent jurisdiction.

(4) Before imposing any civil penalty, the court, the commission, or the commission's designee may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the diseased livestock indemnity fund created in section 35-50-114 (3).

35-50-119. Criminal penalties. (1) Except as set forth in subsection (2) of this section, any person, firm, partnership, association, or corporation, and any officer or agent thereof, who violates any of the provisions of this article or any lawful order or rule of the commissioner commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars and not more than two thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) A person who moves or causes to be moved any single head or any herd of cattle, horses, sheep, goats, swine, poultry, or other livestock from a hold or quarantined area in violation of a hold or quarantine order or who knowingly or unlawfully introduces a reportable disease into the state commits a class 1 misdemeanor and, upon conviction thereof, shall be punished pursuant to title 18, C.R.S. In the case of a second or subsequent conviction under this section, a sentence of imprisonment within the minimum and maximum terms shall be mandatory and shall not be subject to suspension. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.

35-50-120. Information sharing and analysis. (1) Except as set forth in subsection (2) of this section, information obtained and maintained by the commissioner pursuant to this article and rules promulgated pursuant to this article and the results of surveillance and investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until the matter is dismissed without further

action or until a quarantine is issued.

(2) As to any enforcement actions taken or the imposition of civil penalties, complaints of record made to the commissioner and the results of the commissioner's investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a respondent or other official action is taken.

35-50-121. Rights of secured parties. Each secured party, whose security interest in the subject livestock appears in the list of effective filings as maintained by the central filing officer pursuant to the "Central Filing of Effective Financing Statement Act", article 9.5 of title 4, C.R.S., prior to the commissioner's payment to the owner of any excess sales proceeds pursuant to section 35-50-109 (7); prior to the issuance to the owner of the state's certificate of indebtedness pursuant to section 35-50-114 (1); or prior to the commissioner's authorization of payment of indemnity pursuant to section 35-50-114 (2) shall have a right to the proceeds of any such payment or indemnity or to such certificate of indebtedness, which is prior to that of the owner, and the commissioner or the governor, as the case may be, shall cause the foregoing to be paid or issued jointly to each such secured party and to the owner.

35-50-122. Savings clause. Nothing in this article diminishes or supersedes the concurrent jurisdiction or the authorities of the parks and wildlife commission or the agriculture commission to regulate captive wildlife and alternative livestock.

ARTICLE 50.5

Confinement of Calves Raised for
Veal and Pregnant Sows

35-50.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Calf raised for veal" means a member of the bovine species kept for the purpose of producing the food product known as veal.

(2) "Farrowing" means the process of a gestating sow giving birth to offspring.

(3) "Farrowing unit" means a structure in which a single gestating sow is kept immediately prior to and during farrowing for the purposes of providing care to the sow and the sow's offspring.

(4) "Gestating sow" means a confirmed pregnant member of the porcine species.

(5) "Person" shall have the meaning set forth in section 2-4-401, C.R.S.

35-50.5-102. Confinement of calves raised for veal and pregnant sows - exceptions - penalty. (1) No person shall confine a calf raised for veal or gestating sow in any manner other than the following:

(a) A calf raised for veal shall be kept in a manner that allows the calf to stand up, lie down, and turn around without touching the sides of its enclosure.

(b) A gestating sow shall be kept in a manner that allows the sow to stand up, lie down, and turn around without touching the sides of its enclosure until no earlier than twelve days prior to the expected date of farrowing. At that time, a gestating sow may be kept in a farrowing unit.

(2) This section shall not apply during the following:

(a) Periods of scientific or agricultural research;

(b) Examination, testing, or individual veterinary treatment;

(c) Transportation;

(d) Exhibitions at rodeos, fairs, or youth programs; or

(e) Slaughter pursuant to article 33 of this title and rules adopted pursuant to article 33 of this title.

(3) A person who violates any provision of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-50.5-103. Applicability. (1) This article shall apply to:

(a) Calves raised for veal, on and after January 1, 2012; and

(b) Gestating sows, on and after January 1, 2018.

ARTICLE 51

Animal Biological Products

35-51-101. Manufacturer required to have federal license. Any person, firm, or corporation operating a plant or laboratory in this state for the manufacture of animal biological products, including animal serums, vaccines, bacterins, and animal virus, offered for sale and recommended by the manufacturer for the treatment or prevention of infectious or contagious animal diseases shall secure from the United States department of agriculture, bureau of animal industry, division of serum-virus control, a federal license authorizing the manufacture of said veterinary biological products and their sale in interstate commerce. This article shall not apply to the manufacture or sale of animal biological products manufactured under United States veterinary license or produced by the United States department of agriculture, bureau of animal

industry.

35-51-102. Penalty for violation. It is unlawful to manufacture or sell animal biological products as defined in section 35-51-101, except in compliance with the provisions of this article, and any person, firm, or corporation violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

35-51-103. Civil penalties. (1) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or the commissioner. The penalty shall not exceed one thousand 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 on at least one prior occasion occurring after March 23, 1995.

(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 the civil penalty, or if any 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 any court of competent jurisdiction.

(4) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the general fund.

35-51-104. Enforcement. (1) The commissioner shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. 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 immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to

any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

ARTICLE 52

Hogs

35-52-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Garbage" means all refuse, animal or vegetable, and includes all waste material, byproducts of a kitchen, restaurant, hospital, hotel, or slaughterhouse, and every refuse accumulation of animal, fruit, or vegetable matter, liquid or otherwise but excludes such vegetable products as leaves and tops of vegetable plants which have not been mixed with or exposed to or which do not contain any other garbage or waste product prior to feeding to swine.

35-52-102. Importing hogs - affidavit. (Repealed)

35-52-103. Cars must be disinfected. (Repealed)

35-52-104. Disposition of copies of affidavit. (Repealed)

35-52-105. Cars placarded. (Repealed)

35-52-106. Railroad stockyards disinfected. (Repealed)

35-52-107. Chutes and yards disinfected. (Repealed)

35-52-108. Local shipments treated as interstate. (Repealed)

35-52-109. Handling at destination. (Repealed)

35-52-110. Dead hogs burned. (Repealed)

35-52-111. Penalty. Any person, firm, partnership, or corporation violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

35-52-111.1. Civil penalties. (1) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty as determined by a court of competent jurisdiction or the commissioner. The penalty shall not exceed one thousand 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 on at least one prior occasion occurring after March 23, 1995.

(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 the civil penalty, or if any 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 any court of competent jurisdiction.

(4) Before imposing any civil penalty, the court or the commissioner may consider the effect of such penalty on the person charged.

(5) All penalties collected pursuant to this section shall be transmitted to the general fund.

35-52-111.2. Enforcement. (1) The commissioner shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue an order requiring any person to cease and desist from such violation. 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 immediately. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses evidence satisfactory to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to

any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under 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.

35-52-112. Selling, distributing, and using virulent virus. (Repealed)

35-52-113. Garbage cooking. (1) It is unlawful for any person, firm, partnership, or corporation, including eleemosynary institutions, to feed garbage to animals unless such garbage has been heated throughout to boiling or equivalent temperature for thirty minutes or heated according to a method specifically promulgated by the state agricultural commission; but this requirement shall not apply to an individual who feeds to his own animals only the garbage obtained from his household.

(2) Garbage to be fed to swine located within the state of Colorado shall be cooked or heated as provided in subsection (1) of this section by one or more of the following methods:

(a) Wet steaming or boiling in an open vat;
(b) Dry steaming or boiling in a jacketed kettle;
(c) Steaming in a pressure cylinder;
(d) Steam boilers; or
(e) Direct heating.

35-52-114. Permit to be obtained. Prior to the feeding of garbage to any swine located in the state of Colorado, the owner or feeder, as the case may be, shall first obtain a permit from the state agricultural commission. The applicant for a garbage feeding permit shall certify in the application that he has facilities for cooking garbage in one or more of the methods described in section 35-52-113 (2). The state agricultural commission must, within a reasonable time, ascertain that such facilities are as represented and, if the requirements of section 35-52-113 can be fulfilled, issue a permit to the applicant.

35-52-115. Revocation of permit. Upon receipt of evidence that any person having a permit under this article has violated or failed to comply with any of the provisions of this article or any of the rules or regulations promulgated under this article, the state agricultural commission may order a hearing for the purpose of reviewing the evidence and determining the true facts. If said facts support the violation, the commission may revoke such permit or may refuse to issue a permit to an applicant therefor.

35-52-116. Premises sanitation. Premises shall be free of collections of unused garbage and waste materials. Rat and fly control measures shall be practiced as a further means of prevention of the spread of diseases.

35-52-117. Premises inspection. Any authorized representative of the department of agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of the conditions relating to the treating of garbage to be fed to swine as required by this article.

35-52-118. Administration and equipment. The department of agriculture is charged with administration and enforcement of this article in conjunction with such rules and regulations as may be promulgated by the state agricultural commission to carry out its provisions.

35-52-119. Exclusions. (Repealed)

ARTICLE 53

Transportation of Livestock

35-53-101. Brand inspection fee - minimum fee - waiver permit. (1) As a means of financing the operations of the state board of stock inspection commissioners, the board is hereby authorized to levy and collect, through authorized brand inspectors, a per head inspection fee not to exceed the amount specified in section 35-41-104 on all livestock inspected. In addition, the board is authorized to levy and collect through authorized brand inspectors a minimum fee of not less than the amount specified in section 35-41-104 from each person, company, or corporation requesting the brand inspection or from whom a brand inspection is required by law. The inspection fee established pursuant to this subsection (1), but not the minimum fee, shall apply when branded or unbranded cattle, horses, or mules are being consigned to a Colorado licensed public livestock market or a licensed slaughter plant. It is the duty of all authorized Colorado brand inspectors to inspect all cattle, horses, and mules, except as exempt by law, that are offered for sale or to be moved interstate or intrastate and collect the inspection fee and minimum fee thereon. Within the limits prescribed by this subsection (1), the state board of stock inspection commissioners shall determine the amount of the inspection fee and minimum fee that shall be collected by authorized brand inspectors from the owner or person in charge of said cattle, horses, or mules before issuing a certificate of brand inspection granting leave to the owner or person in charge to offer the brand inspected cattle, horses, or mules for sale or movement

interstate or intrastate. The inspection fee and minimum fee so collected shall be reported and transmitted to the state board of stock inspection commissioners at such time and in such manner as the board shall by regulation require.

(2) When any individual, firm, association, partnership, or corporation, referred to in this article as "person", who owns or has had under control by lease or grazing permit for not less than five years a headquarters ranch or farm and who moves any cattle, horses, or mules from the headquarters place to another grazing or feeding ground that is also owned by the person or that has been controlled by lease or by grazing permit for not less than five years by the person, or when the person moves any cattle, horses, or mules from the grazing or feeding ground within this state to the person's headquarters ranch or farm in this state, the person, upon payment of a fee in an amount determined by the board by rule, may apply to the state board of stock inspection commissioners for and may be granted a brand inspection fee waiver permit, irrespective of the fact such headquarters ranch or farm and the other grazing or feeding grounds exceed seventy-five miles from the point of origin provided for in section 35-53-105 (4) (f) or that the grazing or feeding grounds are outside this state. The brand inspection fee waiver permit shall entitle the permittee to move cattle, horses, and mules for grazing or feeding purposes, with no change of ownership involved, between the headquarters ranch or farm and the other grazing or feeding grounds, with no charge for brand inspection and no collection of a beef board fee. If the livestock are moved outside this state, the permittee shall guarantee that, if, for any reason, the livestock are not returned to the Colorado ranch or farm, the permittee will immediately pay the required brand inspection and beef board fee to the board.

35-53-102. Duties of brand inspector. It is the duty of the brand inspector, who shall be notified as provided in section 35-53-105, or shall be selected by the board of stock inspection commissioners, to inspect the brands and earmarks of any cattle, horses, or mules to be transported by rail, truck, or other conveyance from any point within this state to any point within or without the state or to be driven out of the state, and to make a report to the state board of stock inspection commissioners, which he shall certify to as correct, of the result of such inspection at least once every thirty days or oftener if in the opinion of the board of stock inspection commissioners it is necessary to do so. It is also the duty of said brand inspector to furnish to any person, firm, association, or corporation, or any agents, servants, or employees thereof, having cattle, horses, or mules destined to be so shipped or driven, a certificate to the effect that he has duly inspected the brands and earmarks of any such cattle, horses, or mules enumerated and designated in the notice furnished such brand inspector.

35-53-103. False report - certificate - penalty. Any inspector who knowingly makes any false certificate under the provisions of section 35-53-102 to the state board of stock inspection commissioners is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

35-53-104. Certificate needed for shipment. (Repealed)

35-53-105. Inspection before shipment - place. (1) Whenever any cattle, horses, or mules are to be transported from any point within this state to any point within or without this state, it is the duty of the transportation company and the person selling and delivering cattle, horses, or mules to other persons for transportation to make application to the state board of stock inspection commissioners or some duly authorized brand inspector of the board to inspect the brands and earmarks of any such cattle, horses, or mules, stating in the application the time when and the place where the animals will be ready for inspection, giving sufficient notice for the inspector to appear at the place designated in such application, and to provide adequate corrals to inspect such cattle, horses, or mules in daylight. It is the duty of such inspector, or some other inspector to be designated by the board, to appear at the place designated in such application and inspect such cattle, horses, or mules, make the necessary record, and give the necessary certificate required by the provisions of this article.

(2) Whenever any cattle, horses, or mules are to be driven from any point within this state to any point within or without this state, it is the duty of the owner or person in charge of such animals to make application to the state board of stock inspection commissioners or some duly authorized inspector of the board to have the same inspected.

(3) In all cases of cattle, horses, or mules transported by rail, the place of inspection shall be at some stockyard at the proposed point of shipment of such animals. All cattle, horses, or mules to be transported by truck or by similar conveyance within this state or beyond its boundaries shall be inspected at the point of origin or some convenient unloading point en route designated by the state board of stock inspection commissioners or one of its inspectors before being transported from the state or within the state. Cattle, horses, or mules to be driven beyond the boundaries of the state shall be inspected not less than three miles from the state line or at some convenient point designated by the state board of stock inspection commissioners or by one of its duly authorized brand inspectors before being driven from the state.

(4) This section shall not apply to:

(a) Unbranded registered purebred horses leaving a Colorado licensed race track that are accompanied by a bill of lading or statement showing the point of loading and the destination;

(b) and (c) (Deleted by amendment, L. 92, p. 161, § 1, effective April 2, 1992.)

(d) Cattle, horses, or mules being driven or transported by truck to a Colorado licensed public livestock market within the state, where Colorado brand inspection is maintained, that are accompanied by a shipper's certificate and agreement, signed by the owner or person in charge and showing the point of origin, the point of destination, and the brands on such cattle, horses, or mules being transported;

(e) Cattle being transported by truck to a Colorado licensed packing house where all of the cattle slaughtered are inspected by a Colorado brand inspector immediately prior to slaughter, accompanied by a shipper's certificate and agreement, signed by the owner, showing the point of origin, the point of destination, and the brands on such cattle being transported;

(f) Cattle, horses, or mules being driven or transported within the boundaries of the state

between established ranges, pastures, and properties owned, leased, or under the control of the owner of such livestock, so long as such livestock are not being driven or transported more than seventy-five miles from the point of origin and are not changing ownership. If such livestock are being driven or transported by road, the shortest passable road route shall be used. All such cattle, horses, or mules being transported and excepted by this paragraph (f) shall be accompanied by a statement, signed by the owner or person in charge, showing the point of origin and the destination and the brands on such cattle, horses, or mules being transported.

(g) Any registered purebred beef or dairy cattle being transported to or from the national western stock show or the Colorado state fair, if such beef or dairy cattle are accompanied by registration papers identifying the legal owner;

(h) (Deleted by amendment, L. 92, p. 161, § 1, effective April 2, 1992.)

(i) Any cattle, horses, or mules which are used in rodeo competition within the state of Colorado and which are branded with the owner's state-recorded ownership brand, together with a contest number identification brand, when being transported between rodeos within the state of Colorado, but only if the same have first been inspected by an authorized brand inspector and the fees therefor paid at the beginning of the rodeo season before the cattle, horses, or mules have been moved from the owner's headquarters unless circumstances arise which will justify an inspection for brands by an authorized Colorado brand inspector. Inspection by an authorized brand inspector and collection of the brand inspection fee shall be required prior to any change of ownership or other disposal of such cattle, horses, or mules. In addition, any cattle, horses, or mules purchased for use in rodeo competition shall be inspected by a Colorado brand inspector and a Colorado brand certificate issued before any such livestock is branded with the rodeo stock owner's state-recorded ownership brand. The exemption granted by this paragraph (i) shall not apply to any cattle, horses, or mules used in rodeo competition for which the requirements of this paragraph (i) have not been met.

(5) Nothing in this section shall be construed to prevent an authorized Colorado brand inspector from investigating and inspecting any cattle, horses, or mules being driven or transported in this state to determine if the requirements of this section have been met. If no violations have occurred, no official inspection shall be deemed to have been made nor shall any brand inspection fee be charged. If any violation is found, the brand inspector may require an official inspection of such livestock and collect the fee therefor, or may seek prosecution of the offender pursuant to section 35-53-112, or both.

35-53-106. Substitution of animals - penalty. Any person, firm, association, or corporation, or any agent or employee thereof, who ships any animals other than those described in the certificate provided by the brand inspector inspecting such animals, as provided in section 35-53-105, or who removes any of said animals and substitutes others therefor without the knowledge of said inspector is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

35-53-107. Disposition of stock taken by officer. In making any inspection of any animals prior to shipment by rail, truck, or other conveyance or removal from the state, if any inspector finds any animals bearing marks and brands other than those of the owner of the other cattle in said shipment and if said owner or shipper fails to exhibit a bill of sale or other authority for the possession of said animals in said shipment, the inspector shall forthwith declare them to be estrays and shall take possession of the same for the state board of stock inspection commissioners and dispose of the same according to the rules and regulations prescribed by said board.

35-53-108. Disposition of estrays. The state board of stock inspection commissioners is empowered to make such reasonable rules and regulations regarding the disposition of estrays taken up by inspectors, as provided in section 35-53-107, as may seem to said board to be proper and just and for the best interests of the owners of same.

35-53-109. Amount received paid to owner. Any person, association, or corporation establishing to the satisfaction of the state board of stock inspection commissioners the ownership of any estray animals which have been sold by said board, and the amount realized from such sale deposited in the estray fund, as provided in section 35-41-102, shall be forthwith paid the amount for which said animals were sold.

35-53-110. Proceeds claimed within three years. All moneys in the estray fund, derived from the sale of estray animals by the state board of stock inspection commissioners or any inspector acting under the authority of said board, which has been in the possession of said board of stock inspection commissioners for six years or longer from the date of sale of such estray animals and for which no valid claim has been made shall be turned into the brand inspection fund of said board, and all claims for moneys from the estray fund made by the owners of cattle sold as estrays by said board shall be made within three years from the date of sale of the same or the same shall be forever barred and no moneys shall be paid upon claims made after three years from date of such sale. The funds so transferred from the estray fund may be used by the said board, under proper vouchers, for the prosecution of persons charged with theft of livestock and for general expenses of the board.

35-53-111. Sanitary rules as to movement of livestock - quarantine - penalty. (1) The state agricultural commission may make and adopt such quarantine and sanitary regulations affecting the movement of livestock into and out of the state of Colorado and within the borders of said state as may from time to time be necessary to prevent the introduction into the state or the spread within the state of any contagious or infectious disease, and the expense of such quarantine measures and the carrying out of such regulations shall be made by the imposition of a fee of three cents per head on all cattle and horses and one and one-half cents

per head on all sheep entering the state of Colorado from any quarantine or infected territory. Whenever the state agricultural commission knows or has good reason to believe that any contagious or infectious disease exists in any locality in any other state, territory, or country or that there are conditions which render domestic animals from such infected district liable to bring such disease into this state, it may report the same to the governor of the state of Colorado whereupon, by proclamation, he shall prohibit the importation of any such livestock into this state, unless accompanied by a certificate of health given by the state veterinarian or sanitary inspectors appointed by the state agricultural commission, which veterinarian or sanitary inspectors shall carefully examine all such livestock previous to the giving of such certificate.

(2) All fees connected with such examinations are to be paid by the owner of such stock so examined; but no fee shall be collected from the owner of any animals entering this state by railroad, in direct route to other states or territories, which do not remain in the state of Colorado for a longer period than is required for feeding and watering in transit. Any person, firm, or corporation who violates or disregards any of the provisions of a proclamation issued by the governor in compliance with this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than three thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(3) Notwithstanding the amount specified for any fee in subsection (1) of this section, the state agricultural commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state agricultural commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

35-53-112. Shipping prior to inspection - penalty. (1) Any person, firm, association, partnership, or corporation, or any employee thereof, who willfully violates any provision of sections 35-53-101 to 35-53-112, except as otherwise provided in said sections, or who moves or causes to be moved any single head or any herd of cattle, horses, or mules within this state or beyond the boundaries of this state without having had the same inspected and cleared by a Colorado brand inspector is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. Upon conviction of a second violation of this section, such person shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the county jail for not less than ninety days nor more than one year. Neither such fine nor imprisonment shall be suspended by the court, nor shall such person be granted probation by the court. Any person who commits a third or subsequent violation of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Nothing in sections 35-53-101 to 35-53-112 shall be construed as repealing the laws now in force respecting the theft of livestock.

(2) It is the duty of the district attorney of the judicial district in this state in which any such violation occurs to initiate criminal proceedings and prosecute the same to effectively enforce the provisions of this section.

35-53-113. Definitions. As used in sections 35-53-113 to 35-53-119, unless the context otherwise requires:

(1) "Carcasses" means one or more animal bodies or parts thereof, but not less than one quarter of an animal body.

35-53-114. Inspector may refuse certificate. If any duly authorized inspector finds any livestock, or the carcasses thereof, in the possession of any person, firm, or corporation desiring to transport the same by motor or other vehicle and said person, firm, or corporation in charge of said livestock, or the carcasses thereof, is not in possession of a bill of sale duly executed or cannot furnish other satisfactory proof that said person, firm, or corporation is the lawful owner of said livestock, or the carcasses thereof, or if said inspector has good reason to believe that said livestock, or said carcasses, or any of them, are stolen, said inspector shall refuse to issue the certificate authorized in section 35-53-102 authorizing the transportation of said livestock, or the carcasses thereof, by motor or other vehicle and shall take possession of the same.

35-53-115. Inspection and transportation of hides - fee - records. (1) It is unlawful for any person, firm, corporation, railroad company, or other common carrier to transport or cause to be transported within this state or beyond the limits of this state any hides that have not been inspected and tagged by a duly authorized brand inspector of the state board of stock inspection commissioners for the district in which such hides are shipped. A certificate of inspection as provided for in section 35-53-102 shall accompany all shipments and shall be exhibited by the carrier or his or her agent at any time upon demand of any inspector or peace officer. For each hide thus inspected there shall be paid by the owner or holder thereof a fee in the amount prescribed by the board, pursuant to section 35-41-104, to the inspector before he or she issues the hide inspection certificate authorizing the transportation of such hides.

(2) Each inspector of hides shall keep a complete record of all inspections made by such inspector and shall forward to the state board of stock inspection commissioners, together with the fee collected, on blanks furnished for that purpose, a complete report of each inspection, giving the names of the purchasers and shippers of the hides, as well as all of the brands thereon. Said report and fee so collected shall be reported and transmitted to said board at such time and in such manner as the board shall by regulation require, and said report shall be preserved by the brand commissioner as part of the records of such commissioner's office. This section shall not apply to slaughter plants or packinghouses where all cattle are inspected immediately prior to slaughter by a duly authorized brand inspector of the state board of stock inspection commissioners.

35-53-116. Hides inspected - fee - seizure. (1) In the event any authorized brand inspector is making an inspection of hides or the inspection of any slaughtered carcasses, the hides from all such carcasses shall be exhibited to the inspector at the time of the inspection, and if the inspector is satisfied that the person, firm, or corporation is acting within the law, the inspector, in addition to furnishing the certificate, shall tag or mark the carcasses and hides in a manner to be designated by the state board of stock inspection commissioners as evidence that the same have been inspected. In any case where the inspector has reason to doubt the ownership of any carcass or of any hide, he shall refuse to write the hide inspection certificate and shall be authorized to seize any such hide or any such carcass of beef and hold the same for proper proof of ownership and to dispose of the same as provided in sections 35-53-118 and 35-53-119.

(2) In the event that any authorized brand inspector is making any inspection of hides received at any hide house, the owner or person in charge of such hide house shall exhibit any hides in his possession and shall show proof of ownership evidenced by proper bill of sale showing the brand, if any, on the hide or by a brand inspection certificate issued by a brand inspector in the district at the point of origin of the hide. The inspector is authorized to seize and impound any hides in the possession of any hide house that are not properly cleared for ownership by a valid bill of sale or brand inspection certificate and to dispose of the same as provided by law for the disposal of estrays.

35-53-117. Officer may inspect vehicle. Any duly authorized inspector, sheriff, deputy sheriff, or peace officer is authorized to stop and inspect any motor or other vehicle transporting or containing livestock, or the carcasses thereof, and demand from the person operating said motor or other vehicle the exhibition of a bill of sale, permit, or certificate. If any person who transports or who has in possession said livestock, or the carcasses thereof, is unable to exhibit to such inspector or peace officer said bill of sale, permit, or certificate, said inspector or peace officer is empowered to arrest, with or without warrant, any such person operating said motor or other vehicle, to take possession of the same and the livestock, or carcasses therein, and to retain such possession until the person operating such motor or other vehicle can produce satisfactory evidence that he, or the person, firm, or corporation for whom the same is being transported, is the lawful owner thereof or until such livestock, or the carcasses thereof, are disposed of as provided in sections 35-53-118 and 35-53-119.

35-53-118. Officer may sell carcasses. If said inspector or peace officer deems it necessary to sell said carcasses so taken to prevent the loss of same by spoiling, he is authorized to do so, retaining the sale price thereof in his possession to be disposed of as provided in section 35-53-119.

35-53-119. Livestock, carcasses, or proceeds of sale. (1) If within a period of ten days

the ownership of said livestock or said carcasses is shown and established, said livestock or carcasses or proceeds of sale shall be delivered to the owner. If, however, within such period the ownership of said livestock or carcasses is not shown or established, then the same shall be sold or disposed of under the direction of the said board. Any moneys derived from the sale of said livestock or carcasses shall be placed in the estray fund in charge of the board of stock inspection commissioners as provided by law and shall be subject to the same provisions applicable to said estray fund.

(2) In all such cases the facts concerning the detention and sale of such livestock or carcasses shall be reported to the district attorney of the judicial district wherein such livestock or carcasses were detained and sold.

35-53-120. Penalty. Any person, whether acting in his own behalf or as agent, servant, officer, or employee of any firm, association, or corporation, who violates any provisions of sections 35-53-113 to 35-53-119 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, except where otherwise provided in said sections.

35-53-121. Owners' transportation permit. It is unlawful for any person to transport or carry live sheep, swine, goats, horses, mules, domestic fowl, or the carcasses thereof upon any public highway of the state of Colorado or over or across any lands of which the one so transporting said animals is not the owner, lessee, or tenant without the written permission of the owner of said livestock or domestic fowl, or the carcasses thereof, for such transportation. Such permit shall contain the name of the owner of said livestock or domestic fowl, ages, sex, and brands thereon, if any, the date of transportation, the points of origin and destination of the shipment, and the person to whom consigned.

35-53-122. Duty to exhibit permit. Any driver or other person in charge or control of any truck, automobile, or other vehicle so transporting or carrying live sheep, swine, goats, horses, mules, domestic fowl, or the carcasses thereof, upon demand of any peace officer of the state of Colorado, shall exhibit to such peace officer his permit to carry said livestock or domestic fowl, or the carcasses thereof, or in lieu of such permit, upon demand of such peace officer, shall make a written statement which shall contain the same information as is specified in section 35-53-121.

35-53-123. Inspection report of officer. Said officer shall make out and sign a complete inspection report showing the date and place of inspection, the number and kind of said livestock, poultry, or the carcasses thereof transported, the person in charge of the truck, automobile, or other vehicle, the license number, if any, of the vehicle, and the facts set forth in

the written permit or written statement, which inspection report shall be filed forthwith in the office of the sheriff of the county where it may be examined at all reasonable hours by any person.

35-53-124. Penalty. Any person who makes a false or forged permit as specified in section 35-53-121 or a false or forged statement as specified in section 35-53-122, or who knowingly exhibits or causes to be exhibited to any peace officer any such false or forged permit or statement, or who, upon request of any peace officer of the state of Colorado, refuses or neglects to exhibit a permit or make a statement as provided in section 35-53-122 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

35-53-125. Inspection at point of origin. (1) Any cattle moved from a pasture shall be inspected for brands by an authorized brand inspector at the point of origin before they are placed in a feed lot, and proof of ownership shall be shown on demand by any Colorado brand inspector or any other interested party. Any cattle found carrying questionable brands when an inspection is made shall be held and handled as estrays or questionably-owned cattle, as provided by law. Such inspections shall be made before mixing with any other cattle, and when any uninspected cattle are mixed prior to an inspection, an inspection shall be made on all the cattle so mixed, and the inspection fee shall be collected. A brand inspector shall be authorized to release the cattle to be inspected at the point of origin for an inspection to be made at any designated place where proper facilities are available.

(2) In the event that two or more parties claim ownership of questionably-owned cattle, the state board of stock inspection commissioners may provide for arbitration of the claim of ownership under the supervision of the said board or under the supervision of such officer or agent of the said board as may be designated by the said board.

35-53-126. Inspection at market - penalty. All cattle that are subject to inspection in the state by virtue of any law or regulation, on arrival at any market, shall be inspected by a duly authorized brand inspector, whether or not they have been previously inspected at the point of origin, before they are taken to the scales for weighing or are weighed at such market unless such cattle are released by an authorized brand inspector. Any person, whether acting in his own behalf or as an agent, servant, officer, or employee of any person, firm, corporation, or association, who violates any provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

35-53-127. Brand inspection contracts. The state board of stock inspection

commissioners is authorized to enter into contracts or agreements, within the limits of funds available therefor, with any agency, governmental or otherwise, to perform the duties imposed by law upon said state board of stock inspection commissioners with respect to brand inspection. All contracts and brand inspections pursuant to such contracts shall be subject to the approval and control of the state board of stock inspection commissioners.

35-53-128. Brand inspectors - powers of arrest. (1) In addition to his other duties, a duly appointed brand inspector is authorized to ride the ranges, pastures, and other localities within the state to protect the livestock industry of the state from depredations and theft.

(2) Brand inspectors in the exercise of their statutory duties are vested with all the powers of arrest, with or without a warrant, conferred upon peace officers as set forth in section 16-3-101, C.R.S.

(3) The state board of stock inspection commissioners may authorize brand inspectors to equip their cars with sirens, red lights, and other devices for use in the apprehension of persons suspected of theft of livestock or violation of stock inspection laws. The board may also authorize the said stock inspectors to carry arms.

35-53-129. Permanent permit for rodeo and other horses - rules. (1) Competition horses, other than contractor-owned bucking horses, that are used in rodeo and horse show competitions, registered breed show horses, racehorses, special drill and pleasure horses, and Colorado farm or ranch work or saddle horses shall be eligible to receive a permanent transportation permit that shall be valid for both interstate and intrastate movement if positive proof of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the board, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the horse, accompanied by a copy of the brand inspection certificate and a transportation permit fee in an amount determined by the board by rule made payable to the state board of stock inspection commissioners, a permanent hauling transportation permit shall be issued that shall be good for the life of the horse unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A permit issued pursuant to this section shall be in lieu of other permits required under the provisions of this article.

35-53-130. Annual transportation permit for cattle or alternative livestock - rules. (1) Bovine livestock, as defined in section 35-41-100.3 (1.4), and alternative livestock, as defined in section 35-41.5-102 (1), shall be eligible to receive an annual transportation permit that shall be valid for both interstate and intrastate movement if positive proof of ownership is

established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the state board of stock inspection commissioners, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the animal, accompanied by a copy of the brand inspection certificate and a transportation permit fee in an amount determined by the board by rule made payable to the board, an annual hauling transportation permit shall be issued that shall be good for one year after the date of issuance unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A permit issued pursuant to this section shall be in lieu of other permits required under the provisions of this article.

35-53-131. Sheep inspection districts. (1) The board of county commissioners of any county, upon petition of at least fifty-one percent of the sheep growers of the county, shall request the board to designate such county as a sheep inspection district. The board shall duly authorize a brand inspector to inspect sheep moving from range to range, or any migratory movement of sheep, through such counties.

(2) The authorized brand inspector shall inspect such transitory sheep for a brand or earmarks, and the owner of sheep so inspected shall be given an inspection certificate stating the time and place of inspection.

(3) Any sheep owner in a county designated as a sheep inspection district shall notify the board, or its duly authorized inspector, seven days in advance of any movement of sheep from one range to another. Such inspector shall then designate a corral, convenient to the route to be taken by such band of sheep, where inspection shall be made.

35-53-132. Failure to give notice. Any owner or foreman who segregates, forms flocks of, transports, or drives any sheep from authorized inspection districts without giving due notice to an authorized inspector as required by section 35-53-131 (3) commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

35-53-133. Inspection fee - range movements. (1) In addition to the moneys now provided by law to provide the board with sufficient moneys with which to meet and defray expenses, it is the duty of brand inspectors appointed by the board to collect a fee, in an amount determined by the board by rule, on each sheep inspected in sheep inspection districts. The fee collected shall be reported and transmitted to the board, at such time and in such way as the

board's rules may require.

(2) Whenever fifty-one percent of the holders of sheep permits on public lands petition the state board of stock inspection commissioners to make inspection of sheep using such public lands, the board shall authorize an inspector of the board to inspect sheep on range-to-range movements for brands or earmarks. Any owner of sheep using such public lands shall notify the board seven days in advance of such intended movement of sheep, and such inspector shall designate the most convenient available corral on the route taken by such transitory bands.

