

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 19-0527.02 Jery Payne x2157

**HOUSE BILL 19-1114**

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**HOUSE SPONSORSHIP**

**Catlin and Valdez D.,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**  
Rural Affairs & Agriculture

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE IMPLEMENTATION UNDER STATE LAW BY THE**  
102                    **COMMISSIONER OF AGRICULTURE OF FEDERAL PRODUCE SAFETY**  
103                    **STANDARDS FOR FARMS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill establishes a state law to implement federal regulations covering produce safety on farms. To implement this, the bill:

- ! Authorizes the commissioner of agriculture (commissioner) to enter into a cooperative agreement with the United States food and drug administration and seek, accept, and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

- ! expend federal funds;
- ! Provides for the commissioner to cease implementing the law if the commissioner does not receive adequate federal funding;
- ! Requires farms that are covered by federal law, selling more than approximately \$25,000 of produce annually on average over a 3-year period, to register with the commissioner;
- ! Requires the commissioner to promulgate rules adopting 21 CFR 112, concerning produce safety, and gives the commissioner rule-making authority to administer the bill;
- ! Authorizes the commissioner to enter farms and farm facilities during regular business hours to implement or enforce the bill;
- ! Authorizes the commissioner to inspect records during regular business hours to implement or enforce the bill;
- ! Authorizes the commissioner to issue cease-and-desist orders;
- ! Authorizes the commissioner to impose administrative penalties;
- ! If requested, requires the commissioner to hold a hearing to issue a cease-and-desist order or impose an administrative penalty, and this process is subject to judicial review;
- ! Authorizes the commissioner to enforce cease-and-desist orders and administrative penalties in court; and
- ! Repeals these provisions in 2034, but requires a sunset review before the repeal.

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

2           **SECTION 1.** In Colorado Revised Statutes, 35-1-104, **amend**  
3 (1)(b) as follows:

4           **35-1-104. Functions, powers, and duties.** (1) The department  
5 has and shall exercise the following functions, powers, and duties:

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

10           **SECTION 2.** In Colorado Revised Statutes, **add** article 77 to title

1 35 as follows:

2

**ARTICLE 77**

3

**Produce Safety**

4 **35-77-101. Legislative declaration.** THIS ARTICLE 77 IS ADOPTED  
5 BY THE GENERAL ASSEMBLY WITH THE INTENTION THAT THE  
6 COMMISSIONER WILL IMPLEMENT AND ENFORCE 21 CFR 112, CONCERNING  
7 PRODUCE SAFETY, UNDER A COOPERATIVE AGREEMENT WITH THE FDA,  
8 AND IN LIEU OF FEDERAL ENFORCEMENT BY THE FDA. THE COMMISSIONER  
9 MAY SEEK TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE FDA  
10 WHEREBY THE COMMISSIONER WILL ASSUME ENFORCEMENT AUTHORITY  
11 AND RECEIVE FUNDING FROM THE FDA. THE FIRST AGREEMENT SHOULD  
12 EXTEND FOR FIVE YEARS. IF THE AGREEMENT IS NOT RENEWED FOR A  
13 SECOND OR SUBSEQUENT PERIOD, THE COMMISSIONER WILL CEASE  
14 IMPLEMENTING AND ENFORCING THIS ARTICLE 77.

15 **35-77-102. Definitions.** AS USED IN THIS ARTICLE 77, UNLESS THE  
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "COMMISSIONER" MEANS THE COMMISSIONER OF  
18 AGRICULTURE.

19 (2) "COVERED ACTIVITY" HAS THE SAME MEANING AS SET FORTH  
20 IN 21 CFR 112.3.

21 (3) "COVERED PRODUCE" HAS THE SAME MEANING AS SET FORTH  
22 IN 21 CFR 112.3.

23 (4) "FARM" HAS THE SAME MEANING AS SET FORTH IN 21 CFR  
24 112.3.

25 (5) "FDA" MEANS THE UNITED STATES FOOD AND DRUG  
26 ADMINISTRATION.

27 (6) "PRODUCE" HAS THE SAME MEANING AS SET FORTH IN 21 CFR

1 112.3.

