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Bill to Raise Sanitation Fines From \$30 to \$900 for First-Time Violations Advances in Senate

The Bolques-sponsored bill seeks to update fines for sanitation violations for the first time since 1949, increasing penalties to \$900 for a first offense, \$1,500 for a second, and \$1,700 for a third.

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Nelcia Charlemagne **May 28, 2025**

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Lawmakers are continuing to make strides in updating sections of the Virgin Islands Code, which have gone unchanged decades. On Tuesday, Senator Angel Bolques Jr. received the support of members of the Committee on Health, Hospitals, and Human Services for Bill 36-0043. The measure, he said, “introduces thoughtful and long overdue updates to the public health enforcement framework.”

If enacted, the bill would increase penalties for violation of existing sanitation laws, fixed since 1949. “Fines for violations have remained as low as \$40 to \$50,” Senator Bolques noted.

Therefore, he argued, the penalties “no longer reflect the seriousness of the health code violations or the cost of enforcing public health protections.”

The bill proposed a tiered system with fines increasing after each offense. “The goal is not to punish, it's to prevent, educate and to protect our people,” said Bolques. “Low fines fail to deter non-compliance, encourage bad actors [who] absorb penalties as the cost of doing business and jeopardizes the health of our residents and visitors alike.”

The bill also incorporates a host of related reforms recommended by the Department of Health, including “a formal process for the suspension and revocation of permits.”

Health Commissioner Justa Encarnacion urged lawmakers to let the findings of a 2019 actuarial study guide their implementation of new penalties. Fines, she said, should be “based on the actual cost of inspection, response and mitigation.” Using statistics from the National Environmental Health Association, Ms. Encarnacion argued that “the USVI fine citation assessments average 31 times less than assessments from comparable agencies.”

“The current nominal fees do not serve as effective deterrence for businesses that may consider violations of sanitation laws simply as a cost of doing business,” Ms. Encarnacion declared. It does not help matters that DOH “lacks the resources necessary to effectively enforce sanitation laws.”

Based on data from comparative analysis, Ms. Encarnacion recommended increasing the fine for a first offense from \$30 to \$900, the second offense from \$50 to \$1,500, and the third offense from \$50 to \$1,700. Doing so “would bring the USVI enforcement mechanism in line with comparable jurisdictions,” the health commissioner advised. She anticipates that higher fines would give businesses a “genuine financial incentive to comply with sanitation laws.” “The vast majority of responsible business owners who maintain proper sanitation standards will never incur these fines.”

Enforcement officers, clarified Mr. Bolques, “would be able to charge not more than \$900 for the first offense based on the parameters of that violation.” Senator Kurt Violet was concerned about the discretion this would grant. “I like the bill, but I don't agree with the flexibility of the fines. I think it needs to be specific,” he said. He feared that fines may vary for the same offense at different locations. He recommended that DOH be tasked with developing a “fee structure for all of the different offenses that can be embedded into this bill to provide clarity and fairness.”

Ms. Encarnacion agreed. “The up to \$900 gives a wide array of individuals making a choice that they shouldn't have to make. It takes away the objectivity of what we're trying to do,” she said.

Senator Hubert Frederick also shared that concern and additionally found the proposed increases “head scratching.” “We don't want the public to feel like when something happens, I'm going to be stuck with this huge bill,” he said. “Bills normally get passed on to customers, so we ultimately all will pay for that,” the lawmaker noted. “To avoid all that, let's make it so that if someone is doing something wrong, let's penalize them but give them an opportunity to fix the problem.”

Committee chair Senator Ray Fonseca also encouraged DOH to consider special circumstances. He used a hypothetical restaurant as an example. “In some areas in the community there are more roaches than other areas. So this business could be in an area where there are a lot of roaches... We want to make sure that it's done in a fair way where the business is not suffering an undue burden,” he told Commissioner Encarnacion. “We're asking you to be considerate of those businesses because it's a large fine, and so they have to be able to operate to pay the funding.”

“I’m going to ask the general public, the business owners, to be considerate about the health risks that they impose upon others if they are not consistent and in compliance with the law, plain and simple,” countered Ms. Encarnacion.

Nonetheless, DOH is willing to exercise some consideration. “If we see a violation, for example, dirty hood, and they know the fine is \$900, we’re not going to take the \$900. We want you to fix the hood,” explained Wanson Harris, DOH director of environmental health. “We want you to fix the problem rather than just paying upfront and continuing with the violation.”

Siding with the department, Senator Milton Potter remarked, “I agree with you that data should really drive policy correctly and not what we feel or what we believe or what we hope.”

“The fact of the matter is that we cannot afford to be labeled as a jurisdiction that does not have proper sanitation laws,” Bolques later chimed in. With committee members largely agreeing, Bill 36-0043 succeeded on Tuesday and proceeded to the Committee on Rules and Judiciary.