ARTICLE 53.5

Feedlot Certification

35-53.5-101. Short title. This article shall be known and may be cited as the "Feedlot Certification Act".

35-53.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the state board of stock inspection commissioners created in section 35-41-101 (1).

(2) "Brand commissioner" means the brand commissioner appointed by the board pursuant to section 35-41-101 (2).

(3) "Brand inspector" means an authorized Colorado brand inspector.

(4) "Commissioner" means the commissioner of agriculture.

(5) "Department" means the department of agriculture.

(6) "Feedlot" has the meaning set forth in section 35-41-100.3 (2).

35-53.5-103. Rules. (1) To carry out the provisions of this article, the board is authorized to adopt appropriate rules pursuant to section 24-4-103, C.R.S., on subjects that shall include, but are not limited to, the following:

(a) Fees to fund all direct and indirect costs of the administration and enforcement of this article;

(b) Methods of separating cattle for purposes of this article;

(c) Standards and procedures for certification of feedlots and for the issuance, renewal, suspension, revocation, and reinstatement of certificates;

(d) The number and type of on-site inspections;

(e) Records to be maintained by the owners and operators of certified feedlots;

(f) Grounds for enforcement actions.

35-53.5-104. Delegation of duties - cooperative agreements. (1) The powers and duties vested in the board by this article may be delegated to qualified employees and agents, including without limitation the brand commissioner and brand inspectors.

(2) The department may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions.

35-53.5-105. Feedlot certification. (1) Any person desiring to have a feedlot certified and utilize the certification seal under the provisions of this article shall secure such certification from the board in accordance with this article and any rules promulgated pursuant to this article. The certification period shall be one year, beginning July 1 and ending June 30 of each year.

(2) (a) Feedlots separated by at least one mile will be treated as separate facilities, even if they are owned by the same entity. Feedlots owned by the same entity and not separated by at least one mile will be considered one facility for purposes of certification under this article. Each facility shall be certified individually.

(b) To be eligible for certification, each facility must be organized and operated primarily for the finishing of terminal slaughter cattle. No animal interdiction or commingling of animals from any other facility shall be permitted.

(c) Animals shall not be marketed as finished in a certified feedlot unless the owner of the feedlot verifies that the animals are destined to a packing facility registered and licensed by the United States department of agriculture. Animals leaving a certified feedlot for any other destination or purpose shall not be marketed as finished in a certified feedlot and shall be subject to all otherwise applicable brand inspection requirements.

(3) Certifications are not transferable.

(4) Certified feedlots shall be exempt from the fee waiver permit provisions of section 35-53-101 (2).

(5) Animals in a certified feedlot shall not be exempt from any Colorado brand inspection requirement other than those exemptions contained in this article.

35-53.5-106. Application - fees - rules. (1) Each person seeking certification of a feedlot shall make application to the board on forms prescribed and furnished by the board. The board may reject any applicant who does not meet the minimum requirements for certification as set forth in rules of the board.

(2) An annual certification fee in an amount determined by the board by rule shall accompany the application.

35-53.5-107. Per-head fees. (1) The per-head inspection fee for a certified feedlot shall

be fifteen cents less than the fee set by the board pursuant to section 35-41-104 for direct-to-slaughter cattle and seventeen cents less than such fee for all other cattle. All such fees shall be due and payable to the board by the fifth day of each month based on the number of animals shipped during the previous calendar month.

(2) Each month, the owner of a certified feedlot shall remit two separate checks, each made payable to the board. One of such checks shall be in the amount of the per-head fee specified in subsection (1) of this section, and the other in the amount required to cover the Colorado beef board fee, the national beef promotion fee assessed pursuant to 7 CFR 1260.172, or both. Any payment received over ten days late shall result in the assessment of a penalty of ten percent of the amount originally due, not to exceed fifty dollars per late payment, plus interest at the legal rate specified in section 5-12-102 (1) (b), C.R.S., until paid.

35-53.5-108. Movement of cattle from certified feedlots - notice - inspection. (1) The board shall supply each certified feedlot with appropriate movement certificates in triplicate. One copy of each certificate shall accompany the slaughter animals to the packing facility, one copy shall be retained by the certified feedlot, and one copy shall be sent to the board together with the appropriate fees. The feedlot shall retain copies of the direct-to-slaughter certificates in a separate file, in numeric order, for audit purposes.

(2) All certified feedlots shall notify the local brand inspector of all anticipated shipments going directly to slaughter, giving the inspector ample notice to inspect or audit the shipment at his or her discretion during daylight hours.

(3) Any certified feedlot that has animals inspected immediately prior to shipment to slaughter and an inspection certificate issued by an authorized Colorado inspector shall be charged the applicable per-head fees, Colorado beef board fees, and national beef promotion fees. The certified feedlot per-head fee will not be charged in addition to the inspection fee. One copy of the inspection certificate shall be filed with feedlot copies of the slaughter movement certificates. The feedlot shall be responsible for the inspection fee, which shall be payable at the time of inspection on all animals inspected.

35-53.5-109. Movement of cattle into certified feedlots - notice - inspection. (1) (a) All Colorado cattle arriving at a certified feedlot from origins in Colorado shall be accompanied by an inspection certificate or Colorado licensed market invoice, issued immediately prior to entry, or shall be inspected upon entry to the certified feedlot. All Colorado cattle that are inspected at the feedlot prior to entry for change of ownership or feedlot entry and that are not accompanied by a Colorado inspection certificate or purchase invoice shall be charged the regular set fees as authorized by section 35-41-104 and shall not be entitled to the discount provided in section 35-53.5-107 (1).

(b) As used in this section, "Colorado cattle" means cattle that either were born in Colorado or were unloaded in Colorado before entering the feedlot.

(2) Cattle received from another brand inspection state or province and accompanied by a current inspection certificate or licensed public livestock market purchase invoice issued

immediately prior to shipment that identifies the animals by brand and that identifies the certified feedlot as the final destination shall be exempt from inspection requirements.

(3) All cattle originating from a non-brand inspection area shall be accompanied by purchase and interstate shipment documentation as required by Colorado or the state of origin of the cattle, or both. The document shall include buyer, seller, date of purchase, number of head, sex, average weight, and brands if known. The feedlot shall notify the local brand inspector within twenty-four hours after arrival, and the cattle shall be held separately by source for a maximum of forty-eight hours after such notification so that the inspector may inspect or audit-endorse purchase and shipment documentation so as to establish identity satisfactory to the inspector. No commingling of shipments shall be allowed prior to inspection. The local brand inspector shall not collect any fee for this service.

(4) Cattle received at the feedlot from any source that are rejected by the feedlot for any reason may be shipped out after proper required inspection. Cattle so rejected shall be considered Colorado cattle. These animals shall be kept totally separate from other animals, and no commingling shall be allowed.

(5) The owner of each certified feedlot shall be required to keep a formal, auditable entry log of all cattle entering the facility. This log shall contain information including, but not limited to, the legal owner of the cattle, date of entry, number of head, sex, and lot number or numbers assigned. In addition, the log shall show the brand inspection or purchase invoice that accompanied the livestock upon entry. Such log shall be for the private use of the feedlot and the brand inspector and shall not be considered a public record under the Colorado open records law, article 72 of title 24, C.R.S. The log shall be kept at the certified feedlot at all times.

35-53.5-110. Audits - inspections - complaints. (1) The board or an authorized brand inspector may audit a certified feedlot at any reasonable time, with or without advance notice, to ensure compliance with this article or any rules adopted under the authority granted in this article.

(2) (a) The board shall determine the depth and frequency of any feedlot audit.

(b) The audit of a certified feedlot may include physical inspection of animals in any area of the facility and may include any document required to verify head count, valid ownership, or legal entry into the facility.

(3) (a) Any person having reasonable suspicion of a potential violation may request, directly to the brand commissioner or his or her designated agent, an inspection or audit of a specific certified feedlot or pen therein. Such request may be granted or denied based upon rules of the board governing such inspection or audit. The person requesting such audit shall be responsible for the board's fees and costs incurred in conducting the inspection or audit; except that, if any violations are proven as a result of the inspection or audit, such person shall be reimbursed from the penalties assessed pursuant to section 35-53.5-113.

(b) The owner of a certified feedlot may request an inspection of cattle held at the feedlot upon payment to the board of all applicable fees.

35-53.5-111. Enforcement - hearings. (1) The board is authorized to administer and enforce the provisions of this article and all rules adopted pursuant thereto.

(2) The board is authorized to conduct hearings in accordance with article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the board.

(3) The board and, in the exercise of delegated authority, the brand commissioner, shall have full authority to administer oaths and take statements, issue subpoenas requiring the attendance of witnesses and the production of books, records, and other documentary evidence, 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 a subpoena, the board or the brand 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.

35-53.5-112. Disciplinary actions - suspension or revocation of certificate - grounds. (1) The board, acting in accordance with article 4 of title 24, C.R.S., may deny, suspend, refuse to renew, or revoke any certification if the applicant or certificate holder has violated any provision of article 43, 44, 53, or 54 of this title or has entered a plea of guilty or nolo contendere to or been convicted of any criminal act under title 18, C.R.S.

(2) The owner of any feedlot whose certification has been suspended or revoked shall, upon notice, cause all animals leaving the facility to be inspected pursuant to section 35-53-105 and shall pay all required inspection fees at the time of inspection.

(3) Upon the suspension or revocation of a certificate, all or part of the annual certification fee may be forfeited as determined by the board.

(4) The owner of a feedlot whose certification has been revoked may reapply for certification at any time after the expiration of two years from the date of revocation and upon the payment of all required fees.

35-53.5-113. Civil penalties. (1) (a) Any person who violates any provision of this article or of any rule adopted pursuant to this article is subject to a civil penalty, not to exceed one thousand dollars per violation, as determined by the board or a court of competent jurisdiction.

(b) No civil penalty shall be imposed by the board unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) All civil penalties levied and collected pursuant to this article shall be credited to the brand inspection fund created in section 35-41-102. All moneys credited to such fund pursuant to this article, together with any interest earned thereon, shall be retained in the fund and shall not revert to the general fund or any other fund except as may be directed by the general assembly, acting by bill.

(2) Nothing in this article shall be construed to limit the authority of the board or any other law enforcement agency to investigate or prosecute violations of local, state, or federal law

except as otherwise specifically provided.

(3) Nothing in this article shall be construed to immunize any person from civil liability.

35-53.5-114. Estrays - stolen livestock - board to assist recovery. (1) The board shall assist the owner of any certified feedlot that, as legal purchaser, has inadvertently received an estray or stolen animal on any shipment received. Stolen livestock found at any inspection location shall be handled in accordance with section 18-4-405, C.R.S.

(2) Animals found to be of questionable title shall be handled as estrays until clear and legal title has been established. At the time of entry into a certified feedlot, the officiating inspector shall notify the owner of the feedlot of any estrays or animals of questionable title and assist in clarifying title wherever possible.

35-53.5-115. Prohibited acts - no liability of state. (1) It shall be unlawful for any unauthorized person to reproduce, produce a facsimile of, or use a feedlot certificate in any fashion. Any person who violates this subsection (1) may be subject to appropriate civil or administrative proceedings or both.

(2) The state assumes no liability for persons who misrepresent any product under the authority of this article.

ARTICLE 54

Sale of Stock

35-54-101. Bills of sale given for livestock sold. No person, whether as principal or agent, shall sell or otherwise dispose of any livestock, nor shall any person, whether as principal or agent, buy, purchase, or otherwise receive any such livestock, unless the person so selling or disposing of any such livestock gives, and the person buying, purchasing, or otherwise receiving any such livestock takes, a bill of sale, in writing, of the livestock so sold or disposed of, or so bought, purchased, or otherwise received.

35-54-102. Penalty. Any person who violates or fails to comply with any of the provisions of section 35-54-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

35-54-103. Requirements of bill of sale. (1) A duly executed bill of sale is an instrument in writing by which the legal owner or authorized agent transfers to the buyer the title of livestock therein described and guarantees to defend said title against all lawful claims. It shall definitely describe the animal sold as follows:

(a) Horses or mules, age, color, and sex, with special markings, including all iron brands carried;

(b) Registered cattle, registration number tattooed in ear, name, sex, breed, brand, and marks, if any;

(c) Range cattle, sex, age, breed, brands or earmarks, wattle or dewlap, horned or dehorned;

(d) When the sale or transfer involves neat cattle carrying one or more Colorado recorded brands, the cattle shall be tallied for brands, and the brands described in the bill of sale, giving location on the animal of all Colorado recorded brands;

(e) Sheep, number, breed class, ewes, rams, wethers, lambs, paint brands, firebrands, and earmarks.

(2) Both the seller and the buyer shall sign the bill of sale, giving the post-office address of each, in the presence of a witness, who also signs with his name and address, and who is a legal resident of the county where the transfer of the described livestock takes place. The bill of sale shall be dated the day of the transaction.

35-54-104. Purchaser must show bill of sale. It is the duty of any person who purchases or receives, or has in his possession, any such livestock, either for himself or for another, to exhibit, on reasonable request to any person inquiring therefor, the bill of sale of such livestock, if in his power to do so, and if not in his power to do so, to state and give the reason therefor. Any person violating or failing to comply with the provisions of this section shall be deemed guilty and liable to punishment as provided in section 35-54-102.

35-54-105. Selling without bill of sale - theft. (1) Any person who sells or offers for sale or trades any livestock upon which such person has not his recorded mark or brand, or for which the person so offering has neither bill of sale nor power of attorney from the owner of such livestock authorizing such sale, is guilty of theft, unless such person upon trial shall establish and prove that he was at the time the actual owner of the livestock so sold or traded, or offered for sale or trade, or that he acted by the direction of one proven to be the actual owner of such livestock.

(2) In prosecutions for a violation of this section, it shall not be necessary, in order to warrant a conviction for the people, to prove motive, intent, or purpose on the part of the accused, or that the accused knew that the livestock sold or traded, or offered for sale or trade, was so sold, traded, or offered in violation of this section, but the fact of such selling, trading, or offering for sale or trade contrary to the provisions of this section, when proved, shall be sufficient to authorize a conviction, unless the accused shall by testimony explain the case made

by the people in a manner consistent with good faith and an innocent purpose.

35-54-106. Partido contracts recorded. No partido or share contract, whereby livestock is delivered to be kept on shares for a period of time at the end of which they, or an equal or similar number, or any number thereof, are to be returned, whatever the specific terms of said contract may be, shall be valid, except as between the parties to said contract, unless such contract is filed or recorded in the office of the county clerk and recorder of deeds of the county wherein such livestock is to be kept.

ARTICLE 55

Public Livestock Markets

35-55-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Livestock" means horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock as defined in section 35-41.5-102 (1).

(2) "Public livestock market" means any place, establishment, or facility, commonly known as a livestock market, conducted or operated for compensation or profit as a public livestock market, consisting of pens, or other enclosures, and their appurtenances, in which live horses, mules, cattle, burros, swine, sheep, goats, and poultry are received, held, or assembled for either public or private sale. The person, partnership, or corporation owning or controlling premises defined as a public livestock market shall be compensated for the use of the premises and the services performed in handling the livestock in connection with the sale.

35-55-102. License requirements. (1) Any person, partnership, or corporation may procure a license to establish and operate, for a term of one year, a public livestock market within the state of Colorado by making written application to the state board of stock inspection commissioners, which application shall provide the following:

(a) The name and address of the applicant, and the names and addresses of all persons having any financial interest in the business;

(b) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(c) A legal description of the property and its exact location, with a complete description of the facilities proposed to be used in connection with such public livestock market;

(d) Repealed.

(e) Proof of the ability of the applicant to comply with the federal "Packers and

Stockyards Act, 1921", as amended (7 U.S.C. sec. 181 et seq.);

(f) Proof of the financial stability, business integrity, and fiduciary responsibility of the applicant.

(2) Each such application shall be accompanied by the annual fee as prescribed in section 35-55-103.

(3) Before an application for license is approved, the applicant shall prove ownership or control by lease of not less than six thousand square feet of holding pens including ample sorting and handling alleys, not less than ten feet wide with at least three gates in each alley that will fasten across the alley; ample pens and sheds for holding and handling sheep and hogs; and at least two adequate-sized pens with connecting alley and usable chute for use by state and federal livestock sanitary inspectors.

(4) Repealed.

(5) Every licensed public livestock market shall use forms approved by the state board of stock inspection commissioners for consignment cards, consignors accounts on sale, buyers settlement sheets, and bills of sale to the purchaser.

(6) A public livestock market shall operate on the day of the week designated by the state board of stock inspection commissioners. The operation of a public livestock market in this state without a license is a misdemeanor punishable as provided in section 35-55-117.

35-55-103. License fee - rules. No person shall engage in the operation of a public livestock market within the state of Colorado without first procuring a license from the state board of stock inspection commissioners and paying a fee prescribed by the board in an amount sufficient to cover the administrative costs of the licensing provisions of this article. The license may be renewed by eligible applicants in accordance with an expiration and renewal schedule established in rules promulgated by the commissioner of agriculture. An application for a license to establish and operate public livestock markets shall be in writing upon a blank form to be furnished by the board and shall be accompanied by the fee prescribed by the board pursuant to this section. If the board does not issue a license or renewal, the fee must be returned to the applicant.

35-55-104. Bond. (1) No license or renewal of license to establish a public livestock market within the state of Colorado may be issued until the applicant has filed evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or executed and delivered to this state a surety bond approved and accepted by the state board of stock inspection commissioners upon a form prescribed by the state board. The bond shall be in a penal sum of not less than twenty-five thousand dollars, the amount to be determined by the state board based upon the dollar volume of the business, and shall be issued by a surety company approved by the state board of stock inspection commissioners. Said bond shall be conditioned upon the prompt payment to the rightful owner, upon sale of the livestock so consigned and delivered to the licensee for sale, of all moneys received, less reasonable expenses and agreed commissions chargeable by the licensee and operator of the public livestock market,

and also upon full compliance with all of the terms and requirements of this article. When so approved, said bond shall be filed with the state board.

(2) Actions at law may be brought in the name of the state board of stock inspection commissioners upon any such bond, for the use and benefit of any person, firm, or corporation who may suffer loss or damage from violations thereof, but the aggregate liability of the surety for all such losses or damages shall, in no event, exceed the sum of said bond.

(3) Any such public livestock market which is registered under the provisions of the federal "Packers and Stockyards Act, 1921", as amended, and has executed a bond as provided for therein and as is required by the rules and regulations prescribed by the secretary of agriculture, is not required to execute the bond provided for in this article if such bond also guarantees payment of all brand and sanitary inspection fees due this state. Copies of any such license and bond certified by the executive officer of such board may be procured upon payment of a fee of one dollar each, and shall be received as competent evidence in any court in this state.

35-55-105. Posting licenses. A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor, and the original or certified copy of said license shall be posted during sale periods in a conspicuous place on the premises where the public livestock market is conducted.

35-55-106. Board rules. The state board of stock inspection commissioners may adopt, publish, and enforce rules and regulations necessary for the administration of this article.

35-55-107. Discipline of licensees. (1) Any violation of the provisions of this article or of any rule adopted and published by the state board of stock inspection commissioners shall be deemed sufficient cause for the state board of stock inspection commissioners to revoke or suspend the license of the offending operator of such public livestock market or to place on probation such licensee, and the following shall also be specific grounds for the imposition of any of the disciplinary actions specified in this introductory portion:

(a) If the state board of stock inspection commissioners finds the licensee has violated any law of the state of Colorado or official rule or regulation made pursuant thereto governing the intrastate or interstate movement, shipment, or transportation of livestock, or the requirements for brand or health inspection thereof;

(b) If the state board of stock inspection commissioners finds that said licensee has been guilty of fraud or misrepresentation as to the title, brands, or ownership;

(c) If the state board of stock inspection commissioners finds the licensee guilty of buying, receiving, or offering for sale any livestock known by him to be diseased or to have been exposed to infectious or contagious disease;

(d) If the state board of stock inspection commissioners finds that the licensee has failed or refused to practice measures of sanitation and inspection as are required by this article or by rule or regulation of the state board of stock inspection commissioners made pursuant thereto

concerning premises or vehicles used for the stabling, yarding, housing, holding, or transporting of animals in the operation of his public livestock market;

(e) If the state board of stock inspection commissioners finds that the licensee has neglected or refused to keep records and forms of consignment cards, consignors account of sale, and buyers account of sale and bill of sale approved by the state board of stock inspection commissioners required by this article, or rules or regulations made pursuant thereto, or fails or refuses to permit inspection of such records by any authorized agent of said board;

(f) If the state board of stock inspection commissioners finds that the licensee has failed or refused to withhold sale proceeds of any livestock designated by the authorized brand inspector as livestock of which the title is questionable in accordance with section 35-55-114, or if the board finds that the licensee has failed or refused to transmit promptly to said board, after the expiration of thirty days, the proceeds of all livestock to which ownership has not been established in accordance with section 35-55-114;

(g) If the state board of stock inspection commissioners finds that the licensee has issued a company account of purchase which establishes ownership of or transfers title to any cattle, horses, or mules which have not been inspected for brands and ownership or title verified by an authorized Colorado brand inspector immediately prior to or on the licensee's market day designated by the board;

(h) If the state board of stock inspection commissioners finds that the licensee attempted to obtain or obtained a livestock market license by fraud or misrepresentation;

(i) If the state board of stock inspection commissioners finds that the licensee is engaging in or has engaged in advertising which is misleading, deceptive, or false;

(j) If the state board of stock inspection commissioners finds that the licensee has violated or has aided or abetted in the violation of any order of the state board of stock inspection commissioners;

(k) If the state board of stock inspection commissioners finds that the licensee has aided or abetted in the violation of any provision of this article or of any rule or regulation adopted by the state board of stock inspection commissioners pursuant to this article;

(l) If the state board of stock inspection commissioners finds that the licensee has violated or has aided or abetted in the violation of the federal "Packers and Stockyards Act, 1921", as amended (7 U.S.C. sec. 181 et seq.);

(m) If the state board of stock inspection commissioners finds that the licensee has been convicted of or has entered a plea of nolo contendere to a felony for an offense related to the conduct regulated by this article.

(2) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the state board of stock inspection commissioners, does not warrant formal action but which should not be dismissed as being without merit, the board may send a letter of admonition to any licensed public livestock market operator. Such letter shall be sent to the licensee by certified mail, and a copy thereof sent to the complainant, advising the operator that the operator may, within twenty days after receipt of the letter, make a written request to the board to institute a formal hearing pursuant to section 35-55-108 to determine the propriety of the alleged misconduct. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal proceedings.

35-55-108. Investigation - hearing - administrative law judge. (1) The state board of stock inspection commissioners, upon its own motion on the basis of reasonable cause or upon the complaint in writing of any person, shall investigate the activities of any licensed livestock market operator or any person who assumes to act in such capacity within the state. Based on the findings of such investigation, the board may initiate proceedings under this article for the discipline of a licensee.

(2) The board shall, through the department of agriculture, employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings for placing a licensee on probation or for revoking or suspending a license on behalf of the board. The administrative law judges shall conduct such hearings pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

35-55-109. Sanitary conditions. Every public livestock market shall be maintained in a sanitary condition and cleaned and disinfected under the supervision of a veterinarian authorized by the state board of stock inspection commissioners when necessary.

35-55-110. Scales. All scales used in the operation of public livestock markets shall come under and be controlled by Colorado's weights and measures laws.

35-55-111. Records. Operators of all public livestock markets shall keep on file an accurate record of the date on which a consignment of animals was received and sold, together with the name and address of the buyer and seller, the number and species of the animals received and sold, and the marks and brands on each animal. Said records together with the gross selling prices, commission, and other proper care, handling, and sale charges on each consignment shall be available for inspection by the executive officer of the state board of stock inspection commissioners, his deputy, or authorized inspector. All records of sales during preceding months shall be kept readily accessible for immediate examination.

35-55-112. Brand inspection. (1) All cattle, horses, mules, and burros, upon entering a public livestock market, shall be inspected for iron brands, earmarks, and other identifying characteristics before being offered for sale. A bill of sale signed by the recorded owner of the brands or no brands or an account of sale showing the brands or no brands on the livestock consigned shall be produced by the consignor. The brand inspector in charge may, in justifiable circumstances, permit the sale of cattle, horses, mules, or burros whose ownership is questionable and then proceed to impound the proceeds of the sale of such animals. After any livestock are consigned to any public livestock market, they shall be held and treated as if the ownership thereof has not been established, until a proper bill of sale or account of sale is

produced by the consignor. Such inspections shall be made by authorized brand inspectors who have been approved by the state board of stock inspection commissioners, and a fee per head in the amount prescribed by the state board of stock inspection commissioners pursuant to section 35-41-104, shall be withheld from the consignor's proceeds of sale by the market operator, to be paid to the state board of stock inspection commissioners, for brand inspection on all cattle, horses, mules, and burros.

(2) The authorized brand inspector making the inspection and collecting the fees prescribed shall issue an official brand inspection certificate in duplicate, one copy to be the property of the owner or operator of the auction market, and will be authority for the public livestock market to issue a bill of sale to the purchaser of any livestock sold or disposed of through a licensed livestock auction market, the original to be delivered to the office of the state board of stock inspection commissioners.

35-55-113. Veterinary inspection - rules. (1) All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by an authorized veterinarian of the department of agriculture. The veterinarian shall examine or test, as indicated or required, animals consigned to the public livestock market for the purpose of determining their condition of health and freedom from infectious or contagious animal diseases. If, in the opinion of the examining veterinarian, said animals are free of symptoms of infectious or contagious disease and have not, to the best of his knowledge, been exposed to any infectious or contagious diseases, he shall issue a health certificate, signed by him, to any purchaser who so requests. Said health certificate shall be delivered to the purchaser at the time of rendering the account of sale or bill of sale. In addition to the requirements of this subsection (1) for all interstate movements, livestock must meet federal interstate and state of destination requirements. All animals found to be affected with any recognized infectious or contagious diseases shall be immediately isolated, quarantined, and held in conformity with the health requirements of Colorado law and the rules and regulations of the department of agriculture. All fees or taxes for veterinary services, prior to the sale of the livestock, shall be paid by the operator of the public livestock market. All livestock intended for interstate shipment, on which the United States department of agriculture requires specific inspections or tests that can only be made by an approved and licensed veterinarian, shall be made at the expense of the buyer or the party who intends to move them interstate.

(2) (a) Swine may be moved from a public livestock market if, upon inspection, the swine are found free from symptoms of cholera or other contagious, infectious, or communicable diseases and in a thriving condition.

(b) Repealed.

(3) Feeding swine and breeding swine going from a market to a farm shall be identified by an approved ear tag, individual tattoo, or ear notch. Sows and boars going to slaughter shall be identified in accordance with the market swine identification program as prescribed in the uniform methods and rules for brucellosis eradication published by the U.S.D.A. animal plant health inspection service agency, in effect July 1, 1981, and as amended from time to time thereafter.

(4) No animal may be sold or offered for sale at a public livestock market if the animal is injured, disabled, or diseased beyond recovery, or if such injury or disease permanently renders the animal unfit for human consumption. This subsection (4) includes, but is not limited to, any animal with severe neoplasia, any animal that is unable to rise to its feet by itself, and any animal with obviously fractured long bones.

(5) If, in the judgment of an authorized veterinarian of the department, an animal presented at a public livestock market is injured, disabled, or diseased beyond recovery, the veterinarian shall humanely euthanize the animal or direct the consignor to immediately remove the animal from the premises of the public livestock market. All expenses incurred for euthanasia and disposal of an animal under the provisions of this subsection (5) are the responsibility of the consignor. Collection of expenses shall not be the responsibility of the consignee.

(6) The commissioner of agriculture shall adopt reasonable rules for the administration and enforcement of this section, including, but not limited to, rules designating any disease as a disease that renders livestock permanently disabled or the carcasses thereof permanently unfit for human consumption. The commissioner shall promulgate all such rules in accordance with existing antemortem inspection guidelines of the United States department of agriculture food safety inspection service.

35-55-114. Title. The operator of each public livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his public livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for such livestock so sold. It is the further duty of such operator, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through said market is lawfully owned by the consignor thereof, to hold the proceeds received from the sale of said livestock for a reasonable time, not to exceed thirty days, to permit the consignor to establish ownership and if at expiration of that time, the consignor fails to establish his lawful ownership of such livestock, said proceeds shall be released by such operator to the state board of stock inspection commissioners, which board has authority to dispose of said proceeds in accordance with Colorado's estray laws relating to the distribution of estray money, and the board's receipt therefor shall relieve said operator from further responsibility for said proceeds. Proof of ownership and an account of all sales of livestock shall be transmitted by the authorized brand inspector to the state board of stock inspection commissioners.

35-55-115. Disposition of fees. All license fees collected from public livestock markets shall be deposited with the state treasurer and shall be placed in the brand inspection fund by the state treasurer for use of the board in paying ordinary expenses of the state board of stock inspection commissioners.

35-55-116. Dispersal sales. All dispersal sales made at public livestock markets shall meet the requirements prescribed for other livestock passing through such markets.

35-55-117. Penalty. Any person, partnership, or corporation who violates any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners is guilty of a class 3 misdemeanor, and any person, partnership, or corporation who commits a second or subsequent violation of any provision or requirement of this article or any rule or regulation adopted by the state board of stock inspection commissioners commits a class 1 misdemeanor and any such offender shall be punished as provided in section 18-1.3-501, C.R.S. It is the duty of the district attorney of the district in which such offense is committed, upon complaint of any private person, or of a sanitary or brand inspector, or of the state board of stock inspection commissioners, to prosecute the same if, after investigation, he or she believes a violation has occurred. The state board of stock inspection commissioners, upon its own initiative, or upon complaint of any person, through the attorney general may bring an action in the district court of the district where such offense is committed in the name of the people of this state for an injunction against any person violating any of the provisions of this article or of any rule or regulation adopted by the state board of stock inspection commissioners.

35-55-118. Denial of license - hearing. (1) The state board of stock inspection commissioners is empowered to determine summarily whether an applicant for a license to establish and operate a public livestock market meets the requirements set forth in this article or whether there is probable cause to believe that an applicant has committed any of the acts set forth in section 35-55-107 as grounds for discipline. As set forth in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not meet the requirements for licensure set forth in this article or that probable cause exists to believe that an applicant has committed any of the acts set forth in section 35-55-107, the board may withhold or deny the applicant a license. In such instance, the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination.

(3) Should reasonable grounds for controversy over the board's action in issuing or refusing to issue a license develop, a hearing may be conducted by four members of the board. Following such hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

35-55-119. Termination of functions - repeal of article. This article is repealed, effective July 1, 2019. Prior to the repeal, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

ARTICLE 56

Auctioneers of Livestock

35-56-101. Stock register. Any person licensed in this state to keep an auction, where horses, mules, or cattle are sold at auction, shall maintain a book called a stock register, in which he shall describe minutely every animal he offers for sale.

35-56-102. Contents of register. In such register shall be recorded the person's name who brings forward such animal for sale, whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also, the color, brand or marks, size, and age, as near as may be, of the animal so offered for sale.

35-56-103. Registration fee. The keeper of such auction shall be entitled to charge and receive for the registering of each animal so entered in his register, before he offers the same for sale, the sum of twenty-five cents. All stock registers shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the right of property may be had.

35-56-104. Penalty. Any person who offers for sale at auction any animal named in section 35-56-101, without first complying with the requirements of this article as to registration, upon conviction thereof, shall be punished by a fine of twenty-five dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

35-56-105. Record kept by auctioneers. All auctioneers, commission merchants, and other persons who keep a place or stand for publicly vending horses, mules, and horned cattle, or any of them, in a book kept for that purpose, shall keep a true and faithful record of all the animals purchased or sold by them, or under their control, which record shall contain a brief description of the animal, including its age, value, marks, brands, and date of purchase and sale, and the name and residence of the seller and purchaser in each case.

35-56-106. Record open to inspection. The record provided for in section 35-56-105 shall be open to the inspection of all persons during the ordinary business hours of the day.

35-56-107. Penalty. Any person violating any of the provisions of this article shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in any court of competent jurisdiction, with cost of suit.

35-56-108. Disposition of fines. All fines recovered under the provisions of this article shall be paid into the county treasury of the proper county, and appeals shall be allowed to the district court as in civil cases.

ARTICLE 57

Colorado Beef Council

35-57-101. Short title. This article shall be known and may be cited as the "Colorado Beef Council Authority Act".

35-57-102. Legislative declaration. (1) It is declared to be in the interest of the public welfare that owners of cattle shall be authorized and encouraged to act jointly and in cooperation with handlers, processors, dealers, and purchasers of cattle in promoting and stimulating, by research, education, advertising, and other methods, the increased and efficient production, distribution, use, and sale of cattle and beef products; and it is the intent and purpose of this article to authorize and provide a method and procedure for a promotional program for the cattle industry and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the cattle industry of this state is affected with a public interest in that, among other things:

(a) The production, processing, handling, purchasing, manufacturing, and distributing of beef and beef products constitutes a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many thousands of its population but also furnishes essential foods that are vital to the public health and welfare.

(b) Stabilization, maintenance, and expansion of the cattle industry of Colorado and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to provide and maintain an adequate standard of living for a great segment of the population of this state, to maintain proper wage scales for those engaged in the cattle industry, and to maintain existing employment.

(c) The essentiality of beef and beef products in proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof and be protected against misrepresentation and deception by the dissemination of accurate and scientific information relative to the healthful qualities of beef and

beef products, their various classifications, the food values, and industrial and medicinal uses thereof; the methods, care, and precautions necessary to their proper production, processing, manufacture, and distribution; the necessary costs and expenses thereof; and the necessity and desirability on the part of the public of using and consuming beef and beef products of the highest standards of quality.

