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STATE OF COLORADO

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DRAFT

LLS NO. 20-0509.01 Jennifer Berman x3286

SUNSET BILL

Sunset Process - House Rural Affairs and Agriculture Committee

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BILL TOPIC: "Sunset Colorado Seed Act"
DEADLINES: Finalize by: JAN 27, 2020 File by: JAN 29, 2020

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE "COLORADO SEED ACT",**
102 **AND, IN CONNECTION THEREWITH, IMPLEMENTING THE**
103 **RECOMMENDATIONS CONTAINED IN THE 2019 SUNSET REPORT**
104 **BY THE DEPARTMENT OF REGULATORY AGENCIES.**

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/>.)

Sunset Process - House Rural Affairs and Agriculture Committee. The bill implements the recommendations of the department of regulatory agencies' sunset review and report on the registration

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

functions of the commissioner of agriculture (commissioner) regarding the "Colorado Seed Act" by:

- Continuing the commissioner's registration functions for 11 years, until 2031 (*recommendation 1, sections 1 and 2* of the bill);
- Repealing the mandatory arbitration process that a seed buyer must engage in before proceeding against a seed seller in court (*recommendation 2, sections 3 through 6*);
- Repealing the statutory provisions related exclusively to seed beans (*recommendation 3, sections 7 through 9*);
- Requiring all monetary civil penalties to be credited to the general fund (*recommendation 4, sections 10 and 11*);
- Repealing the statutory fee caps for registration and allowing the commissioner to establish registration fees by rule (*recommendation 5, section 12*);
- Removing the fee discount afforded to registrants with respect to registering a second and any additional locations (*recommendation 6, section 13*);
- Authorizing the commissioner to establish a registration renewal schedule by rule and repealing language that made each registration effective for one year from March 1 through the last day in February, regardless of when the registration was approved (*recommendation 7, section 14*); and
- Removing obsolete language requiring money to be transferred between funds in 2009 (*recommendation 8; section 15*).

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

2 ***Recommendation 1***

3 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
4 (18)(a)(III); and **add** (32) as follows:

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (18) (a) The following agencies, functions, or both,
8 are scheduled to repeal on July 1, 2020:

9 (III) ~~The registration functions of the commissioner of agriculture~~
10 ~~specified in article 27 of title 35, C.R.S.;~~

1 (32) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE
2 SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2031:

3 (I) THE REGISTRATION FUNCTIONS OF THE COMMISSIONER OF
4 AGRICULTURE SPECIFIED IN ARTICLE 27 OF TITLE 35.

5 (b) THIS SUBSECTION (32) IS REPEALED, EFFECTIVE SEPTEMBER 1,
6 2033.

7 **SECTION 2.** In Colorado Revised Statutes, **amend** 35-27-125 as
8 follows:

9 **35-27-125. Repeal of article - termination of functions.** This
10 ~~article~~ ARTICLE 27 is repealed, effective July 1, 2020. ~~Prior to such~~
11 SEPTEMBER 1, 2031. BEFORE THE repeal, the registration functions of the
12 commissioner of agriculture shall be reviewed as provided for in ARE
13 SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

14 ***Recommendation 2***

15 **SECTION 3.** In Colorado Revised Statutes, **repeal** 35-27-122 as
16 follows:

17 **35-27-122. Arbitration council - procedures.** ~~(1) (a) The~~
18 commissioner shall appoint an arbitration council for each case composed
19 of three members. The following shall each recommend one member:

20 ~~(I) (Deleted by amendment, L. 2007, p. 643, § 6, effective April~~
21 ~~26, 2007.)~~

22 ~~(II) The dean of the college of agriculture, Colorado state~~
23 ~~university;~~

24 ~~(III) The president of the Colorado seedsmen's association; and~~

25 ~~(IV) The president of any organization of farmers in the state as~~
26 ~~the commissioner determines to be appropriate.~~

27 ~~(V) (Deleted by amendment, L. 2007, p. 643, § 6, effective April~~

1 ~~26, 2007.)~~

2 ~~(b) (Deleted by amendment, L. 2007, p. 643, § 6, effective April~~
3 ~~26, 2007.)~~

