

LOCAL HEALTH REGULATION

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

▶ prohibits a local health department board from establishing standards and regulations more stringent than those established by federal law, state statute, or Department of Health, rules unless the local health department board makes a written finding that federal and state laws are not adequate to protect public health of the state; ~~H→~~ **[and]**

▶ provides that the restrictions for more stringent standards and regulations do not affect standards and regulations made under emergency rulemaking provisions or made for items not regulated by federal, law, state statute, or administrative rules; and ~~H←~~

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

H.B. 313



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-1-23**, as enacted by Laws of Utah 1981, Chapter 126

31 **26A-1-121**, as last amended by Laws of Utah 2008, Chapter 3



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

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

34 **26-1-23. Regulations for local health departments prescribed by department --**
35 **Local standards not more stringent than federal or state standards -- Exceptions for**
36 **written findings.**

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

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

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

50 (b) The findings shall ~~H~~→ [be accompanied by an opinion referring to and evaluating]
51 address ~~H~~ the
52 public health information and studies contained in the record, which form the basis for the local
53 health department's conclusion.

54 ~~H~~→ (4) Nothing in the provisions of Subsection (2) or (3), shall limit the ability of a local
55 health department to make standards and regulations in accordance with
56 Subsection 26A-1-121(1)(a) for:

- 57 (a) emergency rules made in accordance with Section 63G-3-304; or
- 58 (b) items not regulated under federal law, state statute, or state administrative rule. ~~H~~

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

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

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

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

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

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

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

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

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

76 (ii) The findings shall ~~H~~→ [be accompanied by an opinion referring to and evaluating]
76a address ←~~H~~ the
77 public health information and studies contained in the record, which form the basis for the
78 board's conclusion.

79 [~~e~~] (d) The board shall provide public hearings prior to the adoption of any regulation
80 or standard. Notice of any public hearing shall be published at least twice throughout the
81 county or counties served by the local health department. The publication may be in one or
82 more newspapers, [~~so long as~~] if the notice is provided in accordance with this Subsection
83 (1)[~~e~~](d).

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

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

89 (2) (a) [~~Any~~] A person aggrieved by [~~any~~] an action or inaction of the local health

90 department relating to the public health shall have an opportunity for a hearing with the local
 91 health officer or a designated representative of the local health department. The board shall
 92 grant a subsequent hearing to the person upon ~~[his]~~ the person's written request ~~[in writing]~~.

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

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

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

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

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

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

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

110a **H→ (3) Nothing in the provisions of Subsection (1)(b)(ii) or (c), shall limit the ability of a**
 110b **local health department board to make standards and regulations in accordance with**
 110c **Subsection (1)(a) for:**

110d **(a) emergency rules made in accordance with Section 63G-3-304; or**

110e **(b) items not regulated under federal law, state statute, or state administrative**
 110f **rule. ←H**

Legislative Review Note
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Office of Legislative Research and General Counsel