

CHAPTER 367

HEALTH AND ENVIRONMENT

HOUSE BILL 16-1401

BY REPRESENTATIVE(S) Becker K. and Priola, Fields, Hamner, Melton, Rosenthal, Young, Hullinghorst;
also SENATOR(S) Woods and Hodge, Guzman, Heath, Johnston, Kerr, Newell, Scheffel, Todd.

AN ACT**CONCERNING THE REGULATION OF RETAIL FOOD ESTABLISHMENTS.**

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

SECTION 1. In Colorado Revised Statutes, 25-4-1606, **amend** (2) and (2.5) as follows:

25-4-1606. Licensure - exception. (2) Before granting any license or certificate of license, the department or a county or district board of health may ~~visit and inspect~~ CONDUCT AN INSPECTION OF the retail food establishment ~~or property on which the applicant conducts or proposes to conduct business to assess whether the establishment can operate in accordance~~ TO DETERMINE COMPLIANCE with the rules promulgated by the department. ~~to provide a safe food product. If an~~ THE applicant ~~complies with the requirements of this subsection (2) and~~ APPEARS TO BE IN COMPLIANCE WITH the rules ~~promulgated pursuant to~~ AND WITH THE APPLICABLE PROVISIONS OF this part 16, the department or a county or district board of health shall approve the application for a license or certificate of license.

(2.5) If a critical violation OR A NONCRITICAL VIOLATION THAT IS SIGNIFICANT IN NATURE is documented during ~~an~~ A PREOPERATIONAL 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~~

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

~~associated costs.~~ FOR THE PURPOSE OF GRANTING A LICENSE OR CERTIFICATE OF LICENSE.

SECTION 2. In Colorado Revised Statutes, 25-4-1607, **amend** (1) and (9) (a); and **add** (1.5), (13), and (14) as follows:

25-4-1607. Fees - repeal. (1) EXCEPT AS PROVIDED IN SUBPARAGRAPH (d.5) AND SUBSECTION (14) OF THIS SECTION (1), EFFECTIVE JANUARY 1 OF THE YEAR FOLLOWING THE INCREASES SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS SECTION, each retail food establishment in this state shall be assessed an annual license fee ~~in accordance with the following provisions~~ AS FOLLOWS:

(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:

Seating Capacity	Fee
0 to 100	\$255 \$385
101 to 200	285 430
Over 200	310 465

(a.5) A RETAIL FOOD ESTABLISHMENT LIMITED TO PREPARING OR SERVING FOOD THAT DOES NOT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY, PROVIDING SELF-SERVICE BEVERAGES, OFFERING PREPACKAGED COMMERCIALY PREPARED FOOD AND BEVERAGES REQUIRING TIME OR TEMPERATURE CONTROL, OR ONLY REHEATING COMMERCIALY PREPARED FOODS THAT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY FOR RETAIL SALE TO CONSUMERS SHALL BE ASSESSED AN ANNUAL FEE OF TWO HUNDRED SEVENTY DOLLARS.

(b) A retail food establishment ONLY offering PREPACKAGED COMMERCIALY PREPARED food AND BEVERAGES, INCLUDING THOSE THAT ARE REQUIRED TO BE HELD AT REFRIGERATED OR FROZEN TIME OR TEMPERATURE CONTROL FOR SAFETY for retail sale to consumers for off-premises consumption, shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 3,500 15,001	\$115 \$195
3,501 to OVER 15,000	180 353
15,001 to 25,000	200
25,001 to 45,000	235
45,001 to 65,000	290
65,001 to 85,000	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:

Square Footage	Fee
Less than 3,500 15,001	\$207 \$375

3,501 to OVER 15,000	338 715
15,001 to 25,000	360
25,001 to 45,000	395
45,001 to 65,000	450
65,001 to 85,000	575
over 85,000	690

(c.5) ~~(F)~~ A retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed an ~~initial licensing~~ ANNUAL fee ~~based on the following schedule:~~ OF EIGHT HUNDRED FIFTY-FIVE DOLLARS.

Seating Capacity	Initial License Fee
0-50	\$ 750
Over 50	1,250

~~(H) 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

(d) A retail food establishment ~~shall be~~ IS subject to only one of the fees established in this subsection (1); EXCEPT THAT EFFECTIVE SEPTEMBER 1, 2016, THE LICENSE FEES ESTABLISHED FOR RETAIL FOOD ESTABLISHMENTS AT A SPECIAL EVENT, AS DEFINED IN SECTION 25-4-1602 (16), MUST BE ESTABLISHED BY THE COUNTY OR DISTRICT PUBLIC HEALTH AGENCY.

(d.5) THE FEES ESTABLISHED IN THIS SUBSECTION (1) ARE EFFECTIVE SEPTEMBER 1, 2018, FOR ANY NEW RETAIL FOOD ESTABLISHMENT THAT WAS NOT LICENSED AND IN OPERATION PRIOR TO THAT DATE.

