

By: Jackson

H.B. No. 1598

Substitute the following for H.B. No. 1598:

By: Otto

C.S.H.B. No. 1598

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to administrative penalties imposed by a public health  
3 district for violations of health and safety provisions relating to  
4 retail food service.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 437, Health and Safety Code, is amended  
7 by adding Sections 437.0185 and 437.0186 to read as follows:

8 Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH  
9 DISTRICT. (a) The director of a public health district may impose  
10 an administrative penalty on a person the district requires to hold  
11 a permit under Section 437.004 if the person violates this chapter  
12 or a rule or order adopted under this chapter.

13 (b) The amount of the penalty may not exceed \$500 per day,  
14 and each day a violation continues or occurs is a separate violation  
15 for the purpose of imposing a penalty. The amount shall be based  
16 on:

17 (1) the seriousness of the violation, including the  
18 nature, circumstances, extent, and gravity of the violation;

19 (2) the history of previous violations;

20 (3) the amount necessary to deter a future violation;

21 (4) efforts to correct the violation; and

22 (5) any other matter that justice may require.

23 (c) The enforcement of the penalty may be stayed during the  
24 time the order is under judicial review if the person pays the

1 penalty to the clerk of the court. A person who cannot afford to pay  
2 the penalty may stay the enforcement by filing an affidavit in the  
3 manner required by the Texas Rules of Civil Procedure for a party  
4 who cannot afford to file security for costs.

5 (d) Not later than the 20th day after the date the person  
6 receives notice of the penalty, the person in writing may:

7 (1) accept the determination and pay the recommended  
8 penalty of the director; or

9 (2) make a request for a hearing on the occurrence of  
10 the violation, the amount of the penalty, or both.

11 (e) The justice of the peace for the justice precinct in  
12 which the retail food store or food establishment is located or the  
13 mobile food establishment or roadside food vendor is based shall  
14 hold a hearing requested under Subsection (d).

15 (f) If the court sustains the finding that a violation  
16 occurred, the court may uphold or reduce the amount of the penalty  
17 and order the person to pay the full or reduced amount of the  
18 penalty.

19 (g) If the court does not sustain the finding that a  
20 violation occurred, the court shall order that a penalty is not  
21 owed.

22 (h) If the person paid the penalty to the clerk of the court  
23 and if the amount of the penalty is reduced or the penalty is not  
24 upheld by the court, the court shall order, when the court's  
25 judgment becomes final, that the appropriate amount be remitted to  
26 the person.

27 Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An

1 administrative penalty may be imposed for a violation of this  
2 chapter or a rule or order under this chapter on a person required  
3 to hold a license under this chapter by the state under Section  
4 437.018 or by the director of a public health district under Section  
5 437.0185, but not both.

6 SECTION 2. Section 437.0185, Health and Safety Code, as  
7 added by this Act, applies only to a violation of Chapter 437,  
8 Health and Safety Code, or a rule or order adopted under that  
9 chapter, that occurs on or after the effective date of this Act. A  
10 violation that occurs before the effective date of this Act is  
11 governed by the law as it existed immediately before that date, and  
12 that law is continued in effect for that purpose.

13 SECTION 3. This Act takes effect September 1, 2005.