

S .B. NO. 2859

JAN 23 2014

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 321-20, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~{~~§321-20~~}~~ **Remedies.** Notwithstanding other penalties,
4 the director may enforce this chapter in either administrative
5 or judicial proceedings:

6 (1) Administrative. If the director determines that any
7 person is violating any provision of this chapter, any
8 rule adopted thereunder, or any variance or exemption
9 or waiver issued pursuant thereto, the director may
10 have that person served with a notice of violation and
11 an order. The notice shall specify the alleged
12 violation. The order may require that the alleged
13 violator do any or all of the following: cease and
14 desist from the violation, pay an administrative
15 penalty not to exceed [~~\$1,000~~] \$10,000 for each day of
16 violation, correct the violation at the alleged
17 violator's own expense, or appear before the director
18 at a time and place specified in the order and answer

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1 the charges complained of. The order shall become
2 final twenty days after service unless within those
3 twenty days the alleged violator requests in writing a
4 hearing before the director. Upon such request the
5 director shall specify a time and place for the
6 alleged violator to appear. When the director issues
7 an order for immediate action to protect the public
8 health from an imminent and substantial danger, the
9 department shall provide an opportunity for a hearing
10 within twenty-four hours after service of the order.
11 After a hearing pursuant to this subsection, the
12 director may affirm, modify, or rescind the order as
13 appropriate. The director may institute a civil
14 action in any court of appropriate jurisdiction for
15 the enforcement of any order issued pursuant to this
16 subsection.

17 Factors to be considered in imposing the
18 administrative penalty include the nature and history
19 of the violation and any prior violation and the
20 opportunity, difficulty, and history of corrective
21 action. It is presumed that the violator's economic
22 and financial conditions allow payment of the penalty
23 and the burden of proof to the contrary is on the

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1 violator. In any judicial proceeding to enforce the
2 administrative penalty imposed pursuant to this
3 chapter, the director need only show that notice was
4 given, a hearing was held or the time granted for
5 requesting a hearing had expired without such a
6 request, the administrative penalty imposed, and that
7 the penalty imposed remains unsatisfied.

8 This section does not supersede specific
9 administrative penalties provided elsewhere.

10 (2) Judicial. The director may institute a civil action
11 in any court of appropriate jurisdiction for
12 injunctive relief to prevent violation of any order
13 issued or rule adopted pursuant to this chapter, in
14 addition to any other remedy or penalty provided for
15 under this chapter."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19
20 INTRODUCED BY: 

21 BY REQUEST

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Report Title:

Administrative Penalties

Description:

Increases from \$100 per day to a maximum of \$10,000 per day fines levied for violations of sanitation laws and rules for establishments required to undergo sanitation inspections by the Department of Health. The increase in sanitation penalties establishes parity with existing food adulteration penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO ADMINISTRATIVE PENALTIES.

PURPOSE: To increase the administrative penalty for violations of chapter 321, Hawaii Revised Statutes, from not to exceed \$1,000 for each day of violation to not to exceed \$10,000 for each day of violation.

MEANS: Amend section 321-20, HRS.

JUSTIFICATION: In 1985 the Legislature set the administrative penalty for violations of chapter 321-20 at not to exceed \$1,000 for each day of violation. This section applies to the penalties for violations of the Department of Health's (DOH) administrative rules regulating food establishments, among other rules and statutory provisions. In the present economy, a \$1,000 per day violation does not have the impact needed to force corrections of violations that may lead to fatalities, extensive hospitalization, permanent physical damage and undue pain and suffering. Food facilities may open without the necessary inspections and food permits to safe-guard public health due to the profits that can easily be made above the existing maximum penalties of \$1,000 per day. High-end restaurants that charge over \$100 per meal know they can generate ten times that amount daily when open. The increase in the penalty will provide the DOH the necessary impetus to force food facility owners to avoid violations of the food rules that may directly lead to injurious food borne illnesses.

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Impact on the public: No impact on the public is anticipated.

Impact on the department and other agencies: No impact on other agencies is anticipated.

GENERAL FUND: Revenues may increase due to higher penalties levied.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.