

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0527.02 Jery Payne x2157

HOUSE BILL 19-1114

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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.**

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.

SENATE
Amended 2nd Reading
March 5, 2019

HOUSE
3rd Reading Unamended
February 15, 2019

HOUSE
Amended 2nd Reading
February 14, 2019

- ! 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.

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) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

22

(4) "FARM" HAS THE SAME MEANING AS SET FORTH IN 21 CFR

23

112.3.

24

(5) "FDA" MEANS THE UNITED STATES FOOD AND DRUG

25

ADMINISTRATION.

26

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

27

112.3.

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

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

15 **35-77-104. Registration required - rules.** (1) EXCEPT AS
16 PROVIDED IN SECTION 35-77-103, A FARM, INCLUDING A FARM THAT IS
17 INCORPORATED INTO ANOTHER BUSINESS, SHALL REGISTER WITH THE
18 COMMISSIONER IF THE FARM CONDUCTS COVERED ACTIVITY AND THE
19 PRODUCE SOLD DURING THE PREVIOUS THREE YEARS BY THE FARM HAS AN
20 AVERAGE ANNUAL MONETARY VALUE OF MORE THAN TWENTY-FIVE
21 THOUSAND DOLLARS, AS ADJUSTED FOR INFLATION BY THE FDA UNDER 21
22 CFR 112, USING 2011 AS THE BASELINE YEAR FOR CALCULATING THE
23 ADJUSTMENT. THE AMOUNT THAT TRIGGERS REGISTRATION IS
24 CALCULATED ON A ROLLING BASIS.

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

1 REGISTRATION.

2 **35-77-105. Produce safety - rules.** THE COMMISSIONER SHALL
3 PROMULGATE RULES ADOPTING 21 CFR 112 FOR PRODUCE SAFETY
4 STANDARDS FOR FARMS.

5 **35-77-106. Commissioner duties and authority - rules.** (1) THE
6 COMMISSIONER MAY:

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

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

11 (2) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, THE
12 COMMISSIONER SHALL CONDUCT HEARINGS REQUIRED BY THIS ARTICLE 77
13 AND, AT THE COMMISSIONER'S DISCRETION, USE ADMINISTRATIVE LAW
14 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, UPON THE COMMISSIONER GIVING THE FARM
25 WRITTEN NOTICE AND OBTAINING CONSENT OR AN ADMINISTRATIVE
26 SEARCH WARRANT, TO REAL PROPERTY USED FOR, ANY BUILDING USED
27 FOR, OR ANY FACILITY USED FOR ACTIVITIES REGULATED UNDER THIS

1 ARTICLE 77 IF THE ACCESS IS FOR THE PURPOSE OF IMPLEMENTING OR
2 ENFORCING THIS ARTICLE 77 OR ANY RULE ADOPTED UNDER THIS ARTICLE
3 77.

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

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

13 (4) (a) THE COMMISSIONER MAY:
14 (I) ADMINISTER OATHS AND TAKE STATEMENTS;
15 (II) ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES
16 BEFORE THE COMMISSIONER AND COMPEL THE WITNESSES TO DISCLOSE
17 ALL KNOWN FACTS CONCERNING THE MATTER UNDER INVESTIGATION; AND
18 (III) REQUIRE THE PRODUCTION OF BOOKS, DOCUMENTS, ITEMS, OR
19 INSTRUMENTS.

20 (b) UPON THE FAILURE OR REFUSAL OF A WITNESS TO OBEY A
21 SUBPOENA COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR TO
22 PRODUCE DOCUMENTARY EVIDENCE, THE COMMISSIONER MAY PETITION
23 THE DISTRICT COURT TO COMPEL THE WITNESS TO OBEY THE SUBPOENA.
24 UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER REQUIRING
25 COMPLIANCE WITH THE SUBPOENA. FAILURE TO OBEY THE COURT'S ORDER
26 IS PUNISHABLE AS A CONTEMPT OF COURT.

27 **35-77-108. Cease-and-desist orders.** (1)(a) THE COMMISSIONER

1 MAY ISSUE AN ORDER TO CEASE AND DESIST FROM VIOLATING THIS
2 ARTICLE 77 IF THE COMMISSIONER DETERMINES, BASED UPON CREDIBLE
3 EVIDENCE, THAT:

4 (I) A PERSON IS VIOLATING THIS ARTICLE 77 OR A RULE ADOPTED
5 UNDER THIS ARTICLE 77; OR

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

7 (b) TO ISSUE A CEASE-AND-DESIST ORDER, THE COMMISSIONER
8 MUST SET FORTH IN THE ORDER THE STATUTES OR RULES ALLEGED TO
9 HAVE BEEN VIOLATED, THE FACTS ALLEGED TO CONSTITUTE THE
10 VIOLATION, AND A REQUIREMENT THAT THE ALLEGED VIOLATIONS CEASE
11 AND DESIST.

12 (c) TO PROTEST A CEASE-AND-DESIST ORDER, A PERSON MUST
13 REQUEST WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER A HEARING
14 ON THE QUESTION OF WHETHER THE PERSON HAS VIOLATED THIS ARTICLE
15 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77. IF SO REQUESTED, THE
16 COMMISSIONER SHALL HOLD A HEARING.

