

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0029.01 Kate Meyer

SENATE BILL 10-072

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Vigil,

Senate Committees

Agriculture and Natural Resources
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CREATION OF THE "COLORADO SEED POTATO ACT",**
102 **AND MAKING AN APPROPRIATION THEREFOR.**

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://www.leg.state.co.us/billsummaries>.)

The bill creates the "Colorado Seed Potato Act" (act), which requires all potato growers who plant potatoes in lots of one or more acres to plant seed potatoes that have been certified by a certifying authority.

"Seed potatoes" are defined in the bill as vegetatively propagated tubers used or intended to be used for potato production. The bill defines

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

the term "certifying authority" as Colorado state university or, for seed potatoes grown outside of Colorado, the duly authorized seed certifying agency of the state, territory, or country of origin. The bill requires imported certified seed potatoes to meet certain minimum standards for certification.

The bill creates the seed potato advisory committee (advisory committee), and describes the composition, terms, and duties of the advisory committee. The bill specifies a sunset date of September 1, 2019, for the advisory committee.

The bill also contains the following exceptions to the certification requirement:

- ! A potato grower may plant uncertified and untested seed potatoes until January 1, 2012, if the seed potatoes were grown as part of that grower's operations.
- ! A potato grower may plant uncertified seed potatoes that are one generation from his or her own certified or qualified seed potatoes and have been grown by that grower. Any grower who wishes to plant seed potatoes that are more than one year out from certification must submit the seed stock to the state certifying agency for testing and approval.
- ! In any year in which the supply of certified or exempt seed potato stock is insufficient, as determined by the commissioner of agriculture (commissioner), growers may apply for permission to plant uncertified seed potatoes pursuant to specified conditions of approval.

Potato growers must comply with certain record-keeping requirements. An independent auditor must perform annual records reviews on 10% of potato growers, selected randomly according to a method established by the commissioner. The commissioner shall select a qualified department of agriculture employee or an independent auditor upon recommendation from the advisory committee.

The bill authorizes the commissioner to investigate and promulgate rules to enforce and administer the act. Civil penalties for violations of the act are specified.

The bill also creates the seed potato cash fund, consisting of moneys from fees and civil fines paid under the act.

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

2 **SECTION 1.** 2-3-1203 (3), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **2-3-1203. Sunset review of advisory committees.** (3) The

1 following dates are the dates for which the statutory authorization for the
2 designated advisory committees is scheduled for repeal:

3 (gg) SEPTEMBER 1, 2019: THE SEED POTATO ADVISORY
4 COMMITTEE CREATED IN SECTION 35-27.3-107, C.R.S.

5 **SECTION 2.** 24-34-104 (50.5), Colorado Revised Statutes, is
6 amended to read:

7 **24-34-104. General assembly review of regulatory agencies
8 and functions for termination, continuation, or reestablishment.**

9 (50.5) The following agencies, functions, or both, shall terminate on
10 September 1, 2019:

11 (a) The Colorado public utilities commission, created by article 2
12 of title 40, C.R.S.;

13 (b) THE FUNCTIONS OF THE COMMISSIONER OF THE DEPARTMENT
14 OF AGRICULTURE RELATED TO SEED POTATOES UNDER ARTICLE 27.3 OF
15 TITLE 35, C.R.S.

16 **SECTION 3.** 35-27-103 (23), Colorado Revised Statutes, is
17 amended to read:

18 **35-27-103. Definitions.** As used in this article, unless the context
19 otherwise requires:

20 (23) "Seed" means agricultural, vegetable, ornamental, shrub, or
21 tree seed for propagation. THE TERM "SEED" DOES NOT INCLUDE TUBERS
22 THAT ARE PLANTED OR USED, OR INTENDED TO BE PLANTED OR USED, AS
23 SEED POTATOES AND ARE THUS REGULATED UNDER THE "COLORADO SEED
24 POTATO ACT", ARTICLE 27.3 OF THIS TITLE.

