

CHAPTER 11

HEALTH AND ENVIRONMENT

HOUSE BILL 19-1014

BY REPRESENTATIVE(S) Singer and Bird, Exum, Galindo, Gonzales-Gutierrez, Gray, Herod, Jaquez Lewis, Kraft-Tharp, Lontine, Snyder, Titone, Williams D., Becker;
also SENATOR(S) Ginal, Tate.

AN ACT

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.

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:

(6.5) (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~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

have HAS 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~~ THEM 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.~~

~~(H) 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.~~

~~(c) (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.~~

~~(H) 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 LICENSEE.

(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.

Approved: February 28, 2019