CHAPTER 1

Department of Health and Environmental Control

**SECTION 44‑1‑20.** Department of Health and Environmental Control created under supervision of Board of Health and Environmental Control.

There is created the South Carolina Department of Health and Environmental Control which shall be administered under the supervision of the South Carolina Board of Health and Environmental Control. The board shall consist of eight members, one from each congressional district, and one from the State at large to be appointed by the Governor, upon the advice and consent of the Senate. The member who is appointed at large shall serve as the chairman of the board. The Governor may remove the chairman of the board pursuant to Section 1‑3‑240(B); however, the Governor only may remove the other board members pursuant to Section 1‑3‑240(C). The terms of the members shall be for four years and until their successors are appointed and qualify. All vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. In making these appointments, race, gender, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

HISTORY: 1962 Code Section 32‑0.1; 1973 (58) 685; 1993 Act No. 181, Section 1030; 2012 Act No. 222, Section 11, eff June 7, 2012.

Editor’s Note

2012 Act No. 222, Section 15, provides as follows:

“SECTION 15. Notwithstanding any other provision of law to the contrary, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member on it as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires.”

CROSS REFERENCES

Commissioner of Department of Health and Environmental Control, or designee, an ex officio member of Advisory Council to S.C. Head and Spinal Cord Service Delivery System, see Section 44‑38‑380.

Department of Health and Environmental Control’s responsibilities with respect to Preschool Programs for Children with Disabilities, see Section 59‑36‑20.

Department’s responsibilities with respect to Special Supplemental Food Program for Pregnant and Breastfeeding Women, Infants and Children, see Sections 43‑5‑910 et seq.

Duties of the Department and Commissioner with respect to the controlled substances research program, see Sections 44‑53‑630 et seq.

Department of Health and Environmental Control regulations, see S.C. Code of Regulations R. 61‑1 et seq.

Library References

Health 363.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10.

**SECTION 44‑1‑30.** Meetings of Board; compensation of members.

The Board shall meet at least quarterly and the members shall receive such compensation for their services as is provided by law for members of boards and commissions.

HISTORY: 1962 Code Section 32‑0.2; 1973 (58) 685.

**SECTION 44‑1‑40.** Selection, term,and salary of director.

The board shall select a director for the department who shall serve a four‑year term and who shall have such authority and perform such duties as may be directed by the board. The salary of the director shall be fixed by the board, upon approval of the State Fiscal Accountability Authority. For any vacancy occurring in the office of director on or after February 1, 1995, the board, after consultation with and approval by the Governor, must submit the name of its appointee to the Senate for the Senate’s advice and consent. On or after February 1, 1995, the board may remove a director only after consultation with and approval by the Governor.

HISTORY: 1962 Code Section 32‑0.3; 1973 (58) 685; 1993 Act No. 181, Section 1031.

CROSS REFERENCES

Commissioner of Department an ex officio member of State Child Fatality Advisory Committee, see Section 63‑11‑1930.

Director of the Department of Health and Environmental Control as being a voting member of the Long Term Care Council, and the obligations with respect thereto, see Section 43‑21‑130.

Director of the Department of Health and Environmental Control serving as ex officio member of the South Carolina Agent Orange Advisory Council, see Section 44‑40‑30.

Duties of the Department and Commissioner with respect to the controlled substances research program, see Sections 44‑53‑630 et seq.

Powers and duties of Commissioner of Health and Environmental Control under Lead Poisoning Prevention and Control Act, see Sections 44‑53‑1310 et seq.

Library References

Health 365, 367.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Section 9.

Attorney General’s Opinions

Where a Director is appointed to fulfill the unexpired portion of the term of a previous Director, the new Director may serve a full term of four years upon confirmation by the Senate. S.C. Op.Atty.Gen. (February 28, 2017) 2017 WL 1017489.

**SECTION 44‑1‑50.** Administrative reviews; power to organize department.

The board may conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1.

The board shall provide for the administrative organization of the department and shall consolidate and merge existing duties, functions, and officers of the former agencies as may be necessary for economic and efficient administration. Provided, however, that the board may appoint such advisory boards as it considers necessary to carry out the functions of Sections 44‑1‑10 to 44‑1‑70, and there shall be provided a compensation for their services as provided by the law for members of boards and commissions.

HISTORY: 1962 Code Section 32‑0.4; 1973 (58) 685; 1993 Act No. 181, Section 1032; 2006 Act No. 387, Section 47, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

CROSS REFERENCES

Appeals from decision for designation or non‑designation, South Carolina trauma care systems, see S.C. Code of Regulations R. 61‑116.308.

Director of the Department of Health and Environmental Control as being a voting member of the Long Term Care Council, and the obligations with respect thereto, see Section 43‑21‑130.

Promulgation of rules and regulations under Hazardous Waste Management Act, see Section 44‑56‑30.

Library References

Health 366, 367.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑60.** Appeals from department decisions giving rise to contested case; procedures.

(A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another animal facility, except a swine facility, also must comply with the provisions of Section 44‑1‑65.

(B) The department staff shall comply with all requirements for public notice, receipt of public comments and public hearings before making a department decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.

(C) The initial decision involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other action of the department shall be a staff decision.

(D) In making a staff decision on any permit, license, certification or other approval, the department staff shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny or condition such permit, license, certification or other approval. At the time that such staff decision is made, the department shall issue a department decision, and shall base its department decision on the administrative record which shall consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification or other approval. The administrative record may also include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as such materials are specifically referred to in the department decision. The department decision need not be issued for routine permits for which no adverse public comments have been received.

(E)(1) Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.

(3) The filing fee must be in the amount of one hundred dollars unless the department establishes a fee schedule by regulation after complying with the requirements of Article 1, Chapter 23, Title 1. This fee must be retained by the department in order to help defray the costs of the proceedings and legal expenses.

(F) No later than sixty calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within sixty calendar days, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person requests pursuant to subsection (G) a contested case hearing before the Administrative Law Court. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten calendar days’ written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

(1) Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the staff must explain the staff decision and the materials relied upon in the administrative record to support the staff decision. The applicant or affected party shall state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. The staff may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the staff. Any final review conference officer may request additional information and may question the applicant or affected party, the staff, and anyone else providing information at the conference.

(2) After the final review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the final review conference or it may be reserved for consideration. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. In either event, the written decision must be mailed to the parties no later than thirty calendar days after the date of the final review conference. Within thirty calendar days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department’s specialized knowledge.

(3) Prior to the initiation of the final review conference, an applicant, permittee, licensee, or affected person must be notified of their right to request a transcript of the proceedings of the final review conference. If a transcript is requested, the applicant, permittee, licensee, or affected person making the request is responsible for all costs.

(G) An applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:

(1) notice is mailed to the applicant, permittee, licensee, and affected persons that the board declined to hold a final review conference; or

(2) the sixty calendar day deadline to hold the final review conference lapses and no conference has been held; or

(3) the final agency decision resulting from the final review conference is received by the parties.

(H) Applicants, permittees, licensees, and affected persons are encouraged to engage in mediation during the final review process.

(I) The department may promulgate regulations providing for procedures for final reviews.

