

JAN 24 2019

A BILL FOR AN ACT

RELATING TO CERTAIN PENALTIES FOR VIOLATIONS OF SUBTITLE 4.

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

1 SECTION 1. Section 183-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§]~~ **§183-5** ~~[§]~~ **General [administrative] penalties.** (a)

4 Except as otherwise provided by law, the board or its authorized
5 representative may:

6 (1) Set, charge, and collect administrative fines;

7 (2) Bring legal action to recover administrative fines,
8 fees, and costs, including attorney's fees and costs
9 and costs associated with land or habitat restoration;
10 and

11 (3) Collect administrative fees and costs pursuant to

12 paragraph (2),

13 resulting from a violation of this chapter, any rule adopted, or
14 permit issued thereunder.

15 (b) ~~[The]~~ Except as provided in subsection (d), the

16 administrative fines for violation of this chapter shall be as

17 follows:

S.B. NO. 1256

- 1 (1) For a first violation, or any violation not preceded
2 within a five-year period by a violation of this
3 chapter, a fine of not more than \$2,500 per violation;
- 4 (2) For a second violation within five years of a previous
5 violation of this chapter, a fine of not more than
6 \$5,000 per violation; and
- 7 (3) For a third or subsequent violation within five years
8 of the last violation of this chapter, a fine of not
9 more than \$10,000 per violation.
- 10 (c) In addition[+
11 ~~(1)~~ A], a fine of an amount up to \$10,000 or three times
12 the market value at the time and place of the
13 violation, as determined by the department, for each
14 tree or tree products, including koa, whichever is
15 greater, per violation of section 183-17 may be levied
16 for each destroyed, damaged, or harvested [koa] tree,
17 or portion thereof, larger than six inches in diameter
18 at ground level [; and
- 19 ~~(2)~~ A fine of up to \$2,000 per violation of section 183-17
20 may be levied for each destroyed or harvested tree or
21 plant, other than koa, or portion thereof, larger than
22 six inches in diameter at ground level.], in addition

S.B. NO. 1256

1 to any costs associated with restoration or
2 replacement of habitat and damages to public land or
3 natural resources, or any combination thereof.

4 (d) Any person who violates any rule adopted by the
5 department under this chapter regulating vehicular parking or
6 traffic movement shall have committed a traffic infraction as
7 set forth in chapter 291D, the adjudication of which shall be
8 subject to the provisions contained therein. A person found to
9 have committed such a traffic infraction shall be fined not more
10 than:

- 11 (1) \$100 for a first violation;
- 12 (2) \$200 for a second violation; and
- 13 (3) \$500 for a third or subsequent violation.

14 ~~[(d)]~~ (e) Any criminal [prosecution] action against a
15 person for any violation of this chapter or any rule adopted
16 thereunder shall not be deemed to preclude the State from
17 ~~[recovering additional]~~ pursuing civil legal action to recover
18 administrative fines, fees, and costs, including attorney's fees
19 and costs[-], or monetary assessments against that person. Any
20 civil legal action against a person to recover administrative
21 fines, fees, and costs, including attorney's fees and costs, or
22 monetary assessments for any violation of this chapter or any

1 rule adopted thereunder shall not be deemed to preclude the
2 State from pursuing any criminal action against that person.

3 ~~[-(e)]~~ (f) No person shall be sanctioned pursuant to this
4 section for the exercise of native Hawaiian gathering rights and
5 traditional cultural practices as authorized by law or as
6 permitted by the department pursuant to article ~~[xii,]~~ XII,
7 section 7, of the ~~[Hawaii]~~ state constitution.

8 ~~[-(f)]~~ (g) The department shall submit an annual report
9 outlining the revenues generated by the penalties to the
10 legislature at least twenty days before the convening of each
11 regular session."

12 SECTION 2. Section 183-18, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§183-18 Criminal penalties.** ~~[Any person who violates~~
15 ~~section 183-17, upon conviction thereof, is guilty of a~~
16 ~~misdemeanor and shall be fined not more than \$2,000 or~~
17 ~~imprisoned not more than one year, or both. In addition to any~~
18 ~~other penalty imposed under this section, a fine of up to \$2,000~~
19 ~~shall be levied for each tree illegally destroyed or harvested~~
20 ~~under section 183-17.]~~ (a) Unless otherwise specified, any
21 person who violates a provision of this part or a rule adopted
22 pursuant to this part shall be guilty of a petty misdemeanor. A

S.B. NO. 1256

1 person convicted of violating a provision of this part or a rule
2 adopted pursuant to this part shall be sentenced, without the
3 possibility of probation or suspension of sentence, as follows:

4 (1) A mandatory fine of not less than \$100, or
5 imprisonment of not more than thirty days, or both,
6 for a first offense, or any offense not preceded
7 within a five-year period by a conviction for a prior
8 offense;

9 (2) A mandatory fine of not less than \$500, or by
10 imprisonment of not more than thirty days, or both,
11 for an offense that occurs within five years of a
12 conviction for a prior offense; and

13 (3) A mandatory fine of \$1,000, or imprisonment of not
14 more than thirty days, or both, for an offense that
15 occurs within five years of two or more convictions
16 for prior offenses.

