

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0568.01 Yelana Love x2295

HOUSE BILL 19-1014

HOUSE SPONSORSHIP

Singer and Bird,

SENATE SPONSORSHIP

Ginal,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE RETAIL FOOD ESTABLISHMENT INSPECTION
102 PROCESS, AND, IN CONNECTION THEREWITH, DETAILING THE
103 PROCESS FOR THE SUSPENSION OF A RETAIL FOOD
104 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";

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

- ! 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-4-1602, **amend**
3 (6.5) as follows:

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

6 (6.5) (a) "Imminent health hazard" means a significant threat or
7 danger to health that is considered to exist when there is evidence
8 sufficient to show that a product, practice, circumstance, or event creates
9 a situation that requires immediate correction or cessation of operation to
10 prevent injury or illness based on the number of potential injuries or
11 illnesses and the nature, severity, and duration of the anticipated injury or
12 illness.

13 (b) "IMMINENT HEALTH HAZARD" INCLUDES AN EMERGENCY SUCH
14 AS A FIRE, FLOOD, EXTENDED INTERRUPTION OF ELECTRICAL OR WATER
15 SERVICE, SEWAGE BACKUP, MISUSE OF POISONOUS OR TOXIC MATERIALS,
16 ONSET OF AN APPARENT FOOD-BORNE ILLNESS OUTBREAK, GROSSLY

1 UNSANITARY OCCURRENCE OR CONDITION, OR OTHER CIRCUMSTANCE
2 THAT MAY ENDANGER PUBLIC HEALTH.

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

5 **25-4-1604. Powers and duties of department - rules.** (1) The
6 department ~~shall have~~ HAS the following powers and duties:

7 (a) To grant or refuse licenses and certificates of license pursuant
8 to section 25-4-1606, or to suspend or revoke licenses and certificates of
9 license pursuant to section ~~25-4-1609~~ 25-4-1611.5;

10 **SECTION 3.** In Colorado Revised Statutes, 25-4-1606, **amend**
11 (2.5) as follows:

12 **25-4-1606. Licensure - exception.** (2.5) If ~~a critical violation or~~
13 ~~a noncritical violation that is significant in nature is documented~~ THE
14 APPLICANT IS FOUND TO BE IN VIOLATION OF SECTION 25-4-1610 during a
15 preoperational inspection, and the ~~retail food establishment~~ APPLICANT is
16 unable to correct the violation while the inspector is on site, ~~follow-up~~
17 ~~activities~~ A REINSPECTION shall be conducted for the purpose of granting
18 a license or certificate of license.

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

21 **25-4-1607.7. Health inspection results - development of a**
22 **uniform system - communication to the public.** (3) AFTER JANUARY
23 1, 2020, THE SYSTEM DEVELOPED AND APPROVED BY THE DEPARTMENT TO
24 COMMUNICATE INSPECTION RESULTS MAY ONLY BE REVISED THROUGH THE
25 TRIENNIAL STAKEHOLDER PROCESS REQUIRED BY SECTION 25-4-1607.5.

26 **SECTION 5.** In Colorado Revised Statutes, 25-4-1608, **amend**
27 (1) as follows:

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

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

11 **25-4-1609. Disciplinary actions - closure - revocation -**
12 **suspension - review.** ~~(1) The department or a county or district board of~~
13 ~~health may, on its own motion or complaint and after an investigation and~~
14 ~~hearing at which the licensee is afforded an opportunity to be heard,~~
15 ~~suspend or revoke a license or certificate of license for any violation of~~
16 ~~this part 16, any rule adopted pursuant to this part 16, or any of the terms,~~
17 ~~conditions, or provisions of such license or certificate of license. A~~
18 ~~written notice of suspension or revocation, as well as any required notice~~
19 ~~of hearing, shall be sent to the licensee by certified mail, or by one or~~
20 ~~more other methods that assure receipt, at the address contained in the~~
21 ~~license or certificate of license.~~

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

1 licensee.

2 ~~(2.5) The department or a county or district board of health may~~
3 ~~issue a cease-and-desist administrative order if a person or licensee has~~
4 ~~been issued a civil penalty in accordance with section 25-4-1611 (1) and~~
5 ~~remains in noncompliance.~~

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

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

14 **25-4-1610. Unlawful acts.** (1) It is unlawful for:

15 (b) Any person to operate a retail food establishment without a
16 valid license or certificate of license from the department or a county or
17 district ~~board of~~ PUBLIC health AGENCY having jurisdiction over such
18 establishment, INCLUDING CONTINUING TO OPERATE A RETAIL FOOD
19 ESTABLISHMENT THAT HAS HAD ITS LICENSE OR CERTIFICATE OF LICENSE
20 SUSPENDED IN ACCORDANCE WITH SECTION 25-4-1611.5;

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

23 **25-4-1611. Violation - penalties.** ~~(1) If the department or a~~
24 ~~county or district board of health finds that a licensee or other person~~
25 ~~operating a retail food establishment was provided with written~~
26 ~~notification of a violation of section 25-4-1610 (1)(a), (1)(b), (1)(d),~~
27 ~~(1)(e), or (1)(f) and was given a reasonable time to comply but remained~~

1 in noncompliance, such person shall be subject to a civil penalty of not
2 less than two hundred fifty dollars and not more than one thousand
3 dollars, assessed by the department or a county or district board of health.

