

1 HOUSE BILL NO. 121

2 INTRODUCED BY D. BEDEY, J. ELLSWORTH

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LOCAL BOARDS OF HEALTH;
 5 REQUIRING THAT CERTAIN RULES, REGULATIONS, AND FEES BE PROPOSED BY A LOCAL BOARD OF
 6 HEALTH AND ADOPTED BY THE GOVERNING BODY; ALLOWING A LOCAL BOARD OF HEALTH TO
 7 ADOPT RULES TO IMPLEMENT A REGULATION ADOPTED BY A LOCAL GOVERNING BODY; ALLOWING
 8 A GOVERNING BODY TO AMEND A DIRECTIVE, MANDATE, OR ORDER GIVEN BY A LOCAL BOARD OF
 9 HEALTH DURING A TIME OF EMERGENCY OR DISASTER; ALLOWING A GOVERNING BODY TO AMEND
 10 AN ORDER GIVEN BY A LOCAL HEALTH OFFICER DURING A TIME OF EMERGENCY OR DISASTER;
 11 PROVIDING FOR RELIGIOUS FREEDOM; REVISING PENALTIES ALLOWED FOR THE VIOLATION OF A
 12 LOCAL BOARD RULE; REVISING AND PROVIDING A DEFINITION DEFINITIONS; AND AMENDING
 13 SECTIONS 50-1-101, 50-2-116, 50-2-118, 50-2-124, AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE
 14 EFFECTIVE DATE."

15

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

17

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

19 **"50-1-101. Definitions.** Unless the context indicates otherwise, in chapter 2 and this chapter, the
 20 following definitions apply:

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

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

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

1 2201.

2 (4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

3 (a) in which an infectious agent normally lives and multiplies;

4 (b) on which an infectious agent depends primarily for survival; and

5 (c) where an infectious agent reproduces in a manner that allows the infectious agent to be
6 transmitted to a susceptible host.

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

9 (a) limit access to or limit or condition the use of environmentally contaminated property or media;

10 (b) provide for the protection or preservation of environmental cleanup measures; or

11 (c) inform the public that property or media is or may be environmentally contaminated.

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

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

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

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

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

21 ~~(c) the board of county commissioners and the elected governing body of each city that oversee a~~
22 ~~city-county local board of health ;or~~

23 ~~(d) the board of county commissioners of each county and the elected governing body of each city~~
24 ~~that oversee a district local board of health~~

25 (C) THE ENTITY IDENTIFIED AS THE GOVERNING BODY AS ESTABLISHED IN THE BYLAWS, INTERLOCAL
26 AGREEMENT, OR MEMORANDUM OF UNDERSTANDING CREATING A CITY-COUNTY LOCAL BOARD OF HEALTH OR A LOCAL
27 DISTRICT BOARD OF HEALTH.

28 ~~(8)~~(9) "Local health officer" means a county, city, city-county, or district health officer appointed by a

1 local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term
2 may include an authorized representative of the local health officer.

3 ~~(9)~~(10) "Local public health agency" means an organization operated by a local government in the
4 state, including local boards of health or local health officers, that principally acts to protect or preserve the
5 public health.

6 ~~(10)~~(11) "Physician" has the meaning provided in 37-3-102.

7 ~~(11)~~(12) "Public health services and functions" means those services and functions necessary to
8 promote the conditions in which the population can be healthy and safe, including:

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

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

14 ~~(12)~~(13) "Public health system" means state and local public health agencies and their public and
15 private sector partners.

16 ~~(13)~~(14) "Quarantine" means the physical separation and confinement of an individual or groups of
17 individuals who ~~are or may have been exposed to a communicable disease or possibly communicable disease~~
18 and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to
19 prevent or limit the transmission of the communicable disease to nonquarantined individuals.

20 ~~(14)~~(15) "Screening" means diagnostic or investigative analysis or medical procedures that determine
21 the presence or absence of or exposure to a condition of public health importance or the condition's precursor
22 in an individual.