4 ~~(c) The council shall elect a chair from its membership. The chair~~
5 ~~shall conduct the deliberations of the council and shall direct all of its~~
6 ~~other activities. The commissioner shall serve as staff to the council and~~
7 ~~shall keep accurate records of all such deliberations and shall perform~~
8 ~~such other duties for the council as the chair directs.~~

9 ~~(d) The council shall conduct the arbitration for the case.~~

10 ~~(2)(a) A buyer of seed shall request arbitration by filing a verified~~
11 ~~complaint with the commissioner together with a filing fee of ten dollars;~~
12 ~~except that the commissioner by rule or as otherwise provided by law may~~
13 ~~reduce the amount of the fee if necessary pursuant to section 24-75-402~~
14 ~~(3), C.R.S., to reduce the uncommitted reserves of the fund to which all~~
15 ~~or any portion of the fee is credited. After the uncommitted reserves of~~
16 ~~the fund are sufficiently reduced, the commissioner by rule or as~~
17 ~~otherwise provided by law may increase the amount of the fee as provided~~
18 ~~in section 24-75-402 (4), C.R.S. The commissioner shall serve a copy of~~
19 ~~the complaint upon the seller of such seed by certified mail or personal~~
20 ~~service.~~

21 ~~(b) Within five working days after receipt of a copy of the~~
22 ~~complaint, the seller shall file a verified answer to the complaint with the~~
23 ~~commissioner, who shall serve a copy of the answer upon the buyer by~~
24 ~~certified mail.~~

25 ~~(c) The commissioner shall investigate the allegations in the~~
26 ~~complaint. In conducting such investigation, the commissioner may~~
27 ~~employ the services of any expert that he or she deems appropriate. Upon~~

1 ~~completion of the investigation, the commissioner shall refer the~~
2 ~~complaint to the council along with a report of the results of the~~
3 ~~investigation:~~

4 ~~(d) Upon referral of a complaint for investigation, the council~~
5 ~~shall conduct an arbitration hearing in accordance with the uniform~~
6 ~~arbitration act, part 2 of article 22 of title 13, C.R.S., and shall report its~~
7 ~~findings and recommendations to the commissioner in an arbitration~~
8 ~~report. Such arbitration report shall be filed with the commissioner within~~
9 ~~sixty days after the conclusion of the arbitration hearing or a later date if~~
10 ~~the parties agree:~~

11 ~~(e) The arbitration report of the council shall include findings of~~
12 ~~fact, conclusions of law, and recommendations as to costs, if any,~~
13 ~~including but not limited to costs of any investigation conducted by the~~
14 ~~commissioner:~~

15 ~~(f) In the course of his or her investigation, the commissioner~~
16 ~~may:~~

17 ~~(I) Examine the buyer, the seller, and any other person who may~~
18 ~~have relevant information;~~

19 ~~(II) Grow a representative sample of the seed through the facilities~~
20 ~~of Colorado state university to production; and~~

21 ~~(III) Conduct any other investigative activities that he or she~~
22 ~~deems necessary to obtain information relevant to the allegations in the~~
23 ~~complaint pursuant to his or her authority in section 35-27-115:~~

24 ~~(g) (Deleted by amendment, L. 2007, p. 643, § 6, effective April~~
25 ~~26, 2007.)~~

26 ~~(h) The members of the council shall receive no compensation for~~
27 ~~the performance of their duties but shall be reimbursed for actual and~~

1 necessary expenses.