25 **SECTION 4.** The introductory portion to 35-27-104 (1), Colorado
26 Revised Statutes, is amended, and the said 35-27-104 (1) is further
27 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

1 (4) "COMMISSIONER" MEANS THE COMMISSIONER OF
2 AGRICULTURE.

3 (5) "COMMUNITY DISEASE" MEANS A DISEASE OR PEST THAT CAN
4 MOVE FROM FIELD TO FIELD DURING THE POTATO GROWING SEASON AND
5 IS NOT CONFINED TO ANY SINGLE POTATO GROWER'S OPERATION. THE
6 TERM INCLUDES LATE BLIGHT AND POTATO VIRUS Y.

7 (6) "CULTIVAR" MEANS UNIQUE VARIETY.

8 (7) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

9 (8) "DISTRIBUTE" MEANS TO OFFER FOR SALE, SELL, BARTER,
10 DELIVER, SUPPLY, FURNISH, OR OTHERWISE PROVIDE SEED POTATOES.

11 (9) "GENERATION" MEANS ONE FULL SEASONAL GROWTH CYCLE,
12 INCLUDING PLANTING, GROWING, HARVESTING, AND STORING.

13 (10) "HUNDREDWEIGHT" MEANS A UNIT OF WEIGHT EQUAL TO ONE
14 HUNDRED POUNDS.

15 (11) "OFFICIAL CONTROL", WITH RESPECT TO A CROP OF POTATOES,
16 MEANS THAT THE SEED POTATOES USED TO PRODUCE THE CROP HAVE BEEN
17 DERIVED FROM CERTIFIED SEED, QUALIFIED SEED, OR TESTED,
18 DOCUMENTED SOURCES AND FOUND TO BE WITHIN THE LEGAL LIMITS FOR
19 ALL DISEASES AND PESTS OF CONCERN.

20 (12) "PARENT" MEANS ONE PRIOR GENERATION REMOVED.

21 (13) "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP,
22 ASSOCIATION, CORPORATION, AGENCY, OR ORGANIZED GROUP OF PERSONS.

23 (14) "PROGENY" MEANS THE OFFSPRING OR DAUGHTER TUBERS OF
24 A POTATO PLANT.

25 (15) "QUALIFIED", WITH RESPECT TO SEED POTATOES, MEANS THAT
26 THE SEED POTATOES ARE DERIVED FROM CERTIFIED SEED POTATOES, HAVE
27 BEEN INSPECTED BY A CERTIFYING AUTHORITY AND MEET ALL APPLICABLE

1 LAWS AND RULES FOR SEED POTATO CERTIFICATION INCLUDING OFFICIAL
2 DISEASE CONTROL STANDARDS, AND ARE THUS ELIGIBLE FOR PLANTING AS
3 SEED.

4 (16) "QUARANTINE" MEANS A QUARANTINE IMPOSED BY THE
5 COMMISSIONER PURSUANT TO SECTION 35-4-110.

6 (17) "SEED POTATOES" MEANS VEGETATIVELY PROPAGATED
7 TUBERS USED OR INTENDED TO BE USED FOR POTATO PRODUCTION.

8 (18) "STATE NATIONAL HARMONIZATION PROGRAM" MEANS THE
9 STATE NATIONAL HARMONIZATION PROGRAM FOR SEED POTATOES
10 DEVELOPED BY THE PLANT PROTECTION AND QUARANTINE PROGRAM OF
11 THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE IN THE UNITED
12 STATES DEPARTMENT OF AGRICULTURE.

13 **35-27.3-104. Distribution of seed potatoes - rules.** (1) ALL
14 SEED POTATOES DISTRIBUTED BY ANY PERSON IN LOTS THAT ARE
15 SUFFICIENT TO PLANT ONE OR MORE ACRES IN COLORADO AS DETERMINED
16 BY THE COMMISSIONER BY RULE SHALL BE CERTIFIED BY A CERTIFYING
17 AUTHORITY.