(J) Any statutory deadlines applicable to permitting and licensing programs administered by the department must be extended to all for this final review process. If any deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

HISTORY: 2006 Act No. 387, Section 48, eff July 1, 2006; 2010 Act No. 278, Section 1, eff July 1, 2010; 2018 Act No. 139 (H.3929), Section 2, eff March 12, 2018.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

2010 Act 278, Section 26, provides as follows:

“This act takes effect July 1, 2010; provided, the provisions of this act do not apply to any matter pending before a court of this State prior to June 1, 2010.”

2018 Act No. 144, Section 4, provides as follows:

“SECTION 4. Nothing in this act shall be construed as affecting or applying to confined swine feeding operations.”

Effect of Amendment

2018 Act No. 139, Section 2, in (A), in the first sentence, substituted “contested case must be made” for “contested case shall be made”, and added the second sentence.

CROSS REFERENCES

Appeals from decision for designation or non‑designation, South Carolina trauma care systems, see S.C. Code of Regulations R. 61‑116.308.

Appeals of department permitting decisions for animal facilities, procedures, see Section 44‑1‑65.

Certificate of Need review procedures, see Section 44‑7‑210.

Order for discontinuance of discharge of wastes or air contaminants, see Section 48‑1‑130.

Library References

Health 370, 379.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 20 to 23, 25, 88 to 92.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 12, Selection of Members of Boards.

S.C. Jur. Public Health Section 47, Board Review.

NOTES OF DECISIONS

Construction with other laws 1

Final agency decision 4

Jurisdiction 5

Notice 2

Staff decision 3

1. Construction with other laws

Notice provisions in Department of Health and Environmental Control (DHEC) regulation addressing public notice did not conflict with statute governing appeals of decisions of DHEC; regulation dealt with public notice, while statute addressed appellate procedures, and, although statute placed an affirmative duty on DHEC to send simultaneous notification of appealable staff decisions to the applicant, permittee, licensee, and affected persons who had asked to be notified by certified mail, it did not prohibit DHEC from sending notice of these decisions to additional persons. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2010) 390 S.C. 418, 702 S.E.2d 246. Environmental Law 10; Environmental Law 17

2. Notice

Statute that required Department of Health and Environmental Control (DHEC) to mail decisions to applicant, permittee, licensee, and affected persons who had asked to be notified required DHEC to mail notices to those parties simultaneously; failing to interpret this statute as requiring DHEC to mail notifications simultaneously would mean DHEC could mail notice of its decision to the applicant and, 15 days later, mail notice of the decision to affected persons who had asked to be notified, and under this scenario, the time period for appealing the decision would have expired by the time the affected person received notice. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2010) 390 S.C. 418, 702 S.E.2d 246. Environmental Law 17

Time period for appeals of decisions of Department of Health and Environmental Control (DHEC) began when notice of the decision had been mailed, not when notice was received; the clear and unambiguous language in the statute provides that the staff decision became final 15 days after notice of the department decision had been mailed, and statute required DHEC to mail notice, unlike other statutes which contained no such requirement. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2010) 390 S.C. 418, 702 S.E.2d 246. Environmental Law 671

Coastal conservation league was an “affected person who had asked to be notified” for purposes of statute governing appeals of decisions of Department of Health and Environmental Control (DHEC); league was on the “mailing list” and should have received copy of permit decision granting permits to States Port Authority (SPA) and Department of Transportation (DOT) to begin development of marine container terminal, and throughout process, league was not an obscure or unknown party. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2010) 390 S.C. 418, 702 S.E.2d 246. Environmental Law 142

3. Staff decision

Telephone conversation in which staff member of Department of Health and Environmental Control (DHEC) informed hospital’s attorney that DHEC had decided not to require hospital’s competitor to apply for a Certificate of Need (CON) or a Non‑Applicability Determination (NAD) for competitor’s urgent care center, was not a “staff decision” on the grant or denial of a license, license, permit, or other matter for which a determination was required by law, and, therefore, did not entitle hospital to a contested case hearing. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

4. Final agency decision

Letter from Department of Health and Environmental Control (DHEC), declining hospital’s request for final review conference on whether competitor was required to obtain certificate of need (CON) or Non‑Applicability Determination (NAD) to operate urgent care center, did not give rise to a final agency decision subject to a contested case proceeding, despite reference in letter to statute providing that a department decision became final if a final review conference was not timely conducted, as there was no original decision that could have become final; competitor neither sought nor received formal approval for a CON or a NAD, and there was no license, order, or decision issued. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

5. Jurisdiction

Exemption of hospital’s competitor from process of obtaining a certificate of need (CON) or a Non‑Applicability Determination (NAD) for its urgent care center, based on status of urgent care center as the office of a licensed private practitioner, did not require a formal written, determination by Department of Health and Environmental Control (DHEC) and, therefore, did not give rise to jurisdiction of Administrative Law Court over contested case proceeding brought by hospital. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

**SECTION 44‑1‑65.** Appeals of department permitting decisions for animal facilities; procedures.

(A) In making a staff decision on a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, pursuant to Section 44‑1‑60(D), or if the department conducts a final review conference related to a decision on a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, pursuant to Section 44‑1‑60(F), the department shall base its decision solely on whether the permit complies with the applicable department regulations governing the permitting of poultry and other animal facilities, other than swine facilities.

(B) For purposes of permitting, licensing, certification, or other approval of a poultry facility or another animal facility, other than a swine facility:

(1) only an applicant, permittee, licensee, or affected person may request a final review conference pursuant to Section 44‑1‑60(F);

(2) only an affected person may request a contested case hearing pursuant to Section 44‑1‑60(G);

(3) only an applicant, permittee, licensee, or affected person may become a party to a final review conference;

(4) only an affected person may become a party to a contested case hearing; and

(5) only an applicant, permittee, licensee, or affected person is entitled as of right to be admitted as a party pursuant to Section 1‑23‑310(5) of the Administrative Procedures Act.

(C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, the department only may take into consideration the existing development on and use of property owned or occupied by an affected person on the date the department receives the applicant’s complete application package as prescribed by regulation. The department must not take into consideration any changes to the development or use of property after receipt of the application, including, but not limited to, the construction of a residence.

(2) If a property owner signs a setback waiver of the right to contest the issuance of a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, including waiver of the right to notice and a public hearing on a permit, license, certification, or other approval and to file a contested case or other action, then the affected person has seventy‑two hours to provide in writing a withdrawal or rescission of the waiver.

(D)(1) An applicant, permittee, licensee, or affected person who has exhausted all administrative remedies within the department relating to a decision to issue or deny a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, and who is aggrieved by a final decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

(2) Notwithstanding any other provision of law, a final decision to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner’s property line or located one thousand feet or more from an adjacent property owner’s residence.

(E) For purposes of this section, “affected person” means a property owner with standing within a one‑mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

HISTORY: 2018 Act No. 139 (H.3929), Section 1, eff March 12, 2018.

Editor’s Note

2018 Act No. 144, Section 4, provides as follows:

“SECTION 4. Nothing in this act shall be construed as affecting or applying to confined swine feeding operations.”

CROSS REFERENCES

Appeals from department decisions giving rise to contested case, procedures, see Section 44‑1‑60.

