

ACT 165

H.B. NO. 1486

A Bill for an Act Relating to Safe Drinking Water.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 340E, Hawaii Revised Statutes, is amended to read as follows:

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1. By adding three new sections to be appropriately designated and to read:

“§340E- Tampering with public water systems, penalties. (a) Any person who tampers with a public water system, attempts to tamper with a public water system, or threatens to tamper with a public water system shall be imprisoned for not more than five years and fined an amount not exceeding \$500,000. If the person is an individual, the fine shall not exceed \$250,000.

(b) Any person who tampers, attempts to tamper, or threatens to tamper with a public water system shall be civilly penalized not more than \$50,000.

(c) For the purposes of this section, the term “tamper” shall mean:

- (1) To introduce a contaminant into a public water system with the intention of harming persons; or
- (2) To otherwise interfere with the operation of a public water system with the intention of harming persons.

§340E- Inspection of premises. The director, in accordance with rules adopted pursuant to chapter 91, may enter and inspect any facility of a supplier of water to determine whether such supplier is acting in compliance with this chapter.

§340E- Notification to users of potential lead contamination. Before June 19, 1988, every public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either the lead content in the construction materials of the public water distribution system or corrosivity of the water supply sufficient to cause leaching of lead, or both. The notice shall provide a clear and readily understandable explanation of the following:

- (1) The potential sources of lead in the drinking water;
- (2) The potential adverse health effects;
- (3) The reasonably available methods of mitigating known or potential lead content in drinking water;
- (4) Any steps the system is taking to mitigate lead content in drinking water; and
- (5) The necessity for seeking alternative water supplies, if any.

The failure to comply with the notification required in this section shall subject the supplier of water to the same penalties under section 340E-6.”

2. By amending the definition of “federal act” in section 340E-1 to read:

“(9) “Federal Act” means the Safe Drinking Water Act, P.L. 93-523[.], as amended by the Safe Drinking Water Act Amendments of 1986, P.L. 99-339.”

3. By amending section 340E-4 to read:

“§340E-4 Imminent hazards. The director [shall], upon learning that a contaminant is present in or is likely to enter a public water system or an underground source of drinking water and may present an imminent and substantial danger to the public, may take such actions necessary to protect the health of the public. The actions which the director may take include but are not limited to:

- (1) Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers)[.], including requiring the provision of alternative

water supplies by persons who caused or contributed to the endangerment; and

- (2) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.”
4. By amending section 340E-6 to read:

“§340E-6 Notification of users and department. (a) Whenever a public water system:

- (1) Fails to comply with an applicable maximum contaminant level, treatment technique, or testing procedure requirement of a State Primary Drinking Water Regulation;
- (2) Fails to perform monitoring required by regulations adopted by the director;
- (3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements of any schedule prescribed by such a variance or exemption; the public water system shall promptly notify the department and local communications media of the conditions and the extent to which they may impose adverse effects on public health and the corrective action being taken when appropriate. [At least once every three months so long as the failure, variance, or exemption continues, the public water system shall also publish notice in a newspaper of general circulation within the areas served by the public water system. The notice shall also accompany the water bills of the public water system so long as the failure, variance, or exemption continues. The director shall prescribe by rules the form and manner for giving such notice. The rules may contain such additional public notification requirements as the director determines are necessary to best effectuate the purpose of this section and may also contain alternative notice requirements for systems principally serving nonresident users.]

(b) Notification shall be provided as follows:

- (1) Notice of any violation of a maximum contaminant level or any other violation determined by the director as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than fourteen days after the violation;
- (2) Notice of a continuous violation of subsection (a) other than a violation of a maximum contaminant level shall be given not less frequently than every three months;
- (3) Notice of a variance or exemption shall be given not less frequently than every three months;
- (4) The public water system shall also publish notice in a newspaper of general circulation within the areas served by the public water system. The notice shall also accompany the water bills of the public water system so long as the violation, variance, or exemption continues; and
- (5) The director shall prescribe by rules the form and manner for giving such notice. The rules may contain such additional public notification requirements as the director determines are necessary to best effectuate the purpose of this section and may also contain alternative notice requirements for systems principally serving nonresident users.”

5. By amending section 340E-7 to read:

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“§340E-7 Prohibited acts. (a) No supplier of water shall violate any rule [or regulation promulgated] adopted pursuant to section 340E-2.

(b) No supplier of water shall violate any condition or provision of a variance, exemption, permit, or other written authorization issued under this chapter.

(c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.

(d) No supplier of water shall disseminate any false or misleading information with respect to notices required pursuant to section 340E-6 or with respect to remedial actions undertaken to achieve compliance with State Primary Drinking Water Regulations.

(e) No person shall violate any order issued by the director pursuant to this chapter.

(f) No person shall cause a public water system to violate the State Primary Drinking Water Regulations.

(g) No person shall violate underground injection control [regulations promulgated] rules adopted pursuant to this chapter.

(h) No person shall fail or refuse to comply with the director’s authority to inspect the premises of a supplier of water pursuant to section 340E-

(i) No person shall install or repair any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system with any pipe, solder, or flux that is not lead free. “Lead free” with respect to solders and flux means containing not more than 0.2 per cent lead and with respect to pipes and pipe fittings means containing not more than 8.0 per cent lead. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.”

6. By amending section 340E-8 to read:

“§340E-8 Penalties and remedies. (a) Any person who violates section 340E-7[, except section 340E-7(g),] shall be civilly penalized not more than [~~\$5,000~~] \$25,000 per day of violation.

[(b) Any person who violates section 340E-7(g) shall be civilly penalized not more than \$7,500 per day of violation.]

(c) (b) Any person who wilfully violates section 340E-7(g) shall be criminally fined not more than [~~\$7,500~~] \$25,000 per day of violation[.] and may be imprisoned for not more than three years.

[(d) (c) Any person may be enjoined from any violation of section 340E-7.]

[(e) (d) The director may enforce this chapter in either administrative or judicial proceedings:

(1) Administrative. If the director determines that any person is violating any provision of this chapter, any rule [or regulation promulgated] adopted thereunder, or any variance, exemption, permit, or other written authorization issued pursuant thereto, the director may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease and desist from the violation, pay a civil penalty as specified in this section, or appear before the director at a time and place specified in the order and answer the charges complained of. The order shall become final twenty days after service unless within those twenty days the alleged violator requests in writing a hearing before the director. Upon such

request the director shall specify a time and place for the alleged violator to appear. When the director issues an order for immediate action to protect the public health from an imminent and substantial danger, the department shall provide an opportunity for a hearing within twenty-four hours after service of the order. After a hearing pursuant to this subsection, the director may affirm, modify, or rescind the director's order as the director deems appropriate. The director may institute a civil action in any court of appropriate jurisdiction for the enforcement of any order issued pursuant to this subsection.

- (2) Judicial. The director may institute a civil action in any court of appropriate jurisdiction for injunctive relief to prevent violation of this chapter or any order or regulation issued pursuant to this chapter, in addition to any other remedy provided for under this section.

(e) Any person who violates section 340E-6 shall be civilly penalized not more than \$25,000 for each violation.

(f) Any person who fails to comply with any action taken by the director pursuant to section 340E-4 shall be civilly penalized not more than \$25,000 for each day of failure to comply."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 5, 1987.)

Note

1. Edited pursuant to HRS §23G-16.5.