

## CHAPTER 556

## S.B. No. 562

## AN ACT

relating to civil, criminal, and administrative penalties under the Texas Food, Drug, Device, and Cosmetic Salvage Act.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 432, Health and Safety Code, is amended by amending Sections 432.018 and 432.019 and adding Sections 432.020 through 432.025 to read as follows:

Sec. 432.018. **CIVIL PENALTY; INJUNCTION.** (a) *If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or municipal attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:*

- (1) *an order enjoining the act or an order directing compliance;*
- (2) *a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person is engaged in or is about to engage in any of the acts;*
- (3) *the assessment and recovery of a civil penalty; or*
- (4) *both the injunctive relief and civil penalty.*

(b) *The penalty may be in an amount not to exceed \$25,000 for each violation. Each day a violation continues is a separate violation.*

(c) *In determining the amount of the penalty, the court shall consider:*

- (1) *the person's history of previous violations;*
- (2) *the seriousness of the violation;*
- (3) *any hazard to the health and safety of the public;*
- (4) *the demonstrated good faith of the person charged; and*
- (5) *other matters as justice may require.*

(d) *Venue for a suit brought under this section is in the municipality or county in which the violation occurred or in Travis County.*

(e) *A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.*

(f) *The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses [If a person violates this chapter or a rule or order adopted or license issued under this chapter, the commissioner may assess a civil penalty against that person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act)].*

Sec. 432.019. **CRIMINAL PENALTY.** (a) *A person commits an offense if the person:*

- (1) *operates a salvage establishment or acts as a salvage broker without a license issued under this chapter; or*
- (2) *fails to comply with a rule adopted under Section 432.011.*

(b) *An offense under this section is a Class A misdemeanor.*

Sec. 432.020. **EMERGENCY ORDER.** (a) *The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory, concerning the sale or distribution of distressed foods, drugs, devices, or cosmetics in the department's jurisdiction if the commissioner or the commissioner's designee determines that:*

- (1) *the sale or distribution of those foods, drugs, devices, or cosmetics creates or poses an immediate and serious threat to human life or health; and*
- (2) *other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.*

(b) *The commissioner or the commissioner's designee may issue the emergency order without notice and hearing if the commissioner or the commissioner's designee determines it is necessary under the circumstances.*

(c) *If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the emergency order is issued, shall determine a time and place for a hearing at which the emergency order will be affirmed, modified, or set aside. The hearing shall be held under departmental formal hearing rules.*

**Sec. 432.021. ADMINISTRATIVE PENALTY.** (a) *The commissioner may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.*

(b) *In determining the amount of the penalty, the commissioner shall consider:*

- (1) *the person's previous violations;*
- (2) *the seriousness of the violation;*
- (3) *any hazard to the health and safety of the public;*
- (4) *the person's demonstrated good faith; and*
- (5) *other matters as justice may require.*

(c) *The penalty may not exceed \$25,000 for each violation. Each day a violation continues is a separate violation.*

**Sec. 432.022. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.** (a) *An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.*

(b) *If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty.*

(c) *If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty.*

(d) *After making a determination under this section that a penalty is to be assessed, the commissioner shall issue an order requiring that the person pay the penalty.*

(e) *The commissioner may consolidate a hearing held under this section with another proceeding.*

**Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY.** (a) *Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the commissioner shall inform the person against whom the order is issued of the amount of the penalty.*

(b) *Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:*

- (1) *pay the penalty in full; or*
- (2) *if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:*

(A) *send the amount of the penalty to the commissioner for placement in an escrow account; or*

(B) *post with the commissioner a bond for the amount of the penalty.*

(c) *A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.*

(d) *A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.*

**Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY.** *Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:*

- (1) *remit to the person the appropriate amount of any penalty payment plus accrued interest; or*

*(2) execute a release of the bond if the person has posted a bond.*

*Sec. 432.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general, at the request of the commissioner, may bring a civil action to recover an administrative penalty under this chapter.*

SECTION 2. This Act takes effect September 1, 1993.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 14, 1993, by a viva-voce vote; passed the House on May 26, 1993, by a non-record vote.

Approved June 11, 1993.

Effective Sept. 1, 1993.