

ACT 236

S.B. NO. 1391

A Bill for an Act Relating to Administrative Penalties on Public Lands.

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

SECTION 1. Section 171-6.4, Hawaii Revised Statutes, is amended to read as follows:

~~“§171-6.4~~ **General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.

(c) Noncompliance with administrative enforcement action against a landowner for a land use, as defined in section 183C-2, that violates the law or for a currently unauthorized structure encroaching on public lands, including but not limited to submerged lands or lands within the shoreline, that falls, slides, or comes onto public land, or arises from or benefits an adjoining or abutting private land shall affect title pursuant to section 501-151 and result in a lien attaching to the adjoining or abutting private land.”

SECTION 2. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

“§501-151 Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and occupancy thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of the certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no ~~[social security number,]~~ State of Hawaii general excise taxpayer identification number, ~~[or]~~ federal employer identification number, or social security number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect ~~[social security number,]~~ State of Hawaii general excise taxpayer identification number, ~~[or]~~ federal employer identification number, or social security number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section ~~[does]~~ shall not apply to attachments, levies of execution, or ~~[to]~~ proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered, it ~~[is]~~ shall be sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter, “judgment” includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a state court ~~[of the State of Hawaii]~~, may be recorded.

Notice of opening a dispute resolution case as provided in section 667-79 may be recorded.

Foreclosure notice as provided in section 667-23 may be recorded.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded.

As used in this section, “action” includes an administrative enforcement action by any state or county agency, board, or commission against a landowner for a land use violation or a currently unauthorized structure encroaching on public lands, including but not limited to submerged lands or lands within the shoreline, that falls, slides, or comes onto public land, or arises from or benefits an adjoining or abutting private land.”

SECTION 3. Section 634-51, Hawaii Revised Statutes, is amended to read as follows:

“§634-51 Recording of notice of pendency of action. ~~[(a)]~~ In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff~~;~~ at the time of filing the complaint~~;~~ any state or county agency, board, or commission imposing an administrative enforcement action; and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or encumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if the person claims through a party to the action; provided that in the case of registered land, section 501-151, sections 501-241 to 501-248, and part II of chapter 501 shall govern.

~~[(b)]~~ This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court.

(c) As used in this section, “action” includes an administrative enforcement action by any state or county agency, board, or commission against a landowner for a land use violation or a currently unauthorized structure encroaching on public lands, including but not limited to submerged lands or lands within the shoreline, that falls, slides, or comes onto public land, or arises from or benefits an adjoining or abutting private land.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 2023.)