

## CHAPTER 255

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**HEALTH AND ENVIRONMENT**

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## SENATE BILL 09-223

BY SENATOR(S) Boyd, Kester, White, Bacon, Foster, Groff, Heath;  
also REPRESENTATIVE(S) Kerr A. and Gardner B., Hullinghorst, Labuda, Merrifield, Pommer, Scanlan, Todd.

**AN ACT**

**CONCERNING REVISIONS TO THE RETAIL FOOD ESTABLISHMENT INSPECTION PROCESS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1.** The introductory portion to 25-4-1601 (1), Colorado Revised Statutes, is amended to read:

**25-4-1601. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that it is in the public interest for the department of public health and environment to establish minimum standards and rules for retail food establishments in Colorado and to provide authority for the UNIFORM STATEWIDE administration, IMPLEMENTATION, INTERPRETATION, and enforcement of such minimum standards and rules. Such standards and rules are established to:

**SECTION 2.** 25-4-1602 (7) and (10), Colorado Revised Statutes, are amended, and the said 25-4-1602 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(2.5) "COUNTY OR DISTRICT PUBLIC HEALTH AGENCY" MEANS A COUNTY OR DISTRICT HEALTH DEPARTMENT, A COUNTY OR MUNICIPAL BOARD OF HEALTH, OR A REGIONAL PUBLIC HEALTH DEPARTMENT ESTABLISHED PURSUANT TO PART 5 OF ARTICLE 1 OF THIS TITLE.

(7) "Inspection" means an inspection of a retail food establishment conducted by the department or a ~~local~~ COUNTY OR DISTRICT board of health to ensure compliance

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

by such establishment with rules promulgated by the department pursuant to this part 16.

(10) ~~"Local board of health" means a county or district health department, a county or municipal board of health, or a regional health department established pursuant to part 5, 6, or 7 of article 1 of this title.~~

(17) "UNIFORM STATEWIDE ADMINISTRATION, IMPLEMENTATION, INTERPRETATION, AND ENFORCEMENT" MEANS THE APPLICATION OF THE RULES ADOPTED BY THE STATE BOARD OF HEALTH AND THE POLICY GUIDANCE OF THE DEPARTMENT BY STATE AND COUNTY OR DISTRICT PUBLIC HEALTH AGENCIES RESPONSIBLE FOR IMPLEMENTATION OF THE RULES AND POLICIES. THE UNIFORM APPLICATION SHALL NOT PRECLUDE COUNTY OR DISTRICT PUBLIC HEALTH AGENCIES FROM IMPLEMENTING ADMINISTRATIVE EFFICIENCIES OR PRACTICES IF THE PRACTICES DO NOT CONFLICT WITH THE STATE BOARD OF HEALTH RULES OR DEPARTMENT POLICIES.

**SECTION 3.** 25-4-1603, Colorado Revised Statutes, is amended to read:

**25-4-1603. Licensing, certification, and food protection agency.** The department is hereby designated the state licensing, certification, and food protection agency for the purpose of protecting the public health and ensuring a safe food supply in this state. In addition to such designation, the department is hereby authorized to regulate and control retail food establishments, promulgate rules governing the operation of such establishments, and UNIFORMLY enforce and administer this part 16.

**SECTION 4.** 25-4-1604 (1) (b) (I), (1) (d), (1) (f), (1) (g), and (1) (i), Colorado Revised Statutes, are amended, and the said 25-4-1604 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(b) (I) To promulgate rules FOR ADOPTION BY THE STATE BOARD OF HEALTH pursuant to article 4 of title 24, C.R.S., for the UNIFORM STATEWIDE ADMINISTRATION, implementation, ~~administration~~ INTERPRETATION, and enforcement of this part 16 and, as necessary, to ensure a safe food supply in retail food establishments. Such rules may include provisions for the initial and periodic medical examination by the department or other competent medical authority of all employees of retail food establishments and shall include provisions specifying and regulating the places and conditions under which food shall be prepared for consumption, a uniform code of sanitary rules, and such other rules as the department deems necessary. Such rules may be modified and changed from time to time.