(2) The purposes of this article are:

(a) To enable the cattle industry, with the aid of the state, to protect their right to market, to develop, maintain, and expand the state, nationwide, and foreign markets for beef and beef products produced, processed, or manufactured in this state, and the use and the consumption of such beef and beef products therein;

(b) In aid, but not in limitation, of the purpose in paragraph (a) of this subsection (2), to authorize and enable the board to formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this article, sales stimulation and consumer or other educational programs designed to increase the use and consumption of beef and beef products;

(c) To provide funds for the administration and enforcement of this article by contributions or fees in the event the federal cattlemen's beef promotion and research board, established in 7 U.S.C. sec. 2904 (1), ceases to exist. Such moneys shall be collected in the manner prescribed in this article.

35-57-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado beef council authority created by section 35-57-104 (1).

(2) "Board" or "beef board" or "beef council" means the board of the Colorado beef council authority created by section 35-57-104 (1).

35-57-104. Colorado beef council authority - creation. (1) There is hereby created the Colorado beef council authority, which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

35-57-105. Colorado beef council authority - board of directors. (1) The powers of the authority shall be vested in the board of directors of the Colorado beef council authority, which shall be composed of:

(a) Two persons who raise, breed, or grow cattle or calves for beef production;

(b) Two persons who are actively engaged in the business of feeding cattle and operating

a feedlot;

(c) Two persons actively engaged in the processing, slaughtering, handling, or marketing of beef;

(d) One person engaged in the production, on a dairy farm, of fluid milk and the selling of dairy cattle for beef;

(e) One person actively engaged in the processing and distribution of beef or beef products.

(2) The governor shall appoint the members of the board. In making such appointments, the governor shall take into consideration nominations and recommendations made to the governor by organizations who represent, or who are engaged in, the same type of production or business as the person so nominated or recommended for appointment as a member of the board. Each member shall continue in office until such member's successor is appointed and qualified. The terms of no two members from the same industry shall expire on the same year.

(3) (Deleted by amendment, L. 93, p. 1850, § 1, effective July 1, 1993.)

35-57-106. Qualifications of members. (1) Each member of the board shall have the following qualifications which shall continue during the member's term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of the state of Colorado.

(c) Each shall demonstrate through membership in a producers' organization, or an organization representing this type of production or business, or public service or otherwise, an active interest in the development of the beef industry of Colorado.

(d) Each shall be actively engaged in the type of production or business which the member will represent on the board for a period of at least five years and shall derive a substantial proportion of such member's income from that type of production or business. Each shall be a contributor to the Colorado beef board.

(e) No more than one-half of the board shall be affiliated with one political party.

35-57-107. Terms of members. (1) The members of the Colorado beef board who are in office on July 1, 1993, shall comprise the original board of the beef council authority, and their initial terms on the beef council authority shall end at the same time as the terms to which they were appointed on the Colorado beef board prior to July 1, 1993.

(2) On the expiration of the term of a member of the board, that member's successor shall be appointed by the governor for a term of four years; except that, in case of a vacancy, the governor shall appoint a person who shall serve for the unexpired term.

35-57-108. Declaring office of member vacant. The governor shall immediately declare the office of any member of the board vacant whenever the governor finds that: The member no longer is actively engaged in the type of beef or dairy production or business the member was engaged in at the time of the member's appointment; the member has become a resident of

another state; the member is unable to perform the duties of the office.

35-57-109. Removal of member. (1) The governor may remove any member of the board for inefficiency, neglect of duty, or misconduct in office or when the segment of the industry which the member represents fails or elects not to pay its equitable share relating to the promotion of beef. Such member shall be entitled to a public hearing after serving upon such member, ten days before the hearing, a copy of the charges against the member, together with the notice of the time and place of the hearing. At the hearing, the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged.

(2) In every case of removal, the governor shall file in the office of the secretary of state a complete statement of all charges against the member, and the governor's findings thereon, together with a record of the entire proceedings had in connection therewith.

35-57-110. Expenses of members. Members, officers, and employees of the board may receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

35-57-111. Meeting place. The board shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the board or to be affected by its acts.

35-57-112. Meetings. The board shall elect a chairperson from among its members and a secretary-treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance. The board shall meet regularly once each six months and at such other times as called by the chairperson. The chairperson may call special meetings at any time and shall call a special meeting when requested by four or more members of the board.

35-57-113. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of beef and beef products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of beef and its products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters concerning the beef industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to carry out the purposes of the board as authorized by this article;

(f) Borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(g) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(h) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(i) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the board, and enter into contracts with such organizations or agencies for carrying on joint programs;

(j) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board as beneficial to the beef industry of this state, and expend funds in connection therewith if that program is compatible with the powers conferred by this article;

(k) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties;

(l) Enter into contracts for the promotion of beef and develop new markets through such promotion;

(m) Receive and hold funds for and on behalf of the national beef promotion and research board as a qualified state beef council pursuant to the beef promotion and research order, 7 CFR 1260.172.

(2) The board's powers and duties, as set forth in subsection (1) of this section, and its activities pursuant to this article are consistent with those of a qualified state beef council pursuant to 7 CFR 1260.172 to 1260.181.

35-57-114. Acceptance of grants and gifts. The board may accept grants, donations, contributions, or gifts from any source for expenditures for any purpose consistent with the powers conferred on the board.

35-57-115. Payments to national organizations. From the contributions it receives, the board may pay or contribute to organizations such as, but not limited to, the national livestock and meat board to carry out work and programs approved by the board on a national basis.

35-57-116. Rules and regulations. The board is authorized to promulgate regulations necessary to carry out the intent and purposes of this article.

35-57-117. Collection of fees for purposes of this article - custody and

disbursement. (1) (a) In order for the board to carry out the provisions and intent of this article, the state board of stock inspection commissioners, by and through the brand commissioner, shall collect a beef board fee on cattle and calves that are sold for which a brand inspection fee is also collected as provided in section 35-41-104 (5). Commencing July 1, 1993, the fee shall not exceed one dollar per head or the amount assessed pursuant to the beef promotion and research order, 7 CFR 1260.172, as amended, whichever is greater.

(b) The fee set forth in paragraph (a) of this subsection (1) shall also be collected from any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, and such producer shall remit to the brand commissioner the set fee per head of cattle or the equivalent thereof.

(c) The fee assessed on each head of cattle sold pursuant to paragraph (b) of this subsection (1) shall not apply to cattle owned by a person if such person:

(I) Certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef product is a sales commission, handling fee, or other service fee;

(II) Certifies that the person acquired ownership of the cattle to facilitate the transfer of ownership of such cattle from the seller to a third party;

(III) Establishes that such cattle were resold not later than ten days after the date on which the person acquired ownership.

(2) (a) The beef board fee collected pursuant to subsection (1) of this section shall be kept separate and distinct from other moneys collected by the state board of stock inspection commissioners. At least once each two months, such fee shall be transferred or paid over to the board, less a sum not in excess of three percent per head on each animal for which a fee is collected.

(b) The board shall utilize the moneys collected pursuant to subsection (1) of this section in carrying out the purposes of this article. In carrying out the purposes of this article, the board may coordinate its activities with any state agency and may allocate such sums collected under this section as are necessary for such coordination.

(3) (Deleted by amendment, L. 93, p. 1853, § 1, effective July 1, 1993.)

35-57-118. Collection procedure. (1) The operators of all stockyards, slaughterhouses, packing plants, and livestock auction markets shall deduct from the proceeds of sale owed by them to the respective owners of animals the beef board fee as authorized by section 35-57-117.

(2) When an operator sends or gives any written statement to an owner or such owner's agent relating to the proceeds owing such owner, the operator shall include a statement of the amount deducted from such proceeds for board purposes under section 35-57-117 and the amount deducted from such proceeds under article 53 of this title for brand inspection.

(3) In accordance with the provisions of subsection (1) of this section, operators shall promptly pay to the state board of stock inspection commissioners all beef board fees collected by them.

35-57-119. Refunds. (1) Any person who paid a beef board fee at the time of the brand inspection as required by section 35-57-117 shall be entitled to an eighty-five percent refund of such fee. A claim for a refund shall be made to the board of directors of the Colorado beef council authority, hereinafter referred to as the "board", within ten days after the date of the brand inspection.

(2) Only the person who paid the fee shall submit a claim for a refund to the board. A written and signed request for a refund of such fee and a copy of the Colorado brand inspection certificate shall be required for such refund. A person may submit a claim by facsimile or by mail. The postmark date or the facsimile confirmation date shall be used to determine the timeliness of a claim.

(3) The board, before processing or making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for such refund. All persons who forward claims for such refunds shall keep pertinent records for a period of at least three years and shall make such records available to the board upon request. The board may file an action to recover a refund of a fee from any person who has obtained such refund illegally.

(4) Any person who files a fraudulent or false claim for a refund, or who by any false pretenses obtains or attempts to obtain a refund not legally due to such person, or who signs a refund claim in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished according to law.

35-57-120. Payment of board money to authorized agent - deposits and withdrawals. Any person authorized by the board to receive or disburse funds as provided in this article shall post with the board surety bond in an amount the board determines sufficient, the cost or premium to be paid by the board.

ARTICLE 57.5

Colorado Sheep and Wool Authority

35-57.5-101. Short title. This article shall be known and may be cited as the "Colorado Sheep and Wool Authority Act".

35-57.5-102. Legislative declaration. (1) It is hereby declared to be in the interest of the public welfare that owners of sheep be authorized and encouraged to act jointly and in cooperation in promoting and stimulating, by research, education, advertising, and other methods, the increased and efficient production, distribution, use, and sale of sheep and sheep

products. It is the intent and purpose of this article to authorize and provide a method and procedure for effectively correlating and encouraging the advancement of the sheep industry and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the sheep industry of this state is affected with a public interest in that the stabilization, maintenance, and expansion of the sheep industry of Colorado and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet and an adequate supply of animal fiber; to protect, for the state and its political subdivisions, a necessary source of tax revenue; to provide and maintain an adequate standard of living for a great segment of the population of this state; to maintain proper wage scales for those engaged in the sheep industry; and to maintain existing employment.

(2) The purpose of this article is to enable the sheep industry to effectively correlate and encourage the advancement and improvement of its commodities.

35-57.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado sheep and wool authority created by section 35-57.5-104 (1).

(1.5) "Board" or "sheep and wool board" means the Colorado sheep and wool board.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Feeder" means a person who commercially feeds sheep that are purchased from producers or fed for producers on a contract basis.

(4) "Handler" means a person who buys, ships, commercially feeds, processes, or distributes sheep that have been sold by or on behalf of a producer or that have been purchased or otherwise acquired from a producer. "Handler" includes a producer who buys, ships, commercially feeds, processes, or distributes such producer's own sheep.

(5) "Producer" means a person who raises or breeds sheep or produces wool from sheep.

35-57.5-104. Colorado sheep and wool authority - creation. (1) There is hereby created the Colorado sheep and wool authority, which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

35-57.5-105. Colorado sheep and wool board - creation. (1) The powers of the authority shall be vested in the Colorado sheep and wool board, which is hereby created, which

shall be composed of twelve members and twelve alternates who raise, breed, grow, or feed sheep and wool or lambs for sheep production.

(2) The board members and alternates shall be appointed as follows:

(a) One member and an alternate from an area comprising the counties of Eagle, Garfield, Grand, Jackson, Moffat, Pitkin, Rio Blanco, and Routt, which shall be known as district 1;

(b) One member and an alternate from an area comprising the counties of Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel, which shall be known as district 2;

(c) One member and an alternate from an area comprising the counties of Archuleta, Alamosa, Conejos, Costilla, Dolores, Hinsdale, La Plata, Mineral, Montezuma, Rio Grande, Saguache, and San Juan, which shall be known as district 3;

(d) One member and an alternate from an area comprising those counties not in districts 1 to 3, which shall be known as district 4;

(e) Two members and their alternates, appointed from the state at large, who are actively engaged in the commercial feeding of sheep;

(f) Six members and their alternates who are actively engaged in sheep production or commercial feeding will be appointed at large. All appointments from this group will be made so that the number of feeders and producers on the board reflects the percentage of fees paid by the feeders and the producers. The selection of at-large producer members shall also be a reflection of the proportion of fees paid by producers in each district within the state.

(3) Each member and alternate of the board shall be appointed by the commissioner from nominations received from producers or producers' organizations in the district in which the member or alternate resides or has a principal place of business.

(4) (Deleted by amendment, L. 93, p. 1839, § 1, effective July 1, 1993.)

35-57.5-106. Qualifications of members and alternates. (1) Each member and alternate of the board shall have the following qualifications, which shall continue during such person's term of office:

(a) The person shall be a citizen of the United States.

(b) The person shall be a bona fide resident of the state of Colorado and reside or maintain a principal place of business in the district from which the person is appointed.

(c) The person shall have demonstrated, through membership in a sheep producers' organization or an organization representing this type of production or business or through public or other service, an active interest in the development of the sheep industry of Colorado.

(d) The person shall have been actively engaged in the raising, breeding, or growing of sheep for a period of at least three years and shall derive a substantial proportion of his or her income from that type of production or business.

35-57.5-107. Terms of members and alternates. (1) The appointments of members and alternates to the Colorado sheep and wool board shall be made on or before July 1, 1997. Four members shall be appointed for terms of one year, four members shall be appointed for

terms of two years, and four members shall be appointed for terms of three years. Thereafter, all appointments shall be for three-year terms.

(2) Upon the expiration of the term of a member and such member's alternate as provided in subsection (1) of this section, their reappointment or successors shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy of a member, such member's appointed alternate shall serve the balance of the member's unexpired term, and, in the case of a vacancy of an alternate, the commissioner shall appoint a person as provided in section 35-57.5-105 (3) who shall serve for the unexpired term.

35-57.5-108. Declaring office of member or alternate vacant. The commissioner shall immediately declare the office of any member or alternate of the board vacant whenever the commissioner finds that: The member or alternate no longer is actively engaged in the production of sheep; the member or alternate has become a resident of another state; or the member or alternate is unable to perform the duties of the office.

35-57.5-109. Removal of member or alternate. (1) The commissioner may remove any member or alternate of the board for inefficiency, neglect of duty, or misconduct in office. Such member or alternate shall be entitled to a public hearing before the board with the commissioner presiding, after service upon the member or alternate ten days before the hearing of a copy of the charges against the member or alternate together with a notice of the time and place of the hearing. At the hearing, the member or alternate shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged.

(2) In every case of removal, the commissioner shall file in the office of the secretary of state a complete statement of all charges against the member or alternate and the commissioner's findings thereon, together with a record of the entire proceedings had in connection therewith.

35-57.5-110. Expenses of members, alternates, and employees. Members, alternates, officers, and employees of the board may receive compensation for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

35-57.5-111. Meeting place. The board shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of a majority of those most likely to have business with the board or to be affected by its acts.

35-57.5-112. Meetings. The first board appointed shall meet as soon as practicable for the purpose of organizing. It shall elect a chairman from among its members and a secretary-

treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the board. Thereafter, the board shall meet regularly once each three months or at such other times as called by the chairman. The chairman may call special meetings at any time and shall call a special meeting when requested by three or more members of the board.

35-57.5-113. Duties and powers of the board. (1) The board may:

(a) Conduct or contract for scientific research to discover and develop the commercial value of sheep and sheep products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of sheep and sheep products;

(c) Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters of trade concerning the sheep industry;

(d) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to the carrying out of the purposes of the board as authorized by this article;

(f) Make grants to research agencies for the financing of special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the board as authorized by this article;

(g) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(h) Cooperate with and enter into contracts with any local, state, or nationwide organization or agency engaged in work or activities similar to those of the board and enter into contracts with such organizations or agencies for carrying on joint programs;

(i) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the board to be beneficial to the sheep industry of this state and expend funds in connection therewith if such program is compatible with the powers conferred by this article;

(j) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties; and

(k) Enter into contracts for the promotion of sheep and for the development of new markets through such promotion.

(2) The board shall establish a license fee for the purpose of funding the services provided to the sheep industry by the board and for funding the activities of the board performed pursuant to the provisions of this article.

35-57.5-114. Acceptance of grants and gifts. The board may accept grants, donations, contributions, or gifts from any source for expenditures in connection with any purpose consistent with the powers conferred on the board.

35-57.5-115. Rules and regulations. The board is authorized to promulgate regulations necessary to carry out the intent and purposes of this article.

35-57.5-116. License fee - expenditure of funds. (1) The board shall determine the amount of assessment per head of sheep upon which the annual license fee provided for in section 35-57.5-113 (2) shall be computed. The amount of such assessment shall not exceed fifty cents per head of sheep and shall be set by the board by November 1 of the year prior to the calendar year the license fee is to be charged. In any calendar year, the fee shall not increase by more than five cents over the amount assessed at the end of the immediately preceding calendar year.

(2) All producers and commercial feeders of sheep in the state shall pay the license fee for each sheep marketed; except that no fee shall be collected on any sheep fed in the state for a period of less than thirty days. The fee shall be collected from such producers and feeders by handlers, who shall remit the proceeds to the authority. The fee shall be payable upon each transfer of the sheep or of any right, title, or interest therein.

(2.5) (a) The operators of feedlots, slaughterhouses, packing plants, and livestock auction markets shall deduct from the proceeds of sale owed by them to the owners of sheep handled at such facilities, and shall promptly remit to the authority, the fees payable under this section. Each payment pursuant to this subsection (2.5) shall be accompanied by a list of the names and addresses of the sheep owners on whose behalf the payment is made and the number of sheep marketed by each such owner.

(b) When the operator of a feedlot, slaughterhouse, packing plant, or livestock auction market sends or gives any written statement to an owner of sheep or to such owner's agent relating to the proceeds owing to the owner, the operator shall include a statement of the amount deducted from such proceeds pursuant to paragraph (a) of this subsection (2.5).

(3) A producer or feeder who, by virtue of his or her activities or circumstances, becomes a handler as defined in section 35-57.5-103 (4) or who sells, ships, or otherwise disposes of sheep to a person not subject to this article shall forthwith remit to the authority an amount equal to the amount of fees that would otherwise have been payable under subsection (2) of this section.

(4) When collected, such license fees shall be paid to the authority and administered by the board for the purposes set forth in this article.

(5) The license fee to defray the costs of this program pursuant to the provisions of this article shall remain in full force and effect from year to year without change unless there is filed with the board a petition signed by at least fifty-one percent of the growers of sheep in the state upon whom the most recent license fee was imposed requesting the repeal of said license fee in total discontinuance of the program or a petition requesting an increase or decrease of said license fee, in which latter case, the board shall fix a new assessment and provide for continuation of the program.

35-57.5-117. Acts constituting violation. It is a violation of this article for any person to fail to pay or remit to the authority an assessment pursuant to section 35-57.5-116 or to knowingly falsify any document furnished in connection with such a payment or remission.

35-57.5-118. Enforcement. (1) The board shall be responsible for the enforcement of this article.

(2) Any assessment levied in such specified amount as may be determined by the board pursuant to the provisions of section 35-57.5-116 shall constitute a personal debt of every person so assessed and shall be due and payable to the authority when payment is called for by the board.

(3) Upon the failure of such person to pay any such assessment upon the date determined by the board, the board may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Whenever it appears to the board, upon sufficient evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or of any order promulgated under this article, the board may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the board 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 board to post a bond.

(5) (a) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the board. The maximum penalty shall not exceed one thousand dollars per violation.

(b) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(c) If the board is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the board, the board may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(d) Whenever the board is found to have lacked substantial justification to impose a civil penalty, the person charged may recover such person's costs and attorney fees from the authority.

(e) Moneys collected from any civil penalties under the provisions of this section shall be paid to the authority, who shall use such funds to defray the costs of the administration of this article.

(f) Before imposing any civil penalty, the board may consider the effect of such penalty on the ability of the person charged to stay in business.

(6) (Deleted by amendment, L. 93, p. 1844, § 1, effective July 1, 1993.)

35-57.5-119. Refunds. (1) Unless otherwise specified in this article, there shall be no refunds of assessments.

(2) Any sheep producer or lamb feeder who has paid an assessment as required by section 35-57.5-116 shall be entitled to a prompt refund of seventy-five percent of such assessment from the board. Claim for refund shall be made to the board within thirty days after the date of payment of the assessment or thirty days after the due date of the assessment, whichever is later, on a form furnished by the board.

(3) Notwithstanding any other laws to the contrary and to carry out the intent of this section to insure prompt refund, the board, except as provided by subsection (4) of this section, is authorized to expeditiously process claims for refund. The refund shall be based on the signed statement of the refund claim and any other information that is attached thereto unless other information or verification is required by subsection (4) of this section.

(4) The board, before processing and making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for refund. All persons who forward claims for refund shall keep pertinent records for a period of at least three years, which shall be available for audit by the board. The board may file an action to recover from any person a refund of assessment illegally obtained.

(5) The claim for refund shall be signed by the person who paid the assessment. Any person who files a fraudulent or false claim for refund, or who, by any false pretenses, obtains or attempts to obtain a refund not legally due him, or who signs a refund claim in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished accordingly.

ARTICLE 57.8

Colorado Horse Development Board

35-57.8-101. Short title. This article shall be known and may be cited as the "Colorado Horse Development Authority Act".

35-57.8-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado horse development authority created by section 35-57.8-103 (2).

(2) "Board" means the board of directors of the Colorado horse development authority created by section 35-57.8-104 (1).

(3) "Commissioner" means the commissioner of agriculture.

35-57.8-103. Legislative declaration - Colorado horse development authority -

creation. (1) The general assembly hereby declares that it is in the public interest and welfare that owners of horses be authorized and encouraged to act jointly and in cooperation in stimulating, by research, education, advertising, and other methods, the promotion of the horse industry in the state. It is the intent and purpose of this article to authorize and provide a method and procedure for effectively correlating and encouraging the promotion of horses and the financing thereof pursuant to the powers of the general assembly as authorized by law. It is further declared that the horse has a long established relationship with the citizens of Colorado and therefore the state is affected with a public interest to ensure the continuation of a stable and expanding horse industry by establishing policies concerning horse promotion in this state and by educating the public concerning the health, care, and welfare of horses.

(2) There is hereby created the Colorado horse development authority that is a body corporate and a political subdivision of the state. The authority is not an agency of state government and is not subject to administrative direction by any state agency except:

(a) As provided in this article;

(b) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.;

(c) For purposes of inclusion in the risk management fund and the self-insured property fund and by the department of personnel pursuant to part 15 of article 30 of title 24, C.R.S.

35-57.8-104. Colorado horse development authority - board of directors - members - terms. (1) (a) The powers of the authority shall be vested in a board of directors, which shall be composed of:

(I) Five representatives of five different horse organizations in this state;

(II) One representative of a state horse show association;

(III) One representative of a state veterinary association;

(IV) One representative of a university equine extension service;

(V) Two representatives of an organization that operates statewide to promote and protect the interests of horses and that represents all types of horse uses and horse breeds;

(VI) Four representatives of horse industry support services.

(b) At least two representatives shall be from the western slope.

(2) The commissioner shall appoint the board members to three-year terms. The terms of no more than five members shall expire on the same year. Each member serves at the pleasure of the commissioner and shall continue in office until the member's successor is appointed and qualified. The members of the board who are in office on September 1, 1998, shall comprise the original board of directors of the authority, and their initial terms on the board shall end at the same time as the terms to which they were appointed on the Colorado horse development board prior to September 1, 1998.

(3) On the expiration of the term of a member of the board, that member's successor shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy, the commissioner shall appoint a person who shall serve for the unexpired term.

35-57.8-105. Qualifications of members. (1) Each board member shall meet the following qualifications at the time of appointment and throughout the member's term of office:

(a) Citizenship of the United States;

(b) Residency in this state;

(c) Demonstration of an active interest in the development of the horse industry in Colorado.

(2) The commissioner shall immediately declare the office of any member of the board vacant whenever the commissioner finds that the member is not qualified under this section or that the member is unable to perform the duties of the office.

35-57.8-106. Expenses - rules. Members shall serve without compensation except for their actual and necessary travel and other expenses incurred in the performance of their official duties. Employees of the board may receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The board shall adopt reasonable rules governing the incurrence and payment of expenses.

35-57.8-107. Duties and powers of the board. (1) The board shall:

(a) Adopt policies concerning horse promotion in this state;

(b) Adopt an education program concerning the health, care, and welfare of horses;

(c) Develop, adopt, and implement a process to fund the activities and responsibilities of the board.

(2) The board may:

(a) Sue and be sued as a board, without individual liability, for acts of the board within the scope of the powers conferred on the board by this article;

(b) Enter into contracts that it deems appropriate to carry out the purposes of the board as authorized by this article;

(c) Appoint an advisory committee to assist the board in developing and promoting the horse industry by recommending programs, policies, and structures;

(d) Appoint subordinate officers and employees of the board and prescribe their duties and fix their compensation;

(e) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the board and enter into contracts with the organizations or agencies for carrying out joint programs;

(f) Provide for conducting and overseeing a horse survey on the economic impact of the horse industry on this state;

(g) Adopt rules as necessary to administer and carry out the intent and purposes of this article.

(3) The board shall contract for the implementation of horse education and promotion programs with a horse industry organization that operates statewide to promote and protect the interests of the horse industry and that represents the interests of all types of horse uses and breeds. The board shall oversee the activities of the organization and the expenditure of moneys

by the organization to implement the programs.

35-57.8-108. Acceptance of grants and gifts - horse development fund. (1) The board may accept grants, donations, contributions, or gifts from any source for expenditures for any purpose consistent with the powers of the board.

(2) The horse development fund is abolished, and any moneys in the fund as of June 30, 1998, shall revert to the general fund.

35-57.8-109. Horse promotion authority assessment. (1) (a) To carry out the provisions and intent of this article, the state board of stock inspection commissioners, by and through the brand commissioner or a designated agent thereof, shall collect an assessment on horses for which a brand inspection fee is also collected as provided in section 35-41-104. The board of directors of the authority shall determine the assessment in an amount not to exceed three dollars per horse. No person shall be assessed more than a total of one hundred dollars in a calendar year.

(b) Any person may purchase a Colorado horse development authority assessment card for one hundred dollars from the authority to provide evidence to the state board of stock inspection commissioners, by and through the brand commissioner or a designated agent thereof, at the time a brand inspection fee is collected as provided in section 35-41-104, that the assessment due pursuant to paragraph (a) of subsection (1) of this section has been collected. Such Colorado horse development authority assessment card shall be valid for a period of one calendar year.

(2) The assessment shall be directly deposited by the livestock inspectors into an account specified by the Colorado horse development authority board. The state board of stock inspection commissioners is authorized to bill the Colorado horse development authority a fee collected pursuant to agreement between the state board of stock inspection commissioners and the Colorado horse development board. Such fee shall not exceed ten percent of the assessment determined by the board pursuant to this section.

35-57.8-110. Collection procedure. (1) The operators of all stockyards and livestock auction markets shall deduct the assessment from the proceeds of sale owed by them to the respective owners of horses as authorized by section 35-57.8-109.

(2) When an operator sends or gives any written statement to an owner or the owner's agent relating to the proceeds owing the owner, the operator shall include a statement of the amount deducted from the proceeds under section 35-57.8-109.

(3) Operators shall promptly pay to the state board of stock inspection commissioners all assessments collected by them pursuant to subsection (1) of this section.

35-57.8-111. Refunds. (1) Any person who has paid an assessment at the time of brand

inspection as required by section 35-57.8-109 shall, upon request, be entitled to a refund of such assessment from the board within a reasonable time; except that a person who has purchased a Colorado horse development authority assessment card shall not be entitled to a refund pursuant to this section.

(2) Notwithstanding any other laws to the contrary, and to carry out the intent of this section to ensure a refund, the board, except as provided by subsection (3) of this section, is authorized to process claims for refund and may make such refunds without the necessity of verification of payment by the applicant. The refund shall be based only on the signed statement of the refund claim and other information as is contained thereon unless other information or verification is required by subsection (3) of this section.

(3) The board, before processing and making a refund, may require any additional information or verification it deems necessary to determine the validity of the claim for refund. The board may file an action to recover from any person a refund of assessments illegally obtained.

(4) A claim for refund shall be signed by the person who paid the contribution. Any person who files a fraudulent or false claim for refund, who, by any false pretenses, obtains or attempts to obtain a refund not legally due such person, or who signs a claim for refund in the name of and for another person commits theft, as defined in section 18-4-401, C.R.S., and shall be punished accordingly.

ARTICLE 57.9

Confidentiality of Livestock Information

35-57.9-101. Short title. This article shall be known and may be cited as the "Livestock Information Security Act".

35-57.9-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "All-hazards security system" means a comprehensive data management system administered by the department in order to prevent, detect, respond to, mitigate, and manage the recovery of any livestock health and safety issues including, but not limited to, outbreaks of disease and injury sustained as a result of natural disasters. The system may compile and use data from sources including, but not limited to, the United States department of agriculture, geographic information systems and spatial modeling, the United States department of homeland security, the state board of stock inspection commissioners, the state veterinarian, the livestock industry, and laboratory tests performed by the department or external entities.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Department" means the department of agriculture.

(4) "Livestock" means cattle, sheep, goats, bison, swine, mules, poultry, horses, donkeys, alternative livestock as defined in section 35-41.5-102, and all other bovine, camelid, caprine, equine, ovine, avian, and porcine animals raised or kept for profit.

(5) "Person in interest" has the meaning set forth in section 24-72-202, C.R.S.

35-57.9-103. Authority of commissioner to deny access to information - redaction - exceptions. (1) The commissioner may deny access to personal information about persons involved with the livestock industry if the commissioner reasonably believes dissemination of such information will cause harm to such persons.

(2) On the grounds that disclosure would be contrary to the public interest, the commissioner may deny access to the following:

(a) Specific operational details of livestock operations that constitute confidential commercial data pursuant to section 24-72-204, C.R.S. Such operational details include ownership, numbers, locations, and movements of livestock; financial information; the purchase and sale of livestock; account numbers or unique identifiers issued by government or private entities; operational protocols; and participation in an all-hazards security system.

(b) Information related to livestock disease or injury:

(I) That would identify a person or location; or

(II) That contains confidential data pursuant to the veterinary-patient-client privilege described in section 24-72-204 (3) (a) (XIV), C.R.S.;

(c) Records of ongoing investigations that pertain to livestock; however, such records shall not be withheld if the investigation has concluded and the person being investigated is found by the commissioner to have violated any provision of this title that pertains to livestock.

(3) If the commissioner denies access to information pursuant to paragraph (a) or (b) of subsection (2) of this section, the commissioner shall redact the confidential information and make the remaining portions of such record available for disclosure. If the commissioner is unable to redact the record within the time limits established in section 24-72-203 (3), C.R.S., such time limits shall be waived and the commissioner shall redact the information and provide the redacted record as soon as is practicable.

(4) Nothing in this article shall be construed to authorize the commissioner to obtain information not otherwise permitted by law.

(5) Nothing in this article shall:

(a) Preclude a person in interest from accessing his or her own information;

(b) Prevent the commissioner from releasing biological livestock samples to authorized external entities for scientific testing, so long as the testing entity agrees to maintain the confidentiality of the information it receives;

(c) Prevent the commissioner from disclosing information that is otherwise permitted or required to be disclosed; or

(d) Apply when the commissioner determines that disclosure of livestock information is necessary to prevent or address an immediate threat to the health and safety of a person or animal.

(6) When disclosing information pursuant to subsection (5) of this section, the commissioner shall release only as much information as is necessary to address the situation.

35-57.9-104. Restrictions on information in databases. Any database created by the department that contains specific operational details that constitute confidential commercial data pursuant to section 24-72-204, C.R.S., shall not be merged or shared with any state, federal, or foreign government, industry partner, or other database that would modify the provisions with respect to how specific operational details that constitute confidential commercial data may be disseminated pursuant to section 35-57.9-103. Such data includes ownership, numbers, locations, and movements of livestock; financial information; the purchase and sale of livestock; account numbers or unique identifiers issued by government or private entities; operational protocols; and participation in an all-hazards security system; except that data within any all-hazards security system may be shared for response to or participation in any all-hazards event limited to the scope of each individual all-hazards event and to the scope of only those agencies directly involved in the all-hazards event. As used in this section, "all-hazards event" means the occurrence of any catastrophic event or incident that is either natural, such as a blizzard, fire, flood, tornado, earthquake, or disease outbreak, or man-made and that could be of biological, chemical, radiological, nuclear, or explosive origin.

MEAT PROCESSING

ARTICLE 58

Meat and Slaughter Plants

35-58-101 to 35-58-110. (Repealed)

ARTICLE 59

Inedible Meat Rendering and Processing Act

35-59-101 to 35-59-113. (Repealed)

AGRICULTURAL PRODUCTS - STANDARDS AND REGULATIONS

- Continued

ARTICLE 60

Commercial Feeding Stuffs

35-60-101. Short title. This article shall be known and may be cited as the "Colorado Feed Law".

35-60-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Brand name" means any word, name, symbol, device, or any combination thereof that identifies the commercial feed of a distributor or labeler and distinguishes it from that of other distributors or labelers.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. "Commercial feed" does not include unmixed whole seeds or grains, as identified in the United States grain standards, and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated as described in section 35-60-107. The commissioner by rule may exempt from this definition, or from specific provisions of this article, commodities such as hay, straw, stover, silage, cobs, husks, hulls, meat, and other portions of animal carcasses in their raw or natural state that have not been further processed, except by denaturing, when such commodities are not intermixed with other materials and are not adulterated as described in section 35-60-107.

(3) "Commissioner" means the commissioner of agriculture or the commissioner's authorized agent.

(3.5) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such person's remuneration is determined wholly or partially by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(5) "Department" means the department of agriculture and includes the state agricultural commission, the commissioner of agriculture, and all agents and employees of the department.

(6) "Distribute" means to sell, offer to sell, exchange, barter, supply, furnish, or otherwise provide commercial feed. "Distribute" does not include sales of commercial feed by a contract feeder as a part of a custom feeding agreement.

(7) "Distributor" means any person who distributes commercial feed in this state.

