HOUSE BILL 19-1014

CONCERNING THE RETAIL FOOD ESTABLISHMENT INSPECTION PROCESS, AND, IN CONNECTION THEREWITH, DETAILING THE PROCESS FOR THE SUSPENSION OF A RETAIL FOOD ESTABLISHMENT'S LICENSE OR CERTIFICATION OF LICENSE.

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.)

With respect to retail food establishment inspections, the bill:

- Clarifies the situations that can create an "imminent health hazard";
Repeals language that separated violations found during inspections into critical and noncritical violations;
Clarifies that it is unlawful to continue to operate a retail food establishment that has had its license or certificate of license suspended;
Aligns the requirements for the communication of inspection results with the determination of whether violations are sufficient to require a reinspection;
Removes the minimum amount for a civil penalty and establishes the maximum amount as $1,000;
Provides that a retail food establishment that is found to be in violation during 4 out of 5 inspections during a 12-month period is subject to a civil penalty not to exceed $1,000 and license suspension; and
Adds unpaid license fees to the list of items on which a retail food establishment can spend an assessed penalty.

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

SECTION 1. In Colorado Revised Statutes, 25-4-1602, amend (6.5) as follows:

25-4-1602. Definitions. As used in this part 16, unless the context otherwise requires:

(a) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries or illnesses and the nature, severity, and duration of the anticipated injury or illness.

(b) "IMMINENT HEALTH HAZARD" INCLUDES AN EMERGENCY SUCH AS A FIRE, FLOOD, EXTENDED INTERRUPTION OF ELECTRICAL OR WATER SERVICE, SEWAGE BACKUP, MISUSE OF POISONOUS OR TOXIC MATERIALS, ONSET OF AN APPARENT FOOD-BORNE ILLNESS OUTBREAK, GROSSLY
UNSANITARY OCCURRENCE OR CONDITION, OR OTHER CIRCUMSTANCE
THAT MAY ENDANGER PUBLIC HEALTH.

SECTION 2. In Colorado Revised Statutes, 25-4-1604, amend
(1) introductory portion and (1)(a) as follows:

25-4-1604. Powers and duties of department - rules. (1) The department shall have the following powers and duties:
(a) To grant or refuse licenses and certificates of license pursuant to section 25-4-1606, or to suspend or revoke licenses and certificates of license pursuant to section 25-4-1609 25-4-1611.5;

SECTION 3. In Colorado Revised Statutes, 25-4-1606, amend
(2.5) as follows:

25-4-1606. Licensure - exception. (2.5) If a critical violation or a noncritical violation that is significant in nature is documented, the applicant is found to be in violation of section 25-4-1610 (1)(c) during a preoperational inspection, and the retail food establishment applicant is unable to correct the violation while the inspector is on site, follow-up activities, a reinspection shall be conducted for the purpose of granting a license or certificate of license.

SECTION 4. In Colorado Revised Statutes, 25-4-1607.7, add (3) as follows:

25-4-1607.7. Health inspection results - development of a uniform system - communication to the public. (3) After January 1, 2020, the system developed and approved by the department to communicate inspection results may only be revised through the triennial stakeholder process required by section 25-4-1607.5.

SECTION 5. In Colorado Revised Statutes, 25-4-1608, amend
(1) as follows:
25-4-1608. **Food protection cash fund - creation.** (1) Fees collected by the department pursuant to section 25-4-1607 AND PENALTIES COLLECTED PURSUANT TO SECTION 25-4-1611.5 shall be transmitted to the state treasurer, who shall credit the same to the food protection cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate the moneys in the fund to the department for the payment of salaries and expenses necessary for the administration of this part 16.