18 (2) ALL LOTS OF SEED POTATOES SUBJECT TO SUBSECTION (1) OF
19 THIS SECTION SHALL, AT THE TIME OF DISTRIBUTION, BE ACCOMPANIED BY
20 THE FOLLOWING DOCUMENTS:

21 (a) AN OFFICIAL TAG OR BULK CERTIFICATE INDICATING THEIR
22 STATUS AS CERTIFIED SEED POTATOES;

23 (b) A CERTIFICATE OF SHIPPING POINT INSPECTION;

24 (c) A NORTH AMERICAN PLANT HEALTH CERTIFICATE ISSUED BY
25 THE CERTIFYING AUTHORITY FOR SEED POTATOES IMPORTED FROM
26 OUTSIDE COLORADO; AND

27 (d) ANY OTHER DOCUMENTATION NECESSARY TO PROVIDE THE

1 INFORMATION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

2 (3) THE DOCUMENTS DESCRIBED IN SUBSECTION (2) OF THIS
3 SECTION SHALL PROVIDE THE FOLLOWING:

4 (a) A DESCRIPTION OF THE GRADE OF THE SEED POTATOES;

5 (b) THE FINDINGS OF FIELD INSPECTIONS AND POSTHARVEST
6 INSPECTIONS CONDUCTED ON EACH LOT OF SEED POTATOES, INCLUDING
7 THE NAME AND AMOUNT OF ANY DISEASES OBSERVED;

8 (c) THE GENERATION OF SEED POTATOES; AND

9 (d) EVIDENCE THAT THE SEED POTATOES WERE TAGGED, AND, IF
10 IMPORTED FROM OUTSIDE COLORADO, PACKED AND SEALED, UNDER THE
11 CERTIFICATION STANDARDS OF THE STATE, TERRITORY, OR COUNTRY IN
12 WHICH THEY WERE GROWN.

13 **35-27.3-105. Minimum standards for planting seed potatoes**

14 **- scope - qualified seed potatoes - rules.** (1) (a) EXCEPT AS OTHERWISE
15 PERMITTED UNDER THIS SECTION, NO SEED POTATOES IN LOTS THAT ARE
16 SUFFICIENT TO PLANT ONE OR MORE ACRES AS DETERMINED BY THE
17 COMMISSIONER BY RULE SHALL BE PLANTED UNLESS THE POTATOES HAVE
18 BEEN CERTIFIED.

19 (b) SEED POTATOES IMPORTED TO COLORADO SHALL MEET THE
20 MINIMUM STANDARDS FOR CERTIFIED SEED SET FORTH IN THE STATE
21 NATIONAL HARMONIZATION PROGRAM AND IN ANY ACTIVE APPLICABLE
22 QUARANTINE.

23 (2) (a) A POTATO GROWER IN COLORADO SHALL BE ALLOWED TO
24 PLANT UNCERTIFIED POTATOES IF:

25 (I) THE POTATOES WERE GROWN AND STORED AS PART OF THAT
26 GROWER'S FARMING OPERATIONS; AND

27 (II) THE UNCERTIFIED POTATOES ARE NO MORE THAN ONE

1 GENERATION FROM CERTIFIED PARENT POTATOES OR QUALIFIED PARENT
2 POTATOES.

3 (b) A POTATO GROWER WHO PLANTS UNCERTIFIED POTATOES
4 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) MAY PLANT
5 PROGENY FROM THAT SEED IN ADDITIONAL YEARS IF, IN EACH ADDITIONAL
6 YEAR, THE GROWER SUBMITS THE SEED STOCK TO THE CERTIFYING
7 AUTHORITY OF COLORADO FOR TESTING AND THE CERTIFYING AUTHORITY
8 OF COLORADO APPROVES THE SEED STOCK FOR PLANTING. THE
9 CERTIFYING AUTHORITY OF COLORADO SHALL APPROVE THE SEED STOCK
10 IF IT MEETS THE STANDARDS FOR SUCH STOCK AS ESTABLISHED BY THE
11 COMMISSIONER BY RULE.