23 ~~(15)~~(16) "Testing" has the same meaning as screening."
24

25 **Section 2.** Section 50-2-116, MCA, is amended to read:

26 **"50-2-116. Powers and duties of local boards of health.** (1) IT IS A PURPOSE OF THIS CHAPTER TO
27 ADDRESS ONGOING ISSUES OR CONDITIONS CREATED DURING A DECLARED STATE OF EMERGENCY AS A RESULT OF
28 ORDERS, DIRECTIVES, OR MANDATES ISSUED BY THE GOVERNOR AS ALLOWED UNDER TITLE 10, CHAPTER 3, FOR A

1 STATE OF EMERGENCY ACTING LONGER THAN 7 DAYS. IT IS NOT A PURPOSE OF THIS CHAPTER TO HINDER, SLOW, OR
 2 REMOVE NONEMERGENCY-RELATED POWERS GRANTED TO A LOCAL BOARD OF HEALTH.

3 (2) In order to carry out the purposes of the public health system, in collaboration with federal, state,
 4 and local partners, each local board of health shall:

5 (a) ~~appoint and fix the salary~~ RECOMMEND TO THE GOVERNING BODY THE APPOINTMENT of a local health
 6 officer who is:

7 (i) a physician;

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

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

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

11 ~~(c) employ qualified staff;~~

12 ~~(d) (C)~~ adopt bylaws to govern meetings;

13 ~~(e) (D)~~ hold regular meetings at least quarterly and hold special meetings as necessary;

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

15 (i) epidemiological tracking and investigation;

16 (ii) screening and testing;

17 (iii) isolation and quarantine measures;

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

19 (v) abatement of public health nuisances;

20 (vi) inspections;

21 (vii) collecting and maintaining health information;

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

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

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

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

1 ~~(f)~~ (H) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the
2 violation of public health laws, rules, and local regulations;

3 ~~(f)~~ (I) identify to the department an administrative liaison for public health. The liaison must be the
4 local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
5 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
6 jurisdiction.

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

15 ~~(2)~~(3) Local boards of health may:

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

18 (b) ~~adopt~~ propose for adoption by the local governing body necessary fees to administer regulations
19 for the control and disposal of sewage from private and public buildings and facilities;

20 (c) ~~adopt~~ propose for adoption by the local governing body regulations that do not conflict with 50-50-
21 126 or rules adopted by the department:

22 (i) for the control of communicable diseases;

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

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

28 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing

1 establishments and that are not less stringent than state standards for tattooing and body-piercing
2 establishments;

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

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

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

8 (vi) to implement the public health laws;

9 (D) ADOPT RULES NECESSARY TO IMPLEMENT AND ENFORCE REGULATIONS ADOPTED BY THE LOCAL
10 GOVERNING BODY; and

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

15 ~~(3)~~(4) A local board of health may provide, implement, facilitate, or encourage other public health
16 services and functions as considered reasonable and necessary.

17 (4)(5) A directive, mandate, or order issued by a local board of health in response to a declaration of
18 emergency and/or OR disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal
19 executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

20 (A) remains in effect ONLY DURING THE DECLARED STATE OF EMERGENCY OR DISASTER OR until THE
21 GOVERNING BODY HOLDS A PUBLIC MEETING AND ALLOWS PUBLIC COMMENT AND the majority of the governing body
22 moves to amend, rescind, or otherwise change the directive, mandate, or order; AND

23 (B) MAY NOT INTERFERE WITH OR OTHERWISE LIMIT, MODIFY, OR ABRIDGE A PERSON'S PHYSICAL ATTENDANCE
24 AT OR OPERATION OF A RELIGIOUS FACILITY, CHURCH, SYNAGOGUE, OR OTHER PLACE OF WORSHIP."

25

26 **Section 3.** Section 50-2-118, MCA, is amended to read:

27 **"50-2-118. Powers and duties of local health officers.** (1) In order to carry out the purpose of the
28 public health system, in collaboration with federal, state, and local partners, local health officers or their

1 authorized representatives, WITHOUT OBJECTION FROM THE MAJORITY OF THE GOVERNING BODY, shall:

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

4 ~~(2)(b)~~ take steps to limit contact between people in order to protect the public health from imminent
5 threats, including but not limited to ordering the closure of buildings or facilities where people congregate and
6 canceling events;

7 ~~(3)(c)~~ report communicable diseases to the department as required by rule;

8 ~~(4)(d)~~ establish and maintain quarantine and isolation measures as adopted by the local board of
9 health; and

10 ~~(5)(e)~~ pursue action with the appropriate court if this chapter or rules adopted by the local board or
11 department under this chapter are violated.