2 ~~(i) After the council has filed its arbitration report with the~~
3 ~~commissioner, the commissioner shall promptly transmit such arbitration~~
4 ~~report by certified mail to all parties.~~

5 **SECTION 4.** In Colorado Revised Statutes, **repeal** 35-27-123 as
6 follows:

7 **35-27-123. Requirement and effect of arbitration.** ~~(1)(a) If a~~
8 ~~buyer of seed suffers damage because such seed does not produce or~~
9 ~~perform in conformance with the labeling or warranty or because of~~
10 ~~negligence by the seller, the buyer shall submit such buyer's claim to~~
11 ~~arbitration pursuant to this section and section 35-27-122. Such submittal~~
12 ~~shall be a prerequisite to such buyer's right to maintain any legal action~~
13 ~~against the seller of such seed. Any statute of limitations shall be tolled~~
14 ~~until ten days after the filing of the arbitration report.~~

15 ~~(b) No claim may be asserted as a counterclaim or defense in any~~
16 ~~action brought pursuant to paragraph (a) of this subsection (1) by a seller~~
17 ~~against a buyer, if the buyer has not submitted such claim to arbitration.~~
18 ~~After the buyer files a written notice of intention to assert a claim as a~~
19 ~~counterclaim or defense in such action, accompanied by a copy of the~~
20 ~~buyer's complaint filed under section 35-27-122 (2)(a), the statute of~~
21 ~~limitations shall be tolled for such claim until ten days after the filing of~~
22 ~~the arbitration report pursuant to section 35-27-122 (2)(d).~~

23 ~~(2) (a) Every label required pursuant to section 35-27-105 shall~~
24 ~~include clear language that arbitration is required for claims arising out~~
25 ~~of the sale of seed; except that arbitration shall not be required if the~~
26 ~~notice required pursuant to this paragraph (a) is not included.~~

27 ~~(b) A notice in the following form or equivalent language shall be~~

1 sufficient to comply with paragraph (a) of this subsection (2):

2 NOTICE OF REQUIRED ARBITRATION
3 UNDER THE "COLORADO SEED ACT", ARTICLE 27
4 OF TITLE 35, COLORADO REVISED STATUTES,
5 ARBITRATION IS REQUIRED AS A PREREQUISITE
6 TO CERTAIN LEGAL ACTIONS, COUNTERCLAIMS,
7 OR DEFENSES AGAINST A SELLER OF SEED.
8 INFORMATION ABOUT THIS REQUIREMENT MAY
9 BE OBTAINED FROM THE COLORADO
10 COMMISSIONER OF AGRICULTURE.

11 (3) (a) ~~An arbitration report filed pursuant to section 35-27-122~~
12 ~~(2)(d) shall be binding upon all parties to the extent agreed upon in any~~
13 ~~contract governing the sale which was the subject of the arbitration.~~

14 (b) ~~In the absence of an agreement to be bound by arbitration, a~~
15 ~~buyer may bring legal action against a seller or assert such claim as a~~
16 ~~counterclaim or defense in any action brought by the seller at any time~~
17 ~~after the arbitration report has been filed.~~

18 (c) ~~During litigation involving a complaint which has been~~
19 ~~arbitrated pursuant to this section, any party who was subject to such~~
20 ~~arbitration may introduce the arbitration report as evidence of the facts~~
21 ~~found in the report if the party against whom the report is offered was~~
22 ~~also subject to the arbitration. The court may give such weight to the~~
23 ~~council's findings and conclusions of law and recommendations as to~~
24 ~~damages and costs as the court sees fit based upon all the evidence before~~
25 ~~the court. The court may also take into account any finding of the~~
26 ~~arbitration council of any failure of any party to cooperate in such~~
27 ~~arbitration proceedings, including any finding as to the effect of delay in~~

1 ~~filing the arbitration claim or answer upon the ability of the arbitration~~
2 ~~council to determine the facts of the case.~~

3 **SECTION 5.** In Colorado Revised Statutes, 35-27-105, **repeal** (2)
4 as follows:

5 **35-27-105. Label requirements.** (2) ~~All labels made pursuant to~~
6 ~~this section shall include arbitration information required pursuant to~~
7 ~~section 35-27-123.~~

8 **SECTION 6.** In Colorado Revised Statutes, 35-27-118, **repeal**
9 (1)(b)(II) as follows:

10 **35-27-118. Civil penalties.** (1) (b) (II) ~~The commissioner may~~
11 ~~request advice from the arbitration council in assessing a fine pursuant to~~
12 ~~this section.~~