12 (3) IN ANY YEAR THAT THE COMMISSIONER, AFTER CONSULTING
13 WITH THE ADVISORY COMMITTEE, DETERMINES THAT THERE IS AN
14 INSUFFICIENT VOLUME OF ANY CULTIVAR OF CERTIFIED SEED POTATOES
15 AND SEED POTATOES MEETING THE REQUIREMENTS OF SUBSECTION (2) OF
16 THIS SECTION, POTATO GROWERS MAY APPLY TO THE ADVISORY
17 COMMITTEE FOR PERMISSION TO PLANT UNCERTIFIED SEED POTATOES.
18 UPON RECOMMENDATION FROM THE ADVISORY COMMITTEE, THE
19 COMMISSIONER MAY GRANT APPLYING GROWERS PERMISSION TO PLANT
20 UNCERTIFIED COLORADO-GROWN SEED POTATOES. ANY SUCH PERMISSION
21 SHALL BE VALID FOR ONLY THAT GROWING SEASON. IN NO EVENT SHALL
22 ANY SEED POTATOES BE PLANTED WHEN BACTERIAL RING ROT, LATE
23 BLIGHT, OR AN UNACCEPTABLE LEVEL OF COMMUNITY DISEASES IS
24 PRESENT IN THE SEED POTATOES.

25 (4) PRIOR TO JANUARY 1, 2012, A COLORADO POTATO GROWER
26 MAY PLANT UNCERTIFIED AND UNTESTED SEED POTATOES IF THE SEED
27 POTATOES HAVE BEEN GROWN AS PART OF THAT GROWER'S FARMING

1 OPERATIONS.

2 **35-27.3-106. Record-keeping requirements - annual record**

3 **reviews.** (1) EACH PERSON GROWING POTATOES IN THIS STATE IN LOTS
4 OF ONE ACRE OR GREATER SHALL KEEP AND MAINTAIN RECORDS, BY
5 CULTIVAR AND BY FIELD, OF THE HUNDREDWEIGHT OF POTATO CULTIVAR
6 OR CULTIVARS PLANTED PER FIELD. THE RECORDS SHALL CONTAIN THE
7 INFORMATION REQUIRED FOR AN INDEPENDENT RECORDS REVIEW
8 CONDUCTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS
9 SECTION. GROWERS SHALL MAINTAIN THE RECORDS FOR A PERIOD OF AT
10 LEAST TWO YEARS AT THE GROWER'S BUSINESS ADDRESS.

11 (2) (a) THE COMMISSIONER SHALL, UPON RECOMMENDATION FROM
12 THE ADVISORY COMMITTEE, SELECT A QUALIFIED DEPARTMENT EMPLOYEE
13 OR INDEPENDENT AUDITOR TO PERFORM A RECORDS REVIEW ON AT LEAST
14 TEN PERCENT OF POTATO GROWERS SUBJECT TO THIS ARTICLE ONCE EVERY
15 SEED POTATO CROP CYCLE. THE COMMISSIONER SHALL DETERMINE A
16 METHOD FOR THE ANNUAL RANDOM SELECTION OF GROWERS. THE AREA
17 COMMITTEE FOR AREA NO. 2, ESTABLISHED IN THE MARKETING ORDER
18 REGULATING THE HANDLING OF POTATOES GROWN IN THE STATE OF
19 COLORADO, AS AMENDED, ISSUED PURSUANT TO THE "COLORADO
20 AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF THIS TITLE,
21 SHALL PAY THE ACTUAL COSTS OF SUCH RECORDS REVIEWS.

22 (b) A RECORDS REVIEW PERFORMED PURSUANT TO THIS SECTION
23 SHALL VERIFY RECORDS THAT TRACE BACK THE GROWER'S POTATOES,
24 INCLUDING RECORDS THAT EVIDENCE THE FOLLOWING:

25 (I) ACREAGE PLANTED BY CULTIVAR; AND

26 (II) HUNDREDWEIGHT AND SOURCE OF THE SEED USED TO PLANT
27 THE ACREAGE, WITH VERIFIABLE DOCUMENTS RELATED TO:

1 (A) FOR SEED POTATOES PURCHASED, THE DOCUMENTS DESCRIBED
2 IN SECTION 35-27.3-104 (2) AND (3); OR

3 (B) FOR SEED POTATOES PLANTED PURSUANT TO SECTION
4 35-27.3-105 (2), THE TESTING HISTORY AND SEED POTATOES USED TO
5 REPLANT THE GROWER'S OWN OPERATIONS.