(8) "Drug" means either of the following:

(a) Any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans; or

(b) Any article, other than a feed, intended to affect the structure or any function of an animal's body.

(9) "Feed" means any substance that is intended for use as food for animals other than humans. "Feed" includes commercial feed and feed ingredients.

(9.5) "Feeder" means any person who provides feed directly to any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food. "Feeder" includes a contract feeder.

(10) "Feed ingredient" means a constituent material used in the manufacture of a feed that becomes part of the feed.

(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the immediate container of any feed or on the invoice or delivery slip with which a feed is distributed.

(12) "Labeling" means all labels and other written, printed, or graphic matter upon a feed or any of its containers or wrappers or that accompany the feed or are otherwise published or communicated in any manner by a distributor of such feed.

(13) "Manufacture" means to grind, mix, blend, or further process a feed.

(14) "Noxious weed seed" means the seed produced from plants that have been designated by the commissioner as being noxious due to such plants negative effects on natural and agricultural ecosystems.

(15) "Official sample" means a sample of feed taken by the commissioner in accordance with the provisions of section 35-60-110.

(16) "Person" means an individual, partnership, corporation, limited liability company, cooperative, business trust, business association, or entity.

(17) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

(18) "Quantity statement" means the declaration of the net weight or mass, net volume of liquid or dry material, or count.

(19) "Ton" means a net weight of two thousand pounds.

35-60-103. Commercial feed registration - rules. (1) No person shall manufacture commercial feed within the state, or allow his or her name to appear on the label of a commercial feed as guarantor, without first registering with the department. Such registration shall expire on the date specified by the commissioner by rule and may be renewed annually.

(2) Nothing in this article shall require a person to register with the department to do the following:

(a) Distribute packaged commercial feed in its original package if that feed was packaged and labeled by a registered manufacturer or distributor whose name and address appears on the package label;

(b) Distribute bulk commercial feed that is:

(I) Distributed in the same form, but not necessarily the same quantities, in which it was received from a registered manufacturer or distributor; and

(II) Labeled with the information, except the quantity statement, that was provided by the registered manufacturer or distributor from whom the bulk commercial feed was received;

(c) Manufacture or distribute a customer-formula feed; except that the manufacturer of such customer-formula feed shall:

(I) Distribute such customer-formula feed only to the final purchaser for whom the feed was formulated;

(II) Obtain all commercial feeds used as ingredients in such customer-formula feed from registered manufacturers or distributors; and

(d) Manufacture or distribute commercial feed as an employee of a person registered pursuant to subsection (1) of this section.

35-60-104. Registration fees. (1) A person registering with the department pursuant to section 35-60-103 (1) shall submit a form provided by the department that includes the following information:

(a) The name and business address of the registrant;

(b) The address of each business location in this state where the registrant engages in activities for which registration is required under section 35-60-103;

(c) The registration fee required under subsection (2) of this section;

(d) A statement that the distribution fees and feed tonnage report required under section 35-60-105 have been paid and are current;

(e) Other information required by the department.

(2) (a) (I) A person required to be registered pursuant to section 35-60-103 (1) shall pay an annual registration fee as established by the agricultural commission. Except as provided in subparagraph (II) of this paragraph (a), for each fiscal year, commencing on July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(b) Any person who fails to register within fifteen business days after notification of the requirement to register, or any registrant who fails to comply with the registration renewal requirements, shall pay a late fee, as established by the agricultural commission, in addition to the registration fee.

(c) Registration fees collected under paragraph (a) of this subsection (2) are nonrefundable and shall not be prorated for any part of a year.

(d) All fees collected by the department under paragraphs (a) and (b) of this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

(e) Registration pursuant to section 35-60-103 (1) is not transferrable between persons or

business locations.

(3) The commissioner may at any time request, and the registrant shall provide, copies of labels and labeling to determine compliance with the provisions of this article.

(4) The commissioner, after an administrative hearing pursuant to article 4 of title 24, C.R.S., may deny registration, place a registrant on probation, or restrict, suspend, revoke, or refuse to renew the registration of a person who has violated any provision of this article or any rule of the commissioner promulgated pursuant to this article or falsified any information requested by the commissioner. The commissioner may place conditions that limit production or distribution of a particular feed on the registration of any person found to have violated any provision of this article. Such restriction, revocation, suspension, or refusal to renew a registration, or the placement of conditions on a registration, may be in addition to or in lieu of penalties or fines imposed by section 35-60-113.

35-60-105. Distribution fees - reports. (1) Except as provided in subsection (5) of this section, distribution fees in an amount established by the agricultural commission shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor, or distributor subject to the following conditions:

(a) No fee shall be paid on a commercial feed if the payment has already been made by a previous distributor. If the fee has not been paid by a previous distributor, the final distributor listed on the label as the manufacturer, guarantor, or distributor shall pay the fee.

(b) No fee shall be paid on customer-formula feeds if the distribution fee has been paid on the commercial feeds that are used as ingredients in the customer-formula feeds. No feed ingredient that is supplied by a farmer or feeder to a manufacturer shall be subject to a fee when used by the manufacturer to produce a customer-formula feed for the farmer or feeder.

(c) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), for each fiscal year, commencing on July 1, fifty percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(B) Repealed.

(II) An annual distribution fee per product as established by the agricultural commission shall be paid in lieu of the distribution fee on commercial feed that is distributed in the state only in packages of ten pounds or less.

(d) The minimum total distribution fee paid shall be as established by the agricultural commission.

(2) In the case of a commercial feed that is distributed in the state both in packages of ten pounds or less, and in packages weighing over ten pounds, the distribution fee required pursuant to subsection (1) of this section shall be paid on the commercial feeds distributed in package weights over ten pounds with a minimum distribution fee established by the agricultural commission. The annual flat distribution fee required pursuant to paragraph (c) of subsection (1) of this section shall be paid on the products sold in packages of ten pounds or less.

(3) Each person who is required to pay the distribution fee set forth in subsection (1) of

this section shall:

(a) File with the department each year, not later than the due date specified by the commissioner by rule, a statement that sets forth the number of net tons of commercial feeds distributed in the state and any other information required by the commissioner as set forth in rule. Distribution fees that are due in accordance with subsection (1) of this section shall be paid when the annual statement is filed. Distribution fees that have not been remitted to the department by the due date shall be assessed a penalty fee of ten percent of the amount due or a minimum fee established by the agricultural commission, whichever amount is greater, which shall be added to the distribution fees that are due and owed. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(b) Maintain records as may be required by the commissioner to accurately reflect the tonnage of commercial feed distributed in this state, and the commissioner shall have the right to examine such records to verify statements of tonnage.

(4) (a) A distributor who is subject to the distribution fees for small packages of ten pounds or less shall file with the commissioner, along with the annual statement required by paragraph (a) of subsection (3) of this section, a list of all small package items weighing ten pounds or less that are distributed in this state. New products added during the year must be submitted to the commissioner as a supplement to this list before distribution.

(b) If the list required in paragraph (a) of this subsection (4) is not received with the annual statement or by the due date specified by the commissioner, a penalty fee in an amount established by the agricultural commission shall be added to the amount due. The assessment of a penalty fee is in addition to and not a substitute for any other penalties or remedies available to the commissioner under this article.

(5) A person other than the manufacturer, guarantor, or distributor may assume liability for payment of the distribution fee pursuant to subsection (1) of this section.

(6) All fees collected under this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-60-106. Labeling - general requirements - commercial and customer-formula feeds. (1) **Commercial feed label contents.** Except as otherwise specified in rule by the commissioner, a commercial feed must be labeled with the information required in this subsection (1). The information must appear on the label in the following order:

(a) The product name of the commercial feed and its brand name, if any;

(b) If the commercial feed contains any drug, the information required by the commissioner as established by rule;

(c) The statement of purpose as established by the commissioner by rule;

(d) The guaranteed analysis stated in terms established by the commissioner by rule. The guaranteed analysis shall advise the user of the composition of the feed and support claims made in the labeling. In all cases the substances or elements shall be determinable by laboratory

methods as published by the international association of official analytical chemists or by other methods acceptable to the commissioner.

(e) The ingredient statement as established by the commissioner by rule. The common or usual name of each ingredient used in the manufacture of the commercial feed shall be listed; except that the commissioner, by rule, may permit the use of a collective term for a group of ingredients that perform a similar function. The commissioner may exempt such commercial feed or any group thereof from the requirement of including an ingredient statement on the label if the commissioner finds that such statement is not necessary to protect consumers.

(f) The use directions and precautionary statements determined by the commissioner by rule as are necessary for the safe and effective use of the commercial feed;

(g) The date of manufacture, processing, packaging, or repackaging or a code that permits the determination of the date;

(h) The name and address of the registered manufacturer or distributor of the commercial feed;

(i) A quantity statement; and

(j) Any other information required by the commissioner as established by rule.

(2) **Customer-formula feed label contents.** The manufacturer of a customer-formula feed shall provide the purchaser of that feed with all of the following information, in writing, when the manufacturer delivers the customer-formula feed to the purchaser:

(a) The name and address of the manufacturer;

(b) The name and address of the purchaser;

(c) The date on which the manufacturer sold or delivered the customer-formula feed to the purchaser;

(d) The name of the customer-formula feed;

(e) The name and net quantity of every commercial feed and every other ingredient used to manufacture the customer-formula feed;

(f) The use directions and precautionary statements determined by the commissioner by rule as are necessary for the safe and effective use of the customer-formula feed. If any commercial feed used in the manufacture of the customer-formula feed is labeled with use directions or precautionary statements, the manufacturer of the customer-formula feed shall provide those use directions and precautionary statements to the purchaser.

(g) If the commercial feed contains any drug, the information required by the commissioner as established by rule. The information shall include, but shall not be limited to, the following:

(I) The purpose of the medication; and

(II) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with established regulation;

(h) A quantity statement; and

(i) A statement on the label or labeling that states "This feed was manufactured according to specific instructions provided by (insert name of person who provided the instructions) and cannot be sold to any other person."

35-60-107. Adulteration and misbranding. (1) (a) No person may manufacture or distribute in this state any feed that is adulterated or misbranded.

(b) No person may use any feed that is adulterated for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food.

(2) A feed is adulterated if any of the following apply:

(a) The feed bears or contains any poisonous or deleterious substance that may render the feed harmful to health; except that, if the poisonous or deleterious substance is not an added substance, a feed shall not be considered adulterated under this subsection (2) if the quantity of such substance in the feed does not ordinarily render it harmful to health.

(b) The feed bears or contains any added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of section 406 of the "Federal Food, Drug, and Cosmetic Act", as amended. This paragraph (b) is not applicable to:

(I) A pesticide used according to label directions on a raw agricultural commodity contained in the feed; or

(II) A food additive that complies with 40 CFR 180.

(c) The feed is a raw agricultural commodity and it bears or contains pesticide residue that is unsafe within the meaning of section 408 (a) of the "Federal Food, Drug, and Cosmetic Act", unless all of the following apply:

(I) The pesticide chemical was applied to the raw agricultural commodity according to an exemption or tolerance under section 408 of the "Federal Food, Drug, and Cosmetic Act";

(II) The raw agricultural commodity has been processed by canning, cooking, freezing, dehydrating, milling, or other processing procedure;

(III) The pesticide residue has been removed from the raw agricultural commodity to the greatest extent possible with good manufacturing practices; and

(IV) The pesticide residue concentration of the feed does not exceed the tolerance prescribed for that pesticide in the raw agricultural commodity.

(d) The feed, if fed to an animal, will likely cause any edible product of that animal to contain a pesticide residue that is unsafe within the meaning of section 408 of the "Federal Food, Drug, and Cosmetic Act".

(e) The feed contains any food additive that is unsafe within the meaning of section 409 of the "Federal Food, Drug, and Cosmetic Act".

(f) The feed contains any color additive that is unsafe within the meaning of section 721 of the "Federal Food, Drug, and Cosmetic Act".

(g) The feed contains any new animal drug that is unsafe within the meaning of section 512 of the "Federal Food, Drug, and Cosmetic Act".

(h) The feed contains any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed.

(i) The feed is manufactured, packaged, or held under unsanitary conditions that may contaminate it with filth or make it harmful to health.

(j) The feed is, in whole or in part, the product of a diseased animal or of an animal that has died by a method other than slaughter and such method is unsafe within the meaning of section 402 (a)(1) or (2) of the "Federal Food, Drug, and Cosmetic Act".

(k) The feed container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents harmful to health.

(l) The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the "Federal Food, Drug, and Cosmetic Act".

(m) A valuable constituent of the feed falls below or differs from that which is represented on the feed labeling.

(n) The feed contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to rules promulgated by the commissioner concerning good manufacturing practice to assure that the drug meets the requirements of this article as to safety and has the identity, strength, and meets the quality and purity characteristics that it purports or is represented to possess. In promulgating such rule, the commissioner shall adopt the current good manufacturing practice regulations for type A medicated articles and types B and C medicated feeds established under authority of the "Federal Food, Drug, and Cosmetic Act", unless the commissioner determines that such regulations are not appropriate to the conditions that exist in this state.

(o) The feed contains any germinative noxious weed seeds in amounts exceeding the limits that the commissioner shall establish by rule.

(p) The feed is manufactured or distributed or used as feed in a manner that does not conform with, or contains any substance that is prohibited by, any rules adopted by the commissioner under this article, including, but not limited to, rules pertaining to the prevention of transmissible spongiform encephalopathies.

(3) A feed is misbranded if any of the following circumstances occur:

(a) The feed labeling is false, deceptive, or misleading in any particular;

(b) The feed is sold or distributed under the name of another feed;

(c) The feed labeling violates any provision of this article;

(d) The feed purports to contain or is represented as containing a feed ingredient that does not conform to the definition of that feed ingredient prescribed by rule of the commissioner; or

(e) Any word, statement, or other information required by or under authority of this article or any rule adopted pursuant to this article to appear on the feed label or labeling is not prominently and conspicuously placed on the label and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

35-60-108. Prohibited acts. (1) The following acts and the causing thereof are prohibited:

(a) The manufacture or distribution of any feed that is adulterated or misbranded;

(a.5) The use of feed that is adulterated for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food;

(b) The adulteration or misbranding of any feed;

(c) The distribution of agricultural commodities such as whole seed, hay, straw, stover,

silage, cobs, husks, and hulls, that are adulterated;

(d) The removal or disposal of a feed in violation of section 35-60-111;

(e) The failure or refusal to register in accordance with section 35-60-104;

(f) The violation of section 35-60-112 (6);

(g) The failure or refusal to pay distribution fees and file reports in accordance with section 35-60-105;

(h) The sale of customer-formula feed to any person other than the person who provided the manufacturing instructions;

(i) The failure to maintain any records required by this article or any rule promulgated pursuant to this article;

(j) The failure to comply with any other provision of this article or the rules promulgated pursuant to this article not otherwise specified in this section; and

(k) The falsification of any information given to the commissioner.

35-60-109. Authority of the commissioner - rules. (1) The commissioner is authorized to promulgate, amend, and repeal, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., such rules as are specifically required by this article and such other reasonable rules, including any record-keeping requirements and operating requirements, as may be necessary for the efficient enforcement of this article.

(2) In the interest of uniformity, the commissioner shall by rule adopt, unless the commissioner determines that they are inconsistent with this article or are not appropriate to conditions that exist in this state, the following:

(a) The official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials as published in the official publication of such association; and

(b) The regulations promulgated pursuant to the "Federal Food, Drug, and Cosmetic Act"; except that, if the commissioner determines that any of such definitions, terms, and regulations are inconsistent with this article or are not appropriate to conditions in this state, the commissioner shall not adopt them.

(3) Before the commissioner issues, amends, or repeals any rule authorized by this article, the commissioner shall provide notice as required by section 24-4-103, C.R.S.

35-60-110. Enforcement - inspection - sampling - analysis. (1) For the purpose of enforcing this article and the rules promulgated pursuant thereto, including the determination of whether or not an operation may be subject to this article, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to:

(a) Enter, during normal business hours, any building, structure, land, vehicle, or other premises or property, public or private, within the state, in or on which feeds are manufactured, processed, packed, distributed, transported, stored, disposed of, or used as feed for any cattle, sheep, goats, swine, poultry, or any other animals if such animals are raised to produce human food, and to inspect such premises, property, or vehicle and all pertinent equipment, finished and

unfinished materials, containers, records, and labeling in or on such premises, property, or vehicle. The inspection may include obtaining samples and the verification of records and production and control procedures as may be necessary to determine compliance with the rules adopted under section 35-60-107 (2) (n) or (2) (p).

(b) (Deleted by amendment, L. 2007, p. 997, § 11, effective May 22, 2007.)

(2) If the commissioner has obtained a sample in the course of an inspection, upon completion of the inspection and prior to leaving the premises, the commissioner shall give to the owner, operator, or agent in charge of the premises a receipt describing the samples obtained.

(3) If the owner, or the owner's agent, of any building, structure, land, vehicle, or other premises or property described in subsection (1) of this section refuses to admit the commissioner to inspect such premises, property, or vehicle, the commissioner is authorized to obtain from the district or county court for the district or county in which such premises, property, or vehicle is located a warrant to enter and inspect such premises, property, or vehicle and to sample such feeds, feed ingredients, or raw agricultural commodities according to this section prior to entry, inspection, and sampling. The district and county courts of this state are empowered to issue such warrants upon a proper showing of the need for such entry, inspection, and sampling. Any information concerning any methods, records, formulations, or processes that are entitled to protection as trade secrets under the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., and that are obtained in the course of the inspection or sampling shall be kept confidential.

(4) Sampling and analysis performed pursuant to this section shall be conducted in accordance with methods published by the international association of official analytical chemists or other generally recognized methods.

(5) The commissioner, in determining whether a feed is in violation in any component, shall be guided by the official sample as defined in section 35-60-102 (15) and obtained and analyzed in accordance with subsections (1) and (2) of this section.

(6) The results of all analyses of official samples revealing violations shall be forwarded by the commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicated a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the commissioner shall furnish to the manufacturer a portion of the sample concerned.

35-60-111. Detained feeds. (1) **Stop distribution, manufacture, or use as feed.** When the commissioner has reasonable cause to believe any feed is in violation of this article or any rules promulgated pursuant to this article, the commissioner may issue and enforce a written or printed "stop distribution, manufacture, or use as feed" order, warning any distributor, manufacturer, or feeder of the feed not to distribute, use as feed, or dispose of such feed in any manner until written permission is given by the commissioner or the court. The commissioner shall release the feed subject to the order when the applicable provisions and rules have been complied with. If the distributor does not come into compliance within thirty days, the commissioner may begin, or upon request of the distributor, manufacturer, or feeder shall begin, proceedings for condemnation.

(2) **Condemnation and confiscation.** Any feed not in compliance with this article or rules promulgated pursuant to this article are subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the district or county where the feed is located. If the court finds the feed to be in noncompliance with this article or rules promulgated pursuant to this article and orders the condemnation of such feed, it must be disposed of in a manner consistent with the quality of the feed and the laws of this state; except that the court shall not order the disposal of the feed without first giving the distributor or other claimant an opportunity to apply to the court for release of the feed or for permission to process or relabel the feed to bring it into compliance with this article or rules promulgated pursuant to this article.

35-60-112. Penalties. (1) Any person violating any of the provisions of this article or who impedes, hinders, or otherwise prevents, or attempts to prevent, the commissioner or duly authorized agent in the performance of his or her duty in connection with this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, or, upon a subsequent conviction, not less than two hundred dollars nor more than five hundred dollars.

(2) Nothing in this article shall be construed to require the commissioner or agent to:

(a) Report for prosecution;

(b) Institute seizure proceedings;

(c) Issue a "stop distribution, manufacture, or use as feed" order as a result of minor violations of this article or rules promulgated pursuant thereto.

(3) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall allow an opportunity for the alleged violator to present his or her view to the commissioner.

(4) The commissioner may apply to the court for, and the court may issue, an order for a temporary restraining order or injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated pursuant thereto, notwithstanding the existence of other remedies at law. Such temporary restraining order or injunction shall be issued without the posting of a bond.

(5) Any person who is adversely affected by acts of the commissioner or rules promulgated pursuant to this article may appeal pursuant to the procedures of article 4 of title 24, C.R.S.

(6) Any person who uses to his or her own advantage, or reveals to state officials other than the commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this article, concerning any methods, records, formulations, or processes that are trade secrets and entitled to protection under the law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars, or imprisoned in the county jail for not less than thirty days, or both; except that nothing in this subsection (6) shall be construed to prohibit the commissioner from exchanging information of a regulatory nature with duly appointed officials of the United States or other state governments who are similarly prohibited by law from revealing this information.

35-60-113. Civil penalties. (1) (a) Any person who violates any provision of this article or any rule promulgated pursuant thereto may be subject to a civil penalty as determined by the commissioner. Such civil penalty is in addition to and not a substitution for other penalties or remedies set forth in this article.

(b) Before imposing any civil penalty, the commissioner shall consider the severity of the violation, the amount of harm caused by such violation, and the presence or absence of a pattern of similar violations by the distributor.

(c) The maximum civil penalty imposed by the commissioner shall not exceed seven hundred fifty dollars per day per violation.

(2) Before the commissioner imposes any civil penalty, the person charged shall be provided with a notice of the violation and an opportunity for a hearing in accordance with 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 any portion of a civil penalty, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-60-114. Cooperation with other entities. The commissioner may cooperate and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

35-60-115. Publications. The commissioner shall publish at least annually, in such form as he or she may deem proper and in accordance with the provisions of section 24-1-136, C.R.S., information concerning the sales of commercial feeds, together with such data on their production and use as the commissioner may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses on the label, but the information concerning production and use of commercial feeds shall not disclose the operations of any person.

ARTICLE 61

Industrial Hemp Regulatory Program

35-61-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Certified seed" means industrial hemp seed, including Colorado heritage cannabis seed, that has been certified by an organization recognized by the department as having no more than a three-tenths of one percent of delta-9 tetrahydrocannabinol concentration on a dry-weight basis.

(2) "Colorado heritage cannabis seed" means seed from the plant cannabis sativa that possesses characteristics of a unique and specialized cannabis seed variety that is present in Colorado or has been recognized as produced in Colorado.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Committee" means the industrial hemp committee established in section 35-61-103.

(5) "Delta-9 tetrahydrocannabinols" has the same meaning as "tetrahydrocannabinols" as set forth in section 27-80-203 (24), C.R.S.

(6) "Department" means the department of agriculture.

(7) "Industrial hemp" means a plant of the genus cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.

35-61-102. Industrial hemp - permitted growth by registered persons. (1) Notwithstanding any other provision of law to the contrary, a person who holds a registration issued pursuant to section 35-61-104 may:

(a) Engage in industrial hemp cultivation for commercial purposes; or

(b) Grow industrial hemp for research and development purposes.

(2) Notwithstanding any other provision of law, a person registered pursuant to section 35-61-104 is not subject to any civil or criminal actions for engaging in the activities described in subsection (1) of this section if the person is acting in compliance with this article.

35-61-103. Industrial hemp committee - appointments - duties - coordination with department. (1) (a) The industrial hemp committee is hereby established. The chair of the agriculture, livestock, and natural resources committee in the house of representatives and the chair of the agriculture, natural resources, and energy committee in the senate shall jointly appoint nine members to the industrial hemp committee as follows:

(I) One member with experience in industrial hemp regulation;

(II) One member who is a farmer from a cooperative;

(III) One member who is a commercial farmer;

(IV) One member with experience in seed development and genetics;

(V) One member representing the hemp manufacturing industry;

(VI) One member representing small hemp businesses;

(VII) One member who is a representative of the attorney general's office;

(VIII) One member who is a citizen advocate for industrial hemp; and

(IX) One member who is a representative from a research institution of higher education.

(b) The term of office of members of the committee is three years; except that the members appointed pursuant to subparagraphs (I), (V), (VI), and (VIII) of paragraph (a) of this subsection (1) shall serve initial two-year terms to ensure staggered terms of office.

(c) Each committee member holds office until his or her term of office expires or until a successor is duly appointed. If a vacancy occurs on the board, the appointing authorities shall appoint a new member meeting the qualifications of the member vacating the position to serve the remainder of the unexpired term of the member.

(d) Members of the committee shall serve without compensation but are entitled to reimbursement for actual and necessary travel and subsistence expenses incurred in the performance of their official duties as members of the committee.

(2) The committee shall work with the department to establish an industrial hemp registration program and a seed certification program pursuant to section 35-61-104, under which a person may obtain authorization to:

(a) Engage in industrial hemp cultivation; or

(b) Grow industrial hemp for purposes of research and development.

(3) The committee shall assist the department in determining the qualifications and other criteria a person must satisfy to qualify for registration under this article. The committee shall assist the department in the development of a seed certification program.

(4) The committee shall meet at least once a year.

35-61-104. Registration - cultivation of industrial hemp - research and development growth - rules. (1) (a) A person wishing to engage in industrial hemp cultivation for commercial purposes or to grow industrial hemp for research and development purposes shall apply to the department for a registration in a form and manner determined by the commissioner, in consultation with the committee, prior to planting the industrial hemp for commercial or research and development purposes. The application must include the name and address of the applicant and the legal description, global positioning system location, and map of the land area on which the applicant plans to engage in industrial hemp cultivation or research and development growth operations. The applicant shall also submit to the department the fee required by section 35-61-106 (2). Application for registration pursuant to this section is a matter of statewide concern.

(b) If a person registered under the industrial hemp remediation pilot program prior to May 28, 2013, applies for a registration pursuant to paragraph (a) of this subsection (1) within sixty days after the applications are made available, the person may continue to engage in industrial hemp activities as authorized under the pilot program until the commissioner makes a determination on the person's application.

(2) If a person applies for registration in accordance with subsection (1) of this section and the commissioner determines that the person has satisfied the requirements for registration pursuant to this article, the commissioner shall issue a registration to the person.

(3) A registration issued pursuant to this section is valid for one year. In order to continue engaging in industrial hemp cultivation or research and development growth operations in this state, the registrant must annually apply for a registration in accordance with subsection (1) of

this section.

(4) If the registrant wishes to alter the land area on which the registrant will conduct industrial hemp cultivation or research and development growth operations, before altering the area, the registrant shall submit to the department an updated legal description, global positioning system location, and map specifying the proposed alterations.

(5) The commissioner shall adopt rules by March 1, 2014, and as necessary thereafter to implement the registration program and to implement and administer this article.

35-61-104.5. Research - fees. (1) (a) The department shall administer an industrial hemp grant research program so that state institutions of higher education may conduct research to develop or recreate strains of industrial hemp best suited for industrial applications. The purpose of the research may include growing industrial hemp to provide breeding strains to aid Colorado's industrial hemp program and to create Colorado strains of industrial hemp.

(b) An institution of higher education that conducts industrial hemp seed research may accept seed varieties that are approved by the committee or the department. The institution of higher education may work with private hemp developers and other stakeholders to develop a Colorado heritage seed.

(2) In addition to the fees collected pursuant to section 35-61-106, the commissioner may collect an additional fee, established by the committee, from each registrant for the purpose of funding industrial hemp research and certification programs, including by making grants to institutions of higher education as specified in subsection (1) of this section. The fees collected shall be deposited in the industrial hemp registration program cash fund created in section 35-61-106 (3). The department may solicit, apply for, and accept moneys from other sources for the grant program.

35-61-105. Report of growth and sales activities - verification of crop content - testing - waiver of concentration limits - rules. (1) At least annually and more often as required by the commissioner, a person who obtains a registration under this article to engage in industrial hemp cultivation for commercial purposes shall file with the department a report that includes the following information:

(a) Prior to planting, a verification that the crop the registrant will plant is of a type and variety of hemp that will produce a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis;

(b) Documentation demonstrating that the registrant has entered into a purchase agreement with an in-state industrial hemp processor; and

(c) Any other information required by the commissioner by rule.

(2) The commissioner, in consultation with the committee, shall adopt rules to establish an inspection program to determine delta-9 tetrahydrocannabinol levels and ensure compliance with the limits on delta-9 tetrahydrocannabinol concentration. The rules shall also establish a process by which a registrant may apply to the commissioner for a waiver from the delta-9 tetrahydrocannabinol concentration limits under circumstances specified in the rules.

35-61-106. Industrial hemp registration program cash fund - industrial hemp research grant cash fund - fees. (1) There is hereby created in the state treasury the industrial hemp registration program cash fund, referred to in this article as the "fund". The fund consists of fees collected by the commissioner pursuant to subsection (2) of this section and any general fund moneys appropriated to the fund by the general assembly. The moneys in the fund are subject to annual appropriation by the general assembly to the department for the direct and indirect costs associated with implementing this article.

(2) The commissioner shall collect a fee from persons applying for a registration pursuant to this article. The commissioner shall set the fee based on the size of the land area on which the person will conduct industrial hemp operations and shall set the fee at a level sufficient to generate the amount of moneys necessary to cover the department's direct and indirect costs in implementing this article. The commissioner shall transmit the fees collected pursuant to this section to the state treasurer for deposit in the fund.

(3) There is hereby created in the state treasury the industrial hemp research grant fund. The fund consists of:

(a) Fees collected by the commissioner pursuant to section 35-61-104.5 (2);

(b) Any moneys from foundations, private individuals, or any other funding sources that can be used to expand the scope or time frame of any hemp research authorized pursuant to this article;

(c) On and after July 1, 2015, up to ten million dollars from the marijuana tax cash fund created in section 39-28.8-501, C.R.S., as enacted by Senate Bill14-215. The moneys in the fund are subject to annual appropriations by the general assembly to the department to establish and administer an industrial hemp research grant program and to conduct hemp research.

35-61-107. Violations - penalties. (1) The commissioner may deny, revoke, or suspend a registration if the applicant or registrant:

(a) Violates any provision of this article or rules adopted pursuant to this article;

(b) Engages in fraud or deception in the procurement of or attempt to procure a registration under this article or provides false information on a registration application; or

(c) Fails to comply with any lawful order of the commissioner.

(2) The commissioner may impose a civil penalty, not to exceed two thousand five hundred dollars per violation, on any person who violates this article or any rule adopted under this article.

(3) The commissioner shall not impose a penalty against a person alleged to have violated this article or a rule adopted under this article until the commissioner has notified the person of the charge and has given the person an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(4) If the commissioner is unable to collect a civil penalty or if a person fails to pay all or a portion of a civil penalty imposed pursuant to this section, the commissioner may bring an action in a court of competent jurisdiction to recover the civil penalty plus attorney fees and

costs.

(5) The commissioner shall neither revoke nor suspend an institution of higher education's registration or a research-and-development registrant's registration when a sample of the registrant's industrial hemp tests higher than the limits established by rule of the commissioner if the crop is destroyed or utilized in a manner approved of and verified by the commissioner.

35-61-108. Exportation of industrial hemp - processing, sale, and distribution. (1) Nothing in this article limits or precludes the exportation of industrial hemp in accordance with the federal "Controlled Substances Act", as amended, 21 U.S.C. sec. 801 et seq., federal regulations adopted under the act, and case law interpreting the act.

(2) Notwithstanding any other provision of law, a person engaged in processing, selling, or otherwise distributing industrial hemp cultivated by a person registered under this article, or selling industrial hemp products produced therefrom, is not subject to any civil or criminal actions under Colorado law for engaging in such activities.

35-61-109. Repeal of article. (1) This article is repealed if one of the following occurs:

(a) The United States congress enacts, the president signs, and the federal government implements federal law authorizing the United States department of agriculture to regulate the cultivation and research and development of industrial hemp; or

(b) The commissioner determines, in consultation with the committee, that industrial hemp, as a commodity in the market, is financially and economically stable, and state regulation of industrial hemp cultivation is no longer necessary.

(2) Upon the occurrence of one of the conditions described in subsection (1) of this section, the commissioner shall notify the revisor of statutes, in writing, that one of the conditions has occurred.

FAIRS

ARTICLE 65

Fairs

PART 1

STATE, COUNTY, AND DISTRICT FAIRS

35-65-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado state fair authority created by part 4 of this article.
(2) "Board" means the board of commissioners of the authority.

35-65-101. Exhibits by counties - agent. For the purpose of promoting and encouraging the organization of agricultural and mechanical fair associations in the state of Colorado, the board of county commissioners of any county in this state, for the purpose of aiding its county in making a display of the agricultural, mineral, and livestock growth and products of its county at the Colorado state fair and industrial exposition held at Pueblo or at any district fair held in any district in this state, may appropriate a sum not exceeding five hundred dollars out of the county treasury for the purpose of having its county suitably represented and may appoint a suitable person as agent to take charge of the county exhibit and represent said county at the Colorado state fair and industrial exposition.

35-65-102. Premiums - commissioners may remit taxes. The boards of county commissioners in this state, for the purpose of encouraging their respective counties in making a suitable display at any fair held in their counties, may offer special premiums for the best display of the products of the soil, the different grades of thoroughbred stock, fruits of all kinds, dairy products, or whatever else is calculated to encourage and promote agricultural pursuits. The boards of county commissioners are authorized to remit the taxes for state and county purposes and the municipal authorities of any city or town to remit the municipal taxes on the property, real and personal, of any agricultural and mechanical fair associations duly organized under the laws of the state of Colorado when said property is actually and exclusively employed for the use and purposes of said fair associations within their respective counties, cities, or towns.

35-65-103. Displays. All universities, colleges, junior colleges, and stations established for experimental purposes may aid and encourage in every way possible complete displays of their respective departments at the annual exhibition of the Colorado state fair and industrial exposition.

35-65-104. Annual report of commission - publications. (Repealed)

35-65-105. State fair and industrial exposition. (1) There is hereby established the Colorado state fair and industrial exposition which shall be held annually at Pueblo, Colorado, for the display of livestock and agricultural, horticultural, industrial, mining, water conservation, tourist industry, recreational, educational, and scientific facilities, processes, and products of the state of Colorado.

