

CHAPTER 219

HEALTH AND ENVIRONMENT

HOUSE BILL 20-1143

BY REPRESENTATIVE(S) Jackson and Gonzales-Gutierrez, Arndt, Caraveo, Coleman, Cutter, Exum, Herod, Hooton, Jaquez Lewis, Kipp, McLachlan, Melton, Singer, Sirota, Snyder, Titone, Valdez A., Benavidez, Bird, Buentello, Duran, Garnett, Gray, Kennedy, Lontine, McCluskie, Mullica, Roberts, Weissman, Woodrow, Becker, Froelich; also SENATOR(S) Winter, Bridges, Danielson, Fenberg, Fields, Foote, Ginal, Gonzales, Hansen, Lee, Moreno, Pettersen, Story, Todd, Garcia.

AN ACT

CONCERNING ADDITIONAL PUBLIC HEALTH PROTECTIONS REGARDING ALLEGED ENVIRONMENTAL VIOLATIONS, AND, IN CONNECTION THEREWITH, RAISING THE MAXIMUM FINES FOR AIR QUALITY AND WATER QUALITY VIOLATIONS.

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

SECTION 1. In Colorado Revised Statutes, 25-7-122, **amend** (1) introductory portion, (1)(b), and (1)(d) as follows:

25-7-122. Civil penalties - rules. (1) Upon application of the division, penalties as determined under this ~~article~~ **ARTICLE 7** may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(b) Any person who violates any requirement or prohibition of an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this ~~article~~ **ARTICLE 7**, any provision related to attainment under part 3 of this ~~article~~ **ARTICLE 7**, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, ~~25-7-106.9~~, 25-7-108, 25-7-109, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414 **C.R.S.**, ~~shall be~~ **is** subject to a civil penalty of not more than ~~fifteen~~ **FORTY-SEVEN** thousand **THREE HUNDRED FIFTY-SEVEN** dollars per day for each day of ~~such~~ **THE** violation; except that:

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.

(I) ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL, BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL PENALTY BASED ON THE PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX; AND

(II) ~~There shall be no~~ Civil penalties SHALL NOT BE assessed or collected against persons who violate emission regulations promulgated by the commission for the control of odor until a compliance order issued pursuant to section 25-7-115 and ordering compliance with the odor regulation has been violated.

(d) Any person who violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including ~~but not limited to~~ failure to obtain such a permit, ~~or~~ to operate in compliance with any term or condition ~~thereof~~ OF THE PERMIT, or to pay the permit fee required under section 25-7-114.7 (2), or WHO commits a violation of section 25-7-109.6 ~~shall be~~ IS subject to a civil penalty of not more than ~~fifteen~~ FORTY-SEVEN thousand THREE HUNDRED FIFTY-SEVEN dollars per day for each violation; EXCEPT THAT, ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL, BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL PENALTY BASED ON THE PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

SECTION 2. In Colorado Revised Statutes, 25-8-608, **amend** (1) introductory portion and (1.7)(d)(II) as follows:

25-8-608. Civil penalties - rules - fund created - temporary moratorium on penalties for minor violations - definitions - repeal. (1) ~~Except as otherwise provided in subsection (3) of this section, any~~ A person who violates ~~any provision of this article or of any~~ THIS ARTICLE 8, A permit issued under this ~~article, or any~~ ARTICLE 8, A control regulation promulgated pursuant to this ~~article~~ ARTICLE 8, or ~~any~~ A final cease-and-desist order or clean-up order ~~shall be~~ IS subject to a civil penalty of not more than ~~ten~~ FIFTY-FOUR thousand EIGHT HUNDRED THIRTY-THREE dollars per day for each day during which such PER violation; ~~occurs~~ EXCEPT THAT, ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL, BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL PENALTY BASED ON THE PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX. In determining the amount of a penalty under this part 6, the following factors shall be considered:

(1.7) (d) (II) This subsection (1.7)(d) is repealed, effective September 1, 2021-2025.

SECTION 3. In Colorado Revised Statutes, 25-8-609, **amend** (2), (3) introductory portion, (3)(a), and (3)(b) as follows:

25-8-609. Criminal pollution - penalties. (2) Prosecution under ~~paragraph (a) of subsection (1) of this section shall be commenced~~ **only** upon ~~complaint filed~~ REQUEST by the division or a peace officer, WHO MUST PRESENT EVIDENCE BASED

ON REASONABLE SUSPICION TO EITHER THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN WHICH AN ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE CHARGED WITHOUT PROBABLE CAUSE.

(3) Any person who commits criminal pollution of state waters shall be ~~fin~~~~ed, for each day the violation occurs~~; PENALIZED as follows:

(a) ~~If the~~ FOR A violation is committed with criminal negligence or recklessly, as BOTH TERMS ARE defined in section 18-1-501, ~~C.R.S.~~, the VIOLATOR IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY A ~~maximum fine shall be twelve~~ OF TWENTY-FIVE thousand ~~five hundred~~ dollars PER DAY FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO THREE HUNDRED SIXTY-FOUR DAYS, OR BOTH.

(b) ~~If the~~ FOR A violation is committed knowingly or intentionally, as BOTH TERMS ARE defined in section 18-1-501, ~~C.R.S.~~, the VIOLATOR IS GUILTY OF A CLASS 5 FELONY AND, NOTWITHSTANDING SECTION 18-1.3-401, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A ~~maximum fine shall be twenty-five~~ OF FIFTY thousand dollars PER DAY FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO THREE YEARS, OR BOTH.

SECTION 4. In Colorado Revised Statutes, **amend** 25-8-610 as follows:

25-8-610. Falsification and tampering - penalties. (1) Any person who knowingly makes any MATERIAL false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this ~~article~~ ARTICLE 8 or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this ~~article~~ ARTICLE 8 is guilty of a ~~misdemeanor~~ CLASS 5 FELONY and, upon conviction thereof, shall be punished ~~by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment~~ AS SPECIFIED IN SECTION 18-1.3-401.

(2) PROSECUTION UNDER THIS SECTION SHALL BE COMMENCED UPON REQUEST BY THE DIVISION OR A PEACE OFFICER, WHO MUST PRESENT EVIDENCE BASED ON REASONABLE SUSPICION TO EITHER THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN WHICH AN ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE CHARGED WITHOUT PROBABLE CAUSE.

(3) IF TWO SEPARATE OFFENSES UNDER THIS SECTION OCCUR IN TWO SEPARATE OCCURRENCES DURING A PERIOD OF TWO YEARS, NOTWITHSTANDING SECTION 18-1.3-401, THE MAXIMUM FINE AND PERIOD OF IMPRISONMENT FOR THE SECOND OFFENSE ARE DOUBLE THE AMOUNTS SPECIFIED IN SECTION 18-1.3-401.

~~(2)~~ (4) Any penalty collected under this section shall be credited to the general fund.

SECTION 5. Applicability. This act applies to conduct occurring, including fines assessed, on or after the effective date of this act.

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, or safety.

Approved: July 2, 2020