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

19 (3) (a) IF A PERSON FAILS TO COMPLY WITH A CEASE-AND-DESIST
20 ORDER WITHIN TWENTY-FOUR HOURS AFTER BEING SERVED WITH THE
21 ORDER, THE COMMISSIONER MAY BRING A SUIT FOR A TEMPORARY
22 RESTRAINING ORDER AND INJUNCTIVE RELIEF TO PREVENT ANY FURTHER
23 VIOLATION OF THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE
24 77.

25 (b) IF THE SUBJECT OF A CEASE-AND-DESIST ORDER REQUESTS
26 THAT THE CEASE-AND-DESIST ORDER BE STAYED PENDING AN APPROVAL
27 OF THE ORDER, A COURT SHALL NOT STAY THE CEASE-AND-DESIST ORDER

1 UNTIL AFTER A HEARING HAS BEEN HELD AT WHICH BOTH PARTIES HAVE
2 HAD AN OPPORTUNITY TO APPEAR.

3 (c) A COURT SHALL GIVE PREFERENCE TO MATTERS BROUGHT
4 BEFORE THE COURT UNDER THIS SECTION OVER OTHER MATTERS ON THE
5 CALENDAR OF THE COURT.

6 **35-77-109. Unlawful acts.** (1) UNLESS AUTHORIZED BY LAW, IT
7 IS UNLAWFUL FOR ANY PERSON TO:

8 (a) REFUSE TO COMPLY WITH A CEASE-AND-DESIST ORDER ISSUED
9 UNDER SECTION 35-77-108; OR

10 (b) MAKE A MATERIAL MISSTATEMENT IN A REGISTRATION OR TO
11 THE COMMISSIONER OR THE DEPARTMENT DURING AN OFFICIAL
12 INVESTIGATION.

13 (2) IT IS UNLAWFUL FOR AN EMPLOYEE, OFFICIAL OF THE
14 DEPARTMENT, OR PERSON DESIGNATED BY THE COMMISSIONER TO:

15 (a) USE FOR PRIVATE ADVANTAGE ANY INFORMATION DERIVED
16 FROM REPORTS OR RECORDS SUBMITTED TO THE DEPARTMENT IN
17 ACCORDANCE WITH THIS ARTICLE 77;

18 (b) DISCLOSE ANY INFORMATION DERIVED FROM REPORTS OR
19 RECORDS SUBMITTED TO THE DEPARTMENT IN ACCORDANCE WITH THIS
20 ARTICLE 77; EXCEPT THAT THE INFORMATION MAY BE DISCLOSED TO:

21 (I) A COURT OF THIS OR OTHER STATES; OR

22 (II) PEOPLE WHO ARE AUTHORIZED TO RECEIVE THE INFORMATION,
23 REPORTS, OR RECORDS.

24 **35-77-110. Administrative penalties.** (1) (a) A FARM THAT
25 VIOLATES THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77
26 IS SUBJECT TO AN ADMINISTRATIVE PENALTY, AS DETERMINED BY THE
27 COMMISSIONER.

1 (b) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER
2 MUST CONSIDER THE SEVERITY OF THE VIOLATION, THE AMOUNT OF HARM
3 CAUSED BY THE VIOLATION, THE PRESENCE OR ABSENCE OF A PATTERN OF
4 SIMILAR VIOLATIONS BY THE FARM, AND THE EFFECT OF THE PROPOSED
5 PENALTY ON THE ABILITY OF THE FARM TO CONTINUE TO CONDUCT
6 BUSINESS.

7 (c) THE COMMISSIONER SHALL NOT IMPOSE AN ADMINISTRATIVE
8 PENALTY THAT EXCEEDS TWO THOUSAND FIVE HUNDRED DOLLARS PER
9 VIOLATION.

10 (2) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER
11 MUST GIVE THE ALLEGED VIOLATOR NOTICE AND AN OPPORTUNITY FOR A
12 HEARING IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24.

13 (3) IF A FARM FAILS TO PAY ANY PORTION OF AN ADMINISTRATIVE
14 PENALTY IMPOSED IN ACCORDANCE WITH THIS SECTION, THE
15 COMMISSIONER MAY BRING SUIT TO RECOVER THE PENALTY. IN ANY
16 ACTION BROUGHT UNDER THIS SECTION, THE COMMISSIONER MAY, IF
17 SUCCESSFUL, RECOVER COSTS AND REASONABLE ATTORNEY FEES.

18 **35-77-111. Repeal of article.** (1) THIS ARTICLE 77 IS REPEALED,
19 EFFECTIVE SEPTEMBER 1, 2034. BEFORE THE REPEAL, THIS ARTICLE 77 IS
20 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

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

1 NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO
2 THE REVISOR OF STATUTES.

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

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (35) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR
8 BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2034:

9 (I) THE REGULATION OF PRODUCE SAFETY ON FARMS BY THE
10 COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 77 OF
11 TITLE 35.

12 (b) THIS SUBSECTION (35) IS REPEALED, EFFECTIVE SEPTEMBER 1,
13 2036.

14 **SECTION 4. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 2, 2019, if adjournment sine die is on May 3,
18 2019); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2020 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

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