

**ACT 193**

H.B. NO. 1009

A Bill for an Act Relating to Certain Penalties for Violations of Subtitle 4 of Title 12, Hawaii Revised Statutes.

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

SECTION 1. Section 183-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§]183-5”~~ **General [administrative] penalties.** (a) Except as otherwise provided by law, the board or its authorized representative may:

- (1) Set, charge, and collect administrative fines;
  - (2) Bring legal action to recover administrative fines, fees, and costs, including attorney’s fees and costs and costs associated with land or habitat restoration; and
  - (3) Collect administrative fees and costs pursuant to paragraph (2),
- resulting from a violation of this chapter, any rule adopted, or permit issued thereunder.

(b) The administrative fines for violation of this chapter shall be as follows:

- (1) For a first violation, or any violation not preceded within a five-year period by a violation of this chapter, a fine of ~~[\u00a5]~~ no more than \$2,500 per violation;
- (2) For a second violation within five years of a previous violation of this chapter, a fine of ~~[\u00a5]~~ no more than \$5,000 per violation; and
- (3) For a third or subsequent violation within five years of the last violation of this chapter, a fine of ~~[\u00a5]~~ no more than \$10,000 per violation.

(c) In addition[~~]~~:

- (1) ~~A], a fine of an amount up to \$10,000 or three times the market value at the time and place of the violation, as determined by the board, for each tree or tree product, including koa, whichever is greater, per violation of section 183-17 may be levied for each destroyed, damaged, or harvested [koa] tree, or portion thereof, larger than six inches in diameter at ground level[~~]~~; and~~
- (2) ~~A fine of up to \$2,000 per violation of section 183-17 may be levied for each destroyed or harvested tree or plant, other than koa, or portion thereof, larger than six inches in diameter at ground level[~~]~~, along with any costs associated with restoration or replacement of habitat and damages to public land or natural resources, or any combination thereof.~~

(d) Any person who violates any rule adopted by the department under this chapter regulating vehicular parking or traffic movement shall have committed a traffic infraction and be adjudicated as set forth in chapter 291D. A person found to have committed a traffic infraction shall be fined no more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

Except as provided in this subsection, the State shall be precluded from pursuing further civil legal action to recover administrative fines, fees, and costs, including attorney’s fees and costs or monetary assessment against the person fined under this subsection.

~~[(d)]~~ (e) Any criminal ~~[prosecution]~~ action against a person for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from ~~[recovering additional]~~ pursuing civil legal action to recover administrative fines, fees, and costs, including attorney’s fees and costs[~~]~~ or monetary assessments against that person. Any civil legal action against a person to recover administrative fines, fees, and costs, including attorney’s fees and costs or monetary assessments, for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

~~[(e)]~~ (f) No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices

as authorized by law or as permitted by the department pursuant to article [xiii,] XII, section 7, of the [Hawaii] state constitution.

[~~(f)~~] (g) The department shall submit an annual report outlining the revenues generated by the penalties to the legislature [~~at least~~] no later than twenty days [~~before~~] prior to the convening of each regular session.”

SECTION 2. Section 183-18, Hawaii Revised Statutes, is amended to read as follows:

~~“§183-18 Criminal penalties. [Any person who violates section 183-17, upon conviction thereof, is guilty of a misdemeanor and shall be fined not more than \$2,000 or imprisoned not more than one year, or both. In addition to any other penalty imposed under this section, a fine of up to \$2,000 shall be levied for each tree illegally destroyed or harvested under section 183-17.]~~ (a) Unless otherwise specified, any person who violates a provision of this part or a rule adopted pursuant to this part shall be guilty of a petty misdemeanor. Authorized employees of the department acting within the scope of employment shall not be subject to the penalty provided for in this section. A person convicted of violating a provision of this part or a rule adopted pursuant to this part shall be sentenced, without the possibility of suspension of sentence, as follows:

- (1) A mandatory fine of no less than \$100, or imprisonment of no more than thirty days, or both, for a first offense, or any offense not preceded within a five-year period by a conviction for a prior offense;
- (2) A mandatory fine of no less than \$500, or by imprisonment of no more than thirty days, or both, for an offense that occurs within five years of a conviction for a prior offense; and
- (3) A mandatory fine of \$1,000, or imprisonment of no more than thirty days, or both, for an offense that occurs within five years of two or more convictions for prior offenses.

For purposes of this subsection, “offense” means a violation of any provision of this part or any rules adopted pursuant thereto.

(b) A person who is convicted of violating section 183-17 is guilty of a misdemeanor and shall be fined no more than \$2,000, or imprisoned no more than one year, or both.”

SECTION 3. Section 183-4, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 2021.)

**Note**

1. Edited pursuant to HRS §23G-16.5.