(2) The Colorado state fair shall be designated as the "Colorado state fair and industrial exposition"; except that the legal effect of any statute designating such fair as the Colorado state fair and all rights acquired and obligations incurred prior to April 15, 1965, under such name shall not be impaired by such change of name. The revisor of statutes is hereby directed to make such change in name as specified in this section.

(3) The Colorado state fair and industrial exposition shall be under the direction and supervision of the authority.

(4) to (6) Repealed.

35-65-106. Revolving fund. (Repealed)

35-65-107. State fair fund - lease and use of facilities - repeal. (1) The board is authorized to enter into agreements to lease any of the facilities at the Colorado state fair and industrial exposition at Pueblo, Colorado, upon such terms and conditions as shall be approved by the board. The board is further authorized to sponsor any off-season event which it may approve. All moneys received by the board under this section and through any other authorized activities shall be transmitted to the state treasurer and placed in the Colorado state fair authority cash fund, which fund is hereby created in the state treasury. Moneys in said fund shall be for the use, operation, maintenance, and support of the Colorado state fair and industrial exposition, which use shall include the payment of bond obligations in accordance with the provisions of part 3 of this article and, without limitation, other obligations of the board.

(2) Custody of all moneys in the Colorado state fair fund as of June 30, 1997, shall be transferred to the Colorado state fair authority cash fund.

(3) (a) The Colorado state fair authority cash fund shall consist of:

(I) All moneys that may be appropriated thereto by the general assembly;

(II) All other moneys that may be available to it, including the moneys received under subsection (1) of this section; and

(III) All moneys credited to the fund in accordance with section 38-13-116.7 (3), C.R.S.

(b) The moneys in the Colorado state fair authority cash fund shall be subject to annual appropriation and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(4) (a) For the 2014-15 state fiscal year, the state treasurer shall transfer three hundred thousand dollars from the general fund to the Colorado state fair authority cash fund created in this section for the purpose of renovating and enhancing facilities and items used in the state fair's programs with the state's 4-H clubs and the Colorado association of the national future farmers of America organization.

(b) This subsection (4) is repealed, effective July 1, 2016.

35-65-107.5. Capital construction and controlled maintenance. (Repealed)

35-65-108. Warrants. (Repealed)

35-65-109. Authorization of peace officers to preserve order and protect exhibits. The board of directors or executive committee of any agricultural, horticultural, or stock society of this state is authorized to contract with a city, town, county, or city and county in whose jurisdiction the grounds of said society are located to provide peace officers, as provided in section 16-2.5-101, C.R.S., whose duty it is to preserve order within and around the grounds of said society, to protect the property within said grounds, and to eject all persons who are improperly within the grounds of said society who are guilty of disorderly conduct or who neglect or refuse to pay the fee or observe the rules prescribed by the society. Said peace officers have the same power, during the time said exhibition continues, that a sheriff has by law to keep the peace and, in addition, during such time, may arrest any person for the commission of any offense mentioned in section 35-65-110.

35-65-110. Penalty. Any person who willfully destroys the property of exhibitors, visitors, or lessees on the fairgrounds, or hinders or obstructs the officers or policemen in the performance of their duties, or wrongfully or maliciously gains admission to the fairgrounds contrary to the rules of said society or without paying the established fees during any fair of said society is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail for not more than thirty days. All fines so imposed and collected under this section shall be paid into the treasury of the county in which such trial is held.

35-65-111. County fairgrounds. The board of county commissioners of any county in this state is authorized to lease or purchase a tract of land suitable for county fair purposes, which shall be used for that purpose, in order to encourage and promote agricultural, mechanical, industrial, and livestock industries in this state.

35-65-112. Fairground - manager - lease. The board of county commissioners of any county in this state in its discretion, after the purchase or lease and the improvement of the land for fairground purposes as provided for in section 35-65-111, may appoint some person to look after, operate, and conduct county fairs on said fairgrounds during each year; or the said board of county commissioners may in its discretion rent or lease the said fairgrounds and improvements thereon for such rental and for such term or period of time as it deems reasonable and proper to any corporation not for pecuniary profit duly organized under the laws of the state of Colorado for the purpose of conducting, operating, and holding a county fair for the promotion of all

mechanical and industrial products and agricultural, horticultural, livestock, and other products and exhibits and also for the purpose of conducting races, sports, and other entertainment usually given at county fairs.

35-65-113. County fairgrounds - appropriation. The board of county commissioners of each county in this state has the power each year to appropriate from the county general fund such money as may be necessary for the purpose of purchasing, leasing, and improving the fairgrounds mentioned in sections 35-65-111 and 35-65-112.

35-65-114. Appropriation for maintenance. If the board of county commissioners of any county in this state elects to conduct, operate, and manage the annual fair in its county or if it elects to lease the fairgrounds and improvements thereon as provided in this article, it is authorized to appropriate from the county general fund for that purpose the amount of money necessary therefor and for the necessary improvements and repairs of said buildings and fairgrounds, and to keep the same in repair, and to pay all costs and expenses incidental to the conducting and managing for said annual fair in its county.

35-65-115. District and regional fairs. The boards of county commissioners of the various counties, for the purpose of promoting and encouraging regional or district fairs in regions or districts of which their counties are a part, may use such portions of their county fair funds as may be agreed upon by the boards of county commissioners in the various counties in the region or district to establish, operate, and conduct regional fairs at a centrally located point in said district or region. No district or regional fair shall be held on any of the days of each year on which the Colorado state fair and industrial exposition is held.

35-65-116. Race meets - dates - licenses - fees. (1) The board is authorized to obtain a license to conduct horse race meets at the Colorado state fair and industrial exposition pursuant to article 60 of title 12, C.R.S. For the purposes of this section, the limitations in section 12-60-511, C.R.S., shall not apply, and such horse race meets shall be conducted as approved by the Colorado racing commission at said Colorado state fair and industrial exposition during its duration.

(2) In lieu of obtaining a license to conduct a horse race meet, the board is authorized to contract for the conduct of horse race meets at the Colorado state fair and industrial exposition with a private, nonprofit person licensed to conduct horse race meets within forty miles of the state fair grounds, subject to authorization by the Colorado racing commission pursuant to section 12-60-511, C.R.S. The meet and the race days of the meet conducted at the Colorado state fair and industrial exposition shall be in addition to the number of meets and race days permitted the licensee pursuant to section 12-60-603, C.R.S.

PART 2

RACE MEETINGS

35-65-201 and 35-65-202. (Repealed)

PART 3

REVENUE BONDS

35-65-301. Board may issue revenue bonds. (1) The board may authorize and issue revenue bonds to finance additional facilities for the board and the Colorado state fair and industrial exposition.

(2) Such revenue bonds shall be authorized and issued only by resolution of the board, which resolution shall conform to the requirements of section 35-65-302. Such bonds may be issued only after approval by both houses of the general assembly either acting by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution.

(3) All bonds issued pursuant to the terms of this part 3 shall provide that:

(a) No holder of any such bond may compel the state or any subdivision thereof to exercise its appropriation or taxing power;

(b) The bond does not constitute a debt of the state and is payable from the net revenues from the operation of the additional facilities acquired or provided pursuant to this part 3 and from contributions by nonstate sources for such additional facilities.

35-65-302. Resolution. (1) Any resolution authorizing the issuance of bonds under the terms of this part 3 shall:

(a) State the date of issuance of the bonds;

(b) State a maturity date or dates during a period not to exceed thirty years from the date of issuance of the bonds;

(c) State the interest rate or rates on, and the denomination or denominations of, the bonds;

(d) State the form of the bond, whether bearer or registered;

(e) State the medium of payment of the bonds and the place where the bonds will be paid.

(2) Any resolution authorizing the issuance of bonds under the terms of this part 3 may:

(a) State that the bonds are to be issued in one or more series;

(b) State a rank or priority of the bonds;

(c) Provide for redemption of the bonds prior to maturity, with or without premium.

35-65-303. Sale of bonds. (1) Any bonds issued pursuant to the terms of this part 3 may be sold at public or private sale.

(2) If bonds are to be sold at a public sale, the board shall advertise the sale in such manner as the board deems appropriate.

(3) Each bond issued pursuant to the terms of this section shall be sold at the price, in the manner, and at such time as the board shall designate. The board may pay any fees, expenses, or commissions which it deems necessary or desirable to accomplish the sale of said bonds. The authority to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other actions necessary to sell and deliver bonds may be delegated to an officer or agent of the authority.

(4) Pending preparation of the actual bonds, interim receipts or certificates may be issued to the purchaser of the bonds in such form and containing such provisions as the board deems appropriate.

35-65-304. Negotiability. Notwithstanding any provisions of the law to the contrary, all bonds issued pursuant to this part 3 are negotiable.

35-65-305. Power to secure bonds. (1) The board, in connection with the issuance of bonds and in order to secure the payment of the bonds and the interest thereon, has the power, by resolution:

(a) To provide that the bonds issued under this part 3 shall be payable from and may be secured by a pledge of and lien on any or all net revenues derived from, and shall be payable from:

(I) Fees, rentals, and other charges for the use of the additional facilities acquired or provided with the proceeds of said bonds or any one or more additional facilities acquired or provided with proceeds of bonds issued pursuant to this part 3; and

(II) Contributions from nonstate sources for such facility or facilities;

(b) To covenant with or for the benefit of the holders of bonds issued under this part 3 that, so long as any of the bonds remain outstanding and unpaid, the board shall prescribe service charges, fees, and rentals and shall revise the same when necessary so that the additional facility or facilities for which the bonds are issued shall always remain self-supporting, with revenues, including donations from nonstate sources for such additional facility or facilities, sufficient:

(I) To provide for all expenses of operation, maintenance, expansion, and replacement of any facilities from which such revenues are derived;

(II) To pay, when due, all bonds and interest thereon; and

(III) To provide reasonable reserves for such purposes.

35-65-306. Provision of bond resolution - covenants. (1) A resolution pertaining to

issuance of bonds under this part 3 may contain covenants as to:

(a) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(b) The use and disposition of the revenues of the project for which the bonds are to be issued;

(c) Such matters as are customary in the issuance of revenue bonds including without limitation the issuance and lien position of other or additional bonds, payable from the net revenue received for the operation of the additional facilities acquired or provided pursuant to this part 3 and contributions from nonstate sources for such facilities;

(d) Books of account and the inspection and audit thereof.

(2) Any resolution made pursuant to the terms of this part 3 shall be deemed a contract with the holders of the bonds, and the duties of the board under such resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

35-65-307. Validity of bonds. (1) Bonds issued under this part 3 and bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon have ceased to be officers of the board.

(2) The validity of the bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the construction, acquisition, improvement, reconstruction, or extension of the facilities of the Colorado state fair and industrial exposition financed by the bonds or done in connection therewith.

35-65-308. Prior lien of bonds. (1) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this part 3 shall have a prior and paramount lien on the net revenues of the additional facilities acquired or provided pursuant to this part 3 for which the bonds have been issued and contributions from nonstate sources for such facilities. The board may provide for preferential security for any bonds, both principal and interest, to be issued under this part 3 to the extent deemed feasible and desirable by such board over any bonds that may be issued thereafter.

(2) Bonds of the same issue or series issued under this part 3 shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery, by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

35-65-309. Board of commissioners of the Colorado state fair authority - bonds. (Repealed)

35-65-310. Colorado state fair authority board - bonds. On June 30, 1997, any bonds issued pursuant to this part 3 shall become an obligation of the Colorado state fair authority to

the same extent that they were an obligation of the board of commissioners of the Colorado state fair authority before said date.

PART 4

STATE FAIR AUTHORITY

35-65-401. Colorado state fair authority - creation - board - powers and duties. (1) (a) The Colorado state fair authority, as it existed prior to June 30, 1997, is abolished. There is hereby created the Colorado state fair authority, which is created within the department of agriculture as a division thereof. The Colorado state fair authority shall exercise its powers, duties, and functions under the department of agriculture as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

(b) The function of the Colorado state fair authority is to direct and supervise the Colorado state fair and industrial exposition created pursuant to section 35-65-105.

(2) (a) On June 30, 1997, the existing board of commissioners of the Colorado state fair authority is abolished, and the terms of the members of the board then serving are terminated.

(b) There is hereby created the board of commissioners of the Colorado state fair authority, which shall have eleven members, ten of whom shall be appointed by the governor with the consent of the senate and one who shall be the commissioner of agriculture or his or her designee. At no time shall more than six members of the board be affiliated with the same political party as the governor. Within thirty days after June 30, 1997, the governor shall appoint the initial members of the board. The governor may appoint, as a member of the board, any person who was a member of the board prior to its termination.

(3) Of the ten appointed members of the board, two shall be residents of the county in which the Colorado state fair and industrial exposition is held and, of the remaining eight members, at least one shall be a resident of each of the congressional districts of the state and at least two shall be residents of the western slope of the state.

(4) Of the members first appointed to the board, two members representing congressional districts shall be appointed for terms expiring November 1, 1998; two members representing congressional districts shall be appointed for terms expiring November 1, 1999; one member representing a congressional district, one member representing the county in which the Colorado state fair and industrial exposition is held, and one at-large member shall be appointed for terms expiring November 1, 2000; one member representing a congressional district, one at-large member, and one member representing the county in which the Colorado state fair and industrial exposition is held shall be appointed for terms expiring November 1, 2001. Thereafter, members of the board shall be appointed for terms of four years. Appointments made to the board when the senate is not in session shall be temporary appointments, and the appointees shall serve on a temporary basis until the senate is in session and is able to confirm such appointments. Each member shall hold office until the member's successor is appointed and qualified.

(5) Of the ten appointed members of the board, one shall be a certified public accountant,

one shall have expertise in finance through current management-level experience in banking, and one shall have substantial experience in agriculture or in the activities of 4-H clubs.

(6) Any appointed member may be removed for cause at any time during the member's term by the governor. Vacancies on the board shall be filled by appointment by the governor with the consent of the senate for the unexpired terms.

(7) Members of the board shall serve without pay but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.

(8) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

(8.5) All eleven members of the board, including the commissioner of agriculture or his or her designee, shall be voting members of the board. The members of the board shall elect a chair, a vice-chair, and a secretary from among the membership of the board. Board action shall require the affirmative vote of a majority of a quorum of the board.

(9) The board shall:

(a) Provide for the Colorado state fair and industrial exposition, subject to available appropriations by the general assembly;

(b) Enter into any agreements with other agencies of the state government as may be necessary to provide for the Colorado state fair and industrial exposition;

(c) Hire and employ the manager of the Colorado state fair authority in accordance with the provisions of section 35-65-403;

(d) Meet as often as necessary, but not less than once a month;

(e) Repealed.

(f) Accept contributions from nonstate sources for the purpose of financing and supporting the Colorado state fair and industrial exposition;

(f.5) and (g) Repealed.

(h) and (i) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

(j) Adopt rules in accordance with the provisions of article 4 of title 24, C.R.S.;

(k) Submit annual reports in accordance with section 35-65-406;

(l) Perform such other duties as may be required by law.

(9.5) and (10) Repealed.

(11) (Deleted by amendment, L. 97, p. 810, § 1, effective June 30, 1997.)

35-65-402. Retirement plans for employees of authority. (Repealed)

35-65-403. Office of manager of the Colorado state fair authority - creation. (1) The office of manager of the Colorado state fair authority is hereby created. The board shall appoint a manager of the Colorado state fair authority who shall have knowledge of livestock, agriculture, horticulture, industry, recreation, education, and scientific facilities, processes, and products of the state of Colorado and who shall have experience in fair management and promotion. The manager shall serve for an indefinite term and shall not hold any other public office but shall devote his or her entire time to the service of the state in the discharge of his or her official

duties. The appointment or removal of the manager shall be subject to the provisions of section 13 of article XII of the state constitution and the statutes enacted pursuant thereto. Notwithstanding any law to the contrary, the office of manager of the Colorado state fair authority shall be a position in the senior executive service for purposes of section 24-50-104 (5) (c), C.R.S.

(2) The manager shall be the chief administrative head of the Colorado state fair authority under the direction and supervision of the board and shall have general supervision and control of all activities, functions, and employees of the Colorado state fair authority and shall exercise all necessary powers incident thereto. The manager shall exercise all the powers and functions of the board in the interim of its meetings and shall perform such other duties as may be prescribed by the board or by law.

(3) Any current state fair authority employee who was previously certified under the state personnel system and who is returning to the state personnel system pursuant to this part 4, as amended by House Bill 97-1342, enacted at the first regular session of the sixty-first general assembly, shall be eligible for reinstatement.

35-65-404. Transfer of property. (1) On June 30, 1997, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Colorado state fair authority, as it existed prior to said date, are transferred to the Colorado state fair authority, created in the department of agriculture, and shall become the property thereof.

(2) On and after June 30, 1997, whenever the Colorado state fair authority or the board of commissioners of the Colorado state fair authority, as they existed prior to June 30, 1997, is referred to or designated by any contract or other document in connection with the Colorado state fair and industrial exposition, such reference or designation shall be deemed to apply to the Colorado state fair authority and the board of commissioners of the Colorado state fair authority, created pursuant to section 35-65-401. All contracts entered into by the authority or its board prior to June 30, 1997, in connection with the Colorado state fair and industrial exposition, are hereby validated, with the Colorado state fair authority, created in the department of agriculture, succeeding to all rights and obligations under such contracts.

(3) No suit, action, or other judicial or administrative proceeding lawfully commenced prior to June 30, 1997, or which could have been commenced prior to said date, by or against the Colorado state fair authority, its board of commissioners, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties shall abate by reason of the abolishment of the Colorado state fair authority and its board, as they existed prior to said date, and the creation, in the department of agriculture, of the Colorado state fair authority and the board of commissioners of the Colorado state fair authority.

35-65-405. Colorado state fair authority - board of commissioners - enterprise status. (1) The Colorado state fair authority and the board of commissioners of the Colorado state fair authority, created pursuant to section 35-65-401, shall constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the board retains the

authority to issue revenue bonds and the Colorado state fair authority receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this subsection (1), the authority and the board shall not be subject to any provisions of section 20 of article X of the state constitution.

(2) For purposes of part 2 of article 72 of title 24, C.R.S., the records of the Colorado state fair authority and the board of commissioners of the Colorado state fair authority shall be public records, as defined in section 24-72-202 (6), C.R.S., regardless of whether the authority and the board constitute an enterprise pursuant to subsection (1) of this section.

35-65-406. Annual reports. (1) The Colorado state fair authority and its board of commissioners shall make an annual report by October 31 of each year to the governor, the senate agriculture, natural resources, and energy committee, and the house of representatives agriculture, livestock, and natural resources committee. The report shall include the following information for the fiscal year ending in the year the annual report is made and for the fiscal year preceding such fiscal year prepared in a comparison format and in accordance with generally accepted accounting principles:

(a) A statement of revenues and expenses resulting from:

(I) Operation of the annual Colorado state fair and industrial exposition events; and

(II) Operation of events on any of the facilities at the Colorado state fair and exposition that are not annual Colorado state fair and industrial exposition events;

(b) A statement of the financial position of the Colorado state fair and industrial exposition as of June 30 of each such fiscal year;

(c) A statement of outstanding revenue bonds issued by the board, including evidence of compliance with applicable bond covenants;

(d) A statement of cash flow for the Colorado state fair and industrial exposition;

(e) A summary of attendance for the Colorado state fair and industrial exposition;

(f) The number of annual Colorado state fair and industrial exposition events and the number of events operated on any of the facilities of the Colorado state fair and industrial exposition that were not Colorado state fair and industrial exposition events; and

(g) A statement of revenues and expenses resulting from the operation of the annual Colorado state fair and industrial exposition for the most recent period ending September 30, including a summary of attendance.

(2) The annual report submitted pursuant to this section shall include any recommendations for change in the statutes that the board or manager deems necessary or desirable, including but not limited to any change to part 14 of article 30 of title 24, C.R.S., and the "Procurement Code", articles 101 to 112 of title 24, C.R.S., necessary or desirable due to the unique nature of the Colorado state fair and industrial exposition.

(3) The report shall be public.

35-65-407. Warrants. The controller is authorized to draw and the state treasurer to pay warrants upon all the funds appropriated from the Colorado state fair authority cash fund, created pursuant to section 35-65-107 (1), on the order of the board, signed by its chair and countersigned by its secretary.

35-65-408. Applicability of other laws. (1) Notwithstanding any law to the contrary:

(a) Until March 1, 1998, the Colorado state fair authority shall not be subject to the provisions of part 14 of article 30 of title 24, C.R.S. On and after March 1, 1998, the Colorado state fair authority shall be subject to the provisions of part 14 of article 30 of title 24, C.R.S.; and

(b) The Colorado state fair authority shall not be subject to the provisions of the "Procurement Code", articles 101 to 112 of title 24, C.R.S.

(2) (Deleted by amendment, L. 99, p. 293, § 2, effective April 14, 1999.)

SOIL CONSERVATION

Conservation Districts

ARTICLE 70

Conservation Districts

35-70-101. Short title. This article shall be known and may be cited as the "Colorado Soil Conservation Act".

35-70-102. Legislative declaration. The general assembly finds and declares that the state of Colorado, through wind and water erosion and depletion of subsurface water resources, has lost for agricultural and livestock uses approximately six million acres, or one-tenth of the total area of the state; that these losses range from severe damage to complete destruction of the topsoils of these areas; that these losses have been caused by improper farm and range practices, by increasing the rate of withdrawal from underground water reserves without adequate attention to recharging such reserves, and by failure to conserve to the full the precious rainfall and snowpacks that could help replenish underground water reserves, and that the areas of land thus destroyed will increase until and unless a constructive method of land use providing for the conservation and preservation of natural resources, including adequate underground water reserves, the control of wind and water erosion, and the reduction of damage resulting from

floods, is established by law over the entire state. It is to accomplish this purpose and to insure the health, prosperity, and welfare of the state of Colorado and its people that this article is created, and it shall be construed liberally in order that the purposes expressed in this article may be accomplished.

35-70-102.5. Legislative declaration - change of name - continuity of existence. (1) The general assembly hereby finds and declares that:

(a) Upon creation in this article, the name "soil conservation district" best reflected the activities of such districts throughout this state;

(b) To better reflect the current activities of the soil conservation districts in this state, each such district should be referred to as a "conservation district"; and

(c) The name of the state board governing all such districts should accordingly be changed from the "soil conservation board" to the "conservation board".

(2) (a) On and after July 1, 2002, the conservation board shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the soil conservation board prior to July 1, 2002, and all employees of the soil conservation board shall be transferred to the conservation board and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(b) On July 1, 2002, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the soil conservation board are transferred to the conservation board and shall become the property thereof.

(c) Whenever the soil conservation board is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the conservation board. All contracts entered into by the soil conservation board prior to July 1, 2002, are hereby validated, with the conservation board succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the conservation board for the payment of such obligations.

(d) Each soil conservation district duly organized pursuant to this article prior to July 1, 2002, is hereby recognized as a duly organized conservation district, and its existence shall be deemed to have been continuous. Whenever a soil conservation district is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the conservation district. All contracts entered into by such soil conservation district prior to July 1, 2002, are hereby validated, with the conservation district succeeding to all the rights and obligations of such contracts.

(3) On and after July 1, 2002, when any provision of the Colorado Revised Statutes refers to the soil conservation board or to a soil conservation district, said law shall be construed as referring to the conservation board or to a conservation district, respectively. The revisor of statutes is authorized to change all references in the Colorado Revised Statutes to the soil

conservation board and to soil conservation districts to refer to the conservation board and conservation districts.

35-70-103. State conservation board - composition - powers. (1) (a) There is hereby created in the department of agriculture the state conservation board, referred to in this article as the "state board", which shall consist of nine members. One member shall be a qualified elector of the state appointed by the governor from the state at large for a term commencing January 1, 1974. The remaining eight positions on the state board shall be filled by elections held within the areas described in this section. The boards of supervisors of local conservation districts within each such area shall elect the number of members specified in this subsection (1) between November 1 and December 31 in 1973 for terms commencing January 1, 1974, and within such dates in succeeding years as necessary to fill expiring terms. A candidate shall be or shall have been an elected supervisor of a local conservation district. The number of members to be elected and the areas from which they are to be elected are as follows:

(I) The White-Yampa and North Platte river watersheds, one member;

(II) The San Juan basin, one member;

(III) The Arkansas river watershed, two members, one from the upper Arkansas river watershed and one member from the lower Arkansas river watershed;

(IV) The Rio Grande watershed, one member;

(V) The Republican and South Platte river watersheds, two members, one from the upper South Platte river watershed and one member from the Republican river and lower South Platte river watersheds;

(VI) The Colorado, Gunnison, and Dolores river watersheds, one member.

(b) The state board created in paragraph (a) of this subsection (1) shall, on and after July 1, 2000, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the former state board in the department of natural resources. On July 1, 2000, all employees of the former state board whose principal duties are concerned with the duties and functions transferred to the state board created in paragraph (a) of this subsection (1) and whose employment in the former state board is deemed necessary by the commissioner of agriculture to carry out the purposes of this article shall be transferred to the state board created in paragraph (a) of this subsection (1) and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 2000, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the former state board in the department of natural resources pertaining to the duties and functions transferred to the state board in the department of agriculture shall become the property of the state board created in paragraph (a) of this subsection (1).

(d) All contracts entered into by the former state board prior to July 1, 2000, in connection with the duties and functions transferred to the state board, created in paragraph (a) of

this subsection (1), are hereby validated. Any appropriations of moneys for the fiscal year beginning July 1, 2000, and from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the state board created in paragraph (a) of this subsection (1) for the payment of such obligations.

(e) All rules, regulations, rates, orders, agreements, and awards of the state board lawfully adopted prior to July 1, 2000, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) At the first regular meeting of the state board in 1974, the nine elected and appointed members of the state board shall by lot determine which three shall hold office for terms of three years, which three for terms of two years, and which three for terms of one year. Thereafter, all such elected and appointed members shall hold office for terms of four years.

(3) (a) Any vacancies occurring in the elective positions on the state board shall be filled by the board by the appointment of a person who would be qualified to stand for election for the board and who is from the same area in which the vacancy occurred, and such appointee shall hold office until the expiration of the term of the office to which he was appointed.

(b) The director of extension work, the director of the state experiment station, the commissioner of agriculture, and the executive director of the department of natural resources shall serve in an advisory capacity to the state board at its request.

(4) Members of the state board shall serve without pay except for their actual traveling and living expenses while on official business of the state board.

(5) The state board has the following powers and duties:

(a) To promote and assist in the organization of conservation districts in any section of the state where erosion damage exists or is threatened;

(b) To accept petitions for the organization of conservation districts and to examine such petitions, determine their sufficiency, and find whether, in its judgment, the organization of such districts is required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people. If, in the opinion of the state board, it is for the best interests of the state that such districts be organized, it shall proceed to hold a hearing and call an election of the landowners within such proposed district, as provided in section 35-70-105.

(c) To prepare and present to the qualified voters uniform bylaws for the conduct of the business of such districts; but, before such bylaws become effective as to any district, they shall first be approved by the qualified voters within each district. Any bylaws so presented and approved shall be consistent with all the provisions of this article.

(d) To act in an advisory capacity with the board of supervisors of each district and to coordinate the programs of all conservation districts;

(e) To act as the state board of appeals;

(f) To prepare a uniform and adequate system of accounting for districts, which may be adopted and used by all districts within the state;

(g) To administer and disburse any funds that may be made available to the state board for the purpose of assisting conservation districts in the conservation of soil and water resources of the state of Colorado and to defray expenses of the state board and its duly appointed or employed agents in carrying out the provisions of this article;

(h) To loan money to conservation districts to assist such districts in furthering the

purposes of this article, such loans to be in such amounts and for such terms as the state board may prescribe by rule in order to fully protect the funds and interest of the state board.

(6) In addition to the powers and duties granted to the state board in other sections of this article, the board has the following powers and duties:

(a) To undertake studies of watershed planning and to undertake development of watershed flood prevention and underground water storage projects, both on its own initiative and in response to requests submitted to the board by one or more soil or water conservation districts, flood prevention or control districts, boards of county commissioners, municipalities, drainage or irrigation districts, or other legally constituted bodies having authority under state law to carry out, maintain, and operate the works of improvement;

(b) To hold public hearings at any point within or without each proposed watershed for the purpose of determining the extent of public interest, the degree of anticipated cooperation, and any other data and information needed by the state board in making decisions as to each project;

(c) To plan, in cooperation with the United States government or any of its agencies, the state of Colorado or any of its political subdivisions, and private individuals or corporations, conservation districts, and others, watershed improvement, underground water storage and flood prevention projects, conservation and erosion control practices, and other projects not inconsistent with this article;

(d) Within the limits of available funds, to administer, direct, and operate such watershed improvement, underground water storage and flood prevention projects, conservation and erosion control projects, and other similar activities;

(e) To administer and expend funds made available to the state board by the United States government or any of its agencies or by the state of Colorado or any of its political subdivisions or funds derived from any other source for the purpose of planning, developing, and putting into operation practices and projects undertaken in accordance with this subsection (6);

(f) To obtain options upon and to acquire, or acquire control of, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this article;

(g) To erect suitable structures and maintain any facilities, so as to arrest or prevent the erosion of soils or lands, to improve the watershed and prevent floods, and to increase underground water reserves, with due consideration to established water rights;

(h) To accept grants, services, and materials and to borrow money from the United States or from any corporation or agency created or designed by the United States to lend or grant money, or from the state of Colorado or any of its subdivisions, or from any other source; but in no event shall the state board pledge the faith or credit of the state of Colorado or any county or other political subdivision. In connection with such grants or loans, it may enter into such agreements or contracts as may be required for such purposes.

(i) To report annually at such times and on such matters as the commissioner of agriculture may require. Publications circulated in quantity outside the executive branch are

subject to the approval and control of the commissioner of agriculture.

(j) To place any funds it receives pursuant to paragraph (e) of this subsection (6) into a trust and to administer and expend any moneys in such trust.

35-70-104. Petition for organization of district - qualified electors. (1) Proceedings to determine whether or not a conservation district shall be organized shall be instituted by a petition addressed to the state board and signed by not less than twenty-five percent of the owners of land within the district and who own not less than half of the area to be included within the proposed district. A determination after hearing by the state board that the requisite number of landowners have signed such petition and that such petition has been signed by landowners who own not less than half of the area to be included within the proposed district shall be final and conclusive unless objection is made to the sufficiency of such petition and appeal is taken from the determination of the board.

(2) The petition shall include:

(a) The name of the proposed district;

(b) Two maps or plats showing the boundaries of the proposed district;

(c) Narrative statement giving the legal description of the area to be included within the proposed district by legal subdivisions or by metes and bounds;

(d) Brief statements of the character of the lands within the boundaries of the proposed district and the need for the establishment of such district.

(3) Every person who is a qualified elector of this state and who owns land within the proposed or existing district is entitled to vote at any election of a proposed or existing district on any matter concerning the organization, operation, consolidation, or dissolution of such district.

(4) (a) (I) A "qualified voter" or "qualified elector", as referred to in this article, means any registered voter or corporation owning land within the proposed or existing district, as shown by the records in the office of the appropriate county clerk and recorder, and any heir or devisee of such land of a deceased landowner.

(II) (A) A landowner who is a qualified voter or qualified elector as defined in this paragraph (a) may authorize a family member who is a registered voter and a renter or manager of the land to vote in an election on behalf of such landowner.

(B) Authorization pursuant to this subparagraph (II) shall be made prior to every election of the district.

(b) A corporation owning land within a proposed or existing district is entitled to vote if such corporation duly authorizes an agent to vote in the election in its behalf.

35-70-104.1. Mobile home ownership - elections and petitions. Notwithstanding any other provision of this article to the contrary, for all elections and petitions that require ownership of real property or land, a mobile home as defined in section 38-12-201.5 (2) or 5-1-301 (29), C.R.S., or a manufactured home as defined in section 42-1-102 (106) (b), C.R.S., shall be deemed sufficient to qualify as ownership of real property or land for the purpose of voting rights

and petitions.

35-70-105. Hearing on petition - election. (1) Within sixty days after it receives a petition, the state board shall cause notice by publication to be made of the pendency of the petition. Such notice shall state:

(a) That a petition has been filed for the organization of a conservation district and the name of the proposed district;

(b) The date (not less than twenty days from the date of such notice), hour, and place that a hearing will be had to determine the sufficiency of the petition and the necessity and advisability of the formation of the proposed district;

(c) That said petition, map, or plat of the proposed district and related material are on file and may be seen and examined by any interested person at the office of the county clerk and recorder of each county in which the proposed district is located and the office of the state board or other designated place within the period between the date of the notice and the date of the hearing;

(d) That anytime after the filing of the petition for the organization of a conservation district, but no later than five days before the day fixed for the hearing thereon, the owner of any real property within the proposed district may file a petition with the state board stating reasons why said property should not be included therein and requesting that said real property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The state board shall hear said petition and all objections thereto at the time of the hearing on the petition for organization and shall determine whether, in the best public interest, said property should be excluded or included in the proposed district.

(2) If on hearing, in the opinion of the state board, the petition or map or plat is insufficient, the papers shall be returned to the petitioners for amendment. If, in the opinion of the state board, the organization of the district is not required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people, it shall so advise the petitioners, and the district shall not be organized, but subsequent petitions covering the same or substantially the same territory may be filed after six months have expired from the date of denial of any such petition, and new hearings shall be held and determinations made thereon.

(3) If it appears upon hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice has been given or to exclude territory within the district as proposed by the petition, the state board shall determine and define by metes and bounds or by legal subdivisions the boundaries of the proposed district, making such inclusions and exclusions as may be determined desirable. The proposal to include territory within which due notice has not been given shall be considered only at an adjourned hearing to be held after due notice thereof has been given throughout the entire area considered for inclusion in the district and such adjourned hearing held.

(4) If, following the hearing, it is the opinion of the state board that the petition and accompanying map or plat are sufficient and it appears that the organization of the proposed district is feasible and practicable and is required for the preservation of the health, prosperity, and welfare of the state of Colorado and its people, the state board shall make and record such

determination.

