

HOUSE BILL NO. 236

INTRODUCED BY M. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC HEALTH; REVISING LAWS RELATED TO LOCAL BOARDS OF HEALTH; REQUIRING THAT CERTAIN POWERS AND DUTIES OF A LOCAL BOARD OF HEALTH MUST OCCUR WITHOUT OBJECTION FROM A LOCAL GOVERNING BODY; CLARIFYING ACTIONS OF A LOCAL BOARD OF HEALTH THAT MUST BE APPROVED BY A LOCAL GOVERNING BODY; REVISING PENALTIES PROVIDED FOR A PERSON OR BUSINESS OWNER WHO VIOLATES RULES ADOPTED BY A LOCAL BOARD OF HEALTH OR THE DEPARTMENT; REMOVING THE PENALTY FOR A LAW ENFORCEMENT OFFICER WHO DOES NOT RENDER AID TO A LOCAL BOARD OF HEALTH OFFICER; PROVIDING AND REVISING DEFINITIONS; AMENDING SECTIONS 50-1-101, 50-1-103, 50-1-104, 50-2-116, 50-2-118, 50-2-120, 50-2-121, 50-2-124, AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in chapter 2 and this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Condition of public health importance" means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

1 (4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:
2 (a) in which an infectious agent normally lives and multiplies;
3 (b) on which an infectious agent depends primarily for survival; and
4 (c) where an infectious agent reproduces in a manner that allows the infectious agent to be
5 transmitted to a susceptible host.

6 (5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health
7 and safety that:

8 (a) limit access to or limit or condition the use of environmentally contaminated property or media;
9 (b) provide for the protection or preservation of environmental cleanup measures; or
10 (c) inform the public that property or media is or may be environmentally contaminated.

11 (6) "Isolation" means the physical separation and confinement of an individual or groups of individuals
12 who are confirmed to be infected or reasonably believed to be infected with a communicable disease ~~or~~
13 ~~possibly communicable disease from nonisolated individuals~~ to prevent or limit the transmission of the
14 communicable disease to nonisolated individuals.

15 (7) "Local board of health" or "local board" means a county, city, city-county, or district board of
16 health.

17 (8) "Local governing body" or "governing body" means:

18 (a) the board of county commissioners that oversees a county local board of health;

19 (b) the elected governing body of a city that oversees a city local board of health; or

20 (c) the entity identified as the governing body as established in the bylaws, interlocal agreement, or
21 memorandum of understanding creating a city-county local board of health or a local district board of health.

22 ~~(8)(9)~~ "Local health officer" means a county, city, city-county, or district health officer appointed by a
23 local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term
24 may include an authorized representative of the local health officer.

25 ~~(9)(10)~~ "Local public health agency" means an organization operated by a local government in the
26 state, including local boards of health or local health officers, that principally acts to protect or preserve the
27 public health.

28 ~~(10)(11)~~ "Physician" has the meaning provided in 37-3-102.

(11)(12) "Public health services and functions" means those services and functions necessary to promote the conditions in which the population can be healthy and safe, including:

(a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or

(b) the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and epidemiological research, developing public health policy, and responding to public health needs and emergencies.

(12)(13) "Public health system" means state and local public health agencies and their public and private sector partners.

(13)(14) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are ~~or may have been exposed to~~ confirmed to have a communicable disease ~~or possibly communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals~~ to prevent or limit the transmission of the communicable disease to nonquarantined individuals.

(14)(15) "Screening" means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition's precursor in an individual.

(15)(16) "Testing" has the same meaning as screening."

Section 2. Section 50-1-103, MCA, is amended to read:

"50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring ~~an~~ a civil action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the department."

1 **Section 3.** Section 50-1-104, MCA, is amended to read:

2 **"50-1-104. General penalty.** ~~(1) Anyone~~A person who intentionally violates a rule adopted by the
3 department for which a penalty is not specified is ~~guilty of a misdemeanor~~ subject to a civil penalty of not more
4 than \$25.

5 (2) The owner of a business who intentionally violates a rule adopted by the department for which a
6 penalty is not specified is subject to a civil penalty of not more than \$2,500."

7
8 **Section 4.** Section 50-2-116, MCA, is amended to read:

9 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of
10 the public health system, without objection from a majority of the local governing body in collaboration with
11 federal, state, and local partners, each local board of health shall:

12 (a) with the approval of the local governing body, appoint and fix the salary of a local health officer
13 who is:

14 (i) a physician;

15 (ii) a person with a master's degree in public health; or

16 (iii) a person with equivalent education and experience, as determined by the department;

17 (b) elect a presiding officer and other necessary officers;

18 (c) employ qualified staff;

19 (d) adopt bylaws to govern meetings;

20 (e) hold regular meetings at least quarterly and hold special meetings as necessary;

21 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:

22 (i) epidemiological tracking and investigation;

23 (ii) screening and testing;

24 (iii) isolation and quarantine measures;

25 (iv) diagnosis, treatment, and case management;

26 (v) abatement of public health nuisances;

27 (vi) inspections;

28 (vii) collecting and maintaining health information;

1 (viii) education and training of health professionals; or

2 (ix) other public health measures as allowed by law;

3 (g) protect the public from the introduction and spread of communicable disease or other conditions of
4 public health importance, including through actions to ensure the removal of filth or other contaminants that
5 might cause disease or adversely affect public health;

6 (h) supervise or make inspections for conditions of public health importance and issue written orders
7 for compliance or for correction, destruction, or removal of the conditions;

8 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
9 of public health laws, rules, and local regulations;

10 (j) identify to the department an administrative liaison for public health. The liaison must be the local
11 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
12 time local health officer, the liaison must be the highest ranking public health professional employed by the
13 jurisdiction.