**SECTION 44‑1‑70.** Rules and regulations of board mst be approved by General Assembly.

All rules and regulations promulgated by the Board shall be null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.

HISTORY: 1962 Code Section 32‑0.6; 1973 (58) 685.

CROSS REFERENCES

Promulgation of rules and regulations under Hazardous Waste Management Act, see Section 44‑56‑30.

**SECTION 44‑1‑80.** Duties and powers of board as to communicable or epidemic diseases.

(A) The Board of Health and Environmental Control or its designated agents must investigate the reported causes of communicable or epidemic disease and must enforce or prescribe these preventive measures as may be needed to suppress or prevent the spread of these diseases by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State. The Board of Health and Environmental Control or its designated agents shall declare, when the facts justify it, any place as infected and, in case of hydrophobia or other diseases transmitted from animals to man, must declare such animal or animals quarantined, and must place all such restrictions upon ingress and egress of persons or animals therefrom as may be, in its judgment, necessary to prevent the spread of disease from the infected locality.

(B)(1) Whenever the board learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to cause a public health emergency, as defined in Section 44‑4‑130, it is authorized to notify the appropriate public safety authority, tribal authorities, and federal health and public safety authorities.

(2) The sharing of information on reportable illnesses, health conditions, unusual clusters, or suspicious events between authorized personnel must be restricted to information necessary for the treatment, control, investigation, and prevention of a public health emergency. Restriction of access to this information to those authorized personnel for the protection of public health ensures compliance with all state and federal health information privacy laws.

(3) The board and its agents must have full access to medical records and nonmedical records when necessary to investigate the causes, character, and means of preventing the spread of a qualifying health event or public health emergency. For purposes of this item, “nonmedical records” mean records of entities, including businesses, health facilities, and pharmacies, which are needed to adequately identify and locate persons believed to have been potentially exposed or known to have been infected with a contagious disease.

(4) An order of the board given to effectuate the purposes of this subsection is enforceable immediately by the public safety authority.

(5) For purposes of this subsection, the terms qualifying health event, public health emergency, and public safety authority have the same meanings as provided in Section 44‑4‑130.

HISTORY: 1962 Code Section 32‑36; 1952 Code Section 32‑36; 1942 Code Section 5011; 1932 Code Section 5054; Civ. C. ‘22 Section 2362; Civ. C. ‘12 Section 1614; 1908 (25) 998; 2002 Act No. 339, Section 22, eff July 2, 2002.

CROSS REFERENCES

Diseases and infections of animals, see Sections 47‑13‑10 et seq.

Implementation of Emergency Health Powers Act, see S.C. Code of Regulations R. 61‑112.

Rabies control, see Sections 47‑5‑10 et seq.

Library References

Health 366, 367.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 119, Disease Protection.

**SECTION 44‑1‑90.** Board shall advise municipal and county authorities.

The State Board of Health and Environmental Control or its designated agents, when it is deemed necessary by the municipal officers of any town or city or the governing body of any county, may (a) visit cities, towns, villages or localities where disease is prevalent or threatened, (b) investigate and advise with the local authorities or persons as to such measures as may tend to prevent the spread of disease or to remove or abate causes that may tend to cause or intensify disease, (c) advise, when practicable or possible, as to measures of sanitation or hygiene and (d) investigate and advise as to all matters respecting water supply, sewage, drainage, ventilation, heating, lighting or other measures connected with public sanitation or safety.

HISTORY: 1962 Code Section 32‑39; 1952 Code Section 32‑39; 1942 Code Section 5013; 1932 Code Section 5056; Civ. C. ‘22 Section 2364; Civ. C. ‘12 Section 1617; 1908 (25) 998; 1972 (57) 2687.

CROSS REFERENCES

Counties, generally, see Title 4.

Sewerage systems and sewerage commissions of municipal corporations, see Sections 5‑31‑810 et seq.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑100.** Assistance from peace and health officers.

All sheriffs and constables in the several counties of this State and police officers and health officers of cities and towns must aid and assist the Director of the Department of Health and Environmental Control and must carry out and obey his orders, or those of the Department of Health and Environmental Control, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed. During a state of public health emergency, as defined in Section 44‑4‑130, the director may request assistance in enforcing orders issued pursuant to this chapter and pursuant to Chapter 4, Title 44, from the public safety authority, as defined in Section 44‑4‑130, other state law enforcement authorities, and local law enforcement. The public safety authority may request assistance from the South Carolina National Guard in enforcing orders made pursuant to this chapter or pursuant to Chapter 4, Title 44.

HISTORY: 1962 Code Section 32‑37; 1952 Code Section 32‑37; 1942 Code Section 5011; 1932 Code Section 5054; Civ. C. ‘22 Section 2362; Civ. C. ‘12 Section 1614; 1908 (25) 998; 1993 Act No. 181, Section 1033; 2002 Act No. 339, Section 23, eff July 2, 2002.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 1, Statutory Authority.

S.C. Jur. Public Health Section 3, Enforcement.

Attorney General’s Opinions

Discussion of the validity of the section. S.C. Op.Atty.Gen. (December 15, 2003) 2003 WL 23138214.

**SECTION 44‑1‑110.** Duties of department in regard to public health, in general.

The Department of Health and Environmental Control is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.

It shall, through its representatives, investigate the causes, character, and means of preventing the epidemic and endemic diseases as the State is liable to suffer from and the influence of climate, location, and occupations, habits, drainage, scavengering, water supply, heating, and ventilation. It shall have, upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation of these diseases. No physician, hospital, or health facility, or person in charge of these records is liable in any action‑at‑law for permitting the examination or review. Patient‑identifying information elicited from these records and registries must be kept confidential by the department and it is exempt from the provisions of Chapter 4 of Title 30. It shall supervise and control the quarantine system of the State. It may establish quarantine both by land and sea.

HISTORY: 1962 Code Section 32‑2; 1952 Code Section 32‑2; 1942 Code Section 4998; 1932 Code Section 4998; Civ. C. ‘22 Section 2309; Civ. C. ‘12 Section 1570; Civ. C. ‘02 Section 1085; G. S. 912; R. S. 957; 1878 (16) 729; 1892 (21) 19; 1916 (29) 958; 1972 (57) 2495; 1988 Act No. 336, Section 1.

CROSS REFERENCES

Cancer registry, see S.C. Code of Regulations R. 61‑45.

Communicable diseases, see S.C. Code of Regulations R. 61‑20.

Health, sanitation and safety, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑505.

Implementation of Emergency Health Powers Act, see S.C. Code of Regulations R. 61‑112.

Infant and toddler care, care for mildly ill children, and night care, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑509.

Powers and duties of Department of Health and Environmental Control under Lead Poisoning Prevention and Control Act, see Sections 44‑53‑1310 et seq.

Sexually transmitted diseases, see S.C. Code of Regulations R. 61‑21.

Transfer of duties and properties of the State Park Health Center to the Department of Health and Environmental Control, see Section 44‑31‑510.

Library References

Health 367.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Section 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 1, Statutory Authority.

Attorney General’s Opinions

This section does not compel the Division of Research and Statistical Services or the Health Care Planning and Oversight Committee to release hospital‑specific or patient‑specific information under the Medically Indigent Assistance Act to the Department of Health and Environmental Control. S.C. Op.Atty.Gen. (February 27, 1989) 1989 WL 406113.