(5) (a) If it is determined that the petition and the map or plat are sufficient and the proposed district is necessary, the state board shall call an election. The state board shall select the date, time, and place for the holding of the election, such date to be not less than twenty days nor more than forty days from the time the state board's determination becomes final.

(b) The state board shall give notice by publication of the date, time, and place of such election, together with a statement of the matters which will be considered at the election. This notice shall also describe the outer boundaries of the proposed district and any exclusions of land within such boundaries, state that the qualifications of voters shall be as described in section 35-70-104 (3), state that the petition is on file at the office of the county clerk and recorder, and state the procedures for nominating supervisors and the place where absent voters' ballots can be obtained. Such publication shall be made not less than ten days nor more than thirty days before the date of such election.

(c) At such election the qualified voter shall vote for or against the organization of the conservation district.

(d) The state board shall conduct the proceedings of the election provided for in this subsection (5) and shall be the judge of all matters in connection therewith. It has the authority to appoint one or more of its own members or other proper persons to act for it and in its stead in such matters. After the organizational election, all subsequent elections and administrative actions concerning the operation of the district, except as otherwise provided in this article, shall be conducted as provided in the local district's bylaws.

(e) (I) If the canvass of votes at any organization election discloses that one-half or more of the votes cast are against organization of the district, the result of the election shall be recorded in the minutes of the state board, and the proposal shall be dismissed. If the canvass discloses that more than one-half of the votes cast are for the organization of the district, the result shall be recorded in the minutes of the state board, and the board shall proceed as provided in section 35-70-106.

(II) The candidates, according to the number of supervisors to be elected, receiving the most votes cast shall be elected. The supervisors elected shall take office upon the taking of an oath and, if required by the state or local board, the filing of a bond in the same manner as specified in section 32-1-901, C.R.S. Failure to take the oath or furnish a bond, if required, except for good cause shown, shall create a vacancy in the office, and the vacancy shall be filled by the next candidate receiving the highest number of votes in the case of a new district or by the remaining supervisors as specified in section 35-70-107 (4).

(6) For the purposes of this section, "publication" means printing, once a week for two consecutive weeks, by two publications in one newspaper of general circulation in the proposed conservation district if there is such a newspaper, and, if not, then in a newspaper in the county in which the proposed conservation district is located. It is not necessary that publication be made on the same day of each week.

(7) (a) Except as may be otherwise provided in this article, the state board and each local district board of supervisors in the conduct of all elections shall follow, as much as practicable, the election procedures set forth in part 8 of article 1 of title 32, C.R.S.

(b) Whenever reference is made to the secretary or board of a special district, it shall be deemed to mean the secretary or board of supervisors of the local district or state board, as applicable.

35-70-106. Creation of district - certification. Within sixty days after the holding of such election, if more than a majority of the votes cast are for organization of such proposed district, the state board shall certify to the division of local government in the department of local affairs a statement of such election and the result thereof, together with a map or plat showing the area included within such district. The director of said division shall thereupon execute and deliver to the state board a certificate declaring the area within the boundaries of such district to be a lawful conservation district under its name as shown in the records, and thereafter such district shall be a public body corporate and a political subdivision of the state of Colorado and shall have all the powers and duties imposed upon such districts under the provisions of this article. Because the district is a political subdivision of the state, the property of such district, both real and personal, shall be exempt from taxation pursuant to section 4 of article X of the state constitution.

35-70-107. Board of supervisors - election - term. (1) (a) (I) The governing body of the district shall consist of a board of supervisors, referred to in this article as "supervisors", who shall be elected by the qualified electors of the district at an election conducted as provided in section 35-70-105. Each board shall consist of not less than five and not more than eleven supervisors, which number shall be specified in the bylaws of the district.

(II) At least sixty-six percent of the supervisors of each district shall be agricultural producers who are landowners in the district; except that, if the district cannot find the requisite percentage of agricultural producers, the district may petition the state board for an exemption from the percentage requirement.

(III) Each supervisor shall serve for a term of four years; except that each district's board shall provide for the staggering of supervisorial terms so that the terms of no more than a simple majority of supervisors expire at any one time. Supervisors serving on July 1, 1995, shall continue to serve the terms for which they were elected or appointed.

(b) Subject to the provisions of paragraph (a) of this subsection (1), no one shall be eligible to become a candidate for election as a member of the board of supervisors of any such district unless such person is a landowner in and a qualified elector of the district, including a renter or manager of the landowner's land pursuant to section 35-70-104 (4), or the duly authorized representative of a corporation owning lands within the district.

(2) The business of the district shall be transacted by the supervisors as provided in this article and in the district's bylaws. All special and regular meetings of the board of supervisors shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (2) governing the location of meetings may be waived only if the

following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (2) and further stating the date, time, and place of such meeting.

(3) Members of the board of supervisors shall be entitled to travel and other expenses necessarily incurred in the discharge of their duties, such reimbursement to be payable only from the income of the district. No supervisor shall be personally liable for the consequences of his official acts; nor shall he receive, by virtue of his office, any benefits from the conduct of the affairs of the district other than the benefits any landowner may be entitled to receive from the operation of the district.

(4) If a vacancy occurs on the board of supervisors, the remaining supervisors shall appoint a successor for the remainder of the term of the seat vacated. In the event any supervisor ceases to be a qualified voter of and landowner in the district or the corporation which he represents ceases to be an owner of lands within the district, the supervisors shall thereupon declare a vacancy and proceed to appoint a successor.

35-70-108. Powers and duties of districts. (1) A conservation district, in the exercise of its public powers, has the following powers and duties in addition to others granted in this article, which powers and duties may be exercised by the supervisors subject to the rules, regulations, and bylaws adopted by such district and to the direction of the qualified voters at any regular or regularly called special meeting of the district:

(a) To conduct surveys, investigations, and research relating to the character of soil conservation and the preventive and control measures needed. In order to avoid duplication of research activities, such work, where possible, shall be conducted in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

(b) To conduct demonstrational projects within the district on lands owned or controlled by the United States or the state of Colorado or any of their agencies, with the consent of the agency administering and having jurisdiction thereof, and on any privately owned lands within the district, upon obtaining the consent of the owner of such lands;

(c) To erect structures and maintain any facilities to arrest or prevent the erosion of soils or lands within such district by reason of wind or water or from any other cause;

(d) To cooperate or enter into agreements with and, within the limit of its available funds, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupant of lands within the district in the carrying on of erosion control, flood control, and water conservation practices within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this article;

(e) To obtain options upon and to acquire or acquire control of, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to acquire real property or any interest therein by eminent domain under the provisions of articles 1 to 7 of title 38, C.R.S., for projects designed exclusively for flood control,

or sediment control, or both, as authorized under Public Law 566, enacted by the eighty-third congress (1954), but such power of eminent domain shall not be exercised by any district unless and until not less than two-thirds of the resident landowners owning at least fifty percent of the privately owned lands within the watershed area, as established by the watershed work plan map, shall, by petition filed with the supervisors of the district, approve the exercise of such power for any specified project; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes of this article;

(f) To make available to landowners and occupants within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such landowners or occupants to carry on operations upon their lands for the conservation of soil or water resources and for the prevention and control of soil erosion and floods;

(g) Repealed.

(h) To accept grants, services, and materials and to borrow money from the United States or from any corporation or agency created or designed by the United States to loan or grant money, or from the state of Colorado or any of its subdivisions, or from any other source, but in no event shall such district pledge the faith or credit of the state of Colorado or any county or other political subdivision, except that of such district. In connection with such grants or loans, it may enter into such agreements or contracts as may be required for such purposes.

(i) To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; and to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries;

(j) To sue and be sued in the name of the district; to have a seal which shall be judicially noticed; to have perpetual succession unless terminated as provided in this article; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations, not inconsistent with this article, to carry into effect its purposes and powers;

(k) To prepare a plan for the care, treatment, and operation of the lands within the district. This plan may be known as the district program and plan of work and shall establish in general its objectives and serve as a guide for carrying out its work to attain its objectives. This plan, from time to time, may be amended to meet the needs of the district.

(l) To cause annual audits to be made in accordance with the "Colorado Local Government Audit Law";

(m) To make contributions of information, data, statistics, funds, or other contributions valuable in the furtherance of land conservation to any state association or other organization representing the interests of conservation districts in the state in the accomplishment of that

purpose;

(n) To sponsor, plan, construct, maintain, and operate flood prevention and watershed improvement projects for the development, conservation, control, and utilization of water resources and, in so doing, to have and exercise all of the authority and power otherwise granted in this article;

(o) To participate in the formulation and implementation of nonpoint source water pollution control programs related to agricultural practices in order to implement programs required or authorized under federal law and section 25-8-205 (5), C.R.S., enter into contracts and agreements, accept funds from any federal, state, or private sources, receive grants or loans, participate in education and demonstration programs, construct, operate, maintain, or replace facilities, and perform such other activities and adopt such rules and policies as the board deems necessary or desirable in connection with nonpoint source water pollution control programs related to agricultural practices.

35-70-109. Assessments - amendments to bylaws.

(1) Repealed.

(2) If, in the judgment of the qualified voters of a district or the supervisors, a tax levy or assessment is essential to accomplish the purposes of the district as set forth in this article, the levy may be assessed as follows:

(a) The supervisors shall prepare a budget and distribute the amount thereof over the lands within the district in accordance with the valuation for assessment, but in no event shall the assessment on real property be in excess of one-half of one mill. Such tax levy or assessment shall be for the general purposes of the district and not for special purposes as provided for in paragraph (d) of this subsection (2).

(b) Prior to setting a date for an election as provided in paragraph (c) of this subsection (2), the supervisors shall hold a public hearing concerning the imposition of a tax levy or assessment. Thereafter, if the board of supervisors decides to proceed with an election, it shall give notice by publication, as provided in section 35-70-105 (6), setting forth the date of the election, the rate or amount of such levy or assessment, a statement as to why such levy or assessment is necessary, and other information concerning the holding of the election.

(c) No tax levy or assessment shall be imposed within a district unless it is first submitted to the qualified electors of the district and approved by a majority of the votes cast. Any such election shall be conducted as provided in section 35-70-105 (7). Any increase in the tax levy or assessment, if the existing levy or assessment does not equal the one-half mill maximum, shall also be proposed and approved at an election in the same manner as provided in this paragraph (c). An existing tax levy or assessment may be continued from year to year or decreased as determined by the board of supervisors and approved by the state board.

(d) If, in the judgment of the qualified voters of a portion of a district or in the judgment of the supervisors, a tax levy or assessment is required for special purposes on real property in said portion of a district for the installation, maintenance, and operation of flood prevention and watershed improvement measures and practices, an assessment or tax levy, in addition to any levy assessed pursuant to paragraph (a) of this subsection (2), for such portion of the district may

be levied on real property as provided for in this subsection (2), but only the qualified voters owning lands within the aforesaid delineated parts of the district may vote upon the question as to whether or not such levy or assessment shall be imposed. Such tax levy or assessment for special purposes shall be administered in the same manner as set forth in paragraph (a) of this subsection (2) and, when combined with any other levy of the district pursuant to this article, shall be subject to the same one-half mill levy limit set forth in said paragraph (a).

(3) The bylaws of any conservation district may be altered, amended, or repealed or have additions made thereto at any regular or regularly called special meeting of the district, upon compliance with the following requirements: A petition whose text sets forth the proposed amendment in full, signed by not less than three percent or fifty of the qualified voters of the district, whichever is less, must be filed with the supervisors; the complete text of the proposed amendment must be published in the notice of the meeting at which it is to be considered, which notice must be published at least once in a newspaper of general circulation within each county in which property included within the district is located, not less than ten days prior to the said meeting; and those present at the said meeting at which the proposed amendment is to be considered shall constitute a quorum for the consideration of the proposed amendment, and the affirmative vote of a two-thirds majority thereof shall be required to adopt the proposed amendment.

35-70-110. Appeals to state board. (1) If the owner of any lands within the district desires, he may appeal from any decision of the supervisors to the state board. To establish such an appeal, he must submit his appeal in writing to the state board within thirty days after the date of the action of the supervisors from which the appeal was taken. The notice of appeal shall state the particular part of the decision of the supervisors from which an appeal is being taken, if less than the entire decision is being appealed from, and shall state in simple and concise language the reasons why the owner considers the decision to be improper.

(2) Within twenty days following the receipt of such written appeal, the state board shall notify, in writing by registered mail, the person making such appeal and the local board of supervisors of the time and place it will hear the appeal. Such hearings shall be held not less than ten days nor more than a period spanning two consecutive meetings of the state board following the mailing of the notice.

(3) At the time and place set forth in the written notice for such meeting, the state board shall hear any persons in interest who desire to be heard in favor of or against the order as finally entered by the supervisors and shall make its decision thereon, which shall be entered in the minutes of the state board.

(4) and (5) Repealed.

(6) No action shall lie in any court of law to set aside or alter the final decision of the state board unless the petitioner or plaintiff therein alleges and shows to the court that the supervisors, in the rules or decision complained of, were guilty of gross carelessness or abuse of discretion, nor shall any action be maintained in such behalf unless the petitioner or plaintiff therein alleges and shows to the court that he has exhausted all rights of appeal provided in this section.

35-70-111. Certify assessments or tax. If an assessment or tax has been voted as provided in section 35-70-109 (2), the supervisors shall, in accordance with the schedule prescribed by 39-5-128, C.R.S., certify to the board of county commissioners of the county in which any tract or parcel of land within the district may lie the amount of assessment or tax to be levied against such land as shown by the distribution of the budget of the district. Such assessment or tax shall be added to all other taxes levied or assessed against such land and shall be collected as are other property taxes. Assessments or taxes against any lands owned by the United States or the state of Colorado or any agency of either shall not be certified to the county commissioners as provided in this section, but such assessments or taxes shall be collected in accordance with agreements to be entered into by the supervisors and the public owner or agency controlling such lands.

35-70-112. Failure to observe ordinances. (Repealed)

35-70-113. Boards of appeals. (Repealed)

35-70-114. Land use ordinances - violations. (Repealed)

35-70-115. Additions and withdrawals. (1) (a) If any owner of lands adjoining or in the immediate vicinity of the boundary of an established conservation district desires to have his or her lands included within the district, the owner may petition the supervisors of the district, stating the legal description of the lands affected and the reasons why it is desired to have such lands included within the district and shall accompany the petition with two maps showing the outer boundaries of the lands petitioned to be included within the district.

(b) If the supervisors find that all of the owners of the lands within such proposed addition have signed the petition and if they approve the addition of such lands to the district, they shall notify the owners of such lands, in writing, of the fact that their lands are included in the district and are entitled to the services and subject to the authority of the district. The supervisors shall cause to be filed with the county clerk and recorder of the county in which any of such land may be located a certificate describing the legal boundaries of the land and stating that such land has been added to and included within such district, and the owner of such land shall pay to the district the cost of recording such certificate.

(c) When, in the opinion of the supervisors, there is public land owned by the United States government that, by reason of its topography, drainage, and other factors, should be included in the conservation district, the supervisors may file with the clerk and recorder of the county in which the land is situated a notice of inclusion of said land in the conservation district. A copy of said notice shall be served personally or by registered mail, return receipt requested,

upon the head of the agency controlling said land, and, at the discretion of the board, information copies may be provided to local agency officials. Said notice shall describe the land to be included within the district and shall further state that said land shall, on the sixtieth day after personal service or delivery of said notice by registered mail, be deemed to be within the district until and unless the controlling agency files a statement with the county clerk and recorder withdrawing said land from the conservation district.

(d) All costs for including any such area within a conservation district shall be paid by the district, and no assessment of any sort shall be made against said land at any time on account of its inclusion within said district.

(2) In the event five or more owners of land adjoining or in the immediate vicinity of the boundary of an established conservation district desire to have their own and neighboring lands added to and included within such district, they shall first secure the written consent of the supervisors of such district and may then petition the state board substantially in the form and with the supporting data required by section 35-70-104, and thereafter the state board shall proceed as to the owners of land within the proposed addition substantially as provided in section 35-70-105 (5) and (7); except that the sole question to be voted upon at the meeting of the landowners shall be the question of whether or not the lands within the boundaries of the proposed addition to the district shall be so included.

(3) If a majority of the votes cast are against such inclusion, the state board shall record the fact in its minutes, and the election shall adjourn; but, if a majority of the votes cast are in favor of such inclusion, the state board shall note that fact in its minutes and shall certify to the director of the division of local government in the department of local affairs the fact that such additional lands have been included within such district, and the director of said division shall issue his certificate describing the legal boundaries of the lands and stating that such land has been added to and included within the district.

(4) Within thirty days after the date of such certificate, the supervisors of the district shall cause the same to be recorded in the books of the county clerk and recorder of the county in which the lands so added are located in whole or in part. From the date of such certificate, the lands thereby included within the district shall be entitled to the same services and subject to the same authority of the district as are other lands of the district.

(5) If the boundary line common to two adjoining conservation districts divides the land of any owner so that such land lies partially within each of such districts, the owner of such land, with the written consent of the supervisors of both such districts, may have all of such land included in whichever of the two districts the owner selects and excluded from the other. No land shall be excluded from a district until and unless all lawful taxes and other charges of the district against such land have been paid. The supervisors of the district to which such land shall be transferred shall cause to be recorded in the books of the county clerk and recorder of the county in which the land so transferred lies in whole or in part a certificate of such transfer, together with the legal description of the land so transferred, and shall collect from the owner of such land the cost of recording such certificate.

(6) In all proceedings as to petitions and elections under the provisions of this section, the qualifications of landowners participating therein shall be as described in section 35-70-104.

(7) In the event that any lands included within a district cease to be used for agricultural purposes and are thereafter devoted exclusively to commercial or industrial uses or other uses related to urban development, or are subdivided for residential purposes, or become a part of the area included within an incorporated municipality, such lands may be withdrawn from a conservation district as follows:

(a) to (d) Repealed.

(e) When, in the opinion of the supervisors, lands included in a district cease to be used for agricultural purposes, the supervisors, on their own initiative, may, upon sixty days' written notice to the owner of lands involved, cause such lands to be withdrawn from the district; or the supervisors may, in lieu of such written notice, give notice of such withdrawal by publication, by causing notice of such withdrawal to be published not less than sixty days nor more than ninety days before the date on which the withdrawal of such lands from the district becomes final.

(f) Said notice shall be published in one issue of a newspaper of general circulation published within the district from which such lands are to be withdrawn, and, if there is no such newspaper within said district, one publication in a newspaper of general circulation throughout the state shall be sufficient. Said notice shall also be posted in a conspicuous place in the conservation district office of the district from which such lands are to be withdrawn. The written notice or, if notice is given by publication, both the publication and the posted notice shall state the reasons for the withdrawal and the date on which the withdrawal becomes final and shall describe the lands to be withdrawn with such certainty as to enable a property owner to determine whether his or her property is included in such lands.

(g) and (h) Repealed.

(8) If the supervisors of one or more districts determine that the transfer of lands from one district to one or more other districts will increase the efficiency of the services provided by the districts to the owner of the land that is to be transferred, they shall proceed as follows:

(a) The supervisors of the district from which the land is to be transferred and the supervisors of the district into which the land is to be transferred shall forward their written request to the state board for approval of the transfer.

(b) If it is the opinion of the state board that the requested transfer is in the best interests of the districts involved, the state board shall make and record such determination and give written notices to the districts of its approval.

(9) (a) After a district has been formed and is in operation, the owner of land within the district may have the owner's land withdrawn from the district by submitting a written and notarized statement of withdrawal to the supervisors of the district. Upon receipt of such statement by the supervisors, the land requested to be withdrawn shall be deemed withdrawn, and no further action shall be necessary for completion of the withdrawal; except that such land shall remain obligated for its proportionate share of the district's expenses and debts incurred prior to receipt of said statement.

(b) Upon receipt of a statement of withdrawal pursuant to paragraph (a) of this subsection (9), the supervisors shall file a certificate with the county clerk and recorder of the county in which such land is located that describes the legal boundaries of the land being withdrawn and states such land has been withdrawn from the district. The owner of the withdrawn land shall reimburse to the district any fee charged for recording such certificate.

(10) No land within a conservation district shall be deemed withdrawn from the district until the procedures set forth in subsection (9) of this section have been met.

35-70-116. County agents. Any resident county extension agent whose jurisdiction lies wholly or in part in any established conservation district shall be ex officio a member of the board of supervisors of such district in an advisory capacity, but without the right to vote. Any county agent may serve in such capacity in more than one district.

35-70-117. Counties to cooperate. The county commissioners of any county in which a conservation district lies in whole or in part shall cooperate with the supervisors of such district in carrying out the purposes of this article, and to that end may use the equipment of the county and persons employed by the county to do such physical work as may be required by the supervisors, and may make a reasonable charge therefor; and, if the county commissioners find that the benefits accruing to the county by reason of the program of a conservation district justify such action, they may make donations to such district of money, services, or the use of equipment.

35-70-118. Dissolution - procedure - conservation fund. (1) No proceeding for the dissolution of a conservation district shall be initiated within five years after the date of the organization of the district. Anytime after the expiration of such five-year period, proceedings to determine whether or not a conservation district shall be dissolved may be instituted by a petition addressed to the state board, which shall be signed by not less than twenty-five percent of the owners of land within the district and approved by a majority of the supervisors of such district. Such petition shall state the reasons for the dissolution and the proposed disposition of all contracts, assets, and liabilities held or owed by the district and shall request that the state board proceed to hold a hearing and call an election to determine whether or not such district shall be dissolved.

(2) Within sixty days after receipt of such petition, the state board shall give notice by publication, as specified in section 35-70-105 (6), of the filing of such petition; of the date (not less than twenty days after the date of such notice), time, and place when a hearing shall be had to determine the sufficiency of the petition and the advisability of dissolving the district; that all complaints and objections that may be made in writing concerning the sufficiency of the petition and the advisability of the dissolution of the district by the owners of any land within such district will be heard and determined before final action thereon; and that all owners of land within the district shall have the right to attend such hearing and be heard.

(3) (a) On hearing, if, in the opinion of the state board, the petition is insufficient or proper arrangements have not been made for the disposition of the contracts, assets, and liabilities of the district, the papers shall be returned to the petitioners for amendment. If, in the opinion of the state board, the dissolution of the district is not advisable, it shall so inform the petitioners, and the district shall not be dissolved; but subsequent petitions may be filed after six

months have expired after the date of denial of such petition and new hearings and determinations made thereon.

(b) If, following the hearing, it is the opinion of the state board that the petition is sufficient and that the dissolution is advisable, the state board shall call an election in the manner provided for in section 35-70-105 (5) and (7), but the only question to be determined at such election shall be whether or not the district shall be dissolved.

(4) (a) If a majority of the votes cast are against dissolution of the district, the district shall continue to exist as though no petition had been filed and no election held. Thereafter, no petitions for dissolution shall be considered by the state board at intervals of less than three years.

(b) If a majority of the votes cast are for dissolution of the district, the state board shall, within sixty days after such election, certify to the division of local government in the department of local affairs a statement of such election and the result thereof. The director of said division thereupon shall execute and issue to the state board a certificate of dissolution, and thereafter the existence of the district shall cease. The state board shall forthwith cause the certificate of dissolution to be recorded in the books of the county clerk and recorder of the county in which such district was located in whole or in part.

(5) (a) Within thirty days after the division of local government has issued a certificate of dissolution, the supervisors shall proceed, as trustees, to sell the assets of the district at public or private sale, whichever may be approved by the state board. After paying any outstanding accounts of the district and the cost of such dissolution and sale, the remainder of the proceeds shall be paid over to the state board and shall be deposited with the state treasurer to the credit of such board in a fund to be known as the conservation fund. Such fund shall be expended by the state board as needed by the organizations of conservation districts and for carrying out the purposes of this article and not otherwise. If at any time after such fund is established there are no conservation districts in existence in the state, the state board shall so notify the controller, and any balance remaining in such fund shall be transferred to the general fund of the state.

(b) All contracts entered into by the district prior to dissolution shall remain in full force and effect until terminated by the terms thereof or by mutual agreement, but, in all such contracts, upon dissolution of such districts, the state board shall be substituted for the supervisors as the district's party to such contracts. The state board has the same right as the supervisors would have had to perform and require performance of such contract, sue and be sued thereon, and modify or terminate such contracts by mutual agreement or as provided in such contracts, but no member of the state board shall be subject to any personal liability therefor.

(c) Such dissolution shall not affect any lien or right of action theretofore held by the district, and the state board shall succeed to all the rights and obligations of the supervisors in such respect. Any funds coming into the hands of each county treasurer in payment of taxes or assessments levied against the lands within the district after dissolution of the district or remaining in such treasurer's hands at the time of such dissolution shall be treated as are other assets of the districts, as provided in this section.

35-70-119. Consolidation of districts. (1) Two or more established districts may be consolidated into a single district by the following procedure:

(a) The supervisors of the districts desiring to consolidate, acting upon their own initiative or upon the petitions of a substantial number of the qualified landowners in their districts, may jointly prepare and submit to the state board a request for authority to consolidate. Such request shall be accompanied by maps showing the geographical boundaries and locations of the districts to be consolidated and of the proposed consolidated district. If the state board finds that the proposed consolidation is in the best interests of the districts affected, it shall notify the supervisors of the districts that they have authority to proceed.

(b) Upon receiving such notification to proceed, the supervisors of the districts shall hold a public hearing concerning the proposed consolidation. Thereafter, if the supervisors decide to proceed with the consolidation, each board of supervisors shall request that the state board prepare a notice of election on the proposed consolidation, setting forth the circumstances of the proposed consolidation and the date, time, and place of a special election to be held in each of the districts at which the question of consolidation will be voted upon. The notice shall be published as specified in section 35-70-105 (6), in a newspaper of general circulation in each of the districts not more than thirty days nor less than ten days before the election and posted at several places in each of the districts. The election shall be conducted by the state board as provided in section 35-70-105 (7).

(c) If a majority of the votes cast in each of the districts are against such consolidation, the state board shall dismiss the proceedings, and the district shall proceed as though no such election had been held. If a majority of the votes cast in each of the districts are in favor of consolidation, the board of supervisors of each district shall certify jointly that fact to the state board, which shall in turn certify it to the division of local government in the department of local affairs. Upon such final certification, the districts so consolidated shall cease to exist as separate districts.

(d) (I) After an election approving a consolidated district, the supervisors of each board of a consolidated district shall constitute the organizational board of the consolidated district, regardless of the number of supervisors. This organizational board shall remain as the board of the consolidated district until such time as the first board of the consolidated district is selected as provided in this paragraph (d).

(II) The organizational board, within six months after the date of the consolidation election, shall select and determine the terms of the supervisors of the first board of the consolidated district. In making such determination, the organizational board shall fix the terms of the first board as follows: The terms of two directors of the first board having the fewest years to serve on the board to which they were originally elected shall expire at the first election after the consolidation, and the terms of the remaining three directors having the greatest number of years to serve on the board to which they were originally elected shall expire at the second election. If the terms of the supervisors so selected to the first board of the consolidated district expire on the same date, the terms of such supervisors shall be determined by the organizational board. Such terms shall be determined, however, so that the terms of three supervisors of the consolidated district shall expire at the time that the terms of three supervisors of existing districts shall expire, and the terms of the remaining two supervisors of the consolidated district shall expire at the time that the terms of the remaining two supervisors of existing districts shall

expire. Thereafter, each supervisor in office shall be elected for a four-year term.

(III) The members of the organizational board of the consolidated district not selected to act as the members of the first board of the consolidated district may act, however, as advisory members to the first board until such time as the terms of office for which they were originally elected would have expired. Advisory members may be compensated equally with compensation paid to the board of the consolidated district for each meeting attended. Advisory board members may not act as officers of nor bind the consolidated district and shall have no vote on any matters before the board of the consolidated district, but they may be employed by the board of the consolidated district in any capacity.

(e) A consolidated district has all of the rights, powers, and authority of each of the conservation districts consolidated. After consolidation the district may consolidate with any other conservation districts, and all actions and proceedings of the consolidated district shall be done without regard to the fact of consolidation.

(2) Any contract to which any district is a party remains the obligation of that district, and the assets or proceeds from the assets thereof shall be first available for the payment of any obligation thereunder, unless the other parties to the said contract agree and consent to the substitution of the new district as a party thereto. In either event, the consolidated district shall, in accordance with the terms of any agreement made between the consolidating districts, be an additional party to any such contract and liable thereon and with full right and authority to perform or require the performance of the said contract, including the right to enforce the said contract by any lawful action, as fully as though the consolidated district were an original party thereto. Upon consolidation of such districts, the consolidated district shall become and shall proceed in all things as a newly-organized district under the provisions of this article.

35-70-120. Change of name. The term "soil erosion district" as used in "The Colorado Soil Conservation Act of 1937" and "conservation district" as used in this article shall be deemed synonymous. Districts organized after April 3, 1941, shall be known as conservation districts, and districts organized before April 3, 1941, may be known either as soil erosion districts or as conservation districts, as determined by the supervisors of such districts. The change of name permitted by this section shall not affect in any way the rights or obligations of districts or landowners or impair the obligations of any contract to which any such district is a party at the time of such change of name.

35-70-121. Cooperation between districts. Whenever, by reason of location, similarity of problems, and need for mutual assistance, the purpose of this article may be more economically, completely, and satisfactorily performed and accomplished thereby, two or more conservation districts may cooperate with each other by the joint exercise of the powers granted in section 35-70-108. The nature and extent of such cooperation and the duties and obligations of and benefits to the respective cooperating districts and interests in property that may be jointly acquired and used shall be determined by contract to be entered into between or among the cooperating districts, subject to the bylaws adopted by each of such districts and to the direction

of the qualified voters at any regular or regularly called special meeting of each such district.

35-70-122. Contributions for purposes of inclusion of conservation districts in the risk management fund. Each conservation district shall contribute moneys, which shall be deposited in the risk management fund, for the conservation district's proportionate share, as determined by the executive director of the department of personnel, of potential claims arising from conservation districts.

Soil Erosion

ARTICLE 71

Soil Erosion - Dust Blowing - 1951 Act

35-71-101 to 35-71-109. (Repealed)

ARTICLE 72

Soil Erosion - Dust Blowing - 1954 Act

35-72-101. Legislative declaration. (1) Soil erosion and damage caused by wind storms and blowing soil produced thereby are recognized and declared to be injurious or destructive to the property and natural resources of this state and a menace to the safety of the citizens of the state.

(2) To deter actions which are harmful to property and natural resources and to further the ability of persons injured by negligent conduct associated with blowing soil to have legal recourse, it is determined to be in the interest of the people of this state to allow recovery of damages for such negligent conduct.

35-72-101.5. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means a board of county commissioners.

(2) "District" means a conservation district formed under the provisions of article 70 of

this title.

(3) "Occupier" means any person, firm, any unit of state government or any agency of the state or federal government, or corporation, other than the owner, who is in lawful possession of any land within the county, whether as lessee, renter, tenant, or otherwise.

(4) "Owner" means any person, firm, or agency of state or federal government or unit of state government in whom is vested the ownership, dominion, or title of the property, and is recognized and held responsible by the law as owner of the property.

35-72-102. Duty of landowner - liability for damage. (1) To conserve property and the natural resources of the state and to prevent the injurious effects of blowing soil, it is the duty of the owner or occupier of any land in this state to prevent soil blowing therefrom, as nearly as can be done, by planting perennial grasses, shrubs, or trees or annual or biennial crops and by treatment consisting of listing, chiseling, and similar practices at such times and in such manner as will prevent or minimize erosion of the soil and soil blowing. If soil blowing is evident, such practices shall include, to the extent practicable, leaving stubble residue on top of the soil.

(2) Any owner or occupier who sustains damages to his property, including but not limited to crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock, proximately caused by the failure of any other owner or occupier of other land to discharge his duty to prevent soil blowing from land he owns or occupies may recover actual damages from the other owner or occupier by bringing an action in any court of competent jurisdiction.

(3) Any unit of state government or any agency of the state or federal government which sustains damages to any of its property, including but not limited to roads, barrow ditches, or fences, proximately caused by the failure of an owner or occupier to discharge his duty to prevent soil blowing from land he owns or occupies may recover actual damages from such owner or occupier by bringing an action in any court of competent jurisdiction.

(4) Such recourse to the court may be taken only upon demonstration that such owner, occupier, unit, or agency of government allegedly sustaining damages has submitted a written report of soil blowing to the board pursuant to section 35-72-103.

(5) In any action brought under this section, any preventive practice followed by an owner or occupier pursuant to a citation issued by a board pursuant to the provisions of section 35-72-103 is not an admission of tort liability, in any such action, and no determination of the board shall give rise to a presumption of negligence or lack of negligence of an owner or occupier.

(6) The provisions of this section shall not apply to any land less than one acre in area.

35-72-103. Action by county commissioners - emergency conditions. (1) (a) When the board of a county of the state is advised in writing or otherwise informed that soil is blowing from land in the county; the board is supplied with a description of the land; and it appears that private property, including crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock on adjacent or other land, or roads, barrow ditches, fences or other public property is being damaged by the blowing soil, the board shall as soon as practicable:

(I) Give notice of the complaint to the owner or occupier of the land from which soil is blowing; and

(II) Inspect or order the inspection of the land.

(b) If the board finds, after consultation with the local district board of directors, the state conservation board, or an extension agent with expertise in soil conservation or soil science, and after consultation with local owners or occupiers, including the owner or occupier of the land from which soil is blowing, that soil is blowing from the land in sufficient quantity to be injurious to private property, including crops, grasslands, fences, fencerows, irrigation canals, ditches, or livestock on adjacent or other land, or to roads, barrow ditches, fences, or other public property because of soil being blown thereon, the board shall determine what, if anything, can be done to prevent or materially lessen the blowing of soil from the land. If the board determines, after the consultation, that the complaint lodged with it falls under article 3.5 of this title, the board shall not take further action. If the board finds, after the consultation, that an emergency exists, that the blowing is occurring, that property damage appears to be resulting from the blowing soil, and that it can be prevented or materially lessened by treatment of the soil, the board shall issue a citation to the owner as listed upon the records of the county assessor and to the occupier, if known to the board, specifying the nature of the treatment required and the extent thereof, the date by which the treatment is to be commenced, and the date it is to be completed.