2 **35-77-103. Cooperative agreement - federal funding -**  
3 **applicability - rules.** (1) THE COMMISSIONER MAY SEEK, ACCEPT, AND  
4 EXPEND FEDERAL MONEY FOR THE PURPOSES OF THIS ARTICLE 77. THE  
5 COMMISSIONER MAY ENTER INTO A COOPERATIVE AGREEMENT WITH THE  
6 FDA TO IMPLEMENT 21 CFR 112 UNDER STATE LAW AND TO SEEK  
7 FEDERAL MONEY.

8 (2) IF THE COMMISSIONER DOES NOT RECEIVE ADEQUATE MONEY  
9 UNDER SUBSECTION (1) OF THIS SECTION TO IMPLEMENT THIS ARTICLE 77,  
10 THE COMMISSIONER NEED NOT IMPLEMENT THIS ARTICLE 77 OR MAY CEASE  
11 IMPLEMENTING THIS ARTICLE 77. IF THE COMMISSIONER DOES NOT  
12 IMPLEMENT THIS ARTICLE 77 OR CEASES IMPLEMENTING THIS ARTICLE 77,  
13 THE COMMISSIONER SHALL PROMULGATE A RULE PROVIDING PUBLIC  
14 NOTICE THAT THIS ARTICLE 77 IS NOT BEING IMPLEMENTED AND THAT A  
15 FARM NEED NOT REGISTER UNDER THIS ARTICLE 77.

16 **35-77-104. Registration required - rules.** (1) EXCEPT AS  
17 PROVIDED IN SECTION 35-77-103, A FARM, INCLUDING A FARM THAT IS  
18 INCORPORATED INTO ANOTHER BUSINESS, SHALL REGISTER WITH THE  
19 COMMISSIONER IF THE FARM CONDUCTS COVERED ACTIVITY AND THE  
20 COVERED PRODUCE SOLD DURING THE PREVIOUS THREE YEARS BY THE  
21 FARM HAS AN AVERAGE ANNUAL MONETARY VALUE OF MORE THAN  
22 TWENTY-FIVE THOUSAND DOLLARS, AS ADJUSTED FOR INFLATION BY THE  
23 FDA UNDER 21 CFR 112, USING 2011 AS THE BASELINE YEAR FOR  
24 CALCULATING THE ADJUSTMENT. THE AMOUNT THAT TRIGGERS  
25 REGISTRATION IS CALCULATED ON A ROLLING BASIS.

26 (2) EACH TIME THE FDA CHANGES THE AMOUNT OF SALES THAT  
27 TRIGGERS REGISTRATION, THE COMMISSIONER SHALL PROMULGATE A RULE

1 SETTING FORTH THE NEW AMOUNT OF SALES THAT TRIGGERS  
2 REGISTRATION.

3 **35-77-105. Produce safety - rules.** THE COMMISSIONER SHALL  
4 PROMULGATE RULES ADOPTING 21 CFR 112 FOR PRODUCE SAFETY  
5 STANDARDS FOR FARMS.

6 **35-77-106. Commissioner duties and authority - rules.** (1) THE  
7 COMMISSIONER MAY:

8 (a) ADOPT ANY RULE REASONABLY NECESSARY TO IMPLEMENT  
9 THIS ARTICLE 77; AND

10 (b) ADMINISTER AND ENFORCE THIS ARTICLE 77 AND ANY RULES  
11 ADOPTED UNDER THIS ARTICLE 77.

12 (2) THE COMMISSIONER SHALL CONDUCT HEARINGS REQUIRED BY  
13 THIS ARTICLE 77 AND, AT THE COMMISSIONER'S DISCRETION, USE  
14 ADMINISTRATIVE LAW JUDGES TO CONDUCT THE HEARINGS.

15 **35-77-107. Investigation - access to records and facilities.**

16 (1) THE COMMISSIONER MAY CLOSE TO PUBLIC INSPECTION  
17 INVESTIGATIONS, COMPLAINTS OF RECORD, AND FARM RECORDS; EXCEPT  
18 THAT:

19 (a) THE PERSON IN INTEREST, AS DEFINED IN SECTION 24-72-202,  
20 MAY ACCESS THESE RECORDS; OR

21 (b) THE RECORDS MAY BE ACCESSED IN ACCORDANCE WITH A  
22 COURT ORDER.

