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### Amending Article 4 of Title 35, Colorado Revised Statutes 1973, Concerning the Treatment and Control of Pests

Colorado General Assembly

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## CHAPTER 99

## AGRICULTURE

## PEST CONTROL

SENATE BILL NO. 111. BY SENATORS Anderson, Comer, Decker, Holme, MacManus, McCormick, Schieffelin, and Soash; also REPRESENTATIVES Jones, Barnhill, Hume, Lillpop, Lloyd, Showalter, Tancredo, Witherspoon, and Zakhem.

## AN ACT

AMENDING ARTICLE 4 OF TITLE 35, COLORADO REVISED STATUTES 1973,  
CONCERNING THE TREATMENT AND CONTROL OF PESTS.

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

Section 1. 35-4-102, Colorado Revised Statutes 1973, is amended to read:

**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.

(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.

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

(2) (6) "Pests" means insect pests and animal pests, except rodents, jackrabbits, and predatory animals, and includes fungus ~~or other~~ plant diseases. ~~and weeds~~:

(7) "PLANT DISEASES" MEANS THE PATHOLOGICAL CONDITION IN PLANTS CAUSED BY FUNGI, BACTERIA, VIRUSES, NEMATODES, MYCOPLASMAS, OR PARASITIC SEED PLANTS.

(4) (8) "STATE PEST inspector" means any CERTIFIED employee of the department of agriculture employed under this article.

Section 2. 35-4-103, Colorado Revised Statutes 1973, is amended to read:

**35-4-103. Administration.** The department of agriculture shall administer this article and shall have full authority for the proper enforcement thereof ~~either directly or through county pest inspectors~~ BY STATE PEST INSPECTORS. 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. A BOARD OF COUNTY COMMISSIONERS MAY REQUEST A STATE PEST INSPECTOR TO PERFORM THE DUTIES OF A COUNTY PEST INSPECTOR. SUCH REQUEST SHALL BE MADE TO THE DEPARTMENT OF AGRICULTURE AND SHALL BE AT THE DISCRETION OF THE BOARD OF COUNTY COMMISSIONERS.

Section 3. 35-4-105, Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**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.

Section 4. 35-4-106, Colorado Revised Statutes 1973, is amended to read:

**35-4-106. Examination of appointees.** It is the duty of the department of agriculture to examine all ~~persons appointed by the board of county commissioners to act as county~~ APPLICANTS FOR THE POSITIONS OF STATE pest inspectors, and, if found competent and fully qualified to perform the duties of the office, the department shall issue to such applicants a license as county STATE pest inspector. IT IS THE DUTY OF A BOARD OF COUNTY COMMISSIONERS TO EXAMINE ALL APPLICANTS FOR THE POSITIONS OF COUNTY PEST INSPECTORS, AND, IF FOUND COMPETENT AND FULLY QUALIFIED TO PERFORM THE DUTIES OF THE OFFICE, THE BOARD SHALL ISSUE TO SUCH APPLICANTS A LICENSE AS COUNTY PEST INSPECTOR. No person shall act as STATE PEST INSPECTOR OR COUNTY pest inspector unless he holds such license, which shall certify to the competency of the applicant and shall authorize him to act as STATE PEST INSPECTOR OR county pest inspector for a period of two years from date, but no person engaged in the nursery, ARBORIST, OR

TREE CARE business, either as owner, agent, employee, or salesman, shall be eligible for this position THESE POSITIONS.