(2) Notice of such citation shall be given by personal communication, if possible, and by mailing a copy thereof by registered mail addressed to each of the persons to whom the citation is directed at the address as shown on the records of the county assessor; otherwise, service of such citation shall be made as provided by the Colorado rules of civil procedure for the service of summons. Such citation shall also be posted in a public place in the county courthouse in the county in which said land is located. If such treatment is not commenced on or before three days or within such greater time as may be specified in such citation after the date of such personal communication, mailing, and posting or the service of notice as provided in this subsection (2), or if the treatment is not performed in the manner and to the extent specified in the citation and in a workmanlike manner and with due diligence, or if, prior to the expiration of the date fixed in said citation, the persons to whom said citation is directed advise the board that they do not intend to or cannot accomplish the work so directed, the board may cause such treatment to be performed in accordance with such citation.

(3) The provisions of this section shall not apply to any land less than one acre in area.

35-72-104. Action by department of agriculture. (Repealed)

35-72-105. Method of assessment. (1) Upon the completion of the treatment caused to be performed by the board as provided in section 35-72-103, the board shall, by resolution, determine what land benefits and from which soil is blowing and assess against the owner of the benefited land the actual cost of the treatment not in excess of forty dollars per acre or the actual cost of treatment, whichever is less, in one calendar year. The board shall record the resolution in

the minutes of the board, deliver the original to the county assessor, and send a copy by registered mail to the landowner at the address shown on the records of the county assessor and to the occupier, if known to the board.

(2) Upon delivery of said resolution to the assessor, he shall extend the same upon the assessment rolls, and said assessment shall thereupon become a part of the general taxes and constitute a lien against said land as set forth in said resolution and shall thereafter become due in the same manner and be collected in the same manner as the general ad valorem property tax. Such assessment may be paid at any time before general taxes become due and payable. All of the provisions of the general laws for the enforcement of the collection of taxes shall be applicable thereto after the extension by the assessor.

(3) All such amounts collected shall be transmitted to the county treasurer, who shall credit the same to the county general fund in order to reimburse those funds which were expended by the board of county commissioners in carrying out the treatment action as authorized by this article. The county treasurer shall not be entitled to collect any fees for the collection of such assessments.

35-72-105.5. Immunity. So long as it is engaged in the scope of activity permitted by the provisions of this article, a board or any of its members shall not be held liable in any court of competent jurisdiction for conduct associated with such tasks undertaken or assigned by it.

35-72-106. Judicial review. Any landowner aggrieved at the amount of the assessment against his land may bring an action in the district court of the county in which the land is situated to test the validity of the assessment or to enjoin its collection, but such action must be brought within thirty days after the assessment is made and the copy of the resolution of the board is mailed as provided in section 35-72-105 and cannot be brought thereafter.

35-72-107. Cooperation with other agencies in erosion control. The board of any county wherein land is being eroded or soil is blowing, as provided in this article, is hereby authorized to enter into any agreement with the federal government or any agency thereof, the state of Colorado or any agency thereof, any district, or any other county or counties for cooperation in preventing or attempting to prevent soil erosion or property damage by soil blowing.

35-72-108. Wind erosion control fund. (Repealed)

DEVELOPMENT AUTHORITY

ARTICLE 75

Colorado Agricultural Development Authority Act

PART 1

GENERAL

35-75-101. Short title. This article shall be known and may be cited as the "Colorado Agricultural Development Authority Act".

35-75-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The high cost and lack of available agricultural loans for farmers and other agricultural enterprises, with the resultant decrease in crop, livestock, and business productivity and resultant inability on the part of farmers and other agricultural enterprises to acquire modern agricultural equipment and processes, makes it difficult for farmers and other agricultural enterprises to maintain their present employment levels or to increase employment and lessens the supply of agricultural commodities available to fulfill the needs of the citizens of this state;

(b) As a result of the continuing increase in the costs of maintaining operations, including costs of construction and rehabilitation, taxes, heating and electricity expenses, maintenance and repair expenses, and the cost of land, the state of Colorado suffers from structural economic weaknesses which contribute to a decline in capital investment, unemployment, and underemployment; and

(c) The insufficiency of gainful employment in rural areas puts additional pressure on the state's welfare, public health, and crime prevention programs.

(2) The general assembly further finds that:

(a) Farm credit and agricultural loan financing is not currently available at interest rates which are consistent with the needs of farmers and other agricultural enterprises;

(b) The problems set forth in this section cannot alone be remedied through the operation of private enterprise but can be alleviated through the creation of an agricultural development authority to encourage the investment of private capital in the agricultural sector through the use of public financing for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets. Creation of such an agricultural development authority to coordinate and cooperate with farmers and other agricultural enterprises is essential to alleviating these conditions.

(c) Alleviating the conditions and problems set forth in this section by the encouragement of private investment through an agricultural development authority is a public purpose, and public money provided by the sale of revenue bonds may be borrowed, expended,

advanced, loaned, and granted for such use. Such activities shall not be conducted for profit and are proper governmental functions best accomplished by the creation of an agricultural development authority vested with the powers and duties specified in this article.

(d) This article is enacted to protect the health, safety, and welfare of the people of this state.

(3) The agricultural development authority created by this article shall make financing available for farmers and other agricultural enterprises to serve those people which private industry is unable to serve.

35-75-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agriculture" or "agricultural enterprise" means the real and personal property constituting farms, ranches, and other agricultural commodity producers, including aquaculture, floriculture, silvaculture, and other agricultural endeavors that the authority wishes to include within the provisions of this article. Such term shall include agricultural land, equipment used in the production and processing of agricultural products, and other capital improvements including, but not limited to, the purchase of livestock and the implementation of soil conservation practices.

(2) "Authority" means the Colorado agricultural development authority created by section 35-75-104.

(3) "Board" means the board of directors of the authority.

(4) "Bond" means any bond, note, debenture, interim certificate, grant and revenue anticipation note, or other evidence of indebtedness authorized to be issued by the authority pursuant to this article.

(5) "Borrower" means an enterprise engaged in agriculture or agricultural processing in Colorado.

(6) "Contracting party" means any party to a lease, sales contract, or loan agreement except the authority.

(7) "Lease" means:

(a) A lease containing an option to purchase an agricultural enterprise for a nominal sum upon payment, in full or with provision for such payment, of all bonds issued in connection with the agricultural enterprise, all interest thereon, and all other expenses in connection with the agricultural enterprise; or

(b) A lease containing an option to purchase an agricultural enterprise at any time, as provided in such lease, upon payment of the purchase price. The purchase price shall be sufficient to pay all bonds issued in connection with the agricultural enterprise, all interest thereon, and all other expenses incurred in connection with the agricultural enterprise, but payment may be made in the form of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the lessee which provide for timely payments, including, but not limited to, interest thereon sufficient for such purposes and delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued.

(8) "Lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan

association, small business investment company, or other institution qualified within the state to originate and service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.

(9) "Loan" means any lease, loan agreement, or sale contract entered into with a borrower.

(10) "Loan agreement" means an agreement which provides for the authority or a lender with which the authority has contracted to loan the proceeds derived from the issuance of bonds pursuant to section 35-75-108 to a contracting party to be used to pay the cost of an agricultural enterprise and which provides for the repayment of such loan by the contracting party. Such agreement may provide for the loans to be secured or evidenced by one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the contracting party, delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued.

(11) "Loan insurer" or "loan guarantor" means an agency, department, administration, or instrumentality, corporate or otherwise, of the federal department of housing and urban development, the farmers home administration of the federal department of agriculture, or the veterans administration of the United States, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.

(12) "Sale contract" means a contract providing for the sale of an agricultural enterprise to a contracting party and includes a contract providing for payment of the purchase price in one or more installments. If the sale contract permits title to the agricultural enterprise to pass to such contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for such contracting party to deliver to the authority or to the trustee under the indenture pursuant to which the bonds were issued one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the contracting party which provides for timely payments, including, without limitation, interest thereon for the balance of the purchase price at or prior to the passage of such title.

(13) "State" means the state of Colorado.

35-75-104. Colorado agricultural development authority - creation - membership. (1) There is hereby created an independent public body politic and corporate to be known as the Colorado agricultural development authority. Said authority is constituted a public instrumentality, and its exercise of the powers conferred by this article shall be deemed and held to be the performance of an essential public function. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(2) (a) The governing body of the authority shall be a board of directors which shall consist of seven members, of which one shall be appointed by the governor, with the consent of the senate, three shall be appointed by the president of the senate, and three shall be appointed by the speaker of the house of representatives. Such members shall be residents of the state, shall have a knowledge of agricultural activity in the state, and shall represent the various agriculture operations and geographical regions of the state. No more than four of the appointed members

shall be of the same political party. The members of the board first appointed shall serve for terms to be designated by the governor, expiring on June 30 of each year beginning in 1982 and ending in 1988. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, upon the expiration of the term of any member, his successor shall be appointed for a term of four years. Each member shall serve until his successor has been appointed and qualified. Any member shall be eligible for reappointment. The person making the original appointment shall fill any vacancy by appointment for the remainder of an unexpired term. The commissioner of agriculture shall be an ex officio, nonvoting member of the board.

(b) Any appointed member of the board may be removed by the person making the appointment for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless such notice and hearing have been expressly waived in writing.

35-75-105. Organization meeting - chairman - personnel - surety bond - conflict of interest. (1) (a) The member of the board appointed by the governor shall call and convene the initial organizational meeting of the board and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties, and such other matters as the authority deems proper. At such meeting, and annually thereafter, the board shall elect one of its members as chairman and one as vice-chairman.

(b) The authority shall appoint an executive officer and such other personnel as it deems necessary, including an associate executive officer, who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as determined by the board.

(2) The executive officer, the associate executive officer, or any other person designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board, the minute books or journal of the board, and its official seal. Said executive officer, associate executive officer, or other person may cause copies to be made of all minutes and other records and documents of the board and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

(3) The board may delegate, by resolution, to one or more of its members or to its executive officer or associate executive officer such powers and duties as it may deem proper.

(4) Before the issuance of any bonds under this article, the executive officer and associate executive officer shall each execute a surety bond in the sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the sum of fifty thousand dollars or, in lieu thereof, the chairman of the board shall execute a blanket bond covering each member of the board, the executive officer, the associate executive officer, and the employees of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(5) No part of the revenues or assets of the authority shall inure to the benefit of, or be distributed to, its members or officers or any other private persons or entities.

(6) The authority and its corporate existence shall continue until terminated by law; except that no such law shall take effect so long as the authority has bonds, notes, or other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

35-75-106. Meetings of board - quorum - expenses. (1) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of at least four of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for compensation and expenses shall be paid from funds of the authority.

35-75-107. General powers and duties of authority. (1) In addition to any other powers specifically granted to the authority in this article, the authority has the following powers:

(a) To have perpetual existence and succession as a body politic and corporate;

(b) To adopt and from time to time amend or repeal bylaws for the regulation of its affairs and the conduct of its business, consistent with the provisions of this article;

(c) To sue and be sued;

(d) To have and to use a seal and to alter the same at pleasure;

(e) To maintain an office at such place as it may designate;

(f) To borrow money and issue bonds, notes, bond anticipation notes, or other obligations for any of its corporate purposes and to fund or refund such obligations as provided in this article;

(g) To engage the services of private consultants and legal counsel to render professional and technical assistance and advice in carrying out the purposes of this article;

(h) To procure insurance against any loss in connection with its property and other assets, including loans and loan notes, in such amounts and from such insurers as it may deem advisable;

(i) To procure insurance or guarantees from any public or private entity, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority, including the power to pay premiums on any such insurance;

(j) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article

subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this article;

(k) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders;

(l) To enter into loan agreements, sales contracts, and leases with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise;

(m) To enter into contracts or agreements with lenders for the servicing and processing of loans;

(n) To provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises and to distribute data and information concerning the encouragement and improvement of agricultural enterprises and agricultural employment in the state;

(o) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(p) To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority;

(q) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party;

(r) To the extent permitted under its contract with the holders of bonds of the authority, to enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, such reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed;

(s) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article;

(t) To do all things necessary and convenient to carry out the purposes of this article.

35-75-108. Authority - loans to or made by lenders. (1) The authority may:

(a) Make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make loans to finance agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in this state.

(b) Invest in, purchase or make commitments to invest in or purchase, or take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase, or assignment by the authority if the loan was made more than six

months prior to the date of investment, purchase, or assignment by the authority.

(2) Prior to exercising any of the powers authorized in subsection (1) of this section, the authority shall require the lender to certify and agree that:

(a) The loan is, or if the loan has not yet been made will at the time of making be, in all respects a prudent investment; and

(b) Such lender will use the proceeds of the loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to finance agricultural enterprises; or, if such lender has made a commitment to make loans to finance agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make and sell the loans to the authority within a reasonable period of time.

(3) Prior to exercising any of the powers under subsection (1) of this section, the authority may, but is not obligated to:

(a) Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;

(b) Require any type of security that it deems reasonable and necessary; or

(c) Authorize the reservation of funds by lenders in such amount and subject to such conditions as the authority considers reasonable and necessary.

35-75-109. Authority - rules and regulations. (1) Prior to exercising its authority under section 35-75-108 (1), the authority shall promulgate rules and regulations governing its activities authorized under this article, including, but not limited to:

(a) Procedures for the submission of requests or invitations and proposals for making loans to lenders and procedures for the investment in, purchase, assignment, and sale of loans;

(b) Procedures for reinvestment by lenders of the proceeds, or an equivalent amount, from any loan to lenders and procedures for the investment in or purchase by the authority of loans or the assignment or sale to the authority of loans to finance agricultural enterprises;

(c) The number of agricultural projects, location of the projects, and other characteristics of agricultural enterprises to be financed directly or indirectly by the authority pursuant to section 35-75-108 (1), including, to the extent reasonably possible, assurance that the agricultural enterprises to be financed by an issue of bonds or series of issues will improve employment conditions or otherwise enhance the welfare of persons in the agricultural sector;

(d) Rates, fees, charges, and other terms and conditions of originating or servicing loans in order to protect against an excessive financial return or benefit by the originator or servicer;

(e) The type and amount of collateral or security to be provided to assure repayment of loans made by the authority;

(f) The type of collateral, payment bonds, performance bonds, or other security to be provided for any loans made by a lender for construction loans;

(g) The nature and amount of fees to be charged by the authority to provide for expenses and reserves of the authority;

(h) Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions, and interest rates for loans made, purchased, sold, assigned, or committed pursuant to this article;

(i) Commitment requirements for agricultural financing by lenders involving money provided directly or indirectly by the authority; or

(j) Any other matters related to the duties or exercise of the authority's powers or duties under this article.

35-75-110. Notes. (1) The authority may issue from time to time its negotiable notes for any corporate purpose and may renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds.

(2) Any resolution authorizing notes of the authority or any issue of such notes may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority or any issue of bonds, and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds.

(3) All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available for such payment and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations outstanding at the time of issuance of such notes.

35-75-111. Bonds. (1) (a) The authority may issue from time to time its bonds in such principal amounts as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes.

(b) In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available for payments and not otherwise pledged or from the proceeds of the sale of the bonds of the authority in anticipation of which they were issued. The bond anticipation notes shall be issued in the same manner as bonds. Such notes and the resolution authorizing them may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(2) (a) Bonds may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts of the authority as designated in the resolution of the authority under which the bonds are authorized to be issued or as designated in a trust indenture authorized by the authority.

(b) Bonds may be executed and delivered by the authority at such times, may be in such form and denominations and include such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such time or times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without the state of Colorado, may bear interest at such rate or rates per annum as determined by the authority without regard to any interest rate limitation appearing in any other law of this state,

may be evidenced in such manner, may be executed by such officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either an officer of the authority or an officer of the trustee authenticating the same, may be in the form of coupon bonds which have attached interest coupons bearing the facsimile signature of an authorized officer of the authority, and may contain such provisions not inconsistent with this article all as provided in the resolution of the authority under which the bonds are authorized to be issued or as provided in a trust indenture authorized by the authority.

(3) If deemed advisable by the authority, there may be retained in the resolution or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part of said bonds as may be specified in such resolution or in such trust indenture, at such price or prices, after such notice or notices, and on such terms and conditions as may be set forth in such resolution or in such trust indenture and as may be briefly recited on the face of the bonds. Nothing in this article shall be construed to confer on the authority the right or option to redeem any bonds except as provided in such resolution or in such trust indenture under which they are issued.

(4) The bonds or notes of the authority may be sold at public or private sale for such price or prices, in such manner, and at such times as determined by the authority, and the authority may pay all expenses, premiums, and commissions which it may deem necessary or advantageous in connection with the issuance of bonds or notes. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and deliver bonds and notes may be delegated to the executive officer by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(5) (a) Any outstanding bonds of the authority may be refunded or advance refunded at any time and from time to time by the authority by the issuance of its bonds for such purpose in a principal amount determined by the authority, which may include interest accrued or to accrue with or without giving effect to investment income and other expenses necessary to be paid in connection with such issuance.

(b) (I) Any such refunding may be effected whether the bonds to be refunded have then matured or will mature thereafter, either by sale of the refunding bonds and the application of the proceeds of such sale for the payment of the bonds to be refunded or by the exchange of the refunding bonds for the bonds to be refunded with the consent of the holders of the bonds to be so refunded, regardless of whether or not the bonds proposed to be refunded are payable on the same date or different dates or are due serially or otherwise.

(II) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may be applied, in the discretion of the authority, to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption dates or upon the purchase or at the maturity thereof and, pending such application, may be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such dates as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested or deposited in securities or depositories meeting the requirements established in part 6 of article 75 of title 24, C.R.S., maturing at such time or times as are appropriate to assure

the prompt payment as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profit, if any, earned or realized on any such investment may also be applied, in the discretion of the authority, to the payment of the outstanding bonds or notes to be so refunded or to the payment of principal and interest on the refunding bonds or for any other purpose under this article. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments may be returned to the authority for use by it in any lawful manner.

(c) All such refunding bonds shall be subject to the provisions of this article in the same manner and to the same extent as other bonds issued pursuant to this article.

(6) The proceeds of any bonds, notes, bond anticipation notes, or other obligations may be used and applied to the payment of financing costs, including legal, underwriting and investment banking, accounting, and other similar costs; the funding of any reserve funds deemed necessary or advisable by the authority; interest on such bonds, notes, bond anticipation notes, or other obligations for a period not to exceed three years; and all other necessary and incidental costs and expenses.

35-75-111.5. Issuance of bonds to construct renewable energy generation facilities and electric transmission lines - renewable energy cooperatives. (1) To facilitate the transmission of electricity generated by a renewable energy cooperative established pursuant to section 7-56-210, C.R.S., the authority may issue revenue bonds in amounts sufficient to pay the following described costs of construction, upgrading, and acquisition, including any required interest on the bonds during construction, upgrading, and acquisition, plus all amounts required for the costs of bond issuance and any required reserves on the bonds:

(a) Construction of renewable energy generation facilities;

(b) Construction or upgrading of electric transmission lines and appurtenances to be used for the transfer of electricity at one hundred fifteen kilovolts or greater;

(c) Acquisition of the right-of-way on which renewable energy generation facilities or electric transmission lines and appurtenances to be used for the transfer of electricity at one hundred fifteen kilovolts or greater are to be constructed; and

(d) Construction or upgrading of electric distribution lines and appurtenances to be used to connect renewable resources or technologies to electric transmission lines and appurtenances.

(2) Revenue bonds, and interest thereon, issued pursuant to this section shall be payable from revenues derived from use of the renewable energy generation facilities or electric transmission lines constructed, upgraded, or acquired through the use of bond proceeds.

(3) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of the state, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

(4) The proceeds of bonds, revenues, and receipts derived from the construction, upgrading, or acquisition activities described in this section that are financed in whole or in part by the bonds, and interest and income earned on the deposit and investment of such proceeds, revenues, and receipts, shall not be included in state fiscal year spending for purposes of section

20 of article X of the state constitution and article 77 of title 24, C.R.S.

(5) Nothing in this section shall be construed as authorizing the contracting by the state of a debt or loan in any form, nor the pledging of the general taxes of the state. Revenue bonds issued pursuant to this section shall not be construed to be moral obligation bonds. The owners or holders of such bonds shall not look to any other revenues of the state for the payment of the bonds; shall not look to any legal, equitable, or moral obligation on the part of the state to pay any portion of the bonds; and shall not look to the state general fund or any other fund of the state for the payment of principal or interest of such obligation.

(6) Revenue bonds, including refunding revenue bonds, issued hereunder and the income derived therefrom shall be exempt from all state, county, and municipal taxation in the state, except Colorado estate taxes.

35-75-112. Negotiability of bonds. All bonds and the interest coupons applicable to such bonds are hereby declared and shall be construed to be negotiable instruments.

35-75-113. Security for bonds and notes. (1) (a) The principal and interest on any bonds or notes issued by the authority may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank located within or without this state having trust powers. Such trust indenture or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the authority, including, without limitation, temporary loans, contracts, agreements, and other security or investment obligations, the fees or charges made or received by the authority, and any other moneys received or due to be received by the authority.

(b) Such trust indenture or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any of the bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the purposes to which proceeds of the bonds or notes may be applied, the disposition or pledging of the revenues or assets of the authority, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding, and application of all moneys. Any such trust indenture or resolution may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by any such holders.

(c) In addition any such trust indenture or resolution may contain such other provision as the authority may deem reasonable and proper for the security of the holders of any bonds or notes. All expenses incurred in carrying out the provisions of such indenture or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the authority.

(2) (a) Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenues and moneys so pledged and thereafter received by the authority shall immediately be subject to lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any

kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice of such lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Each pledge, agreement, and indenture made for the benefit or security of any of the bonds of the authority shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same are made has been fully paid or provision for such payment duly made.

(b) In the event of default in any such payment or in any agreements of the authority made as part of the contract under which the bonds were issued, whether contained in the resolutions authorizing the bonds or in any trust indenture executed as security for such bonds, said payment or agreement may be enforced by suit, mandamus, or either of such remedies.

35-75-114. Personal liability. Neither the members of the board, employees of the authority, nor any person executing the bonds or notes shall be liable personally on bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

35-75-115. Purchase. The authority may purchase its bonds or notes out of any available funds. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

35-75-116. Payment of bonds - nonliability of state. (1) Bonds and notes issued by the authority shall not constitute or become an indebtedness, a debt, or a liability of the state, nor shall the state be liable on such bonds and notes, nor shall such bonds or notes constitute the giving, pledging, or loaning of the full faith and credit of the state, but such bonds and notes shall be payable solely from the funds provided for in this article. The issuance of bonds or notes under the provisions of this article shall not obligate the state or empower the authority, directly, indirectly, or contingently, to levy or collect any form of taxes or assessments, to create any indebtedness payable out of taxes or assessments, or to make any appropriation for their payment, and such appropriation, levy, or collection is prohibited.

(2) Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or notes authorized pursuant to this article, but nothing in this article shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Colorado; and all bonds issued by the authority pursuant to the provisions of this article are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or with any trust indenture executed as security for such bonds and are not a debt or liability of the state of Colorado.

(3) The state shall not be liable in any event for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, obligation, or agreement shall impose any pecuniary liability upon the state or any charge upon

its general credit or against its taxing power.

35-75-117. Exemption from taxation - securities law. The income or other revenues of the authority, all properties at any time owned by the authority, any bonds, notes, or other obligations issued pursuant to this article, the transfer of and the income, including any profit made on sale, from any such bonds, notes, or other obligations, and all trust indentures and other documents issued in connection with such bonds, notes, or other obligations shall be exempt at all times from all taxation and assessments in the state of Colorado. Bonds issued by the authority shall also be exempt from the provisions of article 51 of title 11, C.R.S.

35-75-118. Fees. All expenses of the authority incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article, and no liability shall be incurred by the authority beyond the moneys which are provided pursuant to this article. For the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided pursuant to this article, the authority may borrow such moneys as may be required for the necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided pursuant to this article.

35-75-119. Investment powers of authority. The authority has the power to invest any funds held in reserve, sinking funds, capital reserve funds, or any funds not required for immediate disbursement in property or in securities in which the state treasurer may legally invest funds subject to his control; and to sell from time to time such securities thus purchased and held; and to deposit any securities in any trust bank within or without the state. In addition, the authority has the power to invest any such funds in unsecured promissory notes of a national bank having the highest investment ratings. Any funds deposited in a banking institution shall be secured in such manner and subject to such terms and conditions as the board may determine, with or without payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any commercial bank incorporated under the laws of this state which may act as a depository of any funds of the authority may issue indemnifying bonds or may pledge such securities as may be required by the board.

35-75-120. Proceeds as trust funds. All moneys received pursuant to this article, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, shall be deemed to be trust funds to be held and applied solely as provided in this article. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this article, subject to such regulations as the authority and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations provides.

35-75-121. Agreement of the state not to limit or alter rights of obligees. The state hereby pledges to and agrees with the holders of any bonds, notes, or other obligations issued under this article and with those parties who may enter into contracts with the authority pursuant to the provisions of this article that the state will not limit, alter, restrict, or impair the rights vested in the authority to fulfill the terms of any agreements made with the holders of bonds, notes, or other obligations authorized and issued pursuant to this article and with the parties who may enter into contracts with the authority pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of such bonds, notes, or other obligations of such parties until such bonds, notes, and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this article precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes, or other obligations of the authority or those entering into such contracts with the authority. The authority may include this pledge and undertaking for the state in such bonds, notes, or other obligations and in such contracts.

35-75-122. Enforcement of rights of bondholders. Any holder of bonds issued pursuant to this article or a trustee under a trust agreement or trust indenture entered into pursuant to this article, except to the extent that his rights are restricted by any bond resolution, may protect and enforce, by any suitable form of legal proceedings, any rights under the laws of this state or granted by the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by this article or the bond resolution and to enjoin unlawful activities.

35-75-123. Bonds eligible for investment. All banks, bankers, trust companies, savings and loan associations, investment companies, insurance companies and associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

35-75-124. Account of activities - receipts for expenditures - report - audit. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. The state auditor may investigate the affairs of the authority, may examine the properties and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to undertakings by the authority.

35-75-125. Federal social security act. The authority may take such action as it deems appropriate to enable its employees to come within the provisions and obtain the benefits of the federal "Social Security Act", as from time to time amended.

35-75-126. Powers of authority not restricted. This article shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state but shall be construed as cumulative of any such powers. Nothing in this article shall be construed to deprive the state and its political subdivisions of their respective police powers over properties of the authority or to impair any power over such properties of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

35-75-127. Repeal. (Repealed)

PART 2

AGRICULTURE VALUE-ADDED
DEVELOPMENT FUND PROGRAM

35-75-201. Legislative declaration - purpose of part. (1) The general assembly finds, determines, and declares that, due to current economic conditions throughout rural Colorado, it is in the best interests of the people of this state that measures be taken to encourage, promote, and stimulate agriculturally based economic development and employment in rural Colorado. To that end, it is the purpose of this part 2 to facilitate the processing of agricultural products and commodities within this state to further stimulate the economy and employment in rural Colorado and to serve as a resource for the state's agricultural industry.

(2) The general assembly further finds, determines, and declares that the public purpose served by the grants, loans and loan guarantees, and equity investments authorized by this part 2 preponderates over any individual interests incidentally served thereby.

35-75-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Board" means the Colorado agricultural value-added development board created in section 35-75-203.

(2) "Department" means the department of agriculture.

(3) "Development facility" means a Colorado facility that either produces goods from an agricultural commodity or uses a process to produce goods from an agricultural product.

(4) "Eligible agricultural value-added cooperative" means a cooperative association

formed pursuant to article 55 or 56 of title 7, C.R.S., for the purpose of operating a development facility and that meets the eligibility criteria established by the board pursuant to section 35-75-204 (2).

(5) "Fund" means the agriculture value-added cash fund created in section 35-75-205 (1).

(6) "Member" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of article 22 of title 39, C.R.S.

(7) "Participant" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of article 22 of title 39, C.R.S., that contributes cash funds to the board.

35-75-203. Colorado agricultural value-added development board - creation - members. (1) There is hereby created, within the department, the Colorado agricultural value-added development board for the purpose of encouraging and promoting agricultural business projects that add value to agricultural products and aid the economies of rural communities.

(2) The board shall consist of seven members of the authority. The commissioner of agriculture shall be an ex officio, nonvoting member of the board.

(3) Members of the board shall receive no compensation for their service on the board, but shall be entitled to reimbursement for actual and necessary travel and other actual expenses incurred in the performance of their official duties. The board shall adopt uniform and reasonable rules governing the incurring and paying of such expenses.

35-75-204. Duties of board - agriculture value-added grants, loans and loan guarantees, and equity investments. (1) The board has the power to make grants, loans and loan guarantees, and equity investments to any person, including eligible agricultural value-added cooperatives, as defined in section 35-75-202 (4), for new or ongoing agricultural projects and research that add value to Colorado agricultural products and aid the economy of rural Colorado communities. The board also has the power to fund market promotion activities of the department pursuant to section 35-75-205 (2) (f).

(2) The board shall employ the following criteria in determining whether to award an agriculture value-added grant, loan, or loan guarantee:

(a) (Deleted by amendment, L. 2007, p. 943, § 1, effective May 17, 2007.)

(b) The experience, professional qualifications, and business background of the directors and consultants chosen to lead the agricultural business project shall be such as to give the project a reasonable chance of success under their leadership;

(c) The contemplated schedule and phasing of the project, whether on an annual or multi-year basis, shall be such as to give the project a reasonable chance of success within three years at a constant or declining rate of support from the board in the form of grants or loans or a combination thereof; and

(d) The economic impact on other local businesses.

(2.5) In addition to the criteria listed in subsection (2) of this section, the board may also consider:

(a) The agricultural business project's planning for long-term success through feasibility studies, marketing plans, and business plans;

(b) The agricultural business project's net economic benefit to the state;

(c) The agricultural business project's net economic impact on other local businesses; and

(d) Any other criteria the board determines are necessary to carry out the purposes of this part 2.

(3) The board may reject any application for grants, loans and loan guarantees, or equity investments pursuant to this part 2.

(4) (a) The board shall require a feasibility study of a member's rural agricultural business project concept to be performed before awarding a grant or loan.

(b) Upon a determination by the board that the project concept is feasible, the board may cause a marketing study to be performed. Such marketing study shall be designed to determine if the project concept may be operated profitably.

(c) Upon a determination by the board that the project concept may be operated profitably, the board may provide for legal assistance to set up the project. Such legal assistance shall include, but not be limited to, providing advice and assistance on the form of business entity and other assistance for which the member may qualify as well as helping the member apply for such assistance.

(5) The board may provide or facilitate grants, loans or loan guarantees, or equity investments for any person who meets the criteria set forth in this part 2 or established by the board under paragraph (d) of subsection (2.5) of this section, including, but not limited to, loans from the United States department of agriculture rural development program, subject to availability. Such financial assistance shall only be provided to feasible project concepts, and the amount of such financial assistance shall be the least amount necessary to cause the project to occur, as determined by the board. The board may structure the financial assistance in a way that causes the project to occur and also provides for a compensatory return on investment or loan payment to the board, based upon the risk of the project concept.

(6) The board may also provide for consulting services for the building and operation of the project. Such consulting services may be provided through state employees or through contracts with private entities.

(7) The board may charge the member a reasonable fee for processing an application for financial assistance or for other services performed by the board or its staff.

(8) The board may consult with other state or federal agencies as necessary to perform its duties pursuant to this part 2.

35-75-205. Grants, loans and loan guarantees, and equity investments - agriculture value-added cash fund - created - repeal. (1) Moneys received by the board from public or private gifts, grants, or donations or from any other source shall be forwarded to the state treasurer and shall be credited to the agriculture value-added cash fund, which fund is hereby created. Moneys in the fund are continuously appropriated to the board and shall be used for the purpose of preparing criteria and reviewing applications as provided in section 35-75-204 and for financial or technical assistance to agricultural projects, project concepts, and research as

approved by the board. All interest earned on the investment of moneys in the fund shall be credited to the fund. The board may provide or facilitate grants, loans and loan guarantees, and equity investments for agricultural projects, project concepts, or research; except that such grants, loans and loan guarantees, and equity investments shall be limited to two million dollars per project. Grants, loans and loan guarantees, and equity investments may only be provided to feasible projects and for an amount that is the least amount necessary to cause the project to occur, as determined by the board. The board may structure the grants, loans and loan guarantees, and equity investments in a way that facilitates the project and also provides for a compensatory return on investment or loan payment to the board based on the risk of the project. Any moneys credited to the agriculture value-added cash fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(1.5) (a) In state fiscal years 2009-10 through 2016-17, the general assembly shall appropriate five hundred thousand dollars, or so much thereof as has been transferred pursuant to section 39-29-109.3 (2) (h), C.R.S., from the agriculture value-added cash fund to the department, for allocation to the board to promote the feasibility and development of agricultural energy-related projects.

(b) This subsection (1.5) is repealed, effective July 1, 2017.

(2) (a) The board, upon application, may:

(I) Issue certificates of guaranty covering a first loss guarantee up to, but not more than, twenty-five percent of the loan on a declining principal basis for loans to eligible borrowers, executing a note or other evidence of a loan made for the purpose of a loan made pursuant to this part 2, but not to exceed the amount of two hundred fifty thousand dollars for any eligible borrower; and

(II) Pay from the fund to an eligible lender up to twenty-five percent of the amount, on a declining principal basis, of any loss on any guaranteed loan made pursuant to the provisions of this article in the event of default on the loan. Upon payment on the guarantee, the board shall be subrogated to all the rights of the eligible lender.