4 (2) (a) Upon a finding by the department or a county or district
5 board of health that a retail food establishment is in violation of this part
6 16 or the rules promulgated pursuant to this part 16, and that the violation
7 is sufficient to permit the department or a county or district board of
8 health to establish a date and time for correction, the department or
9 county or district board of health shall, in writing, advise the licensee or
10 other person operating the establishment of the violation, provide the
11 person with a reasonable time to comply, and conduct a follow-up
12 inspection. If, at the time of the follow-up inspection, the establishment
13 is found to be in violation of the same provisions, the department or a
14 county or district board of health shall issue the person a written
15 notification of noncompliance, provide the person with a reasonable time
16 to comply, and conduct a second follow-up inspection.

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

24 (II) If, at a second follow-up inspection, a retail food
25 establishment is found to be in violation of the same provisions as were
26 cited in the written notification of noncompliance issued pursuant to
27 paragraph (a) of this subsection (2), the department or a county or district

1 ~~board of health shall issue a second written notification of~~
2 ~~noncompliance, advising the licensee or other person operating the~~
3 ~~establishment of the violation and potential civil penalties that may be~~
4 ~~assessed if the noncompliance continues. The department or a county or~~
5 ~~district board of health shall conduct a third follow-up inspection.~~

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

18 ~~(H) If, at a third follow-up inspection, a retail food establishment~~
19 ~~is found to be in violation of the same provisions as were cited in the~~
20 ~~second written notification of noncompliance issued pursuant to~~
21 ~~paragraph (b) of this subsection (2), the department or a county or district~~
22 ~~board of health may assess a civil penalty of not less than five hundred~~
23 ~~dollars nor more than one thousand dollars. When compliance with the~~
24 ~~provisions cited in the second written notification of noncompliance is~~
25 ~~obtained, the department or a county or district board of health shall~~
26 ~~notify the licensee or other person operating the establishment in writing~~
27 ~~that noncompliance with the cited provisions in the second notification of~~

1 noncompliance at the next regular inspection will result in the issuance
2 of a third written notification of noncompliance and may result in an
3 additional civil penalty of not less than five hundred dollars nor more than
4 one thousand dollars.

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

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

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

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

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

25 (7) ~~In addition to the remedies provided in this part 16 and other~~
26 ~~remedies provided by law, the department or a county or district board of~~
27 ~~health is authorized to apply to the county or district court of the county~~

1 ~~or district where a retail food establishment is located for a temporary or~~
2 ~~permanent injunction, and such court shall have jurisdiction to issue an~~
3 ~~injunction restraining any person from violating section 25-4-1610.~~

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

6 **25-4-1611.5. Violations - penalties - review.** (1) IF THE
7 DEPARTMENT OR A COUNTY OR DISTRICT PUBLIC HEALTH AGENCY FINDS
8 THAT A LICENSEE OR OTHER PERSON OPERATING A RETAIL FOOD
9 ESTABLISHMENT WAS PROVIDED WITH WRITTEN NOTIFICATION OF A
10 VIOLATION OF SECTION 25-4-1610 (1)(a), (1)(b), (1)(d), (1)(e), OR (1)(f)
11 AND WAS GIVEN A REASONABLE TIME TO COMPLY BUT REMAINED IN
12 NONCOMPLIANCE, THE PERSON IS SUBJECT TO A CIVIL PENALTY OF NOT
13 LESS THAN TWO HUNDRED FIFTY DOLLARS AND NOT MORE THAN ONE
14 THOUSAND DOLLARS, ASSESSED BY THE DEPARTMENT OR COUNTY OR
15 DISTRICT PUBLIC HEALTH AGENCY.

16 (2) (a) (I) UPON A FINDING BY THE DEPARTMENT OR A COUNTY OR
17 DISTRICT PUBLIC HEALTH AGENCY THAT AN ESTABLISHMENT IS IN
18 VIOLATION OF SECTION 25-4-1610, AND THAT THE VIOLATIONS ARE
19 SUFFICIENT TO REQUIRE THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC
20 HEALTH AGENCY TO CONDUCT A REINSPECTION, THE DEPARTMENT OR
21 COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL PROVIDE THE
22 ESTABLISHMENT WITH A REASONABLE TIME TO COMPLY AND CONDUCT A
23 REINSPECTION.

24 (II) FOR THE PURPOSES OF THIS SUBSECTION (2)(a), THE
25 DETERMINATION OF WHETHER A VIOLATION OF SECTION 25-4-1610 IS
26 SUFFICIENT TO REQUIRE REINSPECTION UNDER THIS SECTION SHALL BE
27 DONE IN A MANNER CONSISTENT WITH THE UNIFORM SYSTEM TO

1 COMMUNICATE INSPECTION RESULTS TO THE PUBLIC DEVELOPED IN
2 ACCORDANCE WITH SECTION 25-4-1607.7.

3 (b) IF, AT THE TIME OF THE FIRST REINSPECTION, THE
4 ESTABLISHMENT IS IN VIOLATION OF SECTION 25-4-1610 AND THE
5 VIOLATIONS ARE SUFFICIENT TO REQUIRE REINSPECTION, THE DEPARTMENT
6 OR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL CONDUCT A
7 SECOND REINSPECTION AFTER PROVIDING THE ESTABLISHMENT A
8 REASONABLE TIME TO COMPLY.