(d) To UNIFORMLY enforce this part 16 and the rules promulgated pursuant to this section;

(f) To develop and enforce UNIFORM STATEWIDE standards of program conduct and performance to be followed and adhered to by employees of the department and

~~local~~ COUNTY OR DISTRICT boards of health;

(g) To provide technical assistance, equipment and product review, training and standardization, program evaluation, and other services necessary to assure the uniform STATEWIDE ADMINISTRATION, IMPLEMENTATION, interpretation, and application ENFORCEMENT of THIS PART 16 AND rules promulgated under this part 16;

(i) To delegate to any ~~local~~ COUNTY OR DISTRICT board of health the powers and duties described in paragraphs (a), (c), (d), (e), and (h) of this subsection (1) at the request of such ~~local~~ COUNTY OR DISTRICT board of health.

(2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO THE CITY AND COUNTY OF DENVER, WHICH, BY ORDINANCE, MAY PROVIDE FOR THE LICENSURE OF RETAIL FOOD ESTABLISHMENTS.

**SECTION 5.** 25-4-1605, Colorado Revised Statutes, is amended to read:

**25-4-1605. Submission of plans for approval - required.** (1) An owner or operator OF A RETAIL FOOD ESTABLISHMENT shall submit plans and specifications to the department or ~~local~~ A COUNTY OR DISTRICT board of health in the jurisdiction in which a retail food establishment is to be constructed or extensively remodeled before such construction or extensive remodeling is begun or any existing structure is converted for use as a retail food establishment. Such plans and specifications shall be submitted for review and approval, in such form as the department requires OR APPROVES, to ensure that the retail food establishment layout, equipment, and food handling procedures are conducive to providing a safe food product. Each plan and specification submission shall be accompanied by the fees set forth in section 25-4-1607. The department and ~~local~~ A COUNTY OR DISTRICT board of health shall treat ~~such~~ THE plans and specifications as confidential trade secret information. ~~Such~~ THE plans and specifications shall indicate the proposed layout, arrangement, mechanical plants, construction materials of work areas, and the location, type, and model of proposed fixed equipment and facilities.

(2) The construction, extensive remodeling, or conversion of any retail food establishment shall be in accordance with the plans and specifications submitted to and approved by the department or ~~local~~ A COUNTY OR DISTRICT board of health. The department or ~~local~~ A COUNTY OR DISTRICT board of health shall conduct preopening inspections of retail food establishments to assure compliance with the approved plans, as circumstances require.

(3) An owner or operator OF A RETAIL FOOD ESTABLISHMENT shall submit an HACCP plan to the department or ~~local~~ A COUNTY OR DISTRICT board of health for review and approval before beginning a modified atmosphere packaging process or other food preparation method that does not meet rules promulgated by the department. HACCP plans shall be submitted in such form as the department requires ~~Such~~ OR APPROVES. THE submission shall ensure that food handling risks are reduced to prevent food-borne illness and outbreaks. The department and any ~~local~~ COUNTY OR DISTRICT board of health shall treat HACCP plans as confidential trade secret information.

(4) The department or ~~local~~ A COUNTY OR DISTRICT board of health shall respond to any plans and specifications submitted pursuant to subsection (1) of this section and to any HACCP plan submitted pursuant to subsection (3) of this section within fourteen working days after receipt. If a submitted HACCP plan or other plan or specification is deemed inadequate, the department or ~~the local~~ A COUNTY OR DISTRICT board of health shall respond in writing to the submitter of the plans or specifications with a statement describing how such deficiencies may be corrected.

**SECTION 6.** 25-4-1606 (1), (2), and (4), Colorado Revised Statutes, are amended, and the said 25-4-1606 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-4-1606. Licensure - exception.** (1) An application for a license or a certificate of license shall be filed with the department or ~~local~~ A COUNTY OR DISTRICT board of health before any person may operate a retail food establishment in this state. ~~Such~~ THE application shall be on a form supplied by the department and shall include such information as the department may require.