(b) The board shall charge for each loan made pursuant to this part 2 a one-time participation fee of one percent of the loan amount, which shall be collected by the eligible lender at the time of closing and paid to the board. In addition, the board may charge a special loan guarantee fee of up to one percent per annum of the outstanding principal, which fee shall be collected from the eligible borrower by the eligible lender and paid to the board. Moneys collected shall be deposited in the agriculture value-added cash fund.

(c) Moneys paid to satisfy a defaulted loan made pursuant to this part 2 shall only be paid out of the agriculture value-added cash fund.

(d) The total outstanding loans made pursuant to this part 2 shall at no time exceed an amount which, according to sound actuarial judgment, would allow immediate redemption of at least forty percent of the outstanding loans guaranteed by the fund at any one time.

(e) The board may make financial arrangements for an eligible business to purchase an existing, established development facility.

(f) The department shall, as part of the administration of the agriculture value-added development fund program created in this part 2, establish market promotion activities and may apply to the board to support such activities through disbursements from the fund.

(3) In any given year, at least ten percent of the funds granted to rural agricultural projects and project concepts shall be awarded in response to grant requests of fifty thousand dollars or less. No single rural agricultural project or project concept shall receive more than two hundred thousand dollars in grant awards from the board.

PET ANIMAL CARE

ARTICLE 80

Pet Animal Care and Facilities Act

35-80-101. Short title. This article shall be known and may be cited as the "Pet Animal Care and Facilities Act".

35-80-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Animal shelter" means a public or private facility licensed pursuant to this article and the rules and regulations adopted pursuant thereto.

(1.5) "Bird hobby breeder facility" means any facility engaged in the operation of breeding and raising birds for the purpose of personal enjoyment that does not transfer more than thirty birds per year.

(2) "Canine hobby breeder facility" means any facility which transfers no more than twenty-four dogs per year or breeds no more than two litters per year, whichever is greater.

(2.5) (Deleted by amendment, L. 2000, p. 1398, § 4, effective May 30, 2000.)

(3) "Commission" means the state agricultural commission.

(4) "Commissioner" means the commissioner of agriculture, or the designee of the commissioner.

(5) "Committee" means the pet animal advisory committee created in section 35-80-115.

(6) "Department" means the department of agriculture.

(6.3) "Dispose" or "disposition" means adoption of a pet animal, return of a pet animal to the owner, release of a pet animal to a rescue group licensed pursuant to this article, release of a pet animal to another pet animal facility licensed pursuant to this article or to a rehabilitator licensed by the division of parks and wildlife or the United States fish and wildlife service, or euthanasia.

(6.5) "Dog breeder" means any person that engages in the operation of breeding and raising dogs for the purpose of selling, trading, bartering, giving away, or otherwise transferring the dogs, excluding racing greyhounds that are not intended to be companion pets.

(6.6) "Dog breeder, large scale operation" or "large scale operation dog breeder" means a

dog breeder that transfers at least one hundred dogs per year, excluding racing greyhounds that are not intended to be companion pets.

(6.7) "Dog breeder, small scale operation" or "small scale operation dog breeder" means a dog breeder that transfers more than the number of dogs permitted for a canine hobby breeder facility but no more than ninety-nine dogs per year.

(7) "Euthanasia" means to produce a humane death by techniques accepted by the American veterinary medical association.

(8) "Feline hobby breeder facility" means any facility that produces or transfers no more than twenty-four cats per year or breeds no more than three litters per year.

(8.7) "Licensed veterinarian" means a person who is licensed to practice veterinary medicine in this state pursuant to article 64 of title 12, C.R.S.

(9) "Livestock" means cattle, horses, mules, burros, sheep, poultry, swine, llama, and goats, regardless of use, and any animal that is used for working purposes on a farm or ranch, and any other animal designated by the commissioner, which animal is raised for food or fiber production.

(10) "Pet animal" means dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet, except livestock, as defined in subsection (9) of this section. "Pet animal" does not include an animal that is used for working purposes on a farm or ranch.

(11) "Pet animal facility" means any place or premise used in whole or in part, which part is used for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals. "Pet animal facility" also includes any individual animals kept by such a facility as breeding stock, such licensing of individual breeding stock to be inclusive in the pet animal facility license. "Pet animal facility" shall not mean a common carrier engaged in intrastate or interstate commerce. For purposes of this article, two or more animal facilities that have the same or a similar purpose and operate from one place or premises shall be considered a single pet animal facility.

(11.2) "Pet animal rescue" means any person licensed pursuant to this article who accepts pet animals for the purpose of finding permanent adoptive homes for animals and does not maintain a central facility for keeping animals, but rather uses a system of fostering in private homes or boarding or keeping pets in licensed pet animal facilities.

(11.4) "Prospective owner" means a person who has no prior rights of ownership to the pet animal to be adopted.

(11.6) "Release" means adoption, sale, or other transfer to the permanent custody of an owner by an animal shelter or pet animal rescue.

(11.8) "Small animal breeder facility" means any facility that transfers more small mammals than the maximum number established by the commissioner by rule for each particular species.

(12) "Small animal hobby breeder facility" means any facility that transfers a number of small mammals that is less than the maximum number established by the commissioner by rule for each particular species.

(13) (Deleted by amendment, L. 2000, p. 1398, § 4, effective May 30, 2000.)

(14) "Sterilization" means the act of permanently rendering an animal incapable of reproduction. The term applies to surgical methods, including the procedures commonly referred to as spay and neuter, and nonsurgical methods and technologies approved by the United States food and drug administration, the United States department of agriculture, or other appropriate designated federal authority.

35-80-103. Scope of article. (1) Any person who operates a pet animal facility that is licensed as of December 31, 1993, by the United States department of agriculture shall not be subject to the routine inspection provisions of this article but shall be subject to all other provisions, including but not limited to those concerning licensure and investigation of reported violations.

(2) The provisions of this article shall not apply to:

(a) Any veterinary hospital which boards pet animals for the purpose of veterinary medical care only and does not actively solicit boarding business in any way;

(b) Any research facility, circus, or publicly or privately owned zoological park or petting zoo licensed or registered under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended;

(c) Any bird hobby breeder facility, canine hobby breeder facility, feline hobby breeder facility, small animal hobby breeder facility, or any other hobby breeder facility as defined by the commissioner which is specific to other pet animal species;

(d) Any pet animal training facility where the pet animal owner or such owner's designee, other than a training facility operator, is present during the duration of the animal's stay;

(e) Any kennel operated for the breeding or sale or racing of racing greyhounds that are not intended to be companion pets;

(f) Any facility licensed pursuant to article 60 of title 12, C.R.S., for the racing of greyhounds;

(g) Any wildlife regulated by the division of parks and wildlife or department of natural resources;

(h) Livestock, as defined in section 35-80-102 (9);

(i) Any owner, breeder, handler, or trainer while transporting a pet animal to or from or exhibiting or competing at any event licensed, regulated, or sanctioned by the American kennel club, united kennel club, or any other nationally recognized registering organization;

(j) Any wildlife sanctuary.

(3) (a) Any pet animal facility structure in existence and licensed by the department of health through 1991 that was in compliance with that department's regulations for such licenses shall be exempt from any conflicting requirements of this article or rules and regulations of the commissioner concerning physical premises.

(b) Any laws or rules promulgated for pet animal facilities shall not require the construction of any new buildings or major reconstruction of the existing physical premises of facilities specified in paragraph (a) of this subsection (3).

35-80-104. Pet animal facility license required. Any person operating a pet animal facility shall possess a valid pet animal facility license issued by the commissioner in accordance with this article and any rules and regulations adopted by the commissioner in accordance with the provisions of this article.

35-80-105. Pet animal facility - licensure requirements - application - fees. (1) Each applicant for a pet animal facility license shall submit an application providing all required information in the form and manner required by the commissioner.

(2) Each location of a pet animal facility shall be separately licensed.

(3) If a pet animal facility operates under more than one business name from a single location:

(a) No additional pet animal facility license shall be required for the different business names;

(b) The pet animal facility operator must maintain separate records pursuant to section 35-80-107 for each such business name; and

(c) The name of each business providing services that are related to those of a pet animal facility shall be listed with the commissioner in the form and manner designated. The commissioner may require that a separate fee be paid for each such business name.

(4) Each applicant for a pet animal facility license shall pay an annual license fee in the amount specified by rule of the commissioner, which amount shall not exceed seven hundred dollars per license.

(5) Each pet animal facility license shall expire on a date specified by the commissioner by rule.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in the application or reports previously submitted within fifteen days of any such change.

(7) Licenses issued pursuant to this article shall not be transferable.

(8) Each pet animal facility licensed pursuant to this article shall display in a conspicuous place signage that contains contact information for the office or other appropriate department subdivision that administers this article.

35-80-106. Pet animal facility license - renewal. (1) Each pet animal facility shall apply to renew its license on or before the expiration date of the license. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the required renewal fee.

(2) If the application for renewal is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed. No license shall be renewed until the renewal fee and any penalty fee are paid.

(3) If the application and fee for renewal are postmarked later than one calendar month after the expiration date of the license, the license shall not be renewed and the pet animal facility

shall apply for a new license.

(4) The commissioner may refuse to renew a license pursuant to this section for failure to pay an outstanding civil penalty imposed under section 35-80-113.

35-80-106.3. Animal holding periods - disposition of unclaimed animals - immunity from actions over disposition of a pet animal. (1) Any pet animal held by or in the custody of a licensed animal shelter, whether public or private, and not reclaimed by the owner shall be held by the animal shelter for a minimum of five days after acquisition by the animal shelter before it may become available for adoption or otherwise disposed of at the discretion of the animal shelter; except that a shelter supervisor may determine that a pet animal without identification, including but not limited to a microchip or collar, may be disposed of in three days if such shelter supervisor determines the shelter has no additional resources for such pet animal or determines that such pet animal is dangerous. For purposes of this section, "days" means days during which the shelter is open to the public. If the animal shelter acquires the pet animal from the owner or an authorized representative of the owner, the pet animal becomes the property of the animal shelter at the time of transfer of the pet animal, and the pet animal may be disposed of by and at the discretion of the animal shelter. If the pet animal is abandoned, as defined in section 18-9-201 (1), C.R.S., the pet animal becomes the property of the animal shelter upon acquisition and may be disposed of by and at the discretion of the animal shelter. The animal shelter shall be the steward of stray animals for the purposes of providing prophylactic veterinary care under the written protocol and direction of the shelter veterinarian. Pet animals, which in the opinion of a veterinarian or the animal shelter supervisor, if a veterinarian is not available, are experiencing extreme pain or suffering, may be disposed of immediately by the animal shelter through euthanasia after the animal shelter has exhausted reasonable efforts to contact the owner; however, for pet animals with identification, the animal shelter shall exhaust reasonable efforts to contact the owner for up to twenty-four hours.

(2) An animal shelter and any employee thereof that complies with the minimum holding period as set forth in subsection (1) of this section or that disposes of a pet animal in accordance with the provisions of subsection (1) of this section for owner-surrendered animals, abandoned animals, or suffering animals shall be immune from liability in a civil action brought by the owner of a pet animal for the shelter's disposition of a pet animal.

(3) Nothing in this section shall preclude a town, city, city and county, or county from adopting, maintaining, or enforcing an ordinance that exceeds the minimum holding period as set forth in subsection (1) of this section. Nothing in this section shall preclude a licensed animal shelter, whether public or private, from adopting, maintaining, or following a policy that exceeds the minimum holding period as set forth in subsection (1) of this section.

35-80-106.4. Sterilization of ownerless dogs and cats required - rules - exceptions - violations. (1) An animal shelter or pet animal rescue shall not release a dog or cat to a prospective owner unless:

(a) The animal has been sterilized by a licensed veterinarian; or

(b) (I) The prospective owner signs an agreement to have the animal sterilized by a licensed veterinarian within ninety days after the date of release and deposits a fee, in an amount specified by rule of the commissioner, with the animal shelter or pet animal rescue.

(II) Upon receiving a written statement from the licensed veterinarian who performed the sterilization procedure that the dog or cat has been sterilized, the animal shelter or pet animal rescue shall refund the deposit to the prospective owner.

(III) If the prospective owner fails to provide the animal shelter or pet animal rescue with a written statement from a licensed veterinarian stating that the veterinarian performed a sterilization procedure on the dog or cat within ninety days after signing the agreement:

(A) The prospective owner shall forfeit the deposit and the animal shelter or pet animal rescue shall forward the amount of the deposit to the pet overpopulation fund created in section 35-80-116.5 (5) or a local dedicated spay and neuter fund; and

(B) The animal shelter or pet animal rescue may promptly reclaim the animal from the prospective owner.

(2) If a licensed veterinarian declares in writing that a sterilization procedure could jeopardize the life or health of the dog or cat, the procedure may be delayed until such time that a veterinarian determines that the dog or cat is fit to undergo the sterilization procedure. At such time, the prospective owner shall have the animal sterilized. If the determination of unfitness for sterilization has been made prior to release, the animal shelter or pet animal rescue may release the dog or cat to the prospective owner, subject to the provisions of this subsection (2).

(3) This section shall not apply to:

(a) The release of a dog or cat to a person with prior and continuing ownership rights to the dog or cat who is reclaiming the animal from an animal shelter or pet animal rescue;

(b) The transfer of an animal from an animal shelter or pet animal rescue to another animal shelter or pet animal rescue or to a veterinarian;

(c) Animal shelters or pet animal rescues with existing sterilization programs that ensure that every dog or cat is sterilized before being released; or

(d) Public animal shelters eligible for waiver of licensing fees pursuant to rules promulgated by the commissioner.

(4) Nothing in this section shall preclude a town, city, county, or city and county from adopting, maintaining, or enforcing an ordinance that exceeds the minimum requirements adopted by the commissioner in implementing and enforcing this section. Nothing in this section shall preclude a licensed animal shelter, whether public or private, from adopting, maintaining, or following a policy that exceeds the minimum requirements adopted by the commissioner in implementing and enforcing this section.

35-80-106.5. Psittacine bird leg band - fee - rules. (1) Each applicant for a Colorado psittacine bird leg band shall be issued a bird leg band number by the commissioner after paying the required application fee, and each holder of a bird leg band number shall pay an annual renewal fee on or before the annual date set by the commissioner.

(2) The application, fees, and annual renewal date described in subsection (1) of this

section shall be set forth in rule adopted by the commissioner.

35-80-107. Record-keeping requirements. Each pet animal facility shall keep and maintain records in the form and manner designated by the commissioner. Such records shall be retained for a period of two years and shall be kept at the address specified in the license application for the pet animal facility.

35-80-108. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person or entity:

(a) To perform any of the acts of a pet animal facility for which licensure is required without possessing a valid license under this article;

(b) To solicit, advertise, or offer to perform any of the acts for which licensure as a pet animal facility is required without possessing a valid license to perform such acts;

(c) To refuse to comply with a cease-and-desist order issued pursuant to section 35-80-111;

(d) To refuse or fail to comply with the provisions of this article;

(e) To make a material misstatement in a license application, a license renewal application, or to the department during an official investigation;

(f) To impersonate any state, county, city and county, or municipal official or inspector;

(g) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or any lawful order issued by the commissioner;

(h) To aid or abet another in any violation of this article or any rule promulgated by the commissioner under the provisions of this article;

(i) To import or have in such person's possession for the purpose of selling, trading, giving, or otherwise transferring certain species of birds designated by the commissioner that have not been legally banded with a leg band applied during the prefeathered stage of development and appropriate to the size and species of the bird;

(j) To sell, barter, exchange, or otherwise transfer, possess, import, or cause to be imported into this state:

(I) Any type of turtle with a length in carapace of less than four inches; except that a person may possess a turtle that the person has bred with a length in carapace of less than four inches; or

(II) (A) Any species of nonhuman primate.

(B) This paragraph (j) does not apply to a research facility or exhibitor properly licensed or registered under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

(k) To sell, transfer, or adopt dogs or cats under the age of eight weeks;

(k.5) To transfer cats under the minimum weight limit set by rule of the commissioner;

(l) To sell, transfer, or adopt guinea pigs, hamsters, or rabbits under the age of four weeks, and such other pet animal species as may be specified by the commissioner; and

(m) To alter or falsify any certificate of veterinary inspection or any other certificate of veterinary health.

(1.5) Paragraphs (i), (j), (k), and (l) of subsection (1) of this section shall apply to all persons and entities, including those specifically exempted under section 35-80-103 (1), (2) (a), (2) (c), (2) (d), and (2) (e).

(2) It is unlawful and a violation of this article for any person operating a pet animal facility:

(a) To refuse to permit entry or inspection in accordance with section 35-80-110;

(b) To sell, offer for sale, barter, exchange, or otherwise transfer immature domestic fowl in lots of less than twenty-five as pets;

(c) To sell, offer for sale, barter, exchange, or otherwise transfer raccoons or other animal species of wildlife that are prohibited to be kept as pets by the division of parks and wildlife in the department of natural resources;

(d) To import or cause to be imported any pet animal for the purpose of sale, resale, trade, or barter by a pet animal facility operator unless such operator is the holder of a valid pet animal facility license issued pursuant to this article;

(e) To allow a license issued pursuant to this article to be used by an unlicensed person;

(f) To make any misrepresentation or false promise through advertisements, employees, agents, or otherwise in connection with the business operations licensed pursuant to this article or for which an application for a license is pending; and

(g) To fail to take reasonable care to release for sale, trade, or adoption only those pet animals that are free of undisclosed disease, injury, or abnormality.

(3) It is unlawful and a violation of this article for any employee or official of the department or any person designated by the commissioner pursuant to section 35-80-109 (6) to disclose or use for his or her own advantage any information derived from any reports or records submitted to the department pursuant to section 35-80-110 or to reveal such information to anyone except authorized persons, including officials or employees of the state, the federal government, and the courts of this or other states.

(4) The failure by any person to comply with the provisions of paragraph (a) or (b) of subsection (1) of this section or paragraph (f) of subsection (2) of this section is a deceptive trade practice and is subject to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

35-80-109. Powers and duties of commissioner - rules. (1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to:

(a) Minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care, medical treatment,

sterilization of dogs and cats released to prospective owners from animal shelters and pet animal rescues, and method of operation, including the minimum holding period for and disposition of stray or abandoned pet animals that are, in the opinion of the commissioner, necessary to carry out the provisions of this article; except that each holding period shall comply with section 35-80-106.3 (1);

(a.5) The minimum weight requirement for the transfer of cats;

(b) Maintenance of records concerning health care, euthanasia, and transactions involving pet animals;

(b.5) The content of, and procedures for, any written recommendations and warnings concerning rabies vaccinations that the commissioner may require a licensee to give in connection with the sale, transfer, trade, or adoption of a dog, cat, or ferret;

(b.6) Written disclosures by licensees in connection with the sale, transfer, trade, or adoption of a dog, cat, ferret, or bird and the retention by licensees of written documentation that the disclosures were made;

(c) The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(d) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition or the denial, restriction, suspension, or revocation of any license authorized under this article; and

(e) (I) The amount of any license fee for a pet animal facility license. Such license fee may be different for different classifications and subclassifications of any license authorized under this article. The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing this article and any rules adopted pursuant thereto.

(II) Repealed.

(3) The commissioner is authorized to conduct hearings required under sections 35-80-112 and 35-80-113 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(4) The commissioner is authorized to establish the annual date or dates on which licenses and psittacine bird leg bands issued pursuant to this article shall expire.

(5) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or with any agency of the United States government for the purpose of carrying out the provisions of this article, receiving grants-in-aid, and securing uniformity of rules.

(6) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

(7) The commissioner shall appoint an advisory committee pursuant to section 35-80-115.

35-80-110. Inspections - investigations - access - subpoena - duty to report suspected animal cruelty or animal fighting - immunity. (1) The commissioner, upon his or her own motion or upon the complaint of any person, may make any investigations necessary to ensure compliance with this article.

(2) Complaints of record made to the commissioner and the results of his or her investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(3) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To those portions of all buildings, yards, pens, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article; and

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article.

(3.5) After the denial, suspension, or revocation of a license for a pet animal facility, the commissioner shall have free and unimpeded access to the areas and records that are reasonably necessary to verify that operation of such a pet animal facility has ceased. The commissioner shall have such access upon consent or upon obtaining a search warrant to the following areas and records:

(a) To those portions of all buildings, yards, pens, and other areas in which animals are suspected of being kept, handled, or transported without the appropriate license; and

(b) To all records that are equivalent to those required to be kept for the purpose of carrying out the provisions of this article. The commissioner may make copies of such records for the purpose of carrying out any provision of this article or any rule promulgated pursuant to this article.

(4) The commissioner shall have full authority to administer oaths and take statements, issue subpoenas requiring the attendance of witnesses before him or her, and require the production of all books, memoranda, papers and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey 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.

(5) (a) If the commissioner or the commissioner's designee, in the course of an investigation under this article, has reasonable cause to know or suspect that an animal has been subjected to animal cruelty in violation of section 18-9-202, C.R.S., or animal fighting in violation of section 18-9-204, C.R.S., the commissioner or the commissioner's designee shall report or cause a report to be made of the animal cruelty or animal fighting to a local law enforcement agency or the state bureau of animal protection created in section 35-42-105. The commissioner or the commissioner's designee shall not knowingly make a false report.

(b) The mere filing of a complaint does not generate a requirement to report under paragraph (a) of this subsection (5).

(c) A commissioner or a commissioner's designee who willfully violates the provisions of this subsection (5) commits a class 1 petty offense, punishable as provided in section 18-1.3-503, C.R.S.

(d) (I) If the commissioner or the commissioner's designee in good faith reports a suspected incident of animal cruelty or animal fighting to the proper authorities in accordance with this subsection (5), he or she is immune from liability in any civil or criminal action brought in connection with the report.

(II) In a civil or criminal action brought in connection with the report, the commissioner or the commissioner's designee is presumed to have acted in good faith.

35-80-111. Enforcement. (1) The commissioner or the commissioner's designee shall enforce the provisions of this article.

(2) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule promulgated pursuant to this article has occurred and immediate enforcement is deemed necessary, he or she 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 such person's discretion, a prompt hearing to determine whether or not such violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of this article.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(3) Whenever the commissioner possesses sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order issued under 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.

35-80-112. Disciplinary actions - denial of license. (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, restrict, or revoke any license authorized under this article if the applicant or

licensee:

(a) Has refused or failed to comply with any provision of this article, any rule adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of cruelty to animals as defined in article 9 of title 18, C.R.S., or any similar statute of any other state;

(c) Has had an equivalent license denied, revoked, or suspended by any authority;

(d) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding the care of animals when requested by the commissioner; or

(e) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) No licensee whose license has been revoked may apply or reapply for a license under this article until two years after the date of the revocation. In the case of an entity whose license was revoked under paragraph (b) of subsection (1) of this section, the two-year period of ineligibility also applies to a principal, officer, director, manager, or any other person who has substantial control or authority over the daily operations of the entity, whether he or she applies individually or as a principal, officer, director, manager, or other person who has or would have substantial control or authority over the daily operations of the same or a different entity.

35-80-112.5. Denial of license - animal cruelty or animal fighting conviction. (1) The commissioner, pursuant to article 4 of title 24, C.R.S., may deny, refuse to renew, or revoke any license authorized under this article if the applicant or licensee, or any principal, officer, director, manager, or other person who has or would have substantial control or authority over the licensee or over its daily operations, has been convicted of cruelty to animals pursuant to section 18-9-202 (1) (a) or (1.5) (a), C.R.S., or any similar statute of any other state.

(2) Notwithstanding subsection (1) of this section, the commissioner, pursuant to article 4 of title 24, C.R.S., shall deny, refuse to renew, or revoke any license authorized under this article if the applicant or licensee, or any principal, officer, director, manager, or other person who has or would have substantial control or authority over the licensee or over its daily operations, has been convicted, at any time, of:

(a) Animal fighting pursuant to section 18-9-204, C.R.S., or any similar statute of any other state;

(b) Aggravated cruelty to animals pursuant to section 18-9-202 (1.5) (b), C.R.S., or any similar statute of any other state; or

(c) A second or subsequent conviction of cruelty to animals pursuant to section 18-9-202 (1) (a) or (1.5) (a), C.R.S., or any similar statute of any other state.

35-80-113. Civil penalties. (1) Any 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. The maximum penalty shall not exceed one thousand dollars per violation.

(2) No civil penalty may be imposed 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 any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may:

(a) Bring suit to recover the amount of the civil penalty plus costs and attorney fees by action in any court of competent jurisdiction; or

(b) Refuse to renew any license authorized under this article that was issued to a person who has not paid the civil penalty pursuant to section 35-80-106 (4).

(4) Repealed.

35-80-114. Criminal penalties. Any person who violates the provisions of section 35-80-108 (1) (a), (1) (b), (1) (c), (1) (f), or (1) (m) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

35-80-115. Advisory committee. (1) There is hereby established a pet animal advisory committee to advise the commissioner in establishing regulations under this article and to provide ongoing review of this article. The members of the advisory committee shall receive no compensation or reimbursement from the state of Colorado or the department for expenses incurred in the performance of their duties. The advisory committee shall consist of seventeen persons appointed by the commissioner as follows:

(a) One person who represents animal rescue;

(b) One person who represents bird breeders;

(c) One person who represents small scale operation dog breeders;

(d) One person who represents cat breeders;

(e) One person who represents small animal breeders;

(f) One person who represents boarding kennels;

(f.5) One person who represents the "dog day care industry", which term means premises on which dogs are kept primarily for the purpose of short-term care;

(g) One person who represents pet groomers;

(h) One person who represents pet animal retailers;

(i) One person who represents pet animal wholesalers;

(j) One person who represents animal control officers;

(k) One person who represents animal shelters;

(l) One veterinarian licensed pursuant to article 64 of title 12, C.R.S.;

(m) Three members of the general public, none of whom shall represent or have a financial interest in any of the groups listed in this subsection (1); and

(n) One person who represents large scale operation dog breeders.

(2) All members of the advisory committee shall be residents of this state.

(3) In the event of a vacancy on the advisory committee prior to the completion of the member's full term, the commissioner shall appoint a person to complete the remainder of the term. Such person shall represent the same group as the member he or she is replacing, pursuant to subsection (1) of this section.

(4) The initial appointments of the animal rescue representative, the small animal breeder, the pet animal wholesaler, one member from the general public, and the large scale operation dog breeder shall expire on January 1, 1995. The initial appointments of the bird breeder, the representative of boarding kennels, the representative of animal control officers, the small scale operation dog breeder, and one member from the general public shall expire on January 1, 1996. The initial appointment of all other members shall be for a term of three years. Thereafter, members of the advisory committee shall serve for terms of three years.

(5) Repealed.

35-80-116. Pet animal care and facility fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the pet animal care and facility fund, which fund is hereby created. All moneys credited to the fund shall be a part of 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. Notwithstanding the provisions of this section to the contrary, all interest derived from the deposit and investment of this fund shall be credited to the general fund, in accordance with section 24-36-114, C.R.S. The general assembly shall make annual appropriations from the fund to the department of agriculture for direct and indirect expenses incurred in carrying out the purposes of this section.

35-80-116.5. Pet overpopulation authority - creation - duties and powers - pet overpopulation fund. (1) There is hereby created the Colorado pet overpopulation authority, also referred to in this section as the "authority", which shall be a body corporate and a political subdivision of the state. The authority is not an agency of state government and is not subject to administrative direction by any state agency except as provided in this article.

(2) (a) The powers of the Colorado pet overpopulation authority shall be vested in a board of directors consisting of the following:

(I) One representative of the animal assistance foundation or its successor organization;

(II) One representative of the Colorado federation of animal welfare agencies or its successor organization;

(III) One representative of a state veterinary medical association;

(IV) One representative of an association organized for Colorado animal control officers;

(V) One representative from the department of agriculture;

(VI) One member from an animal rescue organization;

(VII) One member of the general public with an interest in animal welfare; and

(VIII) One representative of western Colorado.

(b) The commissioner shall appoint the board members to three-year terms; except that three of the members appointed on September 1, 2001, shall serve an initial term of two years.

Each member shall serve at the pleasure of the commissioner and shall continue in office until the member's successor is appointed and qualified. Initial members of the authority shall be appointed no later than September 1, 2001.

(c) On the expiration of the term of a member of the board, that member's successor shall be appointed by the commissioner for a term of three years; except that, in the case of a vacancy, the commissioner shall appoint a person who shall serve for the unexpired term.

(3) (a) Each board member shall meet the following qualifications at the time of appointment and throughout the member's term of office:

(I) Residency in this state; and

(II) Demonstration of an active interest in the education of the community regarding the benefits of pet overpopulation control in Colorado.

(b) The commissioner shall immediately declare the office of any member of the board vacant whenever the commissioner finds that the member is not qualified under this subsection (3) or that the member is unable to perform the duties of the office.

(c) Members shall serve without compensation for any service provided to the Colorado pet overpopulation authority. Members shall not receive any reimbursement from the board for any expenses incurred fulfilling their responsibilities pursuant to this section.

(4) The board may:

(a) Adopt an education program concerning pet overpopulation with emphasis on the importance of spaying and neutering to control pet overpopulation;

(b) Develop, adopt, and implement a process to fund and expend moneys for the activities and responsibilities of the board. Funding for the board includes the moneys available in the pet overpopulation fund created in subsection (5) of this section.

(c) Accept gifts, grants, and donations, including personal services, for the activities and responsibilities of the board. Any gift, grant, or donation other than personal services shall be deposited into the pet overpopulation fund created in subsection (5) of this section.

(d) Develop, adopt, and implement a cooperative process to work with local veterinarians, licensed animal shelters, and local communities concerning animal sheltering and pet overpopulation control in this state.

(5) (a) Donations collected pursuant to subsection (4) of this section and section 39-22-2201, C.R.S., shall be transmitted to the state treasurer and credited to the pet overpopulation fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(b) All unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and not revert back to the general fund or any other fund or be used for any purpose other than the purposes set forth in this section. Such moneys shall be appropriated continually to the state treasurer, who shall transfer all available moneys in the pet overpopulation fund to the pet overpopulation authority at least quarterly unless the board expressly requests otherwise. The board shall expend moneys from the pet overpopulation fund for the implementation of this section.

(c) When expending funds to implement this section, the Colorado pet overpopulation authority shall give priority to the areas that have an insufficient number of pet animal veterinary resources to adequately meet local needs.

(d) There is hereby created in the pet overpopulation fund the adopt a shelter pet account, which consists of moneys donated to qualify for the adopt a shelter pet special license plate pursuant to section 42-3-234, C.R.S.

(e) The authority shall use the moneys in the adopt a shelter pet account to support the spay and neutering and other medical costs of animals in animal shelters and rescues or to support overpopulation education programs; except that up to ten percent of the moneys in the adopt a shelter pet account may be used for the administration of the account.

(6) Except as provided in section 42-3-234, C.R.S., the Colorado pet overpopulation authority, created pursuant to this section, shall not be funded by or through any state agency.

(7) Nothing in this section shall be construed to authorize the Colorado pet overpopulation authority to promulgate rules to implement this section.

35-80-117. Repeal of article - sunset review - report to general assembly. (1) This article is repealed, effective September 1, 2019.

(2) Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

(3) On or before February 1, 2018, the commissioner shall provide a written report to the agriculture, livestock, and natural resources committee and the finance committee of the house of representatives and the agriculture, natural resources, and energy committee and the finance committee of the senate, or their successor committees, containing the following information, as of September 1, 2013, and September 1, 2017:

(a) A schedule of the fees charged for all classes of licenses issued under this article and for renewal of those licenses;

(b) The total revenue received by the department as a result of the fees charged for licenses and renewals under this article; and

(c) The total number of personnel employed by the department to administer this article.

(4) On or before February 1, 2015, and annually thereafter, the commissioner shall provide a written report to the executive committee of the legislative council, the agriculture, livestock, and natural resources committee of the house of representatives, and the agriculture, natural resources, and energy committee of the senate, or their successor committees, explaining the need for and purposes of any increase in the fee charged for any class of licenses issued under this article or for renewal of those licenses, including without limitation a statement of the number of inspections performed per month before and after the increase.

ARTICLE 81

Hybrid Animals

35-81-101. Legislative declaration. (1) The general assembly hereby determines and declares that:

(a) Hybrid canids and felines may pose a significant threat to other animals and humans because of their unpredictable nature;

(b) Wolf hybrids in particular may pose a threat to humans and have been declared responsible for killing two children each year in the United States;

(c) Ten states prohibit the breeding and maintenance of wolf hybrids;

(d) Most hybrid canids and felines are abandoned or killed when they reach two to three years of age and exhibit their wild nature, and some ultimately are contained in hybrid-animal refuges.

(2) The general assembly further determines that problems caused by hybrid canids and felines, and the lack of definitive information concerning the same, warrant a study of:

(a) The behavior of such animals;

(b) The extent of the problem in this state resulting from or projected to result from hybrid canids and felines;

(c) The regulation of the breeding, care, and maintenance of hybrid canids and felines that is necessary to protect the health, welfare, and safety of the residents of this state and livestock and other animal life.

35-81-102. Study of hybrid animals. (1) The commissioner of the department of agriculture is hereby authorized to appoint and convene an advisory group to study the behavior of hybrid canids and felines including, but not limited to, wolf hybrids, which study shall include a review of any incidents involving property damage and personal injury caused by such animals. The advisory group shall consist of the commissioner of the department of agriculture or the commissioner's designee, a veterinarian, representatives from the division of parks and wildlife, wolf-refuge owners, hybrid canid or feline breeders, animal-welfare agencies, and the agricultural and environmental communities.

(2) No later than January 15, 1998, the department shall present legislative committees of reference with a summary of its findings, including, if necessary, proposals for legislation.

(3) For purposes of section 35-81-101 and this section, a "hybrid canid or feline" means an animal produced by breeding a wild canid or feline with a domestic canid or feline, and that animal's progeny. "Wolf hybrid" means an animal produced by breeding a wolf with a domestic canine, and that animal's progeny.