6 (3) IF THE INDEPENDENT AUDITOR WHO CONDUCTED THE RECORDS
7 REVIEW BELIEVES A VIOLATION OF THIS SECTION HAS OCCURRED, HE OR
8 SHE SHALL NOTIFY THE COMMISSIONER. THE COMMISSIONER SHALL THEN
9 INVESTIGATE THE ALLEGED VIOLATION ACCORDING TO SECTION
10 35-27.3-109.

11 **35-27.3-107. Advisory committee - created - members - terms**
12 **- duties - sunset review - repeal.** (1) (a) THERE IS HEREBY CREATED THE
13 SEED POTATO ADVISORY COMMITTEE.

14 (b) (I) THE ADVISORY COMMITTEE SHALL CONSIST OF NINE
15 MEMBERS APPOINTED BY THE COMMISSIONER AS FOLLOWS:

16 (A) FOUR POTATO GROWERS WHO DO NOT GROW SEED POTATOES
17 AND WHOSE OPERATIONS ARE LOCATED IN AREA NO. 2, ESTABLISHED IN
18 THE MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN
19 IN THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE
20 "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF
21 THIS TITLE;

22 (B) ONE POTATO GROWER WHO DOES NOT GROW SEED POTATOES
23 AND WHOSE OPERATION IS LOCATED IN AREA NO. 3, ESTABLISHED IN THE
24 MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN
25 THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE
26 "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF
27 THIS TITLE;

1 (C) TWO MEMBERS OF THE COLORADO CERTIFIED POTATO
2 GROWERS' ASSOCIATION, OR ITS SUCCESSOR ORGANIZATION, ONE OF WHOM
3 SHALL BE THE SITTING PRESIDENT OF THAT ASSOCIATION;

4 (D) ONE PERSON EMPLOYED BY COLORADO STATE UNIVERSITY;
5 AND

6 (E) ONE PERSON EMPLOYED BY THE DEPARTMENT.

7 (II) WHENEVER POSSIBLE, THE ADVISORY COMMITTEE MEMBERS
8 APPOINTED UNDER SUB-SUBPARAGRAPHS (D) AND (E) OF SUBPARAGRAPH
9 (I) OF THIS PARAGRAPH (b) SHALL HAVE KNOWLEDGE OF OR EXPERIENCE
10 WITH SEED POTATOES.

11 (2) (a) EXCEPT AS PROVIDED IN PARAGRAPHS (b) AND (c) OF THIS
12 SUBSECTION (2), MEMBERS APPOINTED TO THE ADVISORY COMMITTEE
13 SHALL SERVE FOR TERMS OF THREE YEARS. MEMBERS MAY BE APPOINTED
14 FOR AN UNLIMITED NUMBER OF TERMS; EXCEPT THAT NO MEMBER SHALL
15 SERVE MORE THAN TWO TERMS CONSECUTIVELY.

16 (b) THE INITIAL APPOINTMENTS OF TWO OF THE ADVISORY
17 COMMITTEE MEMBERS DESCRIBED IN SUB-SUBPARAGRAPH (A) OF
18 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS
19 SECTION, ONE OF THE MEMBERS DESCRIBED IN SUB-SUBPARAGRAPH (C) OF
20 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS
21 SECTION, AND THE MEMBER DESCRIBED IN SUB-SUBPARAGRAPH (E) OF
22 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS
23 SECTION, SHALL BE FOR TWO YEARS. THEREAFTER, EACH APPOINTMENT
24 TO THE ADVISORY COMMITTEE SHALL BE FOR A TERM OF THREE YEARS.