The Department of Health and Environmental Control may inspect school lunchrooms and sanitary facilities in private schools. S.C. Op.Atty.Gen. (March 2, 1982) 1982 WL 154980.

The Department of Health and Environmental Control is not responsible for enforcing prison sanitation standards. S.C. Op.Atty.Gen. (August 11, 1978) 1978 WL 22620.

**SECTION 44‑1‑130.** Department may establish health districts and district advisory boards of health.

The Department of Health and Environmental Control may divide the State into health districts and establish in these districts advisory boards of health which shall consist of representatives from each county in the district. Boards of health now existing in the districts shall have representation on the district advisory board. Counties not having local boards of health shall be represented by individuals appointed by the county legislative delegation. The number of members of a district advisory board shall be determined by the Department with due consideration to the population and community needs of the district. District advisory boards of health shall be subject to the supervisory and advisory control of the Department. District advisory boards are charged with the duty of advising the district medical director or administrator in all matters of sanitary interest and scientific importance bearing upon the protection of the public health.

The district medical director or administrator shall be secretary of the advisory board and the district advisory board shall elect annually from its membership a chairman.

HISTORY: 1962 Code Section 32‑7; 1952 Code Section 32‑7; 1942 Code Sections 5000, 5024; 1932 Code Sections 5000, 5039; Civ. C. ‘22 Sections 2311, 2349; Civ. C. ‘12 Sections 1572, 1605; Civ. C. ‘02 Sections 1087, 1108; G. S. 914; R. S. 959, 961; 1878 (16) 729; 1883 (18) 291, 292; 1885 (19) 319; 1892 (21) 20; 1970 (56) 2561.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑140.** Department may promulgate and enforce rules and regulations for public health.

The Department of Health and Environmental Control may make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing:

(1) For the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State and all convict camps, penitentiaries, jails, hotels, schools and other places used by or open to the public;

(2) For the sanitation of hotels, restaurants, cafes, drugstores, hot dog and hamburger stands and all other places or establishments providing eating or drinking facilities and all other places known as private nursing homes or places of similar nature, operated for gain or profit;

(3) For the production, storing, labeling, transportation and selling of milk and milk products, filled milk and filled milk products, imitation milk and imitation milk products, synthetic milk and synthetic milk products, milk derivatives and any other products made in semblance of milk or milk products;

(4) For the sanitation and control of abattoirs, meat markets, whether the same be definitely provided for that purpose or used in connection with other business, and bottling plants;

(5) For the classification of waters and for the safety and sanitation in the harvesting, storing, processing, handling and transportation of mollusks, fin fish and crustaceans;

(6) For the control of disease‑bearing insects, including the impounding of waters;

(7) For the safety, safe operation and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps and fairs;

(8) For the control of industrial plants, including the protection of workers from fumes, gases and dust, whether obnoxious or toxic;

(9) For the use of water in air humidifiers;

(10) For the care, segregation and isolation of persons having or suspected of having any communicable, contagious or infectious disease;

(11) For the regulation of the methods of disposition of garbage or sewage and any like refuse matter in or near any village, town or city of the State, incorporated or unincorporated, and to abate obnoxious and offensive odors caused or produced by septic tank toilets by prosecution, injunction or otherwise;

(12) For the thorough investigation and study of the causes of all diseases, epidemic and otherwise, in this State, the means for the prevention of contagious disease and the publication and distribution of such information as may contribute to the preservation of the public health and the prevention of disease; and

(13) For alteration of safety glazing material standards and the defining of additional structural locations as hazardous areas, and for notice and hearing procedures by which to effect these changes.

The Department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health.

HISTORY: 1962 Code Section 32‑8; 1952 Code Section 32‑8; 1942 Code Section 5002; 1932 Code Section 5002; Civ. C. ‘22 Section 2313; 1912 (27) 744; 1926 (34) 1015; 1947 (45) 115; 1968 (55) 3042; 1972 (57) 2687; 1973 (58) 297; 1977 Act No. 153 Sections 1, 2.

CROSS REFERENCES

Development of subdivision water supply and sewage treatment/disposal systems, see S.C. Code of Regulations R. 61‑57.

Health, sanitation and safety, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑505.

Implementation of Emergency Health Powers Act, see S.C. Code of Regulations R. 61‑112.

Infant and toddler care, care for mildly ill children, and night care, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑509.

Licensing of onsite wastewater system master contractors, see S.C. Code of Regulations R. 61‑56.2.100 et seq.

Limitation on regulations affecting use of open bin ice dispensers in hotels and similar accommodations, see Section 45‑1‑80.

Onsite wastewater systems, see S.C. Code of Regulations R. 61‑56.100 et seq.

Promulgation of rules and regulations regarding the controlled substances therapeutic research program, see Section 44‑53‑630.

Regulations governing sanitation in manufacture and distribution of ice cream, etc., see Section 39‑37‑120.

Regulations pertaining to communicable diseases, see S.C. Code of Regulations R. 61‑20.

Regulations pertaining to horse meat and kangaroo meat, see S.C. Code of Regulations R. 61‑28.

Regulations pertaining to licensed midwives, see S.C. Code of Regulations R. 61‑24.

Regulations pertaining to raw milk for human consumption, enforcement, see S.C. Code of Regulations R. 61‑34 Section XI.

Regulations pertaining to retail food establishments, see S.C. Code of Regulations R. 61‑25.

Regulations pertaining to soft drink and water bottling plants, see S.C. Code of Regulations R. 61‑32.

Regulations pertaining to wholesale commercial ice manufacturing, see S.C. Code of Regulations R. 61‑54.

Retail food establishment inspection fees, see S.C. Code of Regulations R. 61‑37.

Shellfish mariculture permittees, out‑of‑season harvest permits, see Section 50‑5‑997.

Supervision and regulation of milk and milk products by the Department of Agriculture, see Sections 46‑49‑10 et seq.

Wholesale seafood dealer, peeler crab, and molluscan shellfish licenses, display of license, roadside vendors, brood stock exception, penalties, see Section 50‑5‑360.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 14, Statutory Provisions.

S.C. Jur. Hotels, Motels and Other Lodgings Section 25, Municipal Inspections.

S.C. Jur. Public Health Section 1, Statutory Authority.

S.C. Jur. Public Health Section 2, Regulations.

S.C. Jur. Public Health Section 14, Permits to Construct On‑Site Septic Systems.

S.C. Jur. Public Nuisance Section 6, Acts Authorized by Law as Not Constituting Public Nuisance.

LAW REVIEW AND JOURNAL COMMENTARIES

A guide to the common law of nuisance in South Carolina. 45 S.C. L. Rev. 337 (Winter 1994).

Carnival cruise ships in South Carolina: Nuisance and cruise control. William H. Yarborough, 66 S.C. L. Rev. 889 (Summer 2015).

Attorney General’s Opinions

The DHEC may inspect school lunchrooms and sanitary facilities in private schools. S.C. Op.Atty.Gen. (March 2, 1982) 1982 WL 154980.

