



**36<sup>TH</sup> LEGISLATURE OF THE VIRGIN ISLANDS  
COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES**

The Honorable Senator Ray Fonseca  
Chair of Committee

Testimony Presented By  
The Honorable Justa Encarnacion, RN, BSN, MBA/HCM  
Commissioner of Health

on

Bill No. 36-0043- An Act amending title 19 Virgin Islands Code, part VI, chapter 53, subchapter IV,  
section 1481 by increasing the penalties for violation of sanitation laws

*Sponsored by Senator Angel Bolques, Jr.*

1 Good day, Honorable Senator Ray Fonseca, Chairperson of the Committee on Health, Hospitals  
2 and Human Services, Honorable Senator Hubert Fredericks, Vice Chair; Committee members,  
3 and all non-committee members, and of course the viewing and listening audience. I am Justa  
4 Encarnacion, Commissioner of Health for the Virgin Islands Department of Health. Joining me  
5 today are Dr. Nicole Craigwell-Syms, Assistant Commissioner; Reuben Molloy, Assistant  
6 Commissioner; Mackiesh Taylor-Jones, Chief Legal Counsel; and Wanson Harris,  
7 Environmental Health Director.

8 Thank you for the opportunity to provide testimony on Bill No. 36-0043- An Act amending title  
9 19 Virgin Islands Code, part VI, chapter 53, subchapter IV, section 1481 by increasing the  
10 penalties for violation of sanitation laws, Sponsored by Senator Angel Bolques, Jr.

11 The Virgin Islands Department of Health stands in full support of the proposed legislation to  
12 increase environmental health fines as an essential step toward modernizing our public health  
13 enforcement framework. However, we respectfully recommend that this bill be expanded into a  
14 more comprehensive update of Title 19, Chapter 53, to better reflect the realities and  
15 responsibilities of environmental health regulation in the Territory. Specifically, we urge the  
16 inclusion of findings from a recent actuarial study, which supports setting fines at higher levels  
17 based on the actual cost of inspection, response, and mitigation. In addition, we propose  
18 amending the Code to require food establishments to post their inspection grades in a visible  
19 location, update the procedures for suspension and revocation of health permits, and clarify the  
20 appeals process for permit holders.

## 21 **Current Status of USVI Environmental Health Enforcement**

The United States Virgin Islands' current sanitation fine and citation schedule is severely outdated. According to a comprehensive 2019 study conducted by the National Environmental Health Association (NEHA), the current fine structure dates back to May 23, 1949 - over 75 years ago.

During this time, the economic landscape, public health challenges, and environmental concerns have evolved dramatically, yet our enforcement mechanisms have remained stagnant.

### **Comparative Analysis Findings**

The NEHA study compared the USVI Division of Environmental Health (DEH) fees, fines, and citations with ten similar environmental health agencies across the United States, including other island and coastal jurisdictions with tourism economies similar to ours.

The findings were stark:

**First citation/fine assessments:** USVI's current first citation amount is \$30, which is thirty times below the mean of \$904 among comparable agencies.

**Second citation/fine assessments:** USVI's current second citation amount is \$50, which is twenty-nine times below the mean of \$1,446 among comparable agencies.

**Third citation/fine assessments:** USVI's current third citation amount is \$50, which is thirty-three times below the mean of \$1,667 among comparable agencies.

**Overall assessment:** USVI fine and citation assessments averaged thirty-one times less than assessments from comparable agencies. In fact, the study concluded that USVI DEH fines and citation assessments are the lowest among all benchmarked agencies by a significant margin.

### **Impact of Current Low Penalty Structure**

The severely outdated and inadequate penalty structure has several negative consequences:

1. **Lack of deterrence:** The current nominal fines do not serve as effective deterrents for businesses that may consider violations of sanitation laws as simply a "cost of doing business."
2. **Limited enforcement capacity:** The Division of Environmental Health lacks the resources necessary to effectively enforce sanitation laws, particularly following the devastating impacts of Hurricanes Irma and Maria in 2017.
3. **Public health risk:** Ineffective enforcement directly impacts public health, potentially leading to increased foodborne illness, waterborne disease, and other environmental health hazards.
4. **Economic costs:** Public health incidents resulting from poor sanitation practices can damage our vital tourism industry, which depends on the USVI's reputation as a clean, safe destination.

Bill No. 36-0043 addresses these concerns by bringing sanitation violation penalties in line with contemporary standards. I strongly recommend updating the penalty structure even further, by using the NEHA study's findings, as follows:

First citation/fine: Increase from \$30 to \$900

Second citation/fine: Increase from \$50 to \$1,500

Third citation/fine: Increase from \$50 to \$1,700

These recommended amounts align with the statistical means identified in the comparative analysis and would bring the USVI's enforcement mechanisms in line with comparable jurisdictions.

