

CHAPTER 160

HEALTH AND ENVIRONMENT

SENATE BILL 07-153

BY SENATOR(S) Morse, and Boyd;
also REPRESENTATIVE(S) Gagliardi, Curry, Labuda, and Levy.

AN ACT**CONCERNING ENFORCEMENT OF CERTAIN ORDERS ISSUED BY A LOCAL HEALTH OFFICER.**

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

SECTION 1. Part 6 of article 1 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

25-1-611.5. Legal actions - adviser. THE DISTRICT ATTORNEY OF THE JUDICIAL DISTRICT IN WHICH A CAUSE OF ACTION ARISES SHALL BRING ANY CIVIL OR CRIMINAL ACTION REQUESTED BY A HEALTH OFFICER TO ABATE A CONDITION THAT EXISTS IN VIOLATION OF, TO RESTRAIN OR ENJOIN ANY ACTION THAT IS IN VIOLATION OF, OR TO PROSECUTE FOR THE VIOLATION OF OR FOR THE ENFORCEMENT OF, THE PUBLIC HEALTH LAWS AND THE STANDARDS, ORDERS, AND RULES OF THE LOCAL BOARD OF HEALTH. IF THE DISTRICT ATTORNEY FAILS TO ACT, THE HEALTH OFFICER MAY BRING ANY SUCH ACTION AND BE REPRESENTED BY SPECIAL COUNSEL EMPLOYED BY HIM OR HER WITH THE APPROVAL OF THE LOCAL BOARD. A LOCAL BOARD OF HEALTH MAY EMPLOY OR RETAIN AND COMPENSATE AN ATTORNEY TO BE THE LEGAL ADVISER OF THE LOCAL BOARD AND TO DEFEND ALL ACTIONS AND PROCEEDINGS BROUGHT AGAINST THE LOCAL BOARD, THE HEALTH OFFICER, AND ANY EMPLOYEE THEREOF.

25-1-611.7. Judicial review of decisions. (1) ANY PERSON AGGRIEVED AND AFFECTED BY A DECISION OF A LOCAL BOARD OR LOCAL HEALTH OFFICER ACTING UNDER THIS PART 6 SHALL BE ENTITLED TO JUDICIAL REVIEW BY FILING, IN THE DISTRICT COURT OF ANY COUNTY OVER WHICH SUCH LOCAL BOARD OR HEALTH OFFICER HAS JURISDICTION, AN APPROPRIATE ACTION REQUESTING SUCH REVIEW WITHIN NINETY DAYS AFTER THE PUBLIC ANNOUNCEMENT OF THE DECISION. THE COURT MAY MAKE ANY INTERESTED PERSON A PARTY TO THE ACTION. THE REVIEW

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

SHALL BE CONDUCTED BY THE COURT WITHOUT A JURY AND SHALL BE CONFINED TO THE RECORD, IF A COMPLETE RECORD IS PRESENTED. IN CASES OF ALLEGED IRREGULARITIES IN THE RECORD OR IN THE PROCEDURE BEFORE THE LOCAL BOARD OR HEALTH OFFICER, TESTIMONY MAY BE TAKEN IN THE COURT. THE COURT MAY AFFIRM THE DECISION OR MAY REVERSE OR MODIFY IT IF THE SUBSTANTIAL RIGHTS OF THE APPELLANT HAVE BEEN PREJUDICED AS A RESULT OF THE FINDINGS AND DECISION OF THE LOCAL BOARD OR HEALTH OFFICER BEING: CONTRARY TO CONSTITUTIONAL RIGHTS OR PRIVILEGES; IN EXCESS OF THE STATUTORY AUTHORITY OR JURISDICTION OF THE LOCAL BOARD OR HEALTH OFFICER; AFFECTED BY ANY ERROR OF LAW; MADE OR PROMULGATED UPON UNLAWFUL PROCEDURE; UNSUPPORTED BY SUBSTANTIAL EVIDENCE IN VIEW OF THE ENTIRE RECORD AS SUBMITTED; OR ARBITRARY OR CAPRICIOUS.

