

ACT 253

H.B. NO. 1630

A Bill for an Act Relating to Citations for Unlicensed Activity.

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

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§436B- Citation for unlicensed activity; civil penalties.** (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in business within the State without having a license previously obtained under and in compliance with this chapter, the licensing laws for the respective profession or vocation, and the rules adopted thereunder.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and may contain an order of abatement, and an assessment of civil penalties as provided in this section. All penalties collected under this section shall be deposited in the special fund established under section 26-9(o).

(c) Any person who violates this section shall be assessed a civil penalty of not more than \$500 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the first violation; not more than \$1,000 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the second violation; and not more than \$5,000 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for any subsequent violation.

(d) Service of a citation issued under this section shall be made by personal service or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(e) Any person cited under this section may submit a written request to the director for a hearing, within twenty days from the service of the citation, with respect to the violations alleged, the scope of the order of abatement, or the amount of the civil penalties assessed.

(f) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order.

(g) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(h) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provision for abatement and civil penalties imposed.

(i) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred. The operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(j) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision.

(k) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 1996.

(Approved June 18, 1993.)

**Note**

1. Edited pursuant to HRS §23G-16.5.