SECTION 6. In Colorado Revised Statutes, **repeal** 25-4-1609 as follows:

25-4-1609. **Disciplinary actions - closure - revocation - suspension - review.** (1) The department or a county or district board of health may, on its own motion or complaint and after an investigation and hearing at which the licensee is afforded an opportunity to be heard, suspend or revoke a license or certificate of license for any violation of this part 16, any rule adopted pursuant to this part 16, or any of the terms, conditions, or provisions of such license or certificate of license. A written notice of suspension or revocation, as well as any required notice of hearing, shall be sent to the licensee by certified mail, or by one or more other methods that assure receipt, at the address contained in the license or certificate of license:

(2) Except in cases of closure due to an imminent health hazard, proceedings for the revocation or suspension of a license or certificate of license may not be commenced until after the imposition of the penalties prescribed by section 25-4-1611. The maximum period of suspension is one month. When a license or certificate of license is suspended or revoked, no part of the fees paid for a license may be returned to the
licensee:

(2.5) The department or a county or district board of health may issue a cease-and-desist administrative order if a person or licensee has been issued a civil penalty in accordance with section 25-4-1611 (1) and remains in noncompliance:

(3) Any suspension or revocation of a license or certificate of license may be reviewed by any court of general jurisdiction having jurisdiction over the retail food establishment for which the application for license or certificate of license was made. If such court determines that such suspension or revocation was without good cause, it shall order the department to reinstate such license or certificate of license:

SECTION 7. In Colorado Revised Statutes, 25-4-1610, amend (1)(b) as follows:

25-4-1610. Unlawful acts. (1) It is unlawful for:

(b) Any person to operate a retail food establishment without a valid license or certificate of license from the department or a county or district board of public health agency having jurisdiction over such establishment, including continuing to operate a retail food establishment that has had its license or certificate of license suspended in accordance with section 25-4-1611.5;

SECTION 8. In Colorado Revised Statutes, repeal 25-4-1611 as follows:

25-4-1611. Violation - penalties. (1) If the department or a county or district board of health finds that a licensee or other person operating a retail food establishment was provided with written notification of a violation of section 25-4-1610 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) and was given a reasonable time to comply but remained
in noncompliance, such person shall be subject to a civil penalty of not
less than two hundred fifty dollars and not more than one thousand
dollars, assessed by the department or a county or district board of health.

(2) (a) Upon a finding by the department or a county or district
board of health that a retail food establishment is in violation of this part
16 or the rules promulgated pursuant to this part 16, and that the violation
is sufficient to permit the department or a county or district board of
health to establish a date and time for correction, the department or
county or district board of health shall, in writing, advise the licensee or
other person operating the establishment of the violation, provide the
person with a reasonable time to comply, and conduct a follow-up
inspection. If, at the time of the follow-up inspection, the establishment
is found to be in violation of the same provisions, the department or a
county or district board of health shall issue the person a written
notification of noncompliance, provide the person with a reasonable time
to comply, and conduct a second follow-up inspection.

(b) (I) If, at a second follow-up inspection, a retail food
establishment is found to be in compliance with the same provisions as
were cited in the written notification issued pursuant to paragraph (a) of
this subsection (2), the department or a county or district board of health
shall advise the licensee or other person operating the establishment that
noncompliance with such provisions at the next regular inspection shall
result in the issuance of a second written notification of noncompliance.

(II) If, at a second follow-up inspection, a retail food
establishment is found to be in violation of the same provisions as were
cited in the written notification of noncompliance issued pursuant to
paragraph (a) of this subsection (2), the department or a county or district
board of health shall issue a second written notification of noncompliance, advising the licensee or other person operating the establishment of the violation and potential civil penalties that may be assessed if the noncompliance continues. The department or a county or district board of health shall conduct a third follow-up inspection:

(e) (I) If, at a third follow-up inspection, a retail food establishment is found to be in compliance with the same provisions as were cited in the second written notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars and shall advise the person operating the establishment in writing that future noncompliance with the cited provisions in the second notification of noncompliance shall result in the issuance of a third written notification of noncompliance and subject the establishment to an additional civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars:

(II) If, at a third follow-up inspection, a retail food establishment is found to be in violation of the same provisions as were cited in the second written notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than five hundred dollars nor more than one thousand dollars. When compliance with the provisions cited in the second written notification of noncompliance is obtained, the department or a county or district board of health shall notify the licensee or other person operating the establishment in writing that noncompliance with the cited provisions in the second notification of
noncompliance at the next regular inspection will result in the issuance
of a third written notification of noncompliance and may result in an
additional civil penalty of not less than five hundred dollars nor more than
one thousand dollars.

