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PART 16 FOOD PROTECTION ACT

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 administration and enforcement of such minimum standards and rules. Such standards and rules are established to:

(a) Ensure the safety of food prepared, sold, or served in retail food establishments;

(b) Maximize public health protection;

(c) Identify hazards and potential sources of contamination and take measures to prevent, reduce, or eliminate the physical, chemical, or biological agents in food prepared, sold, or served in retail food establishments; and

(d) Improve the sanitary condition of all retail food establishments, reduce food-borne illness outbreaks, and control the spread of food-borne disease from retail food establishments.

(2) This part 16 is deemed an exercise of the police powers of the state for the protection of the health and social welfare of the people of the state of Colorado.

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

(1) "Automated food merchandising enterprise" means the collective activity of the supplying or preparing of food or drink for automated food merchandising machines.

(2) "Certificate of license" means a grant to operate a retail food establishment without a fee, under the conditions set forth in section [25-4-1607](#) (9).

(3) "Department" means the department of public health and environment, and its authorized employees.

(4) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(5) "Fund" means the food protection cash fund created in section [25-4-1608](#).

(6) "HACCP plan" means a written document setting forth the formal procedures for following hazard analysis critical control point principles.

(7) "Inspection" means an inspection of a retail food establishment conducted by the department or a local board of health to ensure compliance by such establishment with rules promulgated by the department pursuant to this part 16.

(8) "License" means a grant to a licensee to operate a retail food establishment.

(9) "Licensee" means a person that is licensed or who holds a certificate of license pursuant to this part 16 and is responsible for the lawful operation of a retail food establishment.

(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.

(11) "Modified atmosphere packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen, displacing the oxygen with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen.

(12) "Nonpotentially hazardous" means any food or beverage that, when stored under normal conditions without refrigeration, will not support the rapid and progressive growth of microorganisms that cause food infections or food intoxications.

(13) "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of such entities.

(14) "Retail food establishment" means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. "Retail food establishment" does not mean:

(a) Any private home;

(b) Private boarding houses;

(c) Hospital and health facility patient feeding operations licensed by the department;

(d) Child care centers and other child care facilities licensed by the department of human services;

(e) Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;

(f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

(g) Motor vehicles used only for the transport of food;

(h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;

(i) Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package;

(j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;

(k) Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;

(l) The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

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

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

(15) "Safe food" means food that does not contain any poisonous, deleterious, or disease-causing substance or microorganisms that may render such food injurious to human health.

(16) "Special event" means an organized event or celebration at which retail food establishments prepare, serve, or otherwise provide food for human consumption.

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 enforce and administer this part 16.

25-4-1604. Powers and duties of the department. (1) The department shall have 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](#);

(b) (I) To promulgate rules pursuant to article [4](#) of title [24](#), C.R.S., for the implementation, administration, 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.

(II) For purposes of this paragraph (b), a uniform code of sanitary rules means rules for the preparation, sale, and serving of food, including but not be limited to general overall retail food establishment and equipment design and construction; sanitary maintenance of equipment, utensils, and facilities for food preparation, service, and storage; wholesomeness of food and drink; source and protection of food and water; disposal of liquid and solid wastes; and other rules for the effective administration and enforcement of this part 16.

(c) To hear and determine all complaints against licensees or grantees of certificates of license and to administer oaths and issue subpoenas to require the presence of any person necessary to the determination of any such hearing;

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

(e) To enter retail food establishments during business hours and at other times during which activity is evident to conduct inspections and other interventions related to food safety and the protection of public health;

(f) To develop and enforce standards of program conduct and performance to be followed and adhered to by employees of the department and local 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 interpretation and application of rules promulgated under this part 16;

(h) To review and approve HACCP plans submitted for evaluation to verify and ensure that food handling risks are reduced to prevent food-borne illness outbreaks;

(i) To delegate to any local 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 board of health.

25-4-1605. Submission of plans for approval - required. (1) An owner or operator shall submit plans and specifications to the department or local 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, 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 board of health shall treat such plans and specifications as confidential trade secret information. Such 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 board of health. The department or local 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 shall submit an HACCP plan to the department or local 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 submission shall ensure that food handling risks are reduced to prevent food-borne illness and outbreaks. The department and any local board of health shall treat HACCP plans as confidential trade secret information.

(4) The department or local 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 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.

25-4-1606. Licensure - exception. (1) An application for a license or a certificate of license shall be filed with the department or local board of health before any person may operate a retail food establishment in this state. Such 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 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 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 board of health shall approve the application for a license or certificate of license.

(3) Every license and certificate of license granted pursuant to this section shall specify the date granted, the period of coverage, the name of the licensee, and the name and address of the licensed establishment. All licenses shall be conspicuously displayed at all times in the licensed establishment.

(4) Licenses and certificates of license shall be valid for one calendar year, or such portion thereof as remains after the granting of such 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 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 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.