23 (2) (a) DURING REGULAR BUSINESS HOURS, A FARM SHALL GIVE  
24 THE COMMISSIONER ACCESS TO REAL PROPERTY USED FOR, ANY BUILDING  
25 USED FOR, OR ANY FACILITY USED FOR ACTIVITIES REGULATED UNDER THIS  
26 ARTICLE 77 IF THE ACCESS IS FOR THE PURPOSE OF IMPLEMENTING OR  
27 ENFORCING THIS ARTICLE 77 OR ANY RULE ADOPTED UNDER THIS ARTICLE

1 77.

2 (b) DURING REGULAR BUSINESS HOURS, A FARM SHALL GIVE THE  
3 COMMISSIONER ACCESS TO ALL RECORDS REQUIRED TO BE KEPT BY RULE  
4 OF THE COMMISSIONER AND SHALL ALLOW THE COMMISSIONER TO MAKE  
5 COPIES OF THE RECORDS IF THE ACCESS OR COPYING IS FOR THE PURPOSE  
6 OF IMPLEMENTING OR ENFORCING THIS ARTICLE 77 OR ANY RULE ADOPTED  
7 UNDER THIS ARTICLE 77.

8 (3) THE COMMISSIONER MAY MAKE ANY INVESTIGATION  
9 NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE 77.

10 **35-77-108. Cease-and-desist orders.** (1)(a) THE COMMISSIONER  
11 MAY ISSUE AN ORDER TO CEASE AND DESIST FROM VIOLATING THIS  
12 ARTICLE 77 IF THE COMMISSIONER DETERMINES, BASED UPON CREDIBLE  
13 EVIDENCE, THAT:

14 (I) A PERSON IS VIOLATING THIS ARTICLE 77 OR A RULE ADOPTED  
15 UNDER THIS ARTICLE 77, AND THE VIOLATION IS A THREAT TO THE HEALTH  
16 AND SAFETY OF THE PUBLIC; OR

17 (II) A PERSON IS VIOLATING SECTION 35-77-104.

18 (b) TO ISSUE A CEASE-AND-DESIST ORDER, THE COMMISSIONER  
19 MUST SET FORTH IN THE ORDER THE STATUTES OR RULES ALLEGED TO  
20 HAVE BEEN VIOLATED, THE FACTS ALLEGED TO CONSTITUTE THE  
21 VIOLATION, AND A REQUIREMENT THAT THE ALLEGED VIOLATIONS CEASE  
22 AND DESIST.

23 (c) TO PROTEST A CEASE-AND-DESIST ORDER, A PERSON MUST  
24 REQUEST WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER A HEARING  
25 ON THE QUESTION OF WHETHER THE PERSON HAS VIOLATED THIS ARTICLE  
26 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77. IF SO REQUESTED, THE  
27 COMMISSIONER SHALL HOLD A HEARING.

1           (2) A PERSON AGGRIEVED BY A CEASE-AND-DESIST ORDER THAT  
2 HAS BECOME FINAL MAY SEEK JUDICIAL REVIEW OF THE ORDER.

3           (3) (a) IF A PERSON FAILS TO COMPLY WITH A CEASE-AND-DESIST  
4 ORDER WITHIN TWENTY-FOUR HOURS AFTER BEING SERVED WITH THE  
5 ORDER, THE COMMISSIONER MAY BRING A SUIT FOR A TEMPORARY  
6 RESTRAINING ORDER AND INJUNCTIVE RELIEF TO PREVENT ANY FURTHER  
7 VIOLATION OF THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE  
8 77.

9           (b) IF THE SUBJECT OF A CEASE-AND-DESIST ORDER REQUESTS  
10 THAT THE CEASE-AND-DESIST ORDER BE STAYED PENDING AN APPROVAL  
11 OF THE ORDER, A COURT SHALL NOT STAY THE CEASE-AND-DESIST ORDER  
12 UNTIL AFTER A HEARING HAS BEEN HELD AT WHICH BOTH PARTIES HAVE  
13 HAD AN OPPORTUNITY TO APPEAR.