(3) A maximum of three civil penalties may be assessed against
a licensee or other person operating a retail food establishment in any
twelve-month period. Whenever a third civil penalty is assessed in a
twelve-month period, the department or a county or district board of
health may initiate proceedings to suspend or revoke the license of the
licensee pursuant to section 25-4-1609.

(4) Neither the department nor a county or district board of health
shall assess a civil penalty pursuant to this section if a disciplinary action
is pending against the same licensee under section 25-4-1609.

(5) (a) All penalties collected by the department pursuant to this
section shall be transmitted to the state treasurer, who shall credit the
same to the food protection cash fund created in section 25-4-1608.

(b) Penalties collected by a county or district board of health shall
be deposited in the appropriate county or district public health agency
fund in accordance with section 25-4-1608, and shall be used to pay
expenses related to the inspection of retail food establishments.

(6) To obtain compliance with this part 16, the department or a
county or district board of health may allow the owner of a retail food
establishment to use any assessed penalty fee to pay for employee training
or the cost of needed improvements to the establishment.

(7) In addition to the remedies provided in this part 16 and other
remedies provided by law, the department or a county or district board of
health is authorized to apply to the county or district court of the county
or district where a retail food establishment is located for a temporary or permanent injunction, and such court shall have jurisdiction to issue an injunction restraining any person from violating section 25-4-1610.

SECTION 9. In Colorado Revised Statutes, add 25-4-1611.5 as follows:

25-4-1611.5. Violations - penalties - review. (1) If the department or a county or district public health agency finds that a licensee or other person operating a retail food establishment was provided with written notification of a violation of section 25-4-1610 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) and was given a reasonable time to comply but remained in noncompliance, the person is subject to a civil penalty of not less than two hundred fifty dollars and not more than one thousand dollars, assessed by the department or county or district public health agency.

(2) (a) (I) Upon a finding by the department or a county or district public health agency that an establishment is in violation of section 25-4-1610 (1)(c), and that the violations are sufficient to require the department or county or district public health agency to conduct a reinspection, the department or county or district public health agency shall provide the establishment with a reasonable time to comply and conduct a reinspection.

(II) For the purposes of this subsection (2)(a), the determination of whether a violation of section 25-4-1610 (1)(c) is sufficient to require reinspection under this section shall be done in a manner consistent with the uniform system to
Communicate inspection results to the public developed in accordance with section 25-4-1607.7.

(b) If, at the time of the first reinspection, the establishment is in violation of section 25-4-1610 (1)(c) and the violations are sufficient to require reinspection, the department or county or district public health agency shall conduct a second reinspection after providing the establishment a reasonable time to comply.

(c) If, at the time of the second reinspection, the establishment remains in violation of section 25-4-1610 (1)(c) and the violations are sufficient to require reinspection, the department or county or district public health agency shall conduct a third reinspection after providing the establishment a reasonable time to comply.

(d) If, at a third reinspection, the establishment remains in violation of section 25-4-1610 (1)(c), the department or county or district public health agency may assess a civil penalty, not to exceed one thousand dollars, and may suspend the license of the licensee pursuant to this section.

(e) If an establishment is found to be in violation of section 25-4-1610 (1)(c) during four out of five inspections during a twelve-month period and the violations are sufficient to require reinspection, the department or county or district public health agency may assess a civil penalty, not to exceed one thousand dollars, and may suspend the license of the licensee pursuant to this section.

(3) A maximum of three civil penalties may be assessed
AGAINST A LICENSEE OR OTHER PERSON OPERATING AN ESTABLISHMENT IN ANY TWELVE-MONTH PERIOD. WHENEVER A THIRD CIVIL PENALTY IS ASSESSED IN A TWELVE-MONTH PERIOD, THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY MAY INITIATE PROCEEDINGS TO SUSPEND OR REVOKE THE LICENSE OF THE LICENSEE PURSUANT TO THIS SECTION.

(4) NEITHER THE DEPARTMENT NOR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL ASSESS A CIVIL PENALTY PURSUANT TO THIS SECTION IF A DISCIPLINARY ACTION IS PENDING AGAINST THE SAME LICENSEE UNDER THIS SECTION.

