

1-1 By: King of Taylor (Senate Sponsor - Deuell) H.B. No. 1585
1-2 (In the Senate - Received from the House May 3, 2007;
1-3 May 7, 2007, read first time and referred to Committee on Health
1-4 and Human Services; May 11, 2007, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 11, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to administrative penalties imposed by a public health
1-9 district or a county for violations of health and safety provisions
1-10 relating to retail food service.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 437, Health and Safety Code, is amended
1-13 by adding Sections 437.0185 and 437.0186 to read as follows:

1-14 Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH
1-15 DISTRICT OR COUNTY. (a) The director of a public health district
1-16 or the commissioners court of a county may impose an administrative
1-17 penalty on a person the district or county requires to hold a permit
1-18 under Section 437.003 or 437.004 if the person violates this
1-19 chapter or a rule or order adopted under this chapter.

1-20 (b) The amount of the penalty may not exceed \$500 per day,
1-21 and each day a violation continues or occurs is a separate violation
1-22 for the purpose of imposing a penalty. The amount shall be based
1-23 on:

1-24 (1) the seriousness of the violation, including the
1-25 nature, circumstances, extent, and gravity of the violation;

1-26 (2) the history of previous violations;

1-27 (3) the amount necessary to deter a future violation;

1-28 (4) efforts to correct the violation; and

1-29 (5) any other matter that justice may require.

1-30 (c) The enforcement of the penalty may be stayed during the
1-31 time the order is under judicial review if the person pays the
1-32 penalty to the clerk of the court. A person who cannot afford to pay
1-33 the penalty may stay the enforcement by filing an affidavit in the
1-34 manner required by the Texas Rules of Civil Procedure for a party
1-35 who cannot afford to file security for costs.

1-36 (d) Not later than the 20th day after the date the person
1-37 receives notice of the penalty, the person in writing may:

1-38 (1) accept the determination and pay the recommended
1-39 penalty of the director or commissioners court; or

1-40 (2) make a request for a hearing on the occurrence of
1-41 the violation, the amount of the penalty, or both.

1-42 (e) The justice of the peace for the justice precinct in
1-43 which the retail food store or food establishment is located or the
1-44 mobile food establishment or roadside food vendor is based shall
1-45 hold a hearing requested under Subsection (d).

1-46 (f) If the court sustains the finding that a violation
1-47 occurred, the court may uphold or reduce the amount of the penalty
1-48 and order the person to pay the full or reduced amount of the
1-49 penalty.

1-50 (g) If the court does not sustain the finding that a
1-51 violation occurred, the court shall order that a penalty is not
1-52 owed.

1-53 (h) If the person paid the penalty to the clerk of the court
1-54 and if the amount of the penalty is reduced or the penalty is not
1-55 upheld by the court, the court shall order, when the court's
1-56 judgment becomes final, that the appropriate amount be remitted to
1-57 the person.

1-58 Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An
1-59 administrative penalty may be imposed for a violation of this
1-60 chapter or a rule or order under this chapter by the state under
1-61 Section 437.018 or by the director of a public health district or
1-62 commissioners court of a county under Section 437.0185, but not
1-63 both.

1-64 SECTION 2. Section 437.0185, Health and Safety Code, as

2-1 added by this Act, applies only to a violation of Chapter 437,
2-2 Health and Safety Code, or a rule or order adopted under that
2-3 chapter, that occurs on or after the effective date of this Act. A
2-4 violation that occurs before the effective date of this Act is
2-5 governed by the law as it existed immediately before that date, and
2-6 that law is continued in effect for that purpose.
2-7 SECTION 3. This Act takes effect September 1, 2007.

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