25 (c) IN THE EVENT OF A VACANCY ON THE ADVISORY COMMITTEE
26 PRIOR TO THE COMPLETION OF A MEMBER'S FULL TERM, THE
27 COMMISSIONER SHALL APPOINT A PERSON TO COMPLETE THE REMAINDER

1 OF THAT TERM. THE PERSON SO APPOINTED SHALL REPRESENT THE SAME
2 GROUP AS THE MEMBER HE OR SHE IS REPLACING, AS SET FORTH IN
3 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

4 (3) THE MEMBERS SHALL RECEIVE NO COMPENSATION OR
5 REIMBURSEMENT FROM THE STATE OF COLORADO OR THE DEPARTMENT
6 FOR ANY EXPENSES INCURRED IN THE EXERCISE OF THEIR DUTIES.

7 (4) THE ADVISORY COMMITTEE SHALL ADVISE THE COMMISSIONER
8 IN ESTABLISHING RULES UNDER THIS ARTICLE, ASSIST IN THE
9 DETERMINATION OF AVAILABILITY OF POTATOES, RECOMMEND WHETHER
10 TO GRANT PERMISSION TO PLANT UNCERTIFIED SEED POTATOES,
11 RECOMMEND INDEPENDENT AUDITORS TO PERFORM RECORDS REVIEWS
12 PURSUANT TO SECTION 35-27.3-106 (2), AND CONSULT WITH THE
13 COMMISSIONER REGARDING THE ADMINISTRATION AND ENFORCEMENT OF
14 THIS ARTICLE.

15 (5) (a) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2019.

16 (b) PRIOR TO SAID REPEAL, THE ADVISORY COMMITTEE APPOINTED
17 PURSUANT TO THIS SECTION SHALL BE REVIEWED PURSUANT TO SECTION
18 2-3-1203, C.R.S.

19 **35-27.3-108. Powers and duties of the commissioner - rules.**

20 (1) IN ADDITION TO ANY OTHER DUTIES IN THIS ARTICLE, THE
21 COMMISSIONER SHALL:

22 (a) ADMINISTER AND ENFORCE THIS ARTICLE;

23 (b) ADOPT RULES NECESSARY FOR THE ADMINISTRATION AND
24 ENFORCEMENT OF THIS ARTICLE, INCLUDING RULES THAT:

25 (I) ESTABLISH REQUIREMENTS FOR COMPLIANCE VERIFICATION,
26 TESTING, SAMPLING, AND INSPECTION;

27 (II) SPECIFY QUALITY OR DISEASE STANDARDS FOR POTATOES;

1 (III) ALLOW FOR THE RANDOM SELECTION OF TEN PERCENT OF
2 POTATO GROWERS SUBJECT TO THE ANNUAL RECORDS REVIEW REQUIRED
3 UNDER SECTION 35-27.3-106 (2);

4 (IV) SET STANDARDS FOR UNCERTIFIED SEED POTATO STOCK THAT
5 MAY BE PLANTED PURSUANT TO SECTION 35-27.3-105 (2) (b);

6 (V) ESTABLISH METHODS FOR DETERMINING THAT BACTERIAL RING
7 ROT OR AN UNACCEPTABLE LEVEL OF COMMUNITY DISEASES IS NOT
8 PRESENT IN SEED POTATOES PLANTED UNDER SECTION 35-27.3-105 (3);

9 (VI) DESIGNATE THE TYPE OF RECORDS THAT MUST BE KEPT BY
10 GROWERS; AND

11 (VII) SET A SCHEDULE OF FEES FOR SERVICES PERFORMED BY THE
12 DEPARTMENT, WHICH FEES SHALL BE BILLED ON A PRO RATA BASIS TO THE
13 AREA COMMITTEES FOR AREAS NO. 2 AND NO. 3, ESTABLISHED IN THE
14 MARKETING ORDER REGULATING THE HANDLING OF POTATOES GROWN IN
15 THE STATE OF COLORADO, AS AMENDED, ISSUED PURSUANT TO THE
16 "COLORADO AGRICULTURAL MARKETING ACT OF 1939", ARTICLE 28 OF
17 THIS TITLE.