17 For purposes of this subsection, "offense" means a violation of
18 any provision of this part or any rules adopted pursuant
19 thereto.

20 (b) A person who is convicted for violating section 183-17
21 is guilty of a misdemeanor and shall be fined not more than
22 \$2,000 or imprisoned not more than one year, or both."

S.B. NO. 1256

1 SECTION 3. Section 183-4, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§183-4 General penalty. Any person violating any of the~~
4 ~~provisions of chapters 183 to 185, for which violation a penalty~~
5 ~~is not otherwise provided, or violating any rule or regulation~~
6 ~~of the department of land and natural resources, and any master~~
7 ~~of any vessel which brings into the State any article which the~~
8 ~~department shall at any time prohibit from being imported into~~
9 ~~the State, and the master of any vessel from which is landed any~~
10 ~~article required in chapters 183 to 185 to be inspected, before~~
11 ~~the master has received a permit to land the articles from the~~
12 ~~department or its officer or inspector, as in such chapters~~
13 ~~provided, shall be fined not more than \$500."~~]

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

20

21

INTRODUCED BY:



22

BY REQUEST

S.B. NO. 1256

Report Title:

Destruction or Harvesting of Trees including Koa on State Lands;
Forest Reserves Violations; Penalties

Description:

Amends fines for destroying or harvesting trees or tree products, including koa, on state forest reserves lands to an amount up to \$10,000 or three times the market value at the time and place of the violation for each tree, whichever is greater, in addition to any costs associated with restoration or replacement of the habitat and damages to public land or natural resources, or any combination thereof. Clarifies that any person violating any provision of part II (Forest Reserves) of chapter 183, Hawaii Revised Statutes, or any rule adopted pursuant thereto, other than section 183-17, Hawaii Revised Statutes, shall be guilty of a petty misdemeanor. Decriminalizes traffic infractions within forest reserves and sets fine amounts. Repeals the general penalty provision of section 183-4, Hawaii Revised Statutes.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO CERTAIN PENALTIES FOR VIOLATIONS OF SUBTITLE 4.

PURPOSE: To amend fines for destroying or harvesting trees or tree products, including koa, on state forest reserves lands to an amount up to \$10,000 or three times the market value at the time and place of the violation, as determined by the Department, for each tree, whichever is greater, and in addition to any costs associated with restoration or replacement of the habitat and damages to public land or natural resources, or combination thereof; to clarify that any person violating any provision of part II (Forest Reserves) of chapter 183, Hawaii Revised Statutes (HRS), or any rule adopted pursuant thereto, other than section 183-17, HRS, shall be guilty of a petty misdemeanor; to decriminalize traffic infractions within forest reserves and set fine amounts; and to repeal the general penalty provision of section 183-4, HRS.

MEANS: Amend sections 183-5 and 183-18 and repeal section 183-4, HRS.

JUSTIFICATION: Section 183-5(c), HRS, authorizes an administrative fine up to \$10,000 per koa tree and \$2,000 for all other tree or plant destroyed or harvested on state lands. The current market value of koa and other forest products, such as Hawaiian sandalwood, far exceeds the dollar amount of the current established fines. Amending fines for destroying or harvesting trees including koa on state lands up to \$10,000 or three times the market value at the time and place of the violation for each tree including koa in addition to any administrative fines and costs associated with restoration or replacement of the habitat and damages to public lands or natural resources, or any

combination thereof, would help: (1) deter illegal harvesting and destruction of natural resources within forest reserves; and (2) make these penalties consistent with those established by other states.

Currently, section 183-18, HRS, only applies criminal penalties for timber trespass offenses. The Department has determined that there are other types of offenses such as removing, injuring, or killing plant or animal life, or introducing plant or animal life except as approved by the Board of Land and Natural Resources, as examples that warrant the imposition of a stricter penalty. Establishing statutory authority for a criminal penalty to apply to any violation of part II of chapter 183, HRS, or any rules adopted pursuant thereto would strengthen the Department's enforcement capabilities and allow for greater protection of the State's natural resources within its forest reserves.

The Legislature has been engaged in an ongoing effort to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. This bill seeks to decriminalize traffic infractions within forest reserves so that they are comparable with the penalties for similar infractions established for the State Park System and sets the fine amounts for violations.

Presently, section 183-4, HRS, authorizes general (civil) penalties for violations of the provisions of chapters 183 to 185, HRS. The Department notes that civil penalties are already provided in sections 183-5 and 184-5.5, HRS. The Department further notes that while chapter 185, HRS, pertaining to land fire protection, does not include a civil penalty section, the chapter does

provide for criminal penalties under section 185-7, HRS. The Department feels that violations of chapter 185, HRS, because of the risk of serious harm to people and the environment, should carry only criminal penalties. Given the above, section 183-4, HRS, has been proposed for repeal.

Impact on the public: This bill will allow the Department to more consistently and effectively address certain conservation and resource violations for the protection, preservation, and enhancement of public resources.

Impact on the department and other agencies: This bill will amend fines for destroying or harvesting trees on state lands to ensure an effective mechanism for pursuing enforcement actions and providing a strong deterrent for unauthorized and illegal use of public resources; establish a criminal penalty for certain conservation and resource violations; and reduces effort and resources expended to resolve minor traffic violations.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 172.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.