(e) (I) Retail food establishment license fees shall be established pursuant to this subsection (1); except that the city and county of Denver may establish such fees by ordinance.

(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 and shall cover all inspections of a retail food establishment pursuant to this subsection (1) throughout an annual license period.

(1.5) (a) EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (a) AND SUBSECTION (14) OF THIS SECTION, EFFECTIVE JANUARY 1, 2018, TO DECEMBER 31, 2018, EACH RETAIL FOOD ESTABLISHMENT IN THIS STATE SHALL BE ASSESSED AN ANNUAL LICENSE FEE AS FOLLOWS:

(I) 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:

SEATING CAPACITY	FEE
0 TO 100	\$360
101 TO 200	400
OVER 200	435

(II) A RETAIL FOOD ESTABLISHMENT PREPARING OR SERVING FOOD THAT DOES NOT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY, PROVIDING SELF-SERVICE BEVERAGES, OFFERING PREPACKAGED COMMERCIALY PREPARED FOOD AND BEVERAGES REQUIRING TIME OR TEMPERATURE CONTROL OR ONLY REHEATING COMMERCIALY PREPARED FOODS THAT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY FOR RETAIL SALE TO CONSUMERS SHALL BE ASSESSED AN ANNUAL FEE OF TWO HUNDRED FIFTY-THREE DOLLARS.

(III) A RETAIL FOOD ESTABLISHMENT ONLY OFFERING PREPACKAGED COMMERCIALY PREPARED FOOD AND BEVERAGES, INCLUDING THOSE THAT ARE REQUIRED TO BE HELD AT REFRIGERATED OR FROZEN TIME OR TEMPERATURE CONTROL FOR SAFETY FOR RETAIL SALE TO CONSUMERS FOR OFF-PREMISES CONSUMPTION, SHALL BE ASSESSED AN ANNUAL FEE BASED ON THE FOLLOWING SCHEDULE:

SQUARE FOOTAGE	FEE
LESS THAN 15,001	\$183
OVER 15,000	330

(IV) 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:

SQUARE FOOTAGE	FEE
LESS THAN 15,001	\$350
OVER 15,000	665

(V) A RETAIL FOOD ESTABLISHMENT OFFERING FOOD AT A TEMPORARY LIVING QUARTER FOR WORKERS ASSOCIATED WITH OIL AND GAS SHALL BE ASSESSED AN ANNUAL FEE OF EIGHT HUNDRED DOLLARS.

(VI) THE FEES ESTABLISHED IN THIS SUBSECTION (1) ARE EFFECTIVE SEPTEMBER 1, 2017, FOR ANY NEW RETAIL FOOD ESTABLISHMENT THAT WAS NOT LICENSED AND IN OPERATION PRIOR TO THAT DATE.

(b) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (VI) OF THIS PARAGRAPH (b), EFFECTIVE JANUARY 1, 2017, TO DECEMBER 31, 2017, EACH RETAIL FOOD ESTABLISHMENT IN THIS STATE SHALL BE ASSESSED AN ANNUAL LICENSE FEE AS FOLLOWS:

(I) 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:

SEATING CAPACITY	FEE
0 TO 100	\$330
101 TO 200	370
OVER 200	405

(II) A RETAIL FOOD ESTABLISHMENT LIMITED TO PREPARING OR SERVING FOOD THAT DOES NOT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY, PROVIDING SELF-SERVICE BEVERAGES, OFFERING PREPACKAGED COMMERCIALY PREPARED FOOD AND BEVERAGES REQUIRING TIME OR TEMPERATURE CONTROL OR ONLY REHEATING COMMERCIALY PREPARED FOODS THAT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY FOR RETAIL SALE TO CONSUMERS SHALL BE ASSESSED AN ANNUAL FEE OF TWO HUNDRED THIRTY-FIVE DOLLARS.

(III) A RETAIL FOOD ESTABLISHMENT ONLY OFFERING PREPACKAGED COMMERCIALY PREPARED FOOD AND BEVERAGES, INCLUDING THOSE THAT ARE REQUIRED TO BE HELD AT REFRIGERATED OR FROZEN TIME OR TEMPERATURE CONTROL FOR SAFETY FOR RETAIL SALE TO CONSUMERS FOR OFF-PREMISES CONSUMPTION, SHALL BE ASSESSED AN ANNUAL FEE BASED ON THE FOLLOWING SCHEDULE:

SQUARE FOOTAGE	FEE
LESS THAN 15,001	\$170
OVER 15,000	305

(IV) 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:

SQUARE FOOTAGE	FEE
LESS THAN 15,001	\$325
OVER 15,000	620

(V) A RETAIL FOOD ESTABLISHMENT OFFERING FOOD AT A TEMPORARY LIVING QUARTER FOR WORKERS ASSOCIATED WITH OIL AND GAS SHALL BE ASSESSED AN ANNUAL FEE OF SEVEN HUNDRED FORTY DOLLARS.