1    **Benefits of Updated Penalties**

2    Updating these penalties would:

- 3       • **Create meaningful deterrence:** Businesses would have a genuine financial incentive to  
4       comply with sanitation laws.
- 5       • **Support enforcement:** Higher penalties signal the importance of sanitation compliance  
6       and provide resources for enforcement.
- 7       • **Protect public health:** Enhanced compliance would reduce environmental health risks to  
8       residents and visitors.
- 9       • **Protect the tourism economy:** Maintaining high sanitation standards supports the  
10      USVI's reputation as a premier destination.
- 11      • **Demonstrate recovery progress:** Following the 2017 hurricanes, this update  
12      demonstrates our commitment to rebuilding stronger institutions and safeguards.

13   **Addressing Potential Concerns**

14   Some may express concern about increasing financial burdens on local businesses. However, it's  
15   important to note that these penalties only affect non-compliant businesses. The vast majority of  
16   responsible business owners who maintain proper sanitation standards will never incur these  
17   fines.

18   Additionally, implementing a graduated enforcement approach that includes education,  
19   warnings, and compliance assistance before imposing penalties would ensure that the primary  
20   goal remains improved public health rather than revenue generation.

21   **Proposed Amendment to Title 19 V.I.C. § 1433 – Posting of Inspection Grades**

22   In addition to updating the proposed health fines, we respectfully recommend an amendment to  
23   Title 19 of the Virgin Islands Code, Part VI, Chapter 53, Subchapter II, Section 1433. The  
24   Division of Environmental Health utilizes the Food and Drug Administration (FDA) restaurants

grading systems. The grading system is a tool used to evaluate food safety practices and communicate results to the public. The purpose of the grading system informs consumers about food safety conditions, motivates restaurants to maintain high standards, creates objective criteria for evaluating establishments, and reduces foodborne illnesses. Studies suggest grading systems correlate with decreased hospitalization rates for foodborne illnesses.

Specifically, we propose revising the final sentence of the section to read as follows:

**"Such health permit, along with the inspection grade, shall be posted in a conspicuous place within the business establishment."**

This amendment aims to further support transparency and accountability in food safety and public health practices. Requiring establishments to display their inspection grades alongside their health permits ensures that customers are informed about the sanitary conditions and overall compliance status of the businesses they frequent.

#### **Proposed Amendment to Title 19 V.I.C. § 1434 – Suspension and Revocation of Health Permits**

The Department of Health proposes a full revision of § 1434 to clarify the procedures for the suspension, reinstatement, and revocation of health permits. This amendment provides a structured and transparent process for permit enforcement while ensuring public health is protected through timely corrective actions.

In conjunction with the FDA Code specifically section...

The revision includes the follow key information:

**Clear Grounds for Suspension:** The Commissioner of Health may suspend permits for violations of applicable laws or regulations. In cases of imminent health hazards, suspensions may be issued immediately without prior notice.

**Defined Reinstatement Procedure:** Permit holders must submit a written request for reinstatement, and a reinspection must occur within two business days. Reinstatement is granted once the regulatory authority confirms that the hazard or violation has been resolved.

**Revocation Authority:** The Commissioner may revoke permits for serious or repeated violations.

**Fair Hearing Process:** Permit holders are afforded due process, including the right to contest a suspension or revocation, present evidence, subpoena witnesses, and receive a written decision with appeal rights.

This amendment ensures due process for permit holders while reinforcing the Department's ability to respond promptly and effectively to health risks. The changes aim to streamline enforcement, improve transparency, and protect the public through clear timelines and procedures.

#### **Proposed Amendment to Title 19 V.I.C. § 1435 – Appeals from Suspension and Revocation of Health Permits**

This amendment clarifies the appeal process for permit holders following a suspension or revocation decision. It provides that permit holders have 30 days from the issuance of a decision to appeal to the appropriate judicial body and a written notice of appeal must be filed within 10

1 business days of receiving the decision, outlining the grounds for the appeal. This ensures due  
2 process while establishing clear, enforceable timelines for challenging regulatory actions.

3 In conclusion, we thank you for your continued partnership in strengthening our public health  
4 infrastructure. Our mission is to reduce health risks, increase access to quality healthcare and  
5 enforce health standards. The Department is committed to ensuring that public health standards  
6 across the Territory are upheld through clear, enforceable, and modern regulations. By  
7 supporting the proposed increase in environmental health fines while simultaneously updating  
8 related sections of the Code such as inspection grade visibility, suspension and revocation  
9 procedures, and the appeals process, we can create a more cohesive and accountable public  
10 health enforcement system. These changes will not only align with the findings of the actuarial  
11 study but also bring the Virgin Islands in line with best practices seen in other U.S. jurisdictions.  
12 We respectfully urge the Legislature to consider these comprehensive amendments as a  
13 necessary and timely update to protect the health and safety of our residents and visitors alike.  
14 Mr. Chair, committee and non-committee members, thank you for your time and your  
15 commitment to the health of our community. We stand ready to answer any questions you may  
16 have.