12 (2) A directive, mandate, or order issued by a local health officer in response to a declaration of
13 emergency and/or OR disaster by the governor as allowed in 10-3-302 and 10-3-303 or by the principal
14 executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

15 (A) remains in effect ONLY DURING THE DECLARED STATE OF EMERGENCY OR DISASTER OR until THE
16 GOVERNING BODY HOLDS A PUBLIC MEETING AND ALLOWS PUBLIC COMMENT AND the majority of the governing body
17 moves to amend, rescind, or otherwise change the directive, mandate, or order; AND

18 (B) MAY NOT INTERFERE WITH OR OTHERWISE LIMIT, MODIFY, OR ABRIDGE A PERSON'S PHYSICAL ATTENDANCE
19 AT OR OPERATION OF A RELIGIOUS FACILITY, CHURCH, SYNAGOGUE, OR OTHER PLACE OF WORSHIP."

20

21 **Section 4.** Section 50-2-124, MCA, is amended to read:

22 **"50-2-124. Penalties for violations.** (1) (A) A person who does not comply with rules adopted by a
23 local board ~~and the local governing body is guilty of a misdemeanor. On conviction, the person shall be fined IS~~
24 SUBJECT TO A CIVIL PENALTY OF not less than \$10 or more than \$200.

25 (B) A BUSINESS ENTITY THAT DOES NOT COMPLY WITH RULES ADOPTED BY A LOCAL BOARD IS SUBJECT TO A
26 CIVIL PENALTY OF NOT MORE THAN \$250.

27 (2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the
28 provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a

1 misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned
2 for not more than 90 days, or both.

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

4 (4) THE LOCAL BOARD OR THE COUNTY ATTORNEY OF THE COUNTY IN WHICH A VIOLATION ALLOWED IN
5 SUBSECTION (1) OCCURRED MAY PETITION A COURT OF LIMITED JURISDICTION TO IMPOSE THE CIVIL PENALTIES
6 ALLOWED IN SUBSECTION (1). VENUE FOR AN ACTION TO COLLECT A CIVIL PENALTY PURSUANT TO SUBSECTION (1) IS IN
7 THE COUNTY IN WHICH THE VIOLATION OCCURRED OR IN A COURT OF LIMITED JURISDICTION.

8 ~~(4)~~(5) Fines, except justice's court fines, must be paid to the county treasurer of the county in which
9 the violation occurs.

10 (6) (A) AS USED IN THIS SECTION, "BUSINESS ENTITY" MEANS A CORPORATION, ASSOCIATION, PARTNERSHIP,
11 LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, OR OTHER LEGAL ENTITY
12 RECOGNIZED UNDER STATE LAW.

13 (B) THE TERM DOES NOT INCLUDE AN INDIVIDUAL."

14

15 **Section 5.** 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~~ propose for adoption by the local governing body a rule under ~~50-2-116(1)(k), (2)(c)(iii), or~~
19 ~~(2)(c)(iv)~~ 50-2-116(2)(J), (3)(C)(III), OR (3)(C)(IV) that is more stringent than the comparable state regulations or
20 guidelines that address the same circumstances. The local board may incorporate by reference comparable
21 state regulations or guidelines.

22 (2) The local board may ~~adopt~~ propose for adoption by the local governing body a rule to implement
23 ~~50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)~~ 50-2-116(2)(J), (3)(C)(III), OR (3)(C)(IV) that is more stringent than
24 comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing
25 and public comment and based on evidence in the record, that:

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

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

1 (3) The written finding must reference information and peer-reviewed scientific studies contained in
2 the record that forms the basis for the local board's conclusion. The written finding must also include
3 information from the hearing record regarding the costs to the regulated community that are directly attributable
4 to the proposed local standard or requirement.

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

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

17

18 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

19

- END -