

Chapter 23

Enforcement Provisions and Penalties

26-23-1 Legal advice and representation for department.

- (1) The attorney general shall be the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them. The county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil action requested by the executive director to abate a condition which exists in violation of the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.
- (2) The district attorney or county attorney having criminal jurisdiction shall prosecute for the violation of the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.
- (3) If the county attorney or district attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or, with the approval of the attorney general, by special counsel.

Amended by Chapter 38, 1993 General Session

26-23-2 Administrative review of actions of department or director.

Any person aggrieved by any action or inaction of the department or its executive director may request an adjudicative proceeding by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

26-23-3 Violation of public health laws or orders unlawful.

It shall be unlawful for any person, association, or corporation, and the officers thereof:

- (1) to willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, or regulation issued thereunder; or
- (2) to fail to remove or abate from private property under the person's control at his own expense, within 48 hours, or such other reasonable time as the health authorities shall determine, after being ordered to do so by the health authorities, any nuisance, source of filth, cause of sickness, dead animal, health hazard, or sanitation violation within the jurisdiction and control of the department, whether the person, association, or corporation shall be the owner, tenant, or occupant of such property; provided, however, when any such condition is due to an act of God, it shall be removed at public expense; or
- (3) to pay, give, present, or otherwise convey to any officer or employee of the department any gift, remuneration or other consideration, directly or indirectly, which such officer or employee is forbidden to receive by the provisions of this chapter;
- (4) to fail to make or file reports required by law or rule of the department relating to the existence of disease or other facts and statistics relating to the public health.

Enacted by Chapter 126, 1981 General Session

26-23-4 Unlawful acts by department officers and employees.

It shall be unlawful for any officer or employee of the department:

- (1) To accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon him by or in behalf of the department or by the provisions of this chapter.
- (2) To perform any work, labor, or services other than the duties assigned to him on behalf of the department during the hours such officer or employee is regularly employed by the department, or to perform his duties as an officer or employee of the department under any condition or arrangement that involves a violation of this or any other law of the state.

Enacted by Chapter 126, 1981 General Session

26-23-5 Unlawful acts concerning certificates, records, and reports -- Unlawful transportation or acceptance of dead human body.

It is unlawful for any person, association, or corporation and the officers of any of them:

- (1) to willfully and knowingly make any false statement in a certificate, record, or report required to be filed with the department, or in an application for a certified copy of a vital record, or to willfully and knowingly supply false information intending that the information be used in the preparation of any report, record, or certificate, or an amendment to any of these;
- (2) to make, counterfeit, alter, amend, or mutilate any certificate, record, or report required to be filed under this code or a certified copy of the certificate, record, or report without lawful authority and with the intent to deceive;
- (3) to willfully and knowingly obtain, possess, use, sell, furnish, or attempt to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy of any of them, including any that are counterfeited, altered, amended, or mutilated;
- (4) without lawful authority, to possess any certificate, record, or report, required by the department or a copy or certified copy of the certificate, record, or report, knowing it to have been stolen or otherwise unlawfully obtained; or
- (5) to willfully and knowingly transport or accept for transportation, interment, or other disposition a dead human body without a permit required by law.

Amended by Chapter 202, 1995 General Session

26-23-5.5 Illegal use of birth certificate -- Penalties.

- (1) It is a third degree felony for any person to willfully and knowingly:
 - (a) and with the intent to deceive, obtain, possess, use, sell, furnish, or attempt to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that the certificate or certified copy was issued upon information which is false in whole or in part or which relates to the birth of another person, whether living or deceased; or
 - (b) furnish or process a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purpose of deception by a person other than the person to whom the certificate of birth relates.
- (2) The specific criminal violations and the criminal penalty under this section take precedence over any more general criminal offense as described in Section 26-23-5.

Enacted by Chapter 202, 1995 General Session

26-23-6 Criminal and civil penalties and liability for violations.

- (1)
 - (a) Any person, association, or corporation, or the officers of any of them, who violates any provision of this chapter or lawful orders of the department or a local health department in a criminal proceeding is guilty of a class B misdemeanor for the first violation, and for any subsequent similar violation within two years, is guilty of a class A misdemeanor, except this section does not establish the criminal penalty for violation of Section 26-23-5.5.
 - (b) Conviction in a criminal proceeding does not preclude the department or a local health department from assessment of any civil penalty, administrative civil money penalty or to deny, revoke, condition, or refuse to renew a permit, license, or certificate or to seek other injunctive or equitable remedies.
- (2) Any person, association, or corporation, or the officers of any of them, who violates any provision of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department:
 - (a) shall be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of \$10,000 per violation; or
 - (b) in an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act, or similar procedures adopted by local or county government, a penalty not to exceed the sum of \$10,000 per violation.
- (3) Assessment of any civil penalty or administrative penalty does not preclude the department or a local health department from seeking criminal penalties or to deny, revoke, impose conditions on, or refuse to renew a permit, license, or certificate or to seek other injunctive or equitable remedies.
- (4) In addition to any penalties imposed under Subsection (1), the person, association, or corporation, or the officers of any of them is liable for any expense incurred by the department in removing or abating any health or sanitation violations, including any nuisance, source of filth, cause of sickness, or dead animal.
- (5) Each day of violation of a provision of this title, lawful orders of the department or a local health department, or rules adopted by the department under it is a separate violation.

Amended by Chapter 347, 2009 General Session

26-23-7 Application of enforcement procedures and penalties.

Enforcement procedures and penalties provided in this chapter do not apply to other chapters in this title which provide for specific enforcement procedures and penalties.

Amended by Chapter 297, 2011 General Session

26-23-8 Representatives of department authorized to enter regulated premises.

Authorized representatives of the department upon presentation of appropriate identification shall be authorized to enter upon the premises of properties regulated under this title to perform routine inspections to insure compliance with rules adopted by the department. This section does not authorize the department to inspect private dwellings.

Enacted by Chapter 126, 1981 General Session

26-23-9 Authority of department as to functions transferred from other agencies.

- (1) If functions transferred from other agencies are vested by this code in the department, the department shall be the successor in every way, with respect to such functions, except

as otherwise provided by this code. Every act done in the exercise of such functions by the department shall have the same force and effect as if done by the agency in which the functions were previously vested.

- (2) Whenever any such agency is referred to or designated by law, contract, or other document, the reference or designation shall apply to the department.

Enacted by Chapter 126, 1981 General Session

26-23-10 Religious exemptions from code -- Regulation of state-licensed healing system practice unaffected by code.

- (1)
- (a) Except as provided in Subsection (1)(b), nothing in this code shall be construed to compel any person to submit to any medical or dental examination or treatment under the authority of this code when such person, or the parent or guardian of any such person objects to such examination or treatment on religious grounds, or to permit any discrimination against such person on account of such objection.
 - (b) An exemption from medical or dental examination, described in Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect a substantial menace to the health of other persons exposed to contact with the unexamined person.
- (2) Nothing in this code shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination, provided the statutes and regulations on sanitation are complied with.
- (3) Nothing in this code shall be construed or used to amend any statute now in force pertaining to the scope of practice of any state-licensed healing system.

Amended by Chapter 297, 2011 General Session