(2) Before granting any license or certificate of license, the department or ~~local~~ A COUNTY OR DISTRICT board of health may visit and inspect the retail food establishment or property on which the applicant conducts or proposes to conduct business to assess whether ~~such~~ THE establishment can operate in accordance with the rules promulgated by the department to provide a safe food product. If an applicant complies with the requirements of this subsection (2) and the rules promulgated pursuant to this part 16, the department or ~~local~~ A COUNTY OR DISTRICT board of health shall approve the application for a license or certificate of license.

(2.5) IF A CRITICAL VIOLATION IS DOCUMENTED DURING AN INSPECTION, AND THE RETAIL FOOD ESTABLISHMENT IS UNABLE TO CORRECT THE VIOLATION WHILE THE INSPECTOR IS ON SITE, FOLLOW-UP ACTIVITIES SHALL BE CONDUCTED. IF THE RETAIL FOOD ESTABLISHMENT IS ABLE TO CORRECT THE CRITICAL VIOLATION DURING THE INSPECTION, THE CRITICAL VIOLATION AND THE RESOLUTION DEMONSTRATING COMPLIANCE SHALL BE DOCUMENTED ON THE INSPECTION REPORT FORM, WITH NO FOLLOW-UP INSPECTION REQUIRED. IF MORE THAN ONE FOLLOW-UP INSPECTION IS NEEDED TO CORRECT THE SAME CRITICAL VIOLATION AT ANY TYPE OF RETAIL FOOD ESTABLISHMENT, THE DEPARTMENT OR A COUNTY OR DISTRICT BOARD OF HEALTH MAY PURSUE THE CIVIL PENALTY PROCESS OUTLINED IN SECTION 25-4-1611 FOR CORRECTION AND TO RECOVER ANY ASSOCIATED COSTS.

(4) Licenses and certificates of license shall be valid for one calendar year or such portion thereof as remains after the granting of ~~such~~ A license or certificate. When a license or certificate is valid for only a portion of a calendar year, there shall be no reduction of the fees required by section 25-4-1607. All licenses and certificates of license shall expire December ~~thirty-first~~ 31 of the year in which they were granted and renewal applications shall be filed with the department during December of each year. Once a license or certificate of license has been granted, the department or ~~local~~ A COUNTY OR DISTRICT board of health shall not refuse to renew such license or certificate unless the licensee has engaged in an unlawful act set forth in section 25-4-1610 or is in violation of any rules promulgated pursuant to this part 16.

**SECTION 7.** 25-4-1607 (1) (a), (1) (b), (1) (c), (1) (e) (II), (2), (3), (4), (5), (8), (10), and (11), Colorado Revised Statutes, are amended, and the said 25-4-1607 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**25-4-1607. Fees - repeal.** (1) Each retail food establishment in this state shall be assessed an annual license fee in accordance with the following provisions:

(a) A retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption shall be assessed an annual fee based on the following schedule:

<b>Seating Capacity</b>	<b>Fee</b>
0 to 100	<del>\$154</del> 255
101 to 200	<del>175</del> 285
Over 200	<del>189</del> 310

(b) A retail food establishment offering food for retail sale to consumers for off-premises consumption shall be assessed an annual fee based on the following schedule:

<b>Square Footage</b>	<b>Fee</b>
Less than <del>3,000</del> 3,500	<del>\$55</del> 115
<del>3,001 to 10,000</del> 3,501 TO 15,000	<del>100</del> 180
<del>10,001 to 20,000</del> 15,001 TO 25,000	<del>115</del> 200
<del>20,001 to 40,000</del> 25,001 TO 45,000	<del>138</del> 235
<del>40,001 to 70,000</del> 45,001 TO 65,000	<del>175</del> 290
<del>over 70,000</del> 65,001 TO 85,000	<del>250</del> 415
OVER 85,000	500

(c) A retail food establishment offering food for retail sale to consumers for off-premises consumption and preparing or serving food in individual portions for immediate consumption either on- or off-premises shall be assessed an annual fee based on the following schedule:

<b>Square Footage</b>	<b>Fee</b>
Less than <del>3,000</del> 3,500	<del>\$138</del> 207
<del>3,001 to 10,000</del> 3,501 TO 15,000	<del>225</del> 338
<del>10,001 to 20,000</del> 15,001 TO 25,000	<del>240</del> 360
<del>20,001 to 40,000</del> 25,001 TO 45,000	<del>263</del> 395
<del>40,001 to 70,000</del> 45,001 TO 65,000	<del>300</del> 450
<del>over 70,000</del> 65,001 TO 85,000	<del>383</del> 575
OVER 85,000	690

