

1 **LOCAL HEALTH REGULATION**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Johnny Anderson**

5 Senate Sponsor: John L. Valentine

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Health Code and the Local Health Department Act by
10 amending powers of local health departments and local health department boards to
11 establish certain standards and regulations.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ prohibits a local health department from establishing standards or regulations that
15 are more stringent than those established by federal law, state statute, or Department
16 of Health rules, unless the local health department makes a written finding that
17 federal and state laws are not adequate to protect public health;

18 ▶ prohibits a local health department board from establishing standards and
19 regulations more stringent than those established by federal law, state statute, or
20 Department of Health rules, unless the local health department board makes a
21 written finding that federal and state laws are not adequate to protect public health
22 of the state;

23 ▶ provides that the restrictions against more stringent regulations do not apply to
24 emergency rulemaking or to items not regulated by federal law, state statute, or
25 administrative rules; and

26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-1-23**, as enacted by Laws of Utah 1981, Chapter 126

34 **26A-1-121**, as last amended by Laws of Utah 2008, Chapter 3



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **26-1-23** is amended to read:

38 **26-1-23. Regulations for local health departments prescribed by department --**
39 **Local standards not more stringent than federal or state standards -- Exceptions for**
40 **written findings.**

41 ~~[The]~~ (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
42 Act, the department may prescribe by rule reasonable requirements not inconsistent with law
43 for a local health [departments] department as defined in Section 26A-1-102.

44 (2) Except as provided in Subsection (3), or where specifically allowed by federal law
45 or state statute, a local health department, as defined in Section 26A-1-102, may not establish
46 standards or regulations that are more stringent than those established by federal law, state
47 statute, or administrative rule adopted in accordance with Title 63G, Chapter 3, Utah
48 Administrative Rulemaking Act.

49 (3) (a) The local health department may make standards and regulations more stringent
50 than corresponding federal law, state statute, or state administrative rules, only if the local
51 health department makes a written finding after public comment and hearing and based on
52 evidence in the record, that corresponding federal laws, state statutes, or state administrative
53 rules are not adequate to protect public health of the state.

54 (b) The findings shall address the public health information and studies contained in
55 the record, which form the basis for the local health department's conclusion.

56 (4) Nothing in the provisions of Subsection (2) or (3), shall limit the ability of a local
57 health department to make standards and regulations in accordance with Subsection

58 26A-1-121(1)(a) for:

59 (a) emergency rules made in accordance with Section 63G-3-304; or

60 (b) items not regulated under federal law, state statute, or state administrative rule.

61 Section 2. Section **26A-1-121** is amended to read:

62 **26A-1-121. Standards and regulations adopted by local board -- Local standards**
63 **not more stringent than federal or state standards -- Exceptions for written findings --**
64 **Administrative and judicial review of actions.**

65 (1) (a) The board may make standards and regulations:

66 (i) not in conflict with rules of the Departments of Health and Environmental Quality;

67 and

68 (ii) necessary for the promotion of public health, environmental health quality, injury
69 control, and the prevention of outbreaks and spread of communicable and infectious diseases.

70 (b) The standards and regulations under Subsection (1)(a):

71 (i) supersede existing local standards, regulations, and ordinances pertaining to similar
72 subject matter[-]; and

73 (ii) except as provided under Subsection (1)(c) and except where specifically allowed
74 by federal law or state statute, may not be more stringent than those established by federal law,
75 state statute, or administrative rules adopted by the Utah Department of Health in accordance
76 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

77 (c) (i) The board may make standards and regulations more stringent than
78 corresponding federal law, state statute, or state administrative rules for the purposes described
79 in Subsection (1)(a), only if the board makes a written finding after public comment and
80 hearing and based on evidence in the record, that corresponding federal laws, state statutes, or
81 state administrative rules are not adequate to protect public health and the environment of the
82 state.

83 (ii) The findings shall address the public health information and studies contained in
84 the record, which form the basis for the board's conclusion.

85 ~~(c)~~ (d) The board shall provide public hearings prior to the adoption of any regulation

86 or standard. Notice of any public hearing shall be published at least twice throughout the
87 county or counties served by the local health department. The publication may be in one or
88 more newspapers, ~~[so long as]~~ if the notice is provided in accordance with this Subsection
89 (1)~~(e)~~(d).

90 ~~(d)~~ (e) The hearings may be conducted by the board at a regular or special meeting, or
91 the board may appoint hearing officers who may conduct hearings in the name of the board at a
92 designated time and place.

93 ~~(e)~~ (f) A record or summary of the proceedings of ~~[any]~~ a hearing shall be taken and
94 filed with the board.

95 (2) (a) ~~[Any]~~ A person aggrieved by ~~[any]~~ an action or inaction of the local health
96 department relating to the public health shall have an opportunity for a hearing with the local
97 health officer or a designated representative of the local health department. The board shall
98 grant a subsequent hearing to the person upon ~~[his]~~ the person's written request ~~[in writing]~~.

99 (b) In ~~[any]~~ an adjudicative hearing, a member of the board or the hearing officer may
100 administer oaths, examine witnesses, and issue notice of the hearings or subpoenas in the name
101 of the board requiring the testimony of witnesses and the production of evidence relevant to
102 ~~[any]~~ a matter in the hearing. ~~[A]~~ The local health department shall make a written record
103 ~~[shall be made]~~ of the hearing, including findings of facts and conclusions of law.

104 (c) Judicial review of a final determination of the local board may be secured by ~~[any]~~
105 a person adversely affected by the final determination, or by the Departments of Health or
106 Environmental Quality, by filing a petition in the district court within 30 days after receipt of
107 notice of the board's final determination.

108 (d) The petition shall be served upon the secretary of the board and shall state the
109 grounds upon which review is sought.

110 (e) The ~~[board in its]~~ board's answer shall certify and file with the court all documents
111 and papers and a transcript of all testimony taken in the matter together with ~~[its]~~ the board's
112 findings of fact, conclusions of law, and order.

113 (f) The appellant and the board are parties to the appeal.

114 (g) The Departments of Health and Environmental Quality may become a party by
115 intervention as in a civil action upon showing cause.

116 (h) A further appeal may be taken to the Court of Appeals under Section 78A-4-103.

117 (3) Nothing in the provisions of Subsection (1)(b)(ii) or (c), shall limit the ability of a
118 local health department board to make standards and regulations in accordance with Subsection
119 (1)(a) for:

120 (a) emergency rules made in accordance with Section 63G-3-304; or

121 (b) items not regulated under federal law, state statute, or state administrative rule.