(2) ANY PARTY MAY HAVE A REVIEW OF THE FINAL JUDGMENT OR DECISION OF THE DISTRICT COURT BY APPELLATE REVIEW IN ACCORDANCE WITH THE LAW AND THE COLORADO APPELLATE RULES.

SECTION 2. The introductory portion to 25-1-650 (1) and 25-1-650 (1) (a), Colorado Revised Statutes, are amended to read:

25-1-650. Investigation by health officer. (1) When the health officer of any county, city, or village in this state receives reliable notice or has good reason to believe that there is, within the county, city, or village of which he OR SHE is the health officer, a case of smallpox, diphtheria, scarlet fever, or other communicable disease dangerous to the public health, it is the duty of the health officer, unless he OR SHE is instructed by the board of health of which he OR SHE is an executive officer to do otherwise:

(a) ~~To investigate the subject immediately and, in behalf of the board of health of which he is an executive officer, to order the prompt and thorough isolation of those sick or infected with such disease so long as there is danger of their communicating the disease to other persons~~ ESTABLISH, MAINTAIN, AND ENFORCE ISOLATION AND QUARANTINE, AND IN PURSUANCE THEREOF, AND FOR THIS PURPOSE ONLY, TO EXERCISE SUCH PHYSICAL CONTROL OVER PROPERTY AND OVER THE PERSONS OF THE PEOPLE WITHIN THE JURISDICTION OF THE LOCAL BOARD AS THE LOCAL BOARD OR HEALTH OFFICER MAY FIND NECESSARY FOR THE PROTECTION OF THE PUBLIC HEALTH;

SECTION 3. Part 6 of article 1 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

25-1-650.5. Unlawful acts - penalties. (1) IT IS UNLAWFUL FOR ANY PERSON, ASSOCIATION, OR CORPORATION OR ANY OFFICER THEREOF:

(a) TO WILLFULLY VIOLATE, DISOBEY, OR DISREGARD THE PROVISIONS OF THE PUBLIC HEALTH LAWS OR THE TERMS OF ANY LAWFUL NOTICE, ORDER, STANDARD, RULE, OR REGULATION ISSUED PURSUANT THERETO;

(b) TO FAIL TO MAKE OR FILE REPORTS REQUIRED BY LAW OR RULE OF THE LOCAL BOARD RELATING TO THE EXISTENCE OF DISEASE OR OTHER FACTS AND STATISTICS RELATING TO THE PUBLIC HEALTH;

(c) TO WILLFULLY AND FALSELY MAKE OR ALTER ANY CERTIFICATE OR CERTIFIED COPY THEREOF ISSUED PURSUANT TO THE PUBLIC HEALTH LAWS;

(d) TO WILLFULLY FAIL TO REMOVE FROM PRIVATE PROPERTY UNDER HIS OR HER CONTROL AT HIS OR HER OWN EXPENSE, WITHIN FORTY-EIGHT HOURS AFTER BEING ORDERED TO DO SO BY THE HEALTH AUTHORITIES, ANY NUISANCE, SOURCE OF FILTH, OR CAUSE OF SICKNESS WITHIN THE JURISDICTION AND CONTROL OF THE LOCAL BOARD, WHETHER SUCH PERSON, ASSOCIATION, OR CORPORATION IS THE OWNER, TENANT, OR OCCUPANT OF SUCH PRIVATE PROPERTY; EXCEPT THAT, WHEN ANY SUCH CONDITION IS DUE TO AN ACT OF GOD, IT SHALL BE REMOVED AT PUBLIC EXPENSE; OR

(e) TO PAY, GIVE, PRESENT, OR OTHERWISE CONVEY TO ANY OFFICER OR EMPLOYEE OF A LOCAL BOARD ANY GIFT, REMUNERATION, OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY, THAT SUCH OFFICER OR EMPLOYEE IS FORBIDDEN TO RECEIVE BY THIS PART 6.

(2) IT IS UNLAWFUL FOR ANY OFFICER OR EMPLOYEE OF ANY LOCAL BOARD OF HEALTH TO ACCEPT ANY GIFT, REMUNERATION, OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY, FOR AN INCORRECT OR IMPROPER PERFORMANCE OF THE DUTIES IMPOSED UPON HIM OR HER BY OR ON BEHALF OF SUCH LOCAL BOARD OR BY THIS PART 6.