(VI) THE FEES ESTABLISHED IN THIS SUBSECTION (1) ARE EFFECTIVE SEPTEMBER 1, 2016, FOR ANY NEW RETAIL FOOD ESTABLISHMENT THAT WAS NOT LICENSED AND IN OPERATION PRIOR TO THAT DATE. THIS SUBPARAGRAPH (VI) IS REPEALED, EFFECTIVE JANUARY 1, 2017.

(c) A RETAIL FOOD ESTABLISHMENT IS SUBJECT TO ONLY ONE OF THE FEES ESTABLISHED IN THIS SUBSECTION (1.5) PER YEAR.

(d) RETAIL FOOD ESTABLISHMENT LICENSE FEES SHALL BE ESTABLISHED PURSUANT TO THIS SUBSECTION (1.5); EXCEPT THAT THE CITY AND COUNTY OF DENVER MAY ESTABLISH SUCH FEES BY ORDINANCE.

(9) (a) A certificate of license may be issued to and in the name and address of any:

~~(I) Parochial, public, or private school~~ PUBLIC OR NONPUBLIC SCHOOL FOR STUDENTS IN KINDERGARTEN THROUGH TWELFTH GRADE OR ANY PORTION THEREOF;

(II) Penal institution;

~~(III) Charitable organization and benevolent, nonprofit retail food establishment conducted for the purpose of assisting elderly, incapacitated, or disadvantaged persons~~ NONPROFIT ORGANIZATION THAT PROVIDES FOOD SOLELY TO PEOPLE WHO ARE FOOD INSECURE, INCLUDING, BUT NOT LIMITED TO, A SOUP KITCHEN, FOOD PANTRY, OR HOME DELIVERY SERVICE; and

~~(IV) LOCAL GOVERNMENT ENTITY OR nonprofit or charitable organization that donates, prepares, OR sells or serves food in conjunction with an event or celebration if such donation, preparation, sale, or service of food:~~ AT A SPECIAL EVENT, INCLUDING, BUT NOT LIMITED TO, A SCHOOL SPORTING EVENT, FIREFIGHTERS' PICNIC, OR CHURCH SUPPER, THAT TAKES PLACE IN THE COUNTY IN WHICH THE LOCAL GOVERNMENT ENTITY OR NONPROFIT ORGANIZATION RESIDES OR IS PRINCIPALLY LOCATED.

~~(A) Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and~~

~~(B) Takes place in the county in which such nonprofit or charitable organization resides or is principally located.~~

(13) Legislative declaration - disposition of fee revenue. (a) THE GENERAL ASSEMBLY DOES NOT INTEND FOR THE FEES PAID BY RETAIL FOOD ESTABLISHMENTS AS OUTLINED IN SUBSECTIONS (1) AND (1.5) OF THIS SECTION TO SUBSIDIZE INSPECTION OR OTHER COSTS ASSOCIATED WITH ENTITIES EXEMPT FROM FEES UNDER PARAGRAPH (a) OF SUBSECTION (9) OF THIS SECTION.

(b) COUNTIES MAY ONLY SPEND THE INCREASED REVENUE FROM THE INCREASE OF RETAIL FOOD ESTABLISHMENT FEES ON RETAIL FOOD HEALTH-RELATED ACTIVITIES. SUPPLANTING FUNDS FOR OTHER COUNTY PROGRAMS IS PROHIBITED.

(14) (a) THE FEE INCREASE IN SUBSECTION (1.5) OF THIS SECTION DOES NOT TAKE EFFECT UNTIL THE DEPARTMENT AND ALL LOCAL PUBLIC HEALTH AGENCIES CONTRACTED BY THE DEPARTMENT TO PERFORM INSPECTIONS AND ENFORCE REGULATIONS REGARDING RETAIL FOOD ESTABLISHMENTS PROVE COMPLIANCE WITH SECTION 25-4-1607.7 (2). IF THE DEPARTMENT AND ALL LOCAL PUBLIC HEALTH AGENCIES ARE NOT IN COMPLIANCE ON JANUARY 1, 2018, THE INCREASE DOES NOT TAKE EFFECT UNTIL JANUARY 1 IN THE YEAR FOLLOWING PROVEN COMPLIANCE.

(b) THE FEE INCREASE IN SUBSECTION (1) OF THIS SECTION DOES NOT TAKE EFFECT UNTIL THE DEPARTMENT PROVES COMPLIANCE WITH SECTION 25-4-1607.9(1). IF THE DEPARTMENT IS NOT IN COMPLIANCE ON JANUARY 1 FOLLOWING THE FEE INCREASE SPECIFIED IN SUBSECTION (1.5) OF THIS SECTION, THE INCREASE IN SUBSECTION (1) DOES NOT TAKE EFFECT UNTIL JANUARY 1 IN THE YEAR FOLLOWING PROVEN COMPLIANCE.