Section 5. 35-4-107, Colorado Revised Statutes 1973, is amended to read:

**35-4-107. Inspections - treatment - collection of costs.** (1) ~~The department of agriculture~~ ANY LANDOWNER MAY FILE A WRITTEN COMPLAINT WITH A BOARD OF COUNTY COMMISSIONERS ALLEGING PROBABLE INJURY BY ANY INFESTATION OR INFECTION OF PESTS, INDICATING THE LOCATION OF SUCH AREA. UPON THE FILING OF SUCH WRITTEN COMPLAINT, THE OWNER OF THE PROPERTY ALLEGED TO BE INFESTED OR INFECTED SHALL RECEIVE WRITTEN NOTICE BY CERTIFIED MAIL OF SUCH WRITTEN COMPLAINT FROM THE BOARD OF COUNTY COMMISSIONERS. AFTER TEN DAYS FROM THE DATE OF MAILING, STATE OR COUNTY PEST INSPECTORS shall HAVE THE RIGHT OF ENTRY to inspect, when it seems necessary TO ENFORCE THE PROVISIONS OF THIS SECTION, orchards, farm and garden crops, TIMBER, and any other premises or objects to determine if any of them are infested or infected with pests which may be disseminated to the injury of others and shall devise means for control of such pests when possible. If such pests are found, the owner or renter or person in charge of the infested or infected property or premises must SHALL RECEIVE WRITTEN NOTICE BY CERTIFIED MAIL OF INFESTATION OR INFECTION FROM THE STATE OR COUNTY PEST INSPECTORS PURSUANT TO SECTION 24-4-105 (2), C.R.S. 1973. SUCH WRITTEN NOTICE SHALL ORDER THE OWNER TO destroy the pests concerned under the direction of, and to the satisfaction of, the STATE OR COUNTY PEST inspector and within a REASONABLE period of time specified by the STATE OR COUNTY PEST inspector. unless the inspector deems it necessary himself to SUCH NOTICE SHALL FURTHER STATE THAT UNLESS THE PESTS ARE DESTROYED WITHIN THE TIME PERIOD SPECIFIED IN THE NOTICE, THE STATE OR COUNTY PEST INSPECTOR WILL destroy the pests or articles on which they are found. Such destruction IF THE OWNER DISPUTES THE FINDING OF INFESTATION OR INFECTION BY A STATE PEST INSPECTOR, HE MAY REQUEST A HEARING ON THAT ISSUE BEFORE THE COMMISSIONER WITHIN TEN DAYS AFTER RECEIVING NOTICE OF INFESTATION OR INFECTION. IF THE OWNER DISPUTES THE FINDING OF INFESTATION OR INFECTION BY A COUNTY PEST INSPECTOR, HE MAY REQUEST A HEARING ON THAT ISSUE BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THAT COUNTY WITHIN TEN DAYS AFTER RECEIVING NOTICE OF INFESTATION OR INFECTION. SAID HEARING SHALL BE CONDUCTED PURSUANT TO SECTION 24-4-105, C.R.S. 1973, AND ANY OWNER REQUESTING SUCH A HEARING SHALL NOT BE REQUIRED TO DESTROY SUCH PESTS PENDING THE OUTCOME OF THE HEARING. IF THE COMMISSIONER OR BOARD OF COUNTY COMMISSIONERS CONDUCTING THE HEARING FINDS THERE IS INFESTATION OR INFECTION AS ALLEGED IN THE WRIT-

TEN NOTICE, IT SHALL ORDER APPROPRIATE RELIEF. ANY RELIEF ORDERED PURSUANT TO THIS ARTICLE shall be at the expense of the owner, and with no recompense therefor, but the cost to any one owner of property involved shall not exceed two hundred fifty FIVE HUNDRED dollars ANNUALLY.

(2) The department of agriculture, or a WHEN NECESSARY TO ENFORCE THE PROVISIONS OF THIS ARTICLE, A STATE OR county pest inspector, when it is deemed necessary and it has been authorized by the board of county commissioners of the county, after notice OF INFESTATION OR INFECTION to the owner or person in charge, PURSUANT TO SUBSECTION (1) OF THIS SECTION, shall spray, fumigate, disinfect, CUT, or otherwise treat trees, shrubbery, potatoes, plants, buildings, or other property. SUCH TREATMENT SHALL NOT BE COMMENCED BY A STATE OR 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, 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 such cost and expense, it shall make demand in writing upon such owner, or person in charge, in person or by mail addressed to him at his last known place of residence, for reimbursement to the county for the amount of such cost and expense. Such written notice shall inform such person OWNER that he may 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 such claims. If the claim, as originally demanded by the board or as adjusted upon such hearing, is not paid at the end of such period, the board shall certify such claim to the county treasurer who shall add the amount thereof to any taxes due, or to become due, from the debtor or owner, and, if not paid in due course, the same shall be collected by the county treasurer as delinquent taxes. All such accounts when collected shall be paid into the general fund of the county.