(c.5) (I) A RETAIL FOOD ESTABLISHMENT OFFERING FOOD AT A TEMPORARY LIVING QUARTER FOR WORKERS ASSOCIATED WITH OIL AND GAS SHALL BE ASSESSED AN INITIAL LICENSING FEE BASED ON THE FOLLOWING SCHEDULE:

<b>SEATING CAPACITY</b>	<b>INITIAL LICENSE FEE</b>
0-50	\$ 750
OVER 50	1,250

(II) ANY FUTURE ANNUAL LICENSE FEE OR A CHANGE IN LOCATION WITHIN THE CALENDAR YEAR OF THE SAME RETAIL FOOD ESTABLISHMENT OFFERING FOOD AT A TEMPORARY LIVING QUARTER FOR WORKERS ASSOCIATED WITH OIL AND GAS SHALL BE ASSESSED A RENEWAL FEE BASED ON THE FOLLOWING SCHEDULE:

SEATING CAPACITY	RENEWAL LICENSE FEE
0-50	\$275
OVER 50	500

(e) (II) Notwithstanding subparagraph (I) of this paragraph (e), the fees established in this subsection (1) OR BY ORDINANCE OF THE CITY AND COUNTY OF DENVER shall be the only annual license fees charged by the state or any county, DISTRICT, local, or regional inspection authority ~~including the city and county of Denver~~, and shall cover all inspections of a retail food establishment pursuant to this subsection (1) throughout an annual license period.

(2) At the time a plan is submitted for review, an application fee of ~~seventy-five~~ ONE HUNDRED dollars shall be paid to the department or ~~local~~ A COUNTY OR DISTRICT board of health. The fee for plan review and reopening inspection of a new or remodeled retail food establishment shall be the actual cost of such review, which shall not exceed ~~two~~ FIVE hundred eighty dollars. Such costs shall be payable at the time the plan is approved and an inspection is completed to determine compliance.

(3) At the time an equipment ~~or product~~ review is submitted, an application fee of ~~seventy-five~~ ONE HUNDRED dollars shall be paid to the department. The fee for equipment ~~or product~~ review by the department to determine compliance with applicable standards shall be the actual cost of such review, which shall not exceed ~~two~~ FIVE hundred ~~eighty~~ dollars. Such costs shall be payable when the review is completed.

(4) The fee for ~~a~~ AN HACCP plan review of a specific written process shall be the actual cost of such review, which shall not exceed ~~eighty~~ ONE HUNDRED dollars. The review of ~~a~~ AN HACCP plan for a process already conducted at a facility shall be the actual cost of such review, which shall not exceed ~~two~~ FOUR hundred dollars. Costs shall be paid at the time the plan is approved and an inspection is completed.

(5) The fee for services requested by any person seeking department or ~~local~~ COUNTY OR DISTRICT board of health review of a potential retail food establishment site shall be ~~seventy-five~~ dollars or the actual cost of such review, whichever is greater. ~~Seventy-five~~ dollars of such fee shall be billed at the time the review is requested, and the remainder shall be payable when services are completed.

(8) The actual cost of a service shall be established by the department or ~~local~~ A COUNTY OR DISTRICT board of health, whichever provided the service.

(10) ~~Local~~ COUNTY OR DISTRICT boards of health created in ~~parts 5, 6, and 7~~ PART 5 of article 1 of this title shall collect fees under this section if ~~such local~~ THE COUNTY OR DISTRICT boards of health are authorized by the department to enforce this part 16 and any rules promulgated pursuant to this part 16.

