

ACT 128

H.B. NO. 712

A Bill for an Act Relating to Violations of Chapter 6E.

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

SECTION 1. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CRIMINAL OFFENSES

§6E- Taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact; penalty. (a) A person commits the offense of taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact if the person knowingly:

- (1) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon the private land of any owner thereof without the owner’s written permission being first obtained; or
- (2) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon land owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) Taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact is a misdemeanor for which a fine not to exceed \$25,000 may be imposed, in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E- Taking, appropriation, excavation, injury, destruction, or alteration of a burial site; penalty. (a) A person commits the offense of taking,

appropriation, excavation, injury, destruction, or alteration of a burial site if the person knowingly:

- (1) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof, located on private land or land owned or controlled by the State or any of its political subdivisions, except as permitted by the department; or
- (2) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(b) Taking, appropriation, excavation, injury, destruction, or alteration of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed, in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E- Failure to stop work upon discovery of a burial site; penalty. (a)

A person commits the offense of failure to stop work upon discovery of a burial site if the person discovers a burial site and knowingly fails to stop work in the immediate area and report the discovery as required by section 6E-43.6.

(b) It is not a defense to the prosecution of a violation of this section that the discovery of the burial site was inadvertent.

(c) Failure to stop work upon discovery of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(d) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E- Criminal penalties not in lieu of civil or administrative penalties. The criminal penalties imposed by this part are in addition to, and not in lieu of, any civil or administrative penalties provided by law.

§6E- Part not applicable to family burial plots. Nothing in this part shall apply to land altering activities related to family burial plots under section 441-5.5.”

SECTION 2. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Person” means any individual, firm, corporation, partnership, or association.”

SECTION 3. Section 6E-11, Hawaii Revised Statutes, is amended to read as follows:

“**§6E-11 [Penalties.] Civil and administrative violations.** (a) It shall be [~~unlawful~~] a civil and administrative violation for any person[~~-, natural or corporate,~~] to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner’s written permission being first obtained. It shall be [~~unlawful~~] a civil and administrative violation for any person[~~-, natural or corporate,~~] to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) It shall be ~~[unlawful]~~ a civil and administrative violation for any person~~;~~ ~~[natural or corporate,]~~ to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department~~].~~ ~~Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section.]~~, or to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department.

(c) It shall be ~~[unlawful]~~ a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval. ~~[The penalties imposed pursuant to subsections (e) and (f) shall be in addition to any other penalties that may be imposed pursuant to law.]~~

(d) It shall be ~~[unlawful]~~ a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in chapter 6E, except as permitted by the department.

~~[(e)]~~ (f) Any person who violates this section shall be fined not more than \$10,000 for each separate ~~[offense.]~~ violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate ~~[offense]~~ violation for which the ~~[offender]~~ violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or¹ burial site, or for the transportation of the violator to or from the historic property or [a] burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

~~[(f)]~~ (g) Any person~~;~~ ~~[natural or corporate,]~~ who knowingly violates this ~~[section]~~ chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

~~[(g)]~~ (h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law."

SECTION 4. Section 6E-11.5, Hawaii Revised Statutes, is amended to read as follows:

"[H]§6E-11.5[H] Civil penalties. [Any] Except as provided in section 6E-11, any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than \$10,000 for each separate [offense.] violation. Each day of each violation constitutes a separate [offense.] violation."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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SECTION 6. Statutory material to be repealed is bracketed and ~~stricken~~.
New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 16, 2005.)

Note

1. Prior to amendment, the word “a” appeared here.