

**First Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 05-0143.01 Kristen Forrestal

**HOUSE BILL 05-1009**

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**HOUSE SPONSORSHIP**

**Coleman,** and Vigil

**SENATE SPONSORSHIP**

**Takis,** Anderson, Taylor, and Tupa

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**House Committees**

Health and Human Services

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING PENALTIES FOR RETAIL FOOD ESTABLISHMENT**  
102 **VIOLATIONS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Legislative Audit Committee.** Replaces the terms "regular inspection" and "follow-up inspection" with the word "inspection". Increases the monetary penalties for retail food establishment violations. Eliminates the requirement that the department of public health and environment ("department") or local board of health submit written noncompliance letters to retail food establishments. Requires enforcement proceedings to end if the department or local board of health finds that a person previously found to have retail food establishment

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

violations has achieved sustained compliance with the laws.

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

2 **SECTION 1.** 25-4-1602, Colorado Revised Statutes, is amended  
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to  
4 read:

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

7 (15.5) "SIGNIFICANT SYSTEMIC PUBLIC HEALTH VIOLATION" MEANS  
8 A VIOLATION OF THE RULES PROMULGATED PURSUANT TO SECTION  
9 25-4-1604 (1) (b) (I) THAT CONTRIBUTES TO AN OVERALL SYSTEMIC  
10 PUBLIC HEALTH PROBLEM. SIGNIFICANT SYSTEMIC PUBLIC HEALTH  
11 VIOLATIONS INCLUDE, WITHOUT LIMITATION, OVERALL POOR HYGIENIC  
12 PRACTICES OR LACK OF PROPER FOOD TEMPERATURE CONTROL, SUCH AS  
13 A FAILURE TO MAINTAIN PROPER COOLING OR REHEATING OF FOODS AT  
14 SAFE TEMPERATURES.

15 (17) "SUSTAINED COMPLIANCE" MEANS THE NONRECURRENT, FOR  
16 AT LEAST TWO CONSECUTIVE INSPECTIONS, OF A VIOLATION OR  
17 VIOLATIONS CONSIDERED SIGNIFICANT SYSTEMIC PUBLIC HEALTH  
18 VIOLATIONS THAT HAVE BEEN PREVIOUSLY CITED.

19 **SECTION 2.** 25-4-1611 (1), (2), and (3), Colorado Revised  
20 Statutes, are amended, and the said 25-4-1611 is further amended BY  
21 THE ADDITION OF A NEW SUBSECTION, to read:

22 **25-4-1611. Violation - penalties.** (1) If the department or a local  
23 board of health finds that a licensee or other person operating a retail  
24 food establishment was provided with written notification of a violation  
25 of section 25-4-1610 (1) (a), (1) (b), (1) (d), (1) (e), or (1) (f) and was

1 given a reasonable time to comply but remained in noncompliance, such  
2 person shall be subject to a civil penalty of not less than two hundred fifty  
3 dollars and not more than one TWO thousand dollars, assessed by  
4 the department or local board of health.

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

1 health shall issue a second written notification of noncompliance,  
2 advising the licensee or other person operating such establishment of the  
3 violation and potential civil penalties that may be assessed if such  
4 noncompliance continues. The department or a local board of health  
5 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 local  
10 board of health may assess a civil penalty of not less than two hundred  
11 fifty dollars nor more than five hundred dollars and shall advise the  
12 person operating such establishment in writing that future noncompliance  
13 with the cited provisions in the second notification of noncompliance  
14 shall result in the issuance of a third written notification of  
15 noncompliance and subject such 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 local board of  
22 health may assess a civil penalty of not less than five hundred dollars nor  
23 more than one thousand dollars. When compliance with the provisions  
24 cited in the second written notification of noncompliance is obtained, the  
25 department or local board of health shall notify the licensee or other  
26 person operating such establishment in writing that noncompliance with  
27 the cited provisions in the second notification of noncompliance at the