(c) THE DIRECTOR OF THE DEPARTMENT SHALL NOTIFY THE REVISOR OF STATUTES,

IN WRITING, WHEN THE CONDITIONS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (14) HAVE BEEN SATISFIED.

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

25-4-1607.7. Health inspection results - development of a uniform system - communication to the public. (1) ON OR BEFORE JANUARY 1, 2017, THE DEPARTMENT SHALL SOLICIT INPUT FROM RETAIL FOOD ESTABLISHMENTS, CONTRACTED LOCAL PUBLIC HEALTH AGENCIES, COUNTY COMMISSIONERS, AND OTHERS WITH A VESTED INTEREST IN THE RETAIL FOOD INSPECTION PROGRAM TO ESTABLISH A UNIFORM SYSTEM TO COMMUNICATE HEALTH INSPECTION RESULTS TO THE PUBLIC. THE UNIFORM SYSTEM ESTABLISHED PURSUANT TO THIS SECTION MUST PROVIDE MEANINGFUL AND REASONABLY DETAILED INFORMATION TO THE PUBLIC AND MUST NOT SUMMARIZE THE RESULTS OF THE INSPECTION WITH A LETTER, NUMBER, OR SYMBOL GRADING SYSTEM, OR A SIMILAR, OVERSIMPLIFIED METHOD OF QUANTIFYING RESULTS.

(2) AFTER JULY 1, 2017, THE DEPARTMENT OR A LOCAL PUBLIC HEALTH AGENCIES CONTRACTED BY THE DEPARTMENT TO PERFORM INSPECTIONS AND ENFORCE REGULATIONS REGARDING RETAIL FOOD ESTABLISHMENTS SHALL ONLY UTILIZE THE SYSTEM DEVELOPED AND APPROVED BY THE DEPARTMENT TO COMMUNICATE INSPECTION RESULTS.

SECTION 4. In Colorado Revised Statutes, **add 25-4-1607.9** as follows:

25-4-1607.9. Department targets - audits - reporting. (1) ON OR BEFORE APRIL 1, 2017, THE DEPARTMENT SHALL RESPOND TO ALL PLANS AND SPECIFICATIONS AND HACCP PLAN REVIEWS WITHIN FOURTEEN WORKING DAYS AFTER RECEIPT, AS REQUIRED BY SECTION 25-4-1605 (4).

(2) ON OR BEFORE DECEMBER 31, 2019, THE DEPARTMENT SHALL ENSURE SIGNIFICANT STATEWIDE COMPLIANCE WITH THE FEDERAL FOOD AND DRUG ADMINISTRATION'S VOLUNTARY NATIONAL RETAIL FOOD REGULATORY PROGRAM STANDARDS BY VERIFYING THAT:

(a) AT LEAST SEVENTY PERCENT OF COLORADO'S RETAIL FOOD PROGRAM STAFF MEET THE NATIONAL CRITERIA FOR APPROPRIATE TRAINING AND EDUCATION TO ADEQUATELY PERFORM REQUIRED INSPECTIONS; AND

(b) AT LEAST SEVENTY PERCENT OF COLORADO'S RETAIL FOOD PROGRAM STAFF MEET THE NATIONAL CRITERIA REGARDING THE FOCUS OF INSPECTIONS ON CRITICAL ITEM RISK FACTORS, THE CORRECTION OF DOCUMENTED DEFICIENCIES, AND THE FOCUS OF INSPECTIONS ON THE HIGHEST-RISK ESTABLISHMENTS.

(c) TO VERIFY COMPLIANCE WITH THIS SECTION:

(I) THE DEPARTMENT SHALL AUDIT ANY LOCAL PUBLIC HEALTH AGENCY THAT CONDUCTS INSPECTIONS WITHIN ITS JURISDICTION; AND

(II) LOCAL PUBLIC HEALTH AGENCIES SHALL AUDIT THE DEPARTMENT REGARDING THE JURISDICTIONS WHERE THE DEPARTMENT CONDUCTS INSPECTIONS.

(d) THE RESULTS OF THE AUDITS CONDUCTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (2) MUST BE DOCUMENTED AND REPORTED DURING EACH STAKEHOLDER PROCESS HELD PURSUANT TO SECTION 25-4-1607.5.

SECTION 5. In Colorado Revised Statutes, 25-4-1609, **amend** (1) and (2); and **add** (2.5) 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, ~~to the licensee~~ 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 ~~six months~~ 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.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); 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 such period, 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Became Law: June 11, 2016