(11) (a) ~~No later than January 1, 2001, the department, working with the retail food industry and local health representatives, shall submit a report to the general assembly with recommended fees for retail food establishments.~~

(b) ~~If the report described in paragraph (a) of this subsection (11) is not submitted or if the fees set forth in this section decrease after July 1, 1998, this part 16 is repealed, effective January 1, 2002. If no report is submitted or if the fees decrease, the department shall notify the general assembly and the revisor of statutes of such fact.~~

**SECTION 8.** 25-4-1608 (2), Colorado Revised Statutes, is amended to read:

**25-4-1608. Food protection cash fund - creation.** (2) ~~Twenty-five FORTY-THREE~~ dollars of each fee collected by the department and ~~local~~ A COUNTY OR DISTRICT board of health pursuant to section 25-4-1607 (1) (a), ~~and twenty dollars of each fee collected by the department and local board of health pursuant to section 25-4-1607 (1) (b), and (1) (c), AND (1) (c.5)~~ shall be transmitted to the state treasurer, who shall credit such fee to the food protection cash fund created in subsection (1) of this section. This portion of the fee shall be used by the department to conduct the duties and responsibilities set forth in section 25-4-1604 (1) (a), (1) (b), (1) (c), (1) (f), (1) (g), and (1) (i). The remainder of such fee shall be retained by the ~~local~~ COUNTY OR DISTRICT board of health for deposit in the appropriate ~~local board of health cash~~ COUNTY OR DISTRICT PUBLIC HEALTH AGENCY fund in accordance with section 25-1-511 or, if the fee is collected by the department, it shall be deposited pursuant to ~~section 25-4-1608 (1)~~ SUBSECTION (1) OF THIS SECTION, and used to pay a portion of the cost of conducting a retail food establishment protection program.

**SECTION 9.** 25-4-1609 (1), Colorado Revised Statutes, is amended to read:

**25-4-1609. Disciplinary actions - revocation - suspension - review.** (1) The department or ~~local~~ 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 by certified mail to the licensee at the address contained in the license or certificate of license.

**SECTION 10.** Part 16 of article 4 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-4-1609.5. Grievance process.** (1) IF A LICENSEE BELIEVES THAT A COUNTY OR DISTRICT PUBLIC HEALTH AGENCY IS TAKING REGULATORY ACTION OUTSIDE THE SCOPE OF ITS AUTHORITY, THE LICENSEE MAY FILE A WRITTEN COMPLAINT WITH THE DEPARTMENT WITHIN THIRTY DAYS AFTER THE LICENSEE'S KNOWLEDGE OF THE REGULATORY ACTION.

(2) WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF A WRITTEN COMPLAINT PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL CONVENE

A DISPUTE RESOLUTION PANEL THAT CONSISTS OF ONE PERSON FROM THE DEPARTMENT, ONE PERSON FROM THE RETAIL FOOD INDUSTRY, AND ONE PERSON FROM A COUNTY OR DISTRICT PUBLIC HEALTH AGENCY WHO IS NOT WITHIN THE JURISDICTION OF THE LICENSEE REQUESTING RESOLUTION. THE DISPUTE RESOLUTION PANEL SHALL ALLOW THE LICENSEE AND THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY TO PROVIDE INFORMATION RELATED TO THE GRIEVANCE. THE DISPUTE RESOLUTION PANEL SHALL MAKE FINDINGS CONCERNING THE GRIEVANCE AND SHALL RECOMMEND TO THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY A RESOLUTION TO THE DISPUTE. THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL IMPLEMENT THE RECOMMENDATIONS WITHIN THIRTY DAYS AFTER RECEIPT OF THE FINDINGS AND RECOMMENDATIONS FROM THE DISPUTE RESOLUTION PANEL. IF THE PARTIES TO THE GRIEVANCE RESOLVE THE COMPLAINT PRIOR TO REVIEW BY THE DISPUTE RESOLUTION PANEL, THE PARTIES SHALL NOTIFY THE DEPARTMENT IN WRITING AND THE GRIEVANCE SHALL BE DISMISSED.