13 *Recommendation 3*

14 **SECTION 7.** In Colorado Revised Statutes, **repeal** 35-27-109 as
15 follows:

16 **35-27-109. Seed beans - approval.** (1) (a) ~~For seed beans, the~~
17 ~~commissioner shall establish tolerances of seed-borne pathogens,~~
18 ~~inspection procedures and standards, and approval procedures for those~~
19 ~~seed beans which are found to be within allowable tolerances.~~

20 ~~(b) The commissioner may designate those areas of the state in~~
21 ~~which the provisions of this section shall apply.~~

22 ~~(2) (a) The commissioner shall establish reasonable fees for~~
23 ~~inspections performed pursuant to this section.~~

24 ~~(b) Fees established pursuant to this subsection (2) shall be:~~

25 ~~(I) Sufficient to offset the actual direct and indirect costs incurred~~
26 ~~by the commissioner in administering the provisions of this section; and~~

27 ~~(II) Paid by the person selling, bartering, or distributing seed~~

1 beans.

2 ~~(3) The commissioner may, by contractual agreement, retain~~
3 ~~qualified persons to act as agents of the commissioner for the~~
4 ~~performance of inspections pursuant to subsection (1) of this section.~~

5 **SECTION 8.** In Colorado Revised Statutes, 35-27-113, **amend**
6 (6) introductory portion; and **repeal** (6)(a)(I) as follows:

7 **35-27-113. Prohibitions.** (6) A person commits a class 1
8 misdemeanor and shall be punished as provided in section 18-1.3-501
9 C.R.S., when ~~such~~ THE person:

10 (a) Sells, offers or exposes for sale, barter, or distributes within
11 the state:

12 (I) ~~Any seed beans which have not been approved in accordance~~
13 ~~with section 35-27-109;~~

14 **SECTION 9.** In Colorado Revised Statutes, 35-27-114, **amend**
15 (1) introductory portion and (1)(b) introductory portion; and **repeal**
16 (1)(b)(III) as follows:

17 **35-27-114. Powers and duties of commissioner.** (1) In addition
18 to any other duties in this ~~article~~ ARTICLE 27, the commissioner shall:

19 (b) Adopt rules ~~and regulations~~ necessary for the administration
20 and enforcement of this ~~article~~ ARTICLE 27 including ~~but not limited to~~
21 rules ~~and regulations which~~ THAT:

22 (III) ~~Establish procedures and standards including defining~~
23 ~~allowable tolerances to be used for the inspection and approval of seed~~
24 ~~beans that are within allowable tolerances pursuant to section 35-27-109;~~

25 ***Recommendation 4***

26 **SECTION 10.** In Colorado Revised Statutes, 35-27-118, **amend**
27 (1)(a) as follows:

1 **35-27-118. Civil penalties.** (1) (a) Any person who violates any
2 ~~provision of this article~~ ARTICLE 27 or any rule ~~or regulation~~ adopted
3 pursuant to this ~~article~~ ARTICLE 27 is subject to a civil penalty, as
4 determined by the commissioner. THE COMMISSIONER SHALL TRANSMIT
5 ALL MONEY COLLECTED FROM CIVIL PENALTIES TO THE STATE TREASURER,
6 WHO SHALL CREDIT THE MONEY TO THE GENERAL FUND.

7 **SECTION 11.** In Colorado Revised Statutes, **amend** 35-27-124
8 as follows:

9 **35-27-124. Fees credited to plant health, pest control, and**
10 **environmental protection cash fund.** All fees ~~and civil fines~~ collected
11 pursuant to this ~~article~~ ARTICLE 27 shall be transmitted to the state
12 treasurer, who shall credit the ~~same~~ FEES to the plant health, pest control,
13 and environmental protection cash fund created in section 35-1-106.3.
14 The fees ~~and fines~~ imposed by this ~~article~~ shall ARTICLE 27 supplement
15 any general fund appropriation appropriated for the purposes of this
16 ~~article~~ ARTICLE 27. Within sixty days after July 1, 2009, the unexpended
17 and unencumbered balance of the seed cash fund, as that fund existed
18 prior to July 1, 2009, shall be transferred to the plant health, pest control,
19 and environmental protection cash fund.