The DHEC is not responsible for enforcing prison sanitation standards. S.C. Op.Atty.Gen. (August 11, 1978) 1978 WL 22620.

The State Board of Health has the responsibility after milk is physically in the State to insure that such milk meets the health standards and requirements of this State. S.C. Op.Atty.Gen. (November 18, 1964) 1964 WL 8373.

**SECTION 44‑1‑143.** Requirements for home‑based food production operations.

(A) For the purposes of this section:

(1) “Home‑based food production operation” means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes nonpotentially hazardous foods for sale directly to a person.

(2) “Nonpotentially hazardous foods” are candy and baked goods that are not potentially hazardous foods.

(3) “Person” means an individual consumer.

(4) “Potentially hazardous foods” includes:

(a) an animal food that is raw or heat‑treated; a plant food that is heat‑treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation; garlic‑in‑oil mixtures not modified to prevent microorganism growth or toxin formation;

(b) certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat‑treated to destroy vegetative cells and subsequently packaged:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
|  | Aw values | | pH values | | |
|  |  |  | 4.6 or less | >4.6—5.6 | >5.6 |
|  | (1) | <0.92 | non‑PHF | non‑PHF | non‑PHF |
|  | (2) | >0.92—0.95 | non‑PHF | non‑PHF | PHF |
|  | (3) | >0.95 | non‑PHF | PHF | PHF |

Foods in item (2) with a pH value greater than 5.6 and foods in item (3) with a pH value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.

(B) The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items, including, but not limited to:

(1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;

(2) prohibiting all animals, including pets, from entering the area in the dwelling in which the home‑based food production operation is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;

(3) prohibiting all domestic activities in the kitchen while the home‑based food production operation is processing, preparing, packaging, or handling food intended for sale;

(4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation; and

(5) ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.

(C) Each home‑based food production operation shall maintain a clean and sanitary facility to produce nonpotentially hazardous foods including, but not limited to:

(1) department‑approved water supply;

(2) a separate storage place for ingredients used in foods intended for sale;

(3) a properly functioning refrigeration unit;

(4) adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;

(5) adequate facilities for the storage of utensils and equipment;

(6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;

(7) a properly functioning toilet facility;

(8) no evidence of insect or rodent activity; and

(9) department‑approved sewage disposal, either onsite treatment or publicly provided.

(D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

(1) the name and address of the home‑based food production operation;

(2) the name of the product being sold;

(3) the ingredients used to make the product in descending order of predominance by weight; and

(4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: “NOT FOR RESALE—PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.”

(E) Home‑based food operations only may sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale. Food produced from a home‑based food production operation must not be considered to be from an approved source, as required of a retail food establishment pursuant to Regulation 61.25.

(F) A home‑based food production operation is not a retail food establishment and is not subject to regulation by the department pursuant to Regulation 61.25.

(G) The provisions of this section do not apply to an operation with net earnings of less than five hundred dollars annually but that would otherwise meet the definition of a home‑based food operation provided in subsection (A)(1).

(H) A home‑based food production operation may apply for an exemption from inspection and label review by the South Carolina Department of Agriculture under Section 39‑25‑10, et seq., if its annual sales are less than fifteen thousand dollars. Exemption forms must be provided by the South Carolina Department of Agriculture.

HISTORY: 2012 Act No. 190, Section 1, eff June 7, 2012.

Library References

Food 6.

Westlaw Topic No. 178.

C.J.S. Food Sections 21 to 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 5, Particular Regulations.

**SECTION 44‑1‑145.** Minimum cooking temperature for ground beef; exceptions.

(A) Notwithstanding any other provision of law, ground beef or any food containing ground beef prepared by a food service provider for public consumption must be cooked to heat all parts of the food to at least one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), unless otherwise ordered by the immediate consumer.

(B) The food service provider, its business or its employees or agents, are not liable for any adverse affects to the purchaser or anyone else for providing a ground beef product cooked at an internal temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), if providing the product is at the request of the purchaser and if the food service provider has notified the purchaser in advance that a possible health risk may exist by eating the product. The notice must state that a possible health risk may exist in eating undercooked ground beef at an internal temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), and be given to the purchaser:

(1) in writing;

(2) as stated on the menu; or

(3) by visible sign warning.

(C) In order for an immediate consumer or purchaser, as used in this section, to request or order ground beef to be cooked to a temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), the individual must be eighteen years of age or older.

HISTORY: 2006 Act No. 338, Section 1, eff June 8, 2006.

Library References

Food 6.

Westlaw Topic No. 178.

C.J.S. Food Sections 21 to 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 5, Particular Regulations.

**SECTION 44‑1‑148.** Resale for human consumption prohibited for fresh meat or fresh meat products if returned by a consumer.

Fresh meat or fresh meat products sold to a consumer may not be offered to the public for resale for human consumption if the fresh meat or fresh meat products have been returned by the consumer.

HISTORY: 2012 Act No. 173, Section 1, eff May 25, 2012.

Library References

Food 6.

Westlaw Topic No. 178.

C.J.S. Food Sections 21 to 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 5, Particular Regulations.

**SECTION 44‑1‑150.** Penalty for violating rules of department.

(A) Except as provided in Section 44‑1‑151, a person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Health and Environmental Control, made by the department pursuant to Section 44‑1‑140, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

(B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 44‑1‑140 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

(C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

(D) The term “notice” as used in this section means either actual notice or constructive notice.

(E) This section does not apply to fines levied under Section 44‑1‑140(8) or any other areas regulated by the South Carolina Occupational Health and Safety Act, Section 41‑12‑10 et seq.

HISTORY: 1962 Code Section 32‑17; 1952 Code Section 32‑17; 1942 Code Section 5002‑1; 1932 Code Section 5003; Civ. C. ‘22 Section 2314; Cr. C. ‘22 Section 395; 1912 (27) 744; 1977 Act No. 148 Section 1; 1983 Act No. 144 Section 1; 2006 Act No. 364, Section 1, eff June 9, 2006.

CROSS REFERENCES

Application of this section to penalty for violation of regulation governing subdivision water supply and sewage disposal, see S.C. Code of Regulations R. 61‑57.

Enforcement of licensing of onsite wastewater system master contractors, see S.C. Code of Regulations R. 61‑56.2.

Enforcement of regulations pertaining to raw milk for human consumption, see S.C. Code of Regulations R. 61‑34.

South Carolina Immunization Registry, see S.C. Code of Regulations R. 61‑120.

Vaccination, screening and immunization; statewide immunization registry, see Section 44‑29‑40.

Violation of regulation governing license to construct or clean onsite sewage treatment and disposal system and self‑contained toilets shall be punishable in accordance with this section, see S.C. Code of Regulations R. 61‑56.1.

Violations and penalties under Hazardous Waste Management Act, see Section 44‑56‑140.

Library References

Food 16.

Health 378.

Westlaw Topic Nos. 178, 198H.

C.J.S. Food Sections 40, 51, 56 to 57, 59.

C.J.S. Health and Environment Sections 27, 81 to 84.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hotels, Motels and Other Lodgings Section 22, State Regulatory Offenses.

S.C. Jur. Public Health Section 3, Enforcement.