14 (k) subject to the provisions of 50-2-130 and with the approval of the local governing body, adopt
15 necessary regulations that are not less stringent than state standards for the control and disposal of sewage
16 from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter
17 4. The regulations must describe standards for granting variances from the minimum requirements that are
18 identical to standards promulgated by the board of environmental review and must provide for appeal of
19 variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits
20 water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-
21 102, encroaches onto adjacent private property without the authorization of the private property owner.

22 (2) Local boards of health may:

23 (a) accept and spend funds received from a federal agency, the state, a school district, or other
24 persons or entities;

25 (b) with the approval of the local governing body, adopt necessary fees to administer regulations for
26 the control and disposal of sewage from private and public buildings and facilities;

27 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

28 (i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130 and with the approval of the local governing body, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 5. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall, without objection from a majority of the local governing body:

(1) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

(2) take steps to limit contact between people in order to protect the public health from imminent

1 threats, including but not limited to ordering the closure of buildings or facilities where people congregate and
2 canceling events;
3 (3) report communicable diseases to the department as required by rule;
4 (4) establish and maintain quarantine and isolation measures as adopted by the local board of health;
5 and
6 (5) pursue action with the appropriate court if this chapter or rules adopted by the local board or
7 department under this chapter are violated."
8

9 **Section 6.** Section 50-2-120, MCA, is amended to read:

10 **"50-2-120. Assistance from law enforcement officials.** A state or local health officer may request a
11 sheriff, constable, or other peace officer to assist the health officer in carrying out the provisions of this chapter.
12 ~~If the officer does not render the service, the officer is guilty of a misdemeanor and may be removed from~~
13 ~~office."~~
14

15 **Section 7.** Section 50-2-121, MCA, is amended to read:

16 **"50-2-121. Removal of diseased prisoner from jail by local health officer.** (1) On written order of a
17 local health officer, and without objection from a majority of the local governing body, a diseased prisoner who
18 is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital
19 or other place of safety.

20 (2) If the prisoner was committed to jail by order of a court, the order for removal and treatment must
21 be signed by the local health officer and filed with the court.

22 (3) When the prisoner recovers from the disease, the prisoner must be returned to the jail.

23 (4) A prisoner removed to a hospital or clinic for treatment may not be considered to have committed
24 an escape."
25

26 **Section 8.** Section 50-2-124, MCA, is amended to read:

27 **"50-2-124. Penalties for violations.** (1) (a) A person who does not comply with rules adopted by a
28 local board is ~~guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than~~

1 ~~\$200~~ subject to a civil penalty of not more than \$25.

2 (b) The owner of a business who does not comply with rules adopted by a local board is subject to a
3 civil penalty of not more than \$2,500.

4 (2) Except as provided in 50-2-123 and subsection (1) of this section, :

5 (a) a person who intentionally violates the provisions of this chapter or rules adopted by the
6 department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be
7 fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both subject to a civil
8 penalty of no more than \$25; and

9 (b) the owner of a business who intentionally violates the provisions of this chapter or rules adopted
10 by the department under the provisions of this chapter is subject to a civil penalty of no more than \$2,500.

11 (3) Each day of violation constitutes a separate offense.

12 (4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the
13 violation occurs."

14

15 **Section 9.** Section 50-2-130, MCA, is amended to read:

16 **"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After
17 April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board
18 may not adopt a rule under 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than the comparable
19 state regulations or guidelines that address the same circumstances. The local board may incorporate by
20 reference comparable state regulations or guidelines.

21 (2) The local board, with the approval of the local governing body, may adopt a rule to implement 50-
22 2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than comparable state regulations or guidelines only if
23 the local board makes a written finding, after a public hearing and public comment and based on evidence in
24 the record, that:

25 (a) the proposed local standard or requirement protects public health or the environment; and

26 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or
27 environment and is achievable under current technology.

28 (3) The written finding must reference information and peer-reviewed scientific studies contained in

1 the record that forms the basis for the local board's conclusion. The written finding must also include
2 information from the hearing record regarding the costs to the regulated community that are directly attributable
3 to the proposed local standard or requirement.

4 (4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April
5 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may
6 petition the local board to review the rule. If the local board determines that the rule is more stringent than
7 comparable state regulations or guidelines, the local board shall comply with this section by either revising the
8 rule to conform to the state regulations or guidelines or making the written finding, as provided under
9 subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A
10 petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The
11 local board may charge a petition filing fee in an amount not to exceed \$250.

12 (b) A person may also petition the local board for a rule review under subsection (4)(a) if the local
13 board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the
14 state government subsequently establishes comparable regulations or guidelines that are less stringent than
15 the previously adopted local board rule."
16

17 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

18 - END -