(5) (a) ALL PENALTIES COLLECTED BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE FOOD PROTECTION CASH FUND CREATED IN SECTION 25-4-1608.

(b) PENALTIES COLLECTED BY A COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL BE DEPOSITED IN THE APPROPRIATE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY FUND IN ACCORDANCE WITH SECTION 25-4-1608.

(6) TO OBTAIN COMPLIANCE WITH THIS PART 16, THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY MAY ALLOW THE OWNER OF AN ESTABLISHMENT TO USE ANY ASSESSED PENALTY FEE TO PAY FOR UNPAID LICENSE FEES, EMPLOYEE TRAINING, OR THE COST OF NEEDED IMPROVEMENTS TO THE ESTABLISHMENT.

(7) IN ADDITION TO THE REMEDIES PROVIDED IN THIS PART 16 AND OTHER REMEDIES PROVIDED BY LAW, THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY IS AUTHORIZED TO APPLY TO THE COUNTY OR DISTRICT COURT WITH JURISDICTION FOR THE COUNTY WHERE
AN ESTABLISHMENT IS LOCATED FOR A TEMPORARY OR PERMANENT
INJUNCTION, AND SUCH COURT SHALL HAVE JURISDICTION TO ISSUE AN
INJUNCTION RESTRAINING ANY PERSON FROM VIOLATING SECTION
25-4-1610.

(8) THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH
AGENCY MAY ISSUE A CEASE-AND-DESIST ADMINISTRATIVE ORDER IF A
PERSON OR LICENSEE HAS BEEN ISSUED A CIVIL PENALTY IN ACCORDANCE
WITH SUBSECTION (2) OF THIS SECTION AND REMAINS IN NONCOMPLIANCE.

(9) (a) THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH
AGENCY MAY SUSPEND OR REVOKE A LICENSE OR CERTIFICATE OF LICENSE
FOR ANY VIOLATION OF THIS PART 16, ANY RULE ADOPTED PURSUANT TO
THIS PART 16, OR ANY OF THE TERMS, CONDITIONS, OR PROVISIONS OF THE
LICENSE OR CERTIFICATE OF LICENSE IN ACCORDANCE WITH SECTION
24-4-104.

(b) EXCEPT AS PROVIDED IN SUBSECTION (9)(c) OF THIS SECTION,
THE SUSPENSION OF A LICENSE OR CERTIFICATE OF LICENSE MAY NOT
EXCEED THREE DAYS AND MAY COMMENCE ONLY:

(I) AFTER ALL REINSPECTIONS REQUIRED BY SUBSECTION (2) OF
THIS SECTION HAVE BEEN COMPLETED;

(II) IF THE LICENSEE REMAINS IN VIOLATION; AND

(III) AFTER THE LICENSEE HAS BEEN PROVIDED WRITTEN
NOTIFICATION OF THE GRIEVANCE PROCESS AVAILABLE PURSUANT TO
SECTION 25-4-1609.5.

(c) IN CASES OF IMMINENT HEALTH HAZARD, THE SUSPENSION OF
A LICENSE OR CERTIFICATE OF LICENSE MAY COMMENCE IMMEDIATELY.

(d) WHEN A LICENSE OR CERTIFICATE OF LICENSE IS SUSPENDED
UNDER THIS SUBSECTION (9), NO PART OF THE FEES PAID FOR A LICENSE
MAY BE RETURNED TO THE LICENSEEE.

(10) AN ESTABLISHMENT THAT HAS BEEN ISSUED A
CEASE-AND-DESIST ORDER OR HAD ITS LICENSE SUSPENDED OR REVOKED
IN ACCORDANCE WITH SUBSECTION (8) OR (9) OF THIS SECTION, AS
APPLICABLE, MAY NOT REINITIATE OPERATIONS WITHOUT THE PRIOR
APPROVAL OF THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH
AGENCY.

SECTION 10. Act subject to petition - effective date -
applicability. (1) This act takes effect January 1, 2020; except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within the ninety-day period after final adjournment of the general
assembly, then the act, item, section, or part will not take effect unless
approved by the people at the general election to be held in November
2020 and, in such case, will take effect on the date of the official
declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable
effective date of this act.