1   AN ACT

2 relating to administrative penalties imposed by a public health

3 district or a county for violations of health and safety provisions

4 relating to 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 OR COUNTY.   (a)   The director of a public health district

10 or the commissioners court of a county may impose an administrative

11 penalty on a person the district or county requires to hold a permit

12 under Section 437.003 or 437.004 if the person violates this

13 chapter or a rule or order adopted under this chapter.

14   (b)   The amount of the penalty may not exceed $500 per day,

15 and each day a violation continues or occurs is a separate violation

16 for the purpose of imposing a penalty.   The amount shall be based

17 on:

18   (1)   the seriousness of the violation, including the

19 nature, circumstances, extent, and gravity of the violation;

20   (2)   the history of previous violations;

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

22   (4)   efforts to correct the violation; and

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

24   (c)   The enforcement of the penalty may be stayed during the

1   time the order is under judicial review if the person pays the

2   penalty to the clerk of the court. A person who cannot afford to pay

3   the penalty may stay the enforcement by filing an affidavit in the

4   manner required by the Texas Rules of Civil Procedure for a party

5   who cannot afford to file security for costs.

6   (d) Not later than the 20th day after the date the person

7   receives notice of the penalty, the person in writing may:

8   (1) accept the determination and pay the recommended

9   penalty of the director or commissioners court; or

10   (2) make a request for a hearing on the occurrence of

11 the violation, the amount of the penalty, or both.

12   (e) The justice of the peace for the justice precinct in

13 which the retail food store or food establishment is located or the

14 mobile food establishment or roadside food vendor is based shall

15 hold a hearing requested under Subsection (d).

16   (f) If the court sustains the finding that a violation

17 occurred, the court may uphold or reduce the amount of the penalty

18 and order the person to pay the full or reduced amount of the

19 penalty.

20   (g) If the court does not sustain the finding that a

21 violation occurred, the court shall order that a penalty is not

22 owed.

23   (h) If the person paid the penalty to the clerk of the court

24 and if the amount of the penalty is reduced or the penalty is not

25 upheld by the court, the court shall order, when the court's

26 judgment becomes final, that the appropriate amount be remitted to

27 the person.

1   Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An
2   administrative penalty may be imposed for a violation of this
3   chapter or a rule or order under this chapter by the state under
4   Section 437.018 or by the director of a public health district or
5   commissioners court of a county under Section 437.0185, but not
6   both.
7   SECTION 2. Section 437.0185, Health and Safety Code, as
8   added by this Act, applies only to a violation of Chapter 437,
9   Health and Safety Code, or a rule or order adopted under that
10   chapter, that occurs on or after the effective date of this Act. A
11   violation that occurs before the effective date of this Act is
12   governed by the law as it existed immediately before that date, and
13   that law is continued in effect for that purpose.
14   SECTION 3.   This Act takes effect September 1, 2007.

_____   _____
    President of the Senate   Speaker of the House

    I certify that H.B. No. 1585 was passed by the House on May 2, 2007, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

                                      _____
                                        Chief Clerk of the House

    I certify that H.B. No. 1585 was passed by the Senate on May 21, 2007, by the following vote: Yeas 31, Nays 0.

                                        _____
                                        Secretary of the Senate

APPROVED: _____
                      Date

_____
                Governor