(4) IF THE BOARD OF COUNTY COMMISSIONERS FINDS THAT 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 WHICH HAS NOT BEEN TREATED OR IS NOT UNDER CONTROL, THE LANDOWNER SHALL NOT BE CHARGED FOR ANY RELIEF ORDERED PURSUANT TO THIS SECTION.

Section 6. 35-4-109, Colorado Revised Statutes 1973, is amended to read:

**35-4-109. Emergency disposal of pest-ridden material.** Any shipment of any plant material in or into Colorado when found or deemed liable PROBABLE to carry pests if in violation of any Colorado or federal quarantine BY A STATE PEST INSPECTOR, may be placed in isolation or

quarantine by the department of agriculture and shall be completely under its control. The owner or bailee shall abate such pests as directed by and to the satisfaction of the department of agriculture unless the latter determines it advisable to destroy the pest-ridden articles and appurtenances thereto or orders the same removed from the state within forty-eight hours at the expense of the owner and without recompense therefor in either case. OR REMOVE SUCH SHIPMENT FROM THE STATE WITHIN FORTY-EIGHT HOURS. Articles not removed from the state as ordered shall be destroyed by the STATE PEST inspector after forty-eight hours with no recompense therefor to the owner. ANY OWNER OR BAILEE CLAIMING THAT HIS SHIPMENT OF PLANT MATERIAL WAS DESTROYED OR ORDERED REMOVED FROM THE STATE BY A STATE PEST INSPECTOR 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 A STATE PEST INSPECTOR WITHOUT REASONABLE JUSTIFICATION AND THAT SAID STATE PEST INSPECTOR ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, THE DEPARTMENT OF AGRICULTURE SHALL REIMBURSE SUCH OWNER OR BAILEE FOR ANY LOSSES SUFFERED.

Section 7. 35-4-111, Colorado Revised Statutes 1973, is amended to read:

**35-4-111. Inspections - certificates - remedial measures.** Should demand arise for or circumstances necessitate ANY OWNER OR BAILEE REQUEST AN inspection of crops, plant material, or other articles or premises for pests, the department of agriculture is authorized to SHALL provide such inspection AND ISSUE A CERTIFICATE SETTING FORTH THE FACTS OF SAID INSPECTION and to SHALL charge the owner OR BAILEE adequate fees therefor to cover THE cost of such inspections AND CERTIFICATES. The department of agriculture has authority to impound and prohibit movement, sale, or disposal of such crops, plant material, or other articles until such fees are paid. but The release of such crops, plant material, or other articles shall also be dependent on meeting all inspection requirements.

Section 8. 35-4-112, Colorado Revised Statutes 1973, is amended to read:

**35-4-112. Right of entry.** Persons EXCEPT AS PROVIDED IN SECTION 35-4-107, STATE OR COUNTY PEST INSPECTORS employed under this article, together with such help as they may need in the prosecution of their work, are authorized, 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. or any other law administered by the department of agriculture.

Section 9. 35-4-113, Colorado Revised Statutes 1973, is amended to read:

**35-4-113. Federal agreements.** The department of agriculture OR THE BOARD OF COUNTY COMMISSIONERS OF ANY COUNTY WHICH EMPLOYS A COUNTY PEST INSPECTOR may enter into agreements with 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. or any other law administered by the department of agriculture.

Section 10. 35-4-114, Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**35-4-114. Penalties.** Except for section 35-4-107, 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 department of agriculture or a board of county commissioners may refer such cases to the county 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.

Section 11. **Repeal.** 35-4-115, Colorado Revised Statutes 1973, is repealed.

Section 12. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 27, 1978