(3) IF THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY FAILS TO IMPLEMENT THE RECOMMENDATIONS OF THE DISPUTE RESOLUTION PANEL WITHIN THIRTY DAYS AFTER RECEIPT OF THE RECOMMENDATIONS, THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY SHALL PROVIDE THE LICENSEE WITH THE OPPORTUNITY TO REQUEST AN ADMINISTRATIVE HEARING IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

**SECTION 11.** 25-4-1610 (1) (a), (1) (b), and (1) (f), Colorado Revised Statutes, are amended to read:

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

(a) Any person to begin the construction or extensive remodeling of a retail food establishment unless such person has received department or ~~local~~ COUNTY OR DISTRICT board of health approval of plans and specifications for such construction or remodeling pursuant to section 25-4-1605;

(b) Any person to operate a retail food establishment without a valid license or certificate of license from the department or ~~local~~ A COUNTY OR DISTRICT board of health having jurisdiction over such establishment;

(f) Any person to fail to pay a civil penalty assessed by the department or ~~local~~ A COUNTY OR DISTRICT board of health.

**SECTION 12.** 25-4-1611, Colorado Revised Statutes, is amended to read:

**25-4-1611. Violation - penalties.** (1) If the department or a ~~local~~ 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 ~~local~~ A COUNTY OR DISTRICT board of health.

(2) (a) Upon a finding by the department or a ~~local~~ 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 ~~such~~ THE violation is sufficient to

permit the department or ~~local~~ A COUNTY OR DISTRICT board of health to establish a date and time for correction, the department or ~~local~~ COUNTY OR DISTRICT board of health shall, in writing, advise the licensee or other person operating ~~such~~ THE establishment of the violation, provide ~~such~~ THE person with a reasonable ~~period of~~ time to comply, and conduct a follow-up inspection. If, at the time of the follow-up inspection, ~~such~~ THE establishment is found to be in violation of the same provisions, the department or ~~local~~ A COUNTY OR DISTRICT board of health shall issue ~~such~~ THE person a written notification of noncompliance, provide ~~such~~ 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 ~~local~~ COUNTY OR DISTRICT board of health shall advise the licensee or other person operating ~~such~~ 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 ~~local~~ COUNTY OR DISTRICT board of health shall issue a second written notification of noncompliance, advising the licensee or other person operating ~~such~~ THE establishment of the violation and potential civil penalties that may be assessed if ~~such~~ THE noncompliance continues. The department or a ~~local~~ 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 ~~local~~ 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 ~~such~~ 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 ~~such~~ 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 ~~local~~ 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 ~~local~~ A COUNTY OR DISTRICT board of health shall notify the licensee or other person operating ~~such~~ 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 calendar year. Whenever a third civil penalty is assessed in a calendar year, the department or ~~local~~ A COUNTY OR DISTRICT board of health shall initiate proceedings to suspend or revoke the license of the licensee pursuant to section 25-4-1609.

(4) Neither the department nor a ~~local~~ 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 ~~local~~ COUNTY OR DISTRICT board of health shall be deposited in the appropriate ~~local board of health cash~~ 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 ~~local~~ 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 ~~such~~ THE establishment.

(7) In addition to the remedies provided in this part 16 and other remedies provided by law, the department or ~~local~~ 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 13.** 25-4-1612, Colorado Revised Statutes, is amended to read:

**25-4-1612. Judicial review.** Any person adversely affected or aggrieved by a department decision to refuse to grant a license or certificate of license may seek judicial review in the district court having jurisdiction over the retail food establishment for which the application for license or certificate of license was made. Any other final order or determination by the department or a ~~local~~ COUNTY OR DISTRICT board of health pursuant to this part 16 shall be subject to judicial review in accordance with article 4 of title 24, C.R.S.

**SECTION 14.** Part 16 of article 4 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-4-1613. General fund moneys - repeal.** (1) FOR THE FISCAL YEARS 2009-10 AND 2010-11, NO GENERAL FUND MONEYS SHALL BE USED AS MATCHING FUNDS TO THE INCREASE IN FEES PURSUANT TO SECTIONS 25-4-1607 AND 25-4-1608. FOR THE FISCAL YEAR, 2011-12, THE DEPARTMENT SHALL REQUEST MONEYS FROM THE GENERAL FUND.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2013.

**SECTION 15. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the food protection fund created in section 24-4-1608, Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for allocation to the consumer protection division, for the fiscal year beginning July 1, 2009, the sum of one hundred fifteen thousand one hundred fifty-seven dollars (\$115,157) cash funds and 0.9 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 16. 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: May 15, 2009