**SECTION 44‑1‑151.** Penalties for violations involving shellfish.

Notwithstanding any other provision of law, all shellfish involved in any violation of law, including any regulation, regarding shellfish may be confiscated and disposed of at the discretion of the arresting officer. Any person convicted of a second offense of harvesting shellfish in any polluted area shall, upon such conviction, be fined not less than two hundred dollars and not more than five hundred dollars or imprisoned for not less than thirty days and not more than sixty days. Any person convicted of a third or subsequent offense of harvesting shellfish in any polluted area shall, upon such conviction, be fined not less than five hundred dollars and not more than one thousand or imprisoned for not less than sixty days and not more than ninety days. All equipment, including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a first offense of harvesting shellfish in any polluted area may be impounded at the discretion of the arresting officer. The equipment impounded shall be delivered to the sheriff of the county in which the arrest was made and shall be retained by the sheriff. Such equipment may not be returned to the owner until the case has been finally disposed of. All equipment, including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a second, third, or subsequent offense of harvesting shellfish in any polluted area shall be confiscated. All such confiscated equipment shall be sold at auction by the sheriff of the county in which such second, third, or subsequent offense took place and by a representative of the State Department of Health and Environmental Control, except for weapons, which, following confiscation, shall be disposed of in the manner set forth in Sections 16‑23‑50, 16‑23‑460, and 16‑23‑500.

HISTORY: 1983 Act No. 144 Section 2.

Library References

Food 16.

Westlaw Topic No. 178.

C.J.S. Food Sections 40, 51, 56 to 57, 59.

**SECTION 44‑1‑152.** Disposition of revenues from fines and forfeitures for violation of shellfish laws.

Notwithstanding any other provision of law, all revenue from any fine or any forfeiture of bond for any violation of any shellfish law or regulation provided by this title must be deposited monthly with the treasurer of the county in which the arrest for such violation was made. One‑third of such revenue must be retained by the county treasurer to be used for the general operating needs of the county pursuant to the direction of the governing body of the county. Two‑thirds of such revenue must be remitted quarterly to the state Department of Health and Environmental Control of which one‑half is to be used in enforcing shellfish laws and regulations and one‑half of such revenue must be remitted quarterly to the state’s general fund. All monies derived from auction sales of confiscated equipment pursuant to Section 44‑1‑151 must be deposited, retained, remitted, and used in the same manner as provided in this section for all revenue derived from any fine or any violation of any shellfish law or regulation. A report of fines for forfeitures of bonds regarding shellfish violations must be sent to the state Department of Health and Environmental Control monthly by each magistrate and clerk of court in this State. A report of monies derived from auction of sales of confiscated equipment must be sent to the state Department of Health and Environmental Control monthly by each sheriff.

HISTORY: 1983 Act No. 144 Section 3; 2000 Act No. 245, Section 15.

Library References

Food 16.

Westlaw Topic No. 178.

C.J.S. Food Sections 40, 51, 56 to 57, 59.

Attorney General’s Opinions

Under former section 50‑17‑520, revenues from all fines for violations of fish and game law were to be transmitted to the Director of the Division of Game to be placed to the credit of the Game Protection Fund of the State Treasurer, unless specifically excepted in Chapter 50 of the Code (Decided under former Section 50‑17‑270). 1976‑77 Op.Atty.Gen. No. 77‑218, p. 168 (July 11, 1977) 1977 WL 24560.

**SECTION 44‑1‑155.** Release on bail of person apprehended by shellfish patrolman upon charge of violating health and sanitary aspects of shellfish, crab, and shrimp laws or regulations.

When any person is apprehended by a shellfish patrolman upon a charge of violating the health and sanitary aspects of shellfish, crab and shrimp laws or regulations, such person upon being served with a summons by the patrolman may in lieu of being immediately brought before the proper judicial officer enter into a formal recognizance or deposit a proper sum of money in lieu of a recognizance or incarceration with the patrolman as bail which shall be not less than the minimum nor more than the maximum fine, but in no case to exceed one hundred dollars. The bail shall be turned over to the proper judicial officer. A receipt for the sum so deposited shall be given to the person by the patrolman. The summons duly served shall give the judicial officer jurisdiction to dispose of the matter. Upon receipt of bail the patrolman shall release the person so charged and he may appear in court at the time stated in and required by the summons.

HISTORY: 1962 Code Section 32‑17.1; 1977 Act No. 148 Section 2.

Library References

Food 17.

Westlaw Topic No. 178.

C.J.S. Food Sections 42, 49 to 50, 53 to 58, 60 to 61.

**SECTION 44‑1‑160.** Prosecution of nuisance not affected by rule‑making power of department.

Nothing contained in Section 44‑1‑140 shall in any way abridge or limit the right of any person to maintain or prosecute any proceedings, civil or criminal, against a person maintaining a nuisance.

HISTORY: 1962 Code Section 32‑10; 1952 Code Section 32‑10; 1942 Code Section 5002; 1932 Code Section 5002; Civ. C. ‘22 Section 2313; 1912 (27) 744; 1926 (34) 1015.

CROSS REFERENCES

Abatement of nuisances, see Sections 15‑43‑10 et seq.

Library References

Health 378.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 27, 81 to 84.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Nuisance Section 6, Acts Authorized by Law as Not Constituting Public Nuisance.

**SECTION 44‑1‑165.** Expedited Review Program established; promulgation of regulations; pilot programs; Expedited Review Fund.

(A) There is established within the Department of Health and Environmental Control the Expedited Review Program to provide an expedited process for permit application review. Participation in this program is voluntary and the program must be supported by expedited review fees promulgated in regulation pursuant to subsection (B)(1). The department shall determine the project applications to review, and the process may be applied to any one or all of the permit programs administered by the department.

(B)(1) Before January 1, 2009, the department shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall include, but are not limited to, definitions of “completeness” for applications submitted, consideration of joint federal‑ state permitting activities, standards for applications submitted that advance environmental protection, and expedited process application review fees.

(2) Regulations promulgated pursuant to this section must not alter public notice requirements for any permits, certifications, or licenses issued by the department.

(C) Until such time as regulations are promulgated pursuant to subsection (B), the department shall conduct a pilot expedited review program to determine the most environmentally sound, cost efficient, and economically beneficial process for implementation of a statewide expedited review program. The department shall determine which permit programs, or subcomponents of a program, to include in the pilot program and also may establish pilot program expedited process application fees.

(D) There is created the Expedited Review Fund that is separate and distinct from the general fund of the State and all other funds. Fees established in regulation pursuant to subsection (B)(1) and assessed pursuant to subsection (C) must be credited to the fund and used for the costs of implementing the expedited review program. Interest accruing to the fund must be retained by the fund and used for the same purposes. Revenue in the fund not expended during a fiscal year, including fees generated pursuant to subsection (C), must be carried forward to the succeeding fiscal year and must be used for the same purposes.

(E) No later than January 1, 2008, the department shall report to the Board of Health and Environmental Control the department’s findings on the implementation of the pilot expedited review program provided for in subsection (C).

HISTORY: 2006 Act No. 307, Section 1, eff May 24, 2006.

Library References

Health 363.

States 127.

Westlaw Topic Nos. 198H, 360.

C.J.S. Health and Environment Sections 9 to 10.

