

BILL ANALYSIS

C.S.H.B. 1598
By: Jackson, Jim
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The intent of HB 1598 is to give public health districts and counties a more effective avenue in their enforcement of the health code. Currently, a public health district is only able to issue a warning to a restaurant for health violations, or the extreme of closing the entire establishment down. This allows them to be able to issue a citation for a violation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 437, Health and Safety Code, by adding Sections 437.0185 and 437.0186, which authorizes a director of a public health district to impose an administrative penalty on a person the district requires to hold a permit if the person violates this chapter or a rule or order adopted under this chapter.

The penalty may not exceed \$500 per day, and each day a violation continues or occurs is a separate violation.

The amount is required to be based on the seriousness of the violation; the history of previous violations; the amount necessary to deter future violation; efforts to correct the violation; and any other matter that justice may require.

The enforcement of the penalty may be stayed when the order is under judicial review if the person pays the penalty to the clerk of the court.

Not later than the 20th day after the date the person receives notice of the penalty the person may accept the determination and pay the recommended penalty of the director; or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

The justice of the peace in which the retail food store is located or the mobile food establishment is based is required to hold a hearing requested under Subsection (d).

If the court sustains the finding that the violation occurred, the court is authorized to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

If the court does not sustain the finding, the court is required to order that a penalty is not owed.

If the person paid the penalty to the clerk and the amount was reduced or was not upheld, the court is required to order that the appropriate amount be remitted to the person, upon final judgment.

Authorizes an imposition of an administrative penalty for a violation of this chapter or rule or order under this chapter on a person required to hold a license under this chapter by the state or by the director of a public health district, but not both.

SECTION 2. Section 437.0185, Health and Safety Code, as added by this Act, applies only to a violation of Chapter 437, Health and Safety Code, or a rule or order adopted under that chapter, that occurs on or after the effective date of this Act.

SECTION 3. Effective Date

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds to SECTION 1 specific information related to the assessment of the penalty including the amount, what the amount of the penalty should be based on, and the enforcement of the penalty. The original bill only gave authorization to a county or public health district to impose administrative penalties. The substitute also adds a new SECTION 2 which makes the Act prospective.