(5) Subsections (1) and (2) of this section shall not apply in the city and county of Denver, which, by ordinance, may provide for the licensure of retail food establishments.

25-4-1607. Fees. (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:

| Seating Capacity | Fee |
|-------------------------|------------|
| 0 to 100 | \$154 |
| 101 to 200 | 175 |
| Over 200 | 189 |

(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:

| Square Footage | Fee |
|-----------------------|------------|
| Less than 3,000 | \$55 |
| 3,001 to 10,000 | 100 |
| 10,001 to 20,000 | 115 |
| 20,001 to 40,000 | 138 |
| 40,001 to 70,000 | 175 |
| over 70,000 | 250 |

(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 3,000 | \$138 |
| 3,001 to 10,000 | 225 |
| 10,001 to 20,000 | 240 |
| 20,001 to 40,000 | 263 |
| 40,001 to 70,000 | 300 |
| over 70,000 | 383 |

(d) A retail food establishment shall be subject to only one of the fees established in this subsection (1).

(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) shall be the only annual license fees charged by the state or any county, 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 dollars shall be paid to the department or local board of health. The fee for plan review and preopening inspection of a new or remodeled retail food establishment shall be the actual cost of such

review, which shall not exceed two 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 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 hundred eighty dollars. Such costs shall be payable when the review is completed.

(4) The fee for a HACCP plan review of a specific written process shall be the actual cost of such review, which shall not exceed eighty dollars. The review of a HACCP plan for a process already conducted at a facility shall be the actual cost of such review, which shall not exceed two 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 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.

(6) The fee for food protection services provided to special events shall not exceed the actual cost of such services and shall be paid by the organizer of such special event when services are completed.

(7) The fee for any requested service not specifically set forth in this section shall not exceed the actual cost of such service.

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

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

(I) Parochial, public, or private school;

(II) Penal institution;

(III) Charitable organization and benevolent, nonprofit retail food establishment conducted for the purpose of assisting elderly, incapacitated, or disadvantaged persons; and

(IV) Nonprofit or charitable organization that donates, prepares, sells, or serves food in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

(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.

(b) No institution or organization listed in paragraph (a) of this subsection (9) shall pay any fee imposed on a retail food establishment pursuant to this section.

(10) Local boards of health created in parts 5, 6, and 7 of article 1 of this title shall collect fees under this section if such local 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.

(12) Notwithstanding the amount specified for any fee in this section, the state board of health by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section [24-75-402](#) (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section [24-75-402](#) (4), C.R.S.

25-4-1608. Food protection cash fund - creation. (1) Fees collected by the department pursuant to section [25-4-1607](#) shall be transmitted to the state treasurer who shall credit the same 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.

(2) Twenty-five dollars of each fee collected by the department and local 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) 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 board of health for deposit in the appropriate local board of health cash fund in accordance with sections [25-1-509](#) and [25-1-713](#), or if the fee is collected by the department it shall be deposited pursuant to section 25-4-1608 (1), and used to pay a portion of the cost of conducting a retail food establishment protection program.

(3) Any interest derived from the deposit and investment of moneys in the food protection cash fund shall be credited to such fund. Any unexpended or unencumbered moneys remaining in such fund at the end of a fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state.

25-4-1609. Disciplinary actions - revocation - suspension - review. (1) The department or local 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.

(2) The revocation and suspension of a license or certificate of license shall be in addition to any other penalties prescribed by this part 16. No suspension shall be for a period longer than six months. When a license or certificate of license is suspended or revoked, no part of the fees paid for a license shall be returned to the licensee.

(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.

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 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 board of health having jurisdiction over such establishment;

(c) Any person to violate this part 16 and any rules promulgated pursuant to this part 16;

(d) Any person or retail food establishment to refuse to permit entry to such establishment in accordance with sections [25-4-1604](#) (1) (e) and 25-4-1606 (2);

(e) Any retail food establishment to sell or serve food prepared in a private home to any person;

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

25-4-1611. Violation - penalties. (1) If the department or a local 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 board of health.

(2) (a) Upon a finding by the department or a local 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 violation is sufficient to permit the department or local board of health to establish a date and time for correction, the department or local board of health shall, in writing, advise the licensee or other person operating such establishment of the violation, provide such 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 establishment is found to be in violation of the same provisions, the department or local board of health shall issue such person a written notification of noncompliance, provide such 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 board of health shall advise the licensee or other person operating such 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 board of health shall issue a second written notification of noncompliance, advising the licensee or other person operating such establishment of the violation and potential civil penalties that may be assessed if such noncompliance continues. The department or a local 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 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 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 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 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 board of health shall notify the licensee or other person operating such 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 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 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 board of health shall be deposited in the appropriate local board of health cash 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 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 establishment.

(7) In addition to the remedies provided in this part 16 and other remedies provided by law, the department or local 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](#).

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 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.