C.J.S. States Sections 400 to 401.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 2, Regulations.

**SECTION 44‑1‑170.** Department shall supervise local boards of health.

The Department of Health and Environmental Control may direct and supervise the action of the local boards of health in incorporated cities and towns and in all townships in all matters pertaining to such local boards.

HISTORY: 1962 Code Section 32‑12; 1952 Code Section 32‑12; 1942 Code Section 5006; 1932 Code Section 5015; Civ. C. ‘22 Section 2326; Civ. C. ‘12 Section 1585; Civ. C. ‘02 Section 1001; 1901 (23) 733.

CROSS REFERENCES

Establishment of health districts, see Section 44‑1‑130.

Local health boards and districts, see Sections 44‑3‑10 et seq.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑180.** Department may establish charges for health care.

The Department of Health and Environmental Control may establish charges for maintenance and medical care for all persons served in State health centers and other health facilities under the jurisdiction of the Department and by personnel of the Department and of the health units under its jurisdiction in homes and any other places where health services are needed. The terms “medical care” and “health services” include the services of physicians, dentists, optometrists, nurses, sanitarians, physical therapists, medical social workers, occupational therapists, health aides, speech therapists, X‑ray technologists, dietitians, nutritionists, laboratory technicians, and other professional and subprofessional health workers. The charges, which may be adjusted from time to time, shall be reasonable and based on the total costs of the services rendered, including operating costs, depreciation costs, and all other elements of costs.

HISTORY: 1962 Code Section 32‑18; 1969 (56) 773; 1970 (56) 2410.

CROSS REFERENCES

Charges for family planning services, see S.C. Code of Regulations R. 61‑89.

Charges for maternal and child health services, see S.C. Code of Regulations R. 61‑88.

Environmental health inspections and fees, see S.C. Code of Regulations R. 61‑29.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑190.** Department may investigate ability to pay and determine amount of charges; contracts for care and treatment.

The Department of Health and Environmental Control shall make such investigations as it deems necessary to determine which persons or which of the parents, guardians, trustees, committees or other persons or agencies legally responsible therefor are financially able to pay the expenses of the care and treatment, and may contract with any person or agency for the care and treatment of any person to the extent permitted by the resources available to the Department. The Department may require any county or State agency to furnish information which would be helpful to it in making the investigations. In arriving at the amount to be charged, the Department shall have due regard for the financial condition and estate of the person, his present and future needs and the present and future needs of his lawful dependents, and whenever considered necessary to protect him or his dependents, may agree to accept a sum less than the actual cost of services. No person shall be deprived of available health services solely because of inability to pay. No fees shall be charged for services which in the judgment of the Department should be made freely available in order to protect and promote the public health.

HISTORY: 1962 Code Section 32‑19; 1969 (56) 773.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑200.** Department may provide home health services.

The Department of Health and Environmental Control may provide home health services to those persons living in areas of the State in which adequate home health services are not available and may charge fees for such services. Home health services shall include care of the ill and disabled rendered at home including, but not limited to, bedside care, treatment and rehabilitation services. In order that it may provide such services, the department may employ the necessary personnel, including nurses, physical therapists, speech therapists, occupational therapists, medical social workers, home health aides, nutritionists, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program. The Department shall, wherever possible, assist and advise nonprofit agencies or associations in the development of home health services programs and may enter into agreements with such agencies or associations specifying the type of assistance and advice it will provide.

HISTORY: 1962 Code Section 32‑20; 1969 (56) 773.

CROSS REFERENCES

Required license for home health agencies, see Section 44‑69‑30.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑210.** Disposition of moneys collected.

All fees and charges collected pursuant to Sections 44‑1‑180 to 44‑1‑200, including vital statistics fees as now provided by law, shall be deposited in the State Treasury and shall be used in the operation of the public health program of the bureau, division, district health unit or local county health department which performed the services for which the fees and charges were collected. An annual report shall be made to the State Fiscal Accountability Authority, Executive Budget Office and the Revenue and Fiscal Affairs Office of the receipts and expenditures made under the provisions of Sections 44‑1‑180 to 44‑1‑200.

HISTORY: 1962 Code Section 32‑21; 1969 (56) 773; 1970 (56) 2410.

CROSS REFERENCES

Vital statistics fees, see Section 44‑63‑110.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

Attorney General’s Opinions

A State agency which receives fees and charges pursuant to 1962 Code Sections 32‑18 to 31‑31 [apparently 32‑18 to 32‑21] [1976 Code Sections 44‑1‑180 to 44‑1‑210] may apply them to any portion of its public health program. 1975‑76 Op.Atty.Gen. No. 4501, p. 359 (October 25, 1976) 1976 WL 23118.

**SECTION 44‑1‑215.** Retaining certain funds.

Notwithstanding Section 13‑7‑85, the Department of Health and Environmental Control may retain all funds generated in excess of those funds remitted to the general fund in fiscal year 2000‑2001 from fees listed in Regulation R61‑64 Title B.

HISTORY: 2007 Act No. 49, Section 4, eff June 5, 2007; Reenacted by 2008 Act No. 353, Section 2, Pt 5.A.1, eff July 1, 2008.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

NOTES OF DECISIONS

Validity 1

1. Validity

The Critical Needs Nursing Initiative Act, as amended to include sections exempting the Department of Health and Environmental Control (DHEC) from certain pharmacy requirements, and sections allowing DHEC to retain certain funds derived from radiation safety requirements, violated the one subject requirement of the South Carolina Constitution. South Carolina Public Interest Foundation v. Harrell (S.C. 2008) 378 S.C. 441, 663 S.E.2d 52. Environmental Law 476; Health 105; Health 358; Statutes 1617(21)

**SECTION 44‑1‑220.** Skilled and intermediate care nursing facilities licensed by department shall furnish itemized statements of charges for services.

All skilled and intermediate care nursing facilities licensed by the Department of Health and Environmental Control shall be required to furnish an item‑by‑item billing for all charges to the patient or the person paying such bill, upon request by such patient or person. Items which remain unpaid are not required to be itemized again. Such requests for itemized billing shall remain in effect until further notification by the patient or person paying such bill. Provided, that the provision herein shall not apply to the contracted amount of a state or federal agency. Any amount above such contract shall be itemized as provided herein.

HISTORY: 1975 (59) 279.

Library References

Health 276.

Westlaw Topic No. 198H.

C.J.S. Social Security and Public Welfare Section 234.

**SECTION 44‑1‑230.** Consideration to be given to benefits available to individuals to meet costs of medical or health services.

The Department of Health and Environmental Control shall give consideration to any benefits available to an individual, including private, group or other insurance benefits, to meet, in whole or in part, the cost of any medical or health services. Such benefits shall be utilized insofar as possible; provided, however, the availability of such benefits shall not be the sole basis for determining eligibility for program services of the department. Insurance carriers shall not deny payment of benefits otherwise available to the insured solely on the basis that an individual has applied for, or has been deemed eligible to receive, or has received, services, or on the basis that payments have been made for services by the department.

HISTORY: 1977 Act No. 115.

Library References

Health 366.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 18 to 25, 61 to 68, 73 to 80.