(3) IT IS UNLAWFUL:

(a) FOR AN OFFICER OR EMPLOYEE OF A LOCAL BOARD TO PERFORM ANY WORK, LABOR, OR SERVICES OTHER THAN DUTIES ASSIGNED TO HIM OR HER BY OR ON BEHALF OF THE LOCAL BOARD DURING THE HOURS SUCH OFFICER OR EMPLOYEE IS REGULARLY EMPLOYED BY THE LOCAL BOARD OR TO PERFORM HIS OR HER DUTIES AS AN OFFICER OR EMPLOYEE OF A LOCAL BOARD UNDER ANY CONDITION OR ARRANGEMENT THAT INVOLVES A VIOLATION OF THIS OR ANY OTHER LAW OF THE STATE OF COLORADO;

(b) FOR AN OFFICER OR EMPLOYEE OF A LOCAL BOARD WHO IS EMPLOYED OR RETAINED ON THE BASIS OF REGULAR FULL-TIME EMPLOYMENT TO PERFORM ANY WORK, LABOR, OR SERVICES CONSISTING OF THE PRIVATE PRACTICE OF MEDICINE, VETERINARY SURGERY, SANITARY ENGINEERING, NURSING, OR ANY OTHER PROFESSION THAT IS OR MAY BE OF SPECIAL BENEFIT TO ANY PRIVATE PERSON, ASSOCIATION, OR CORPORATION AS DISTINGUISHED FROM THE LOCAL BOARD OR THE PUBLIC GENERALLY AND THAT IS PERFORMED BY SUCH OFFICER OR EMPLOYEE, DIRECTLY OR INDIRECTLY, FOR REMUNERATION, WHETHER DONE IN AN ACTIVE, ADVISORY, OR CONSULTATIVE CAPACITY OR PERFORMED WITHIN OR WITHOUT THE HOURS SUCH OFFICER OR EMPLOYEE IS REGULARLY EMPLOYED BY THE LOCAL BOARD.

(4) ANY PERSON, ASSOCIATION, OR CORPORATION, OR ANY OFFICER THEREOF, WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. IN ADDITION TO SUCH FINE AND IMPRISONMENT, HE OR SHE SHALL BE LIABLE FOR ANY EXPENSE INCURRED BY

THE LOCAL BOARD IN REMOVING ANY NUISANCE, SOURCE OF FILTH, OR CAUSE OF SICKNESS. CONVICTION UNDER THE PENALTY PROVISIONS OF THIS PART 6 OR ANY OTHER PUBLIC HEALTH LAW SHALL NOT RELIEVE A PERSON FROM ANY CIVIL ACTION IN DAMAGES THAT MAY EXIST FOR AN INJURY RESULTING FROM A VIOLATION OF THE PUBLIC HEALTH LAWS.

25-1-650.7. Mode of treatment inconsistent with religious creed or tenet. NOTHING IN THIS PART 6 AUTHORIZES A LOCAL BOARD OF HEALTH TO IMPOSE ON A PERSON ANY MODE OF TREATMENT INCONSISTENT WITH THE CREED OR TENETS OF ANY RELIGIOUS DENOMINATION OF WHICH HE OR SHE IS AN ADHERENT IF SANITARY AND QUARANTINE LAWS AND RULES ARE COMPLIED WITH BY ANY SUCH PERSON.

SECTION 4. Repeal. 25-1-633, Colorado Revised Statutes, is repealed as follows:

25-1-633. Quarantine regulations. ~~The said quarantine regulations, after notice has been given, shall be observed and complied with by all persons. Any person who violates any such regulations shall forfeit a sum not less than five dollars and not more than five hundred dollars.~~

SECTION 5. Repeal. 25-1-646, Colorado Revised Statutes, is repealed as follows:

25-1-646. Violation of regulations - penalty. ~~Any physician or other person in any of the hospitals or places of reception mentioned in this part 6 or attending, approaching, or concerned with the same who violates any of the regulations lawfully made in relation thereto, either with respect to himself or to his or any other person's property, upon conviction, shall be punished by a fine of not less than ten nor more than one hundred dollars for each offense.~~

SECTION 6. 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 20, 2007