20 ***Recommendation 5***

21 **SECTION 12.** In Colorado Revised Statutes, 35-27-111, **amend**
22 (4)(a) as follows:

23 **35-27-111. Registration of custom seed conditioners, farmer**
24 **seed labelers, retail seed dealers, and seed labelers - form - fees -**
25 **renewal - rules.** (4) (a) The commissioner shall establish registration
26 fees ~~except that registration fees for:~~ BY RULE.

27 ~~(f) Custom seed conditioners and seed labelers shall not exceed~~

1 ~~three hundred dollars; and~~

2 ~~(H) Farmer seed labelers and retail seed dealers shall not exceed~~
3 ~~seventy-five dollars.~~

4 ***Recommendation 6***

5 **SECTION 13.** In Colorado Revised Statutes, 35-27-111, **repeal**
6 **(4)(b)** as follows:

7 **35-27-111. Registration of custom seed conditioners, farmer**
8 **seed labelers, retail seed dealers, and seed labelers - form - fees -**
9 **renewal.** ~~(4) (b) The commissioner shall establish fees for each~~
10 ~~additional separate registration location according to the class of~~
11 ~~registrant; except that the fee for:~~

12 ~~(I) Custom seed conditioners and seed labelers shall not exceed~~
13 ~~seventy-five dollars for each such additional separate location; and~~

14 ~~(H) Farmer seed labelers and retail seed dealers shall not exceed~~
15 ~~twenty-five dollars for each such additional separate location.~~

16 ***Recommendation 7***

17 **SECTION 14.** In Colorado Revised Statutes, 35-27-111, **amend**
18 **(2)(b)** as follows:

19 **35-27-111. Registration of custom seed conditioners, farmer**
20 **seed labelers, retail seed dealers, and seed labelers - form - fees -**
21 **renewal - rules.** ~~(2) (b) (I) Each registration completed pursuant to this~~
22 ~~section shall be IS effective on the first day of the month following the~~
23 ~~month it was submitted to the department and shall expire on the last day~~
24 ~~of the month twelve months from the date it became effective FOR UP TO~~
25 ~~ONE YEAR, SUBJECT TO A RENEWAL SCHEDULE ESTABLISHED BY THE~~
26 ~~COMMISSIONER BY RULE.~~

27 ~~(II) Notwithstanding subparagraph (I) of this paragraph (b);~~

1 registrations renewed between March 1, 2000, and February 1, 2001, shall
2 expire February 28, 2001. Effective March 1, 2001, all registrations shall
3 be effective March 1 of each year and shall expire the last day of
4 February of each year.

5 ***Recommendation 8***

6 **SECTION 15.** In Colorado Revised Statutes, **amend** 35-27-124
7 as follows:

8 **35-27-124. Fees credited to plant health, pest control, and**
9 **environmental protection cash fund.** All fees and civil fines collected
10 pursuant to this ~~article~~ ARTICLE 27 shall be transmitted to the state
11 treasurer, who shall credit the same to the plant health, pest control, and
12 environmental protection cash fund created in section 35-1-106.3. The
13 fees and fines imposed by this ~~article~~ shall ARTICLE 27 supplement any
14 general fund appropriation appropriated for the purposes of this ~~article~~.
15 ~~Within sixty days after July 1, 2009, the unexpended and unencumbered~~
16 ~~balance of the seed cash fund, as that fund existed prior to July 1, 2009,~~
17 ~~shall be transferred to the plant health, pest control, and environmental~~
18 ~~protection cash fund~~ ARTICLE 27.

19 **SECTION 16. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, or safety. <{***Because the***
22 ***"Colorado Seed Act" is subject to repeal on July 1, 2020, the bill should***
23 ***have a safety clause to avoid the entire "Colorado Seed Act" repealing***
24 ***before this bill goes into effect.***>