**SECTION 44‑1‑260.** Early periodic screening, diagnosis, and treatment screening; referral for assistive technology evaluation; definitions.

Upon conducting an early periodic screening, diagnosis, and treatment screening (EPSDT), or another physical examination of a child from which it is determined that the child may benefit from the use of assistive technology, the department or person conducting the screening or examination may refer the child to an appropriate agency for an assistive technology evaluation. For purposes of this section, “assistive technology” means a device or service which is used to increase, maintain, or improve the functional capacities of an individual with a disability. An “assistive technology device” is an item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capacities of an individual with a disability including, but not limited to, aids for daily living, augmentative communication devices, wheelchairs, and mobility aids, seating and positioning aids, computer aids, environmental controls, home and workplace modifications, prosthetics and orthotics, or aids for vision or hearing impairments. An “assistive technology service” is a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

HISTORY: 1997 Act No. 78, Section 1.

Library References

Education 677.

Westlaw Topic No. 141E.

C.J.S. Schools and School Districts Sections 1004 to 1005, 1007.

**SECTION 44‑1‑280.** Coordination with First Steps to School Readiness initiative.

The Board and Department of Health and Environmental Control in establishing priorities and funding for programs and services which impact on children and families during the first years of a child’s life, within the powers and duties granted to it, must support, as appropriate, the South Carolina First Steps to School Readiness initiative, as established in Title 59, Chapter 152, at the state and local levels.

HISTORY: 1999 Act No. 99, Section 6.

Editor’s Note

2016 Act No. 284, Section 117.128, provides as follows:

“117.128. (GP: First Steps Reauthorization) Act 99 of 1999, the South Carolina First Steps to School Readiness Act, as amended by Act 287 of 2014 is reauthorized for the duration of Fiscal Year 2016‑17.”

2017 Act No. 97, Section 117.119, provides:

“117.119. (GP: First Steps Reauthorization) Act 99 of 1999, the South Carolina First Steps to School Readiness Act, as amended by Act 287 of 2014 is reauthorized for the duration of Fiscal Year 2017‑18.”

Library References

Education 677.

Westlaw Topic No. 141E.

C.J.S. Schools and School Districts Sections 1004 to 1005, 1007.

**SECTION 44‑1‑290.** Supplier of effluent for irrigation as public utility.

A corporation or person whose only purpose is furnishing, supplying, marketing, or selling treated effluent for irrigation purposes, shall not be considered a public utility for purposes of Title 58 by virtue of the furnishing, supplying, marketing, or selling of the treated effluent, provided that the effluent has not been permitted for consumption by the department or other regulatory agency.

HISTORY: 2007 Act No. 106, Section 2, eff January 1, 2008.

Library References

Public Utilities 101.

Westlaw Topic No. 317A.

C.J.S. Corporations Sections 8 to 13, 89 to 90.

C.J.S. Public Utilities Sections 1, 4, 8, 12.

**SECTION 44‑1‑300.** Exemption from enforcement of regulation that would prohibit churches and charitable organizations from serving food to public.

The department shall not use any funds appropriated or authorized to the department to enforce Regulation 61‑25 to the extent that its enforcement would prohibit a church or charitable organization from preparing and serving food to the public on their own premises at not more than one function a month or not more than twelve functions a year.

HISTORY: 2008 Act No. 353, Section 2, Pt 5C, eff July 1, 2009.

Library References

Food 6.

Westlaw Topic No. 178.

C.J.S. Food Sections 21 to 24.

**SECTION 44‑1‑310.** Maternal Morbidity and Mortality Review Committee.

(A) The Department of Health and Environmental Control shall establish a Maternal Morbidity and Mortality Review Committee to review maternal deaths and to develop strategies for the prevention of maternal deaths. The committee must be multidisciplinary and composed of members deemed appropriate by the department. The committee also may review severe maternal morbidity. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and performing other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this section.

(B) The committee shall:

(1) identify maternal death cases, as defined as a death within one year of pregnancy with a direct or indirect causation related to the pregnancy or postpartum period;

(2) review medical records and other relevant data;

(3) contact family members and other affected or involved persons to collect additional data;

(4) consult with relevant experts to evaluate the records and data;

(5) make determinations regarding the preventability of maternal deaths;

(6) develop recommendations for the prevention of maternal deaths; and

(7) disseminate findings and recommendations pursuant to subsection (F).

(C)(1) Health care providers and pharmacies licensed pursuant to Title 40 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this subsection are not liable for civil damages or subject to criminal or disciplinary action for good faith efforts in providing the records.

(D)(1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this section are not admissible as evidence in any action of any kind in any court or before another tribunal, board, agency, or person. The information, records, reports, statements, notes, memoranda, or other data must not be exhibited nor their contents disclosed, in whole or in part, by an officer or a representative of the department or another person, except as necessary for the purpose of furthering the review of the committee of the case to which they relate. A person participating in a review may not disclose the information obtained except in strict conformity with the review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations authorized by the department pursuant to this section are confidential.

(E)(1) All proceedings and activities of the committee, opinions of members of the committee formed as a result of the proceedings and activities, and records obtained, created, or maintained pursuant to this section, including records of interviews, written reports, and statements procured by the department or another person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this section, are confidential and are not subject to the provisions of Chapter 4, Title 30 relating to open meetings or public records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding. However, this section must not be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee’s proceedings.

(2) Members of the committee must not be questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee. However, this section must not be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(F) Reports of aggregated nonindividually identifiable data for the previous calendar year must be compiled and disseminated by March first of the following year in an effort to further study the causes and problems associated with maternal deaths. Reports must be distributed to the General Assembly, the Director of the Department of Health and Environmental Control, health care providers and facilities, key governmental agencies, and others necessary to reduce the maternal death rate.

(G) Members shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

HISTORY: 2016 Act No. 142 (H.3251), Section 2, eff March 14, 2016.

Library References

Health 363.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10.

**SECTION 44‑1‑315.** Environmental permits and permittees; boundary clarification.

(A) For purposes of the section, “impacted location” means any facility issued or otherwise subject to a permit, license, or approval from the North Carolina Department of Environment and Natural Resources that has now been determined to be located within the jurisdiction of the South Carolina Department of Health and Environmental Control as a result of the amendments to Section 1‑1‑10, effective January 1, 2017.

(B) Notwithstanding any other provision of law, the South Carolina Department of Health and Environmental Control, in issuing any environmental permit, license, or approval to an impacted location shall provide a schedule of compliance that allows the permittee a reasonable period of time to be no greater than five years to come into compliance with any South Carolina environmental rule, regulation, or standard established by the department or by law that has no corresponding rule, regulation, or standard under North Carolina law or regulation, or is more stringent than the corresponding rule, regulation, or standard established under North Carolina law or regulation. The department may include increments of progress applicable in each year of the schedule established under this subsection, and may shorten the period of compliance as necessary to prevent an imminent threat to the public health and environment. The department may extend a permittee’s compliance schedule under this section beyond five years upon written application by the permittee only if the department determines that circumstances reasonably require such an extension, and the extension of time would pose no threat to public health or the environment.

HISTORY: 2016 Act No. 270 (S.667), Section 18, eff January 1, 2017.

Library References

Environmental Law 19.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 124, 141, 147.