14           (c) A COURT SHALL GIVE PREFERENCE TO MATTERS BROUGHT  
15 BEFORE THE COURT UNDER THIS SECTION OVER OTHER MATTERS ON THE  
16 CALENDAR OF THE COURT.

17           **35-77-109. Administrative penalties.** (1) (a) A FARM THAT  
18 VIOLATES THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77  
19 IS SUBJECT TO AN ADMINISTRATIVE PENALTY, AS DETERMINED BY THE  
20 COMMISSIONER.

21           (b) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER  
22 MUST CONSIDER THE SEVERITY OF THE VIOLATION, THE AMOUNT OF HARM  
23 CAUSED BY THE VIOLATION, THE PRESENCE OR ABSENCE OF A PATTERN OF  
24 SIMILAR VIOLATIONS BY THE FARM, AND THE EFFECT OF THE PROPOSED  
25 PENALTY ON THE ABILITY OF THE FARM TO CONTINUE TO CONDUCT  
26 BUSINESS.

27           (c) THE COMMISSIONER SHALL NOT IMPOSE AN ADMINISTRATIVE

1 PENALTY THAT EXCEEDS TWO THOUSAND FIVE HUNDRED DOLLARS PER  
2 VIOLATION.

3 (2) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER  
4 MUST HOLD A HEARING.

5 (3) IF A FARM FAILS TO PAY ANY PORTION OF AN ADMINISTRATIVE  
6 PENALTY IMPOSED IN ACCORDANCE WITH THIS SECTION, THE  
7 COMMISSIONER MAY RETAIN THE ATTORNEY GENERAL UNDER SECTION  
8 35-27-116 TO BRING SUIT TO RECOVER THE PENALTY. IN ANY ACTION  
9 BROUGHT UNDER THIS SECTION, THE COMMISSIONER MAY, IF SUCCESSFUL,  
10 RECOVER COSTS AND REASONABLE ATTORNEY FEES.

11 **35-77-110. Repeal of article.** (1) THIS ARTICLE 77 IS REPEALED,  
12 EFFECTIVE SEPTEMBER 1, 2034. BEFORE THE REPEAL, THIS ARTICLE 77 IS  
13 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

14 (2) THIS ARTICLE 77 WILL BE REPEALED IF THE COMMISSIONER  
15 PROMULGATES A RULE PROVIDING PUBLIC NOTICE THAT THIS ARTICLE 77  
16 IS NOT BEING IMPLEMENTED. THE COMMISSIONER SHALL NOTIFY THE  
17 REVISOR OF STATUTES IN WRITING OF THE DATE WHEN THE CONDITION  
18 SPECIFIED IN THIS SUBSECTION (2) HAS OCCURRED BY E-MAILING THE  
19 NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS ARTICLE 77 IS  
20 REPEALED EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE OR, IF THE  
21 NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO  
22 THE REVISOR OF STATUTES.

23 **SECTION 3.** In Colorado Revised Statutes, 24-34-104, **add** (35)  
24 as follows:

25 **24-34-104. General assembly review of regulatory agencies**  
26 **and functions for repeal, continuation, or reestablishment - legislative**  
27 **declaration - repeal.** (35) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR

1 BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2034:

2 (I) THE REGULATION OF PRODUCE SAFETY ON FARMS BY THE  
3 COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 77 OF  
4 TITLE 35.

5 (b) THIS SUBSECTION (35) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
6 2036.

7 **SECTION 4. Act subject to petition - effective date -**  
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
9 the expiration of the ninety-day period after final adjournment of the  
10 general assembly (August 2, 2019, if adjournment sine die is on May 3,  
11 2019); except that, if a referendum petition is filed pursuant to section 1  
12 (3) of article V of the state constitution against this act or an item, section,  
13 or part of this act within such period, then the act, item, section, or part  
14 will not take effect unless approved by the people at the general election  
15 to be held in November 2020 and, in such case, will take effect on the  
16 date of the official declaration of the vote thereon by the governor.

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