18 **35-27.3-109. Inspections - access - investigations - subpoenas.**

19 (1) THE COMMISSIONER, UPON THE COMMISSIONER'S OWN MOTION OR
20 UPON THE RECOMMENDATION OF AN INDEPENDENT AUDITOR PURSUANT TO
21 SECTION 35-27.3-106 (2), MAY MAKE AN INVESTIGATION NECESSARY TO
22 DETERMINE COMPLIANCE WITH THIS ARTICLE.

23 (2) (a) FOR INSPECTION PURPOSES PURSUANT TO SUBSECTION (1)
24 OF THIS SECTION, THE COMMISSIONER SHALL HAVE FREE AND UNIMPEDED
25 ACCESS DURING REGULAR BUSINESS HOURS, EITHER UPON CONSENT OF THE
26 OWNER OR UPON OBTAINING AN ADMINISTRATIVE SEARCH WARRANT, TO
27 INSPECT ANY RECORDS REQUIRED TO BE KEPT PURSUANT TO THIS ARTICLE.

1 (b) THE COMMISSIONER MAY MAKE COPIES OF ANY RECORDS
2 INSPECTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2).

3 (3) (a) THE COMMISSIONER HAS FULL AUTHORITY TO ADMINISTER
4 OATHS; TAKE STATEMENTS; ISSUE SUBPOENAS TO COMPEL THE
5 APPEARANCE OF WITNESSES BEFORE THE COMMISSIONER; ISSUE
6 SUBPOENAS FOR THE PRODUCTION OF ANY BOOKS, MEMORANDA, PAPERS,
7 OR OTHER DOCUMENTS, ARTICLES, OR INSTRUMENTS; AND COMPEL
8 DISCLOSURE BY WITNESSES OF ALL FACTS KNOWN TO SUCH WITNESSES
9 RELATIVE TO ANY MATTER UNDER INVESTIGATION.

10 (b) UPON FAILURE OR REFUSAL OF ANY PERSON TO OBEY A
11 SUBPOENA ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3),
12 THE COMMISSIONER MAY PETITION THE DISTRICT COURT TO ENTER AN
13 ORDER COMPELLING SUCH PERSON TO COMPLY WITH THE SUBPOENA.

14 (c) FAILURE TO OBEY AN ORDER OF THE COURT ENTERED
15 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) MAY BE
16 PUNISHABLE AS CONTEMPT OF COURT.

17 (4) COMPLAINTS OF RECORD MADE TO THE COMMISSIONER AND
18 THE RESULTS OF THE COMMISSIONER'S INVESTIGATIONS SHALL BE CLOSED
19 TO PUBLIC INSPECTION, EXCEPT TO THE PERSON IN INTEREST AS DEFINED
20 IN SECTION 24-72-202 (4), C.R.S., OR PURSUANT TO COURT ORDER,
21 DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR NOTICE OF
22 HEARING AND CHARGES ARE SERVED.

23 **35-27.3-110. Violations - civil penalties.** (1) (a) EXCEPT AS
24 OTHERWISE PROVIDED IN THIS SECTION, THE COMMISSIONER MAY IMPOSE
25 A CIVIL PENALTY ON ANY PERSON WHO VIOLATES ANY PROVISION OF THIS
26 ARTICLE OR ANY RULE ADOPTED UNDER THIS ARTICLE. SUCH PENALTY
27 SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS PER

1 VIOLATION.

2 (b) ANY PERSON WHO PLANTS OR DISTRIBUTES POTATOES IN
3 VIOLATION OF THIS ARTICLE OR ANY RULE ADOPTED PURSUANT TO THIS
4 ARTICLE IS SUBJECT TO A CIVIL PENALTY, AS DETERMINED BY THE
5 COMMISSIONER. THE PENALTY IMPOSED BY THE COMMISSIONER SHALL BE
6 AT LEAST TWENTY DOLLARS PER ACRE BUT SHALL NOT EXCEED ONE
7 HUNDRED DOLLARS PER ACRE PER VIOLATION.