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

5 (2.5) (a) IF THE DEPARTMENT OR A LOCAL BOARD OF HEALTH FINDS  
6 THAT A LICENSEE OR OTHER PERSON OPERATING A RETAIL FOOD  
7 ESTABLISHMENT IS IN VIOLATION OF SECTION 25-4-1610(1) (c), AND THAT  
8 THE VIOLATION IS A SIGNIFICANT SYSTEMIC PUBLIC HEALTH VIOLATION,  
9 THE DEPARTMENT OR LOCAL BOARD OF HEALTH SHALL PROVIDE WRITTEN  
10 NOTIFICATION ON THE INSPECTION REPORT AND BY WRITTEN LETTER AND  
11 ESTABLISH A DATE, WITHIN A REASONABLE TIME, FOR COMPLIANCE. THE  
12 DEPARTMENT OR LOCAL BOARD OF HEALTH SHALL CONDUCT AN  
13 INSPECTION ON OR AFTER THE ESTABLISHED DATE TO DETERMINE  
14 COMPLIANCE WITH SECTION 25-4-1610(1) (c) AS LISTED ON THE WRITTEN  
15 NOTIFICATION. IF THE LICENSEE OR OTHER PERSON IS FOUND TO REMAIN  
16 IN NONCOMPLIANCE, THE DEPARTMENT OR LOCAL BOARD OF HEALTH  
17 SHALL AGAIN PROVIDE WRITTEN NOTIFICATION OF NONCOMPLIANCE AND  
18 A REASONABLE TIME FOR COMPLIANCE. IF, DURING THE INSPECTION ON OR  
19 AFTER THE SECOND ESTABLISHED COMPLIANCE DATE, THE LICENSEE OR  
20 OTHER PERSON REMAINS IN NONCOMPLIANCE, SUCH PERSON SHALL BE  
21 SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN TWO HUNDRED FIFTY  
22 DOLLARS AND NOT MORE THAN ONE THOUSAND DOLLARS, ASSESSED BY  
23 THE DEPARTMENT OR LOCAL BOARD OF HEALTH. IF, DURING THE  
24 INSPECTIONS, ANOTHER SIGNIFICANT SYSTEMIC PUBLIC HEALTH VIOLATION  
25 IS OBSERVED THAT WAS NOT LISTED ON THE INITIAL VIOLATION  
26 NOTIFICATION, A SEPARATE CIVIL PENALTY ENFORCEMENT PROCEEDING  
27 REGARDING THE NEW VIOLATION MAY BE INITIATED.

1 (b) IF, AT THE NEXT INSPECTION FOLLOWING THE ASSESSMENT OF  
2 A CIVIL PENALTY PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2.5),  
3 THE DEPARTMENT OR LOCAL BOARD OF HEALTH FINDS THAT THE PERSON  
4 SUBJECT TO THE CIVIL PENALTY IS AGAIN IN VIOLATION OF SECTION  
5 25-4-1610 (1) (c), SUCH PERSON SHALL BE ASSESSED A SECOND CIVIL  
6 PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS AND NOT MORE  
7 THAN ONE THOUSAND FIVE HUNDRED DOLLARS, ASSESSED BY THE  
8 DEPARTMENT OR LOCAL BOARD OF HEALTH. SUCH PERSON SHALL HAVE A  
9 REASONABLE TIME PERIOD TO COMPLY.

10 (c) IF, AT THE NEXT INSPECTION FOLLOWING THE ASSESSMENT OF  
11 A CIVIL PENALTY PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2.5),  
12 THE DEPARTMENT OR LOCAL BOARD OF HEALTH FINDS THAT THE PERSON  
13 SUBJECT TO THE CIVIL PENALTY IS AGAIN IN VIOLATION OF SECTION  
14 25-4-1610 (1) (c), SUCH PERSON SHALL BE ASSESSED A THIRD CIVIL  
15 PENALTY OF NOT LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS AND  
16 NOT MORE THAN TWO THOUSAND DOLLARS, ASSESSED BY THE  
17 DEPARTMENT OR LOCAL BOARD OF HEALTH.

18 (d) IF, DURING SUBSEQUENT INSPECTIONS, THE DEPARTMENT OR  
19 LOCAL BOARD OF HEALTH FINDS THAT A PERSON PREVIOUSLY SUBJECT TO  
20 A CIVIL PENALTY UNDER PARAGRAPH (a), (b), OR (c) OF THIS SUBSECTION  
21 (2.5) IS ONCE AGAIN IN COMPLIANCE WITH SECTION 25-4-1610 (1) (c), THE  
22 DEPARTMENT OR LOCAL BOARD OF HEALTH SHALL NOTIFY THE PERSON IN  
23 WRITING THAT NONCOMPLIANCE WITH SECTION 25-4-1610 (1) (c) AT THE  
24 NEXT INSPECTION MAY RESULT IN THE ISSUANCE OF A CIVIL PENALTY  
25 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2.5).

26 (e) IF THE DEPARTMENT OR LOCAL BOARD OF HEALTH FINDS THAT  
27 A PERSON PREVIOUSLY SUBJECT TO CIVIL PENALTIES UNDER PARAGRAPHS

1 (a) AND (b) OF THIS SUBSECTION (2.5) HAS ACHIEVED SUSTAINED  
2 COMPLIANCE WITH SECTION 25-4-1610 (1) (c), FOR THE VIOLATIONS FOR  
3 WHICH PENALTIES WERE PREVIOUSLY ASSESSED, THE ENFORCEMENT  
4 PROCEEDINGS SHALL END.

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 ~~calendar year~~ TWELVE-MONTH PERIOD. Whenever a third civil penalty is  
8 assessed in a ~~calendar year~~ ANY TWELVE-MONTH PERIOD, the department  
9 or local board of health shall initiate proceedings to suspend or revoke the  
10 license of the licensee pursuant to section 25-4-1609.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, and safety.