

**ACT 100**

**S.B. NO. 669**

**A Bill for an Act Relating to Health.**

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

SECTION 1. Chapter 322, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**"§322- Civil penalties.** (a) Any person who violates this part or any rule adopted by the department of health to implement this part shall be fined not more than \$10,000 for each separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) The director of health may impose by order the civil penalty specified in this section. Factors to be considered in imposing the civil penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator. For any judicial proceeding to recover the civil penalty imposed, the director of health need only show that notice was given, a hearing was held, or the time granted for requesting a hearing has expired without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(c) In addition to the penalty under subsection (a), the director of health may order the person who has committed the violation to correct the violation at the person's own expense.

**§322- Injunctive relief.** The director of health may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this part or any rule adopted to implement this part. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure."

SECTION 2. Chapter 328, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**"§328- Civil penalties.** (a) Any person who violates this part or any rule adopted by the department pursuant to this part shall be fined not more than \$10,000 for each separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) In addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this part, the director may impose by order the civil penalty specified in this section. Factors to be considered in imposing the civil penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§328- Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this part or any rule adopted to implement this part. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure."

SECTION 3. Section 321-18, Hawaii Revised Statutes, is amended to read as follows:

**“§321-18 Penalty.** [Every] Except when another penalty is provided, every person who violates any rule [or regulation] of the department, after the same has been adopted, as provided in section 321-10, shall be [fined not more than \$500, or imprisoned not more than one year, or both.] guilty of a misdemeanor.”

SECTION 4. Section 328-1, Hawaii Revised Statutes, is amended by amending the definition of “food” to read:

“(3) “Food” means (A) articles used for food or drink [for man or animals,] by humans, dogs, or cats, (B) chewing gum, and (C) articles used for components of any such article;”

SECTION 5. Section 328-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [All regulations and their amendments adopted by the Federal Food, and Drug Administration as of [June 9, 1977] under the authority of the Federal Food, Drug, and Cosmetic Act applicable to the General Regulations Relating to Definitions and Standards for Food (21 CFR Part 10), Standards of Quality for Foods for Which There are No Standards of Identity (21 CFR Part 11), Color Additives (21 CFR Part 8), Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act (21 CFR Part 1), Tolerances and Exemptions From Tolerances for Pesticides Chemicals in or on Raw Agricultural Commodities (40 CFR Part 180), Regulations on Food Additives (21 CFR Part 121), Food for Special Dietary Uses (21 CFR Part 125), Human Foods, Current Good Manufacturing Practices (21 CFR Part 128), Fish and Seafood Products (21 CFR Part 128a), Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers (21 CFR Part 128b), Processing and Bottling of Bottled Drinking Water (21 CFR Part 128d); Cosmetic Labeling (21 CFR Part 701), are adopted for the use of the department; provided that when in the director’s judgment such action will promote honesty and fair dealing in the interest of consumers, the director may establish such additional rules as may be necessary. All such regulations adopted or amended after [June 9, 1977] shall be adopted under chapter 91.] The director may establish rules as necessary for the enforcement of this part, including but not limited to, the establishment and enforcement of tolerance levels. The rules shall be adopted pursuant to chapter 91.”

SECTION 6. Section 322-7, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutuory material to be repealed is bracketed. New material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved May 24, 1983.)

**Note**

1. Edited pursuant to HRS §23G-16.5.