8 (c) ANY PERSON WHO FAILS TO MAINTAIN COMPLETE AND
9 ACCURATE RECORDS PURSUANT TO SECTION 35-27.3-106 OR RULES
10 PROMULGATED PURSUANT TO SECTION 35-27.3-108 (1) (b) (VII) IS
11 SUBJECT TO A CIVIL PENALTY OF AT LEAST FIVE HUNDRED DOLLARS BUT
12 NO MORE THAN ONE THOUSAND DOLLARS, AS DETERMINED BY THE
13 COMMISSIONER.

14 (2) NO CIVIL PENALTY SHALL BE IMPOSED UNLESS THE PERSON
15 CHARGED IS GIVEN NOTICE AND AN OPPORTUNITY FOR A HEARING
16 PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

17 (3) IF THE COMMISSIONER IS UNABLE TO COLLECT A CIVIL PENALTY
18 OR IF ANY PERSON FAILS TO PAY ALL OR A SET PORTION OF SUCH CIVIL
19 PENALTY, THE COMMISSIONER MAY BRING SUIT IN ANY COURT OF
20 COMPETENT JURISDICTION TO RECOVER THE PENALTY PLUS COSTS AND
21 ATTORNEY FEES.

22 (4) MONEYS COLLECTED FROM ANY CIVIL PENALTY IMPOSED
23 UNDER THIS ARTICLE SHALL BE PAID TO THE STATE TREASURER, WHO
24 SHALL CREDIT THE SAME TO THE SEED POTATO CASH FUND CREATED IN
25 SECTION 35-27.3-111.

26 **35-27.3-111. Seed potato cash fund - created.** ALL FEES AND
27 CIVIL FINES COLLECTED PURSUANT TO THIS ARTICLE SHALL BE

1 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
2 TO THE SEED POTATO CASH FUND, WHICH FUND IS HEREBY CREATED. ALL
3 MONEYS CREDITED TO THE FUND AND ALL INTEREST EARNED ON THE
4 INVESTMENT OF MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND
5 SHALL NOT BE TRANSFERRED OR CREDITED TO THE GENERAL FUND OR TO
6 ANY OTHER FUND EXCEPT AS DIRECTED BY THE GENERAL ASSEMBLY
7 ACTING BY BILL. IN ADDITION TO ANY APPROPRIATION FROM THE GENERAL
8 FUND, THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS
9 FROM THE SEED POTATO CASH FUND TO THE DEPARTMENT TO CARRY OUT
10 THE PURPOSES OF THIS ARTICLE.

11 **35-27.3-112. Repeal of article - termination of functions.** THIS
12 ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2019. PRIOR TO SUCH
13 REPEAL, THE CERTIFICATION FUNCTIONS OF THE COMMISSIONER SHALL BE
14 REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

15 **SECTION 6. Appropriation.** (1) In addition to any other
16 appropriation, there is hereby appropriated, out of any moneys in the seed
17 potato cash fund created in section 35-27.3-111, Colorado Revised
18 Statutes, not otherwise appropriated, to the department of agriculture, for
19 allocation to the agricultural services division, for implementation of the
20 Colorado seed potato act, for the fiscal year beginning July 1, 2010 , the
21 sum of two thousand nine hundred fifty-nine dollars (\$2,959) cash funds,
22 or so much thereof as may be necessary, for the implementation of this
23 act.

24 (2) In addition to any other appropriation, there is hereby
25 appropriated to the department of law, for the fiscal year beginning July
26 1, 2010 , the sum of nine hundred five dollars (\$905), or so much thereof
27 as may be necessary, for the provision of legal services to the department

1 of agriculture related to the implementation of this act. Said sum shall be
2 from reappropriated funds received from the department of agriculture
3 out of the appropriation made in subsection (1) of this section.

4 **SECTION 7. Specified effective date - applicability.** This act
5 shall take effect July 1, 2010, and shall apply to seed potatoes distributed
6 or planted on or after said date.

7 **SECTION 8. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.