9 (c) IF, AT THE TIME OF THE SECOND REINSPECTION, THE
10 ESTABLISHMENT REMAINS IN VIOLATION OF SECTION 25-4-1610 AND THE
11 VIOLATIONS ARE SUFFICIENT TO REQUIRE REINSPECTION, THE DEPARTMENT
12 OR COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL CONDUCT A
13 THIRD REINSPECTION AFTER PROVIDING THE ESTABLISHMENT A
14 REASONABLE TIME TO COMPLY.

15 (d) IF, AT A THIRD REINSPECTION, THE ESTABLISHMENT REMAINS
16 IN VIOLATION OF SECTION 25-4-1610, THE DEPARTMENT OR COUNTY OR
17 DISTRICT PUBLIC HEALTH AGENCY MAY ASSESS A CIVIL PENALTY, NOT TO
18 EXCEED ONE THOUSAND DOLLARS, AND MAY SUSPEND THE LICENSE OF THE
19 LICENSEE PURSUANT TO THIS SECTION.

20 (e) IF AN ESTABLISHMENT IS FOUND TO BE IN VIOLATION OF
21 SECTION 25-4-1610 DURING FOUR OUT OF FIVE INSPECTIONS DURING A
22 TWELVE-MONTH PERIOD AND THE VIOLATIONS ARE SUFFICIENT TO REQUIRE
23 REINSPECTION, THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH
24 AGENCY MAY ASSESS A CIVIL PENALTY, NOT TO EXCEED ONE THOUSAND
25 DOLLARS, AND MAY SUSPEND THE LICENSE OF THE LICENSEE PURSUANT TO
26 THIS SECTION.

27 (3) A MAXIMUM OF THREE CIVIL PENALTIES MAY BE ASSESSED

1 AGAINST A LICENSEE OR OTHER PERSON OPERATING AN ESTABLISHMENT
2 IN ANY TWELVE-MONTH PERIOD. WHENEVER A THIRD CIVIL PENALTY IS
3 ASSESSED IN A TWELVE-MONTH PERIOD, THE DEPARTMENT OR COUNTY OR
4 DISTRICT PUBLIC HEALTH AGENCY MAY INITIATE PROCEEDINGS TO
5 SUSPEND OR REVOKE THE LICENSE OF THE LICENSEE PURSUANT TO THIS
6 SECTION.

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

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

15 (b) PENALTIES COLLECTED BY A COUNTY OR DISTRICT PUBLIC
16 HEALTH AGENCY SHALL BE DEPOSITED IN THE APPROPRIATE COUNTY OR
17 DISTRICT PUBLIC HEALTH AGENCY FUND IN ACCORDANCE WITH SECTION
18 25-4-1608.

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

24 (7) IN ADDITION TO THE REMEDIES PROVIDED IN THIS PART 16 AND
25 OTHER REMEDIES PROVIDED BY LAW, THE DEPARTMENT OR COUNTY OR
26 DISTRICT PUBLIC HEALTH AGENCY IS AUTHORIZED TO APPLY TO THE
27 COUNTY OR DISTRICT COURT WITH JURISDICTION FOR THE COUNTY WHERE

1 AN ESTABLISHMENT IS LOCATED FOR A TEMPORARY OR PERMANENT
2 INJUNCTION, AND SUCH COURT SHALL HAVE JURISDICTION TO ISSUE AN
3 INJUNCTION RESTRAINING ANY PERSON FROM VIOLATING SECTION
4 25-4-1610.

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

9 (9) (a) THE DEPARTMENT OR COUNTY OR DISTRICT PUBLIC HEALTH
10 AGENCY MAY SUSPEND OR REVOKE A LICENSE OR CERTIFICATE OF LICENSE
11 FOR ANY VIOLATION OF THIS PART 16, ANY RULE ADOPTED PURSUANT TO
12 THIS PART 16, OR ANY OF THE TERMS, CONDITIONS, OR PROVISIONS OF THE
13 LICENSE OR CERTIFICATE OF LICENSE IN ACCORDANCE WITH SECTION
14 24-4-104.

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

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

20 (II) IF THE LICENSEE REMAINS IN VIOLATION; AND

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

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

26 (d) WHEN A LICENSE OR CERTIFICATE OF LICENSE IS SUSPENDED
27 UNDER THIS SUBSECTION (9), NO PART OF THE FEES PAID FOR A LICENSE

1 MAY BE RETURNED TO THE LICENSEE.

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

8 **SECTION 10. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within the ninety-day period after final adjournment of the general
13 assembly, then the act, item, section, or part will not take effect unless
14 approved by the people at the general election to be held in November
15 2020 and, in such case, will take effect on the date of the official
16 declaration of the vote thereon by the governor.

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