

By Mr. Angelo of Saugus, petition of Steven Angelo, Robert A. Durand and Pamela P. Resor relative to the disposal of infectious waste. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT RELATING TO INFECTIOUS WASTE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is amended by
2 inserting after Section 56, the following section: —

3 Section 56A. In addition to those fines and penalties set forth in
4 section fifty-six, the department may assess civil administrative
5 fines against hospitals and clinics licensed pursuant to section
6 fifty-one for violations of sections fifty-one through sections fifty-
7 seven C and the regulations promulgated pursuant to those sec-
8 tions.

9 (a) Whenever the department finds upon inspection, or through
10 information in its possession, that a hospital or clinic is not in
11 compliance with a requirement established under this chapter, the
12 department may issue an order directing the licensee to correct
13 such deficiency. Such an order may also be issued in any case
14 where a hospital or clinic fails to implement an acceptable plan of
15 correction for deficiencies cited during the course of a department
16 inspection of that hospital or clinic within a reasonable time after
17 that inspection; or fails to implement an acceptable plan of correc-
18 tion for deficiencies in accordance with the time table set forth in
19 that plan as accepted by the department. Every such correction
20 order shall include a statement of the deficiencies found, set forth
21 the provisions of law relied upon, and prescribe the period of time
22 within which each cited deficiency must be corrected. The depart-
23 ment, in its discretion, may set the time period as any period of
24 time which it deems reasonable in view of the nature and severity

25 of that deficiency, provided that in no case shall that correction
26 period be less than twenty-four hours after receipt of the order.

27 (b) The department may impose a civil administrative fine
28 against any hospital or clinic which fails to correct any deficiency
29 cited in correction order issued pursuant to the provisions of para-
30 graph (a) of this section within the time period prescribed by the
31 department in that order. Such an assessment shall be calculated at
32 a rate of one hundred dollars per deficiency for each day the defi-
33 ciency continues to exist beyond the date prescribed for correc-
34 tion. Before imposing such an assessment, the department shall
35 give the affected licensee written notice of the matters alleged and
36 the provisions of law relied upon and shall afford such licensee an
37 opportunity for a hearing upon timely written request. If, after
38 hearing or waiver thereof, the department determines that cause
39 exists, it shall impose an appropriate assessment. The affected
40 licensee shall pay such assessment except to the extent that, upon
41 judicial review, the reviewing court may reverse the final decision
42 of the department.

43 (c) Notwithstanding the provisions of the preceding paragraphs,
44 in any case where the department finds that a hospital or clinic has
45 failed to comply with any requirement established under this
46 chapter, and further finds that the deficiency presents an imme-
47 diate danger to patient health or safety, or that the deficiency is
48 one which has been cited in a correction order issued to the hos-
49 pital or clinic pursuant to paragraph (a) of this section at any time
50 within the past twelve months, the department may immediately
51 issue a cease and desist order and, in addition, may impose a civil
52 administrative fine of one thousand dollars for each such defi-
53 ciency against the hospital or clinic without issuing a correction
54 order pursuant to paragraph (a) of this section or affording the
55 licensee an opportunity to correct. In such a case, the department
56 shall give the affected licensee written notice of the deficiencies
57 upon which the civil administrative fine is based and the provision
58 of law relied upon, and shall specify a date by which such defi-
59 ciencies must be corrected. The department may impose an addi-
60 tional civil administrative fine of one thousand dollars per day for
61 each such deficiency which is not corrected by the date specified
62 in the department's notice. The affected licensee shall be granted a
63 hearing if a written request for such hearing is filed within seven

64 days after receipt of such notice. If, after hearing or waiver
65 thereof, the department determines that cause exists, the depart-
66 ment shall send a second written notice to the affected licensee
67 notifying the licensee of the amount of the civil administrative
68 fine imposed. The licensee shall pay that civil administrative fine
69 except to the extent that, upon judicial review, the reviewing court
70 may reverse the final decision of the department.

71 (d) A civil administrative fine imposed pursuant to any para-
72 graph of this section shall be due and payable to the common-
73 wealth thirty days after the affected licensee receives written
74 notice of the final decision of the department. The attorney gen-
75 eral shall recover any civil administrative fine due and payable in
76 an action of contract, or any other appropriate action, suit or pro-
77 ceeding, brought in the name of the commonwealth in the super-
78 ior court. Upon the motion of the attorney general, such court
79 may consolidate for hearing and decision a judicial review if the
80 proceedings result from some administrative action.

81 (e) Any licensee who institutes proceedings for judicial review
82 of any civil administrative fine imposed pursuant to this action
83 shall place the full amount of the final civil administrative fine in
84 an interest bearing escrow account in the custody of the clerk
85 magistrate of the reviewing court. The establishment of such an
86 interest bearing account shall be a condition precedent to the
87 jurisdiction of the reviewing court unless the party seeking judi-
88 cial review demonstrates in a preliminary hearing held within
89 twenty days of the filing of the complaint either inability to pay
90 or other good cause shown. Upon such a demonstration, the court
91 may grant an extension of waiver of the interest bearing escrow
92 account or may require in lieu of such interest bearing escrow
93 account, the posting of a bond payable directly to the common-
94 wealth in the amount of one hundred and twenty-five percent of
95 the civil administrative fine. If after judicial review, in a case
96 where the requirement for an escrow account has been waived,
97 and in cases where a bond has been posted in lieu of such require-
98 ment, the court affirms, in whole or in part, the civil administra-
99 tive finist the department shall be paid the amount thereof
100 together with interest at the rate set forth in section six C of
101 chapter two hundred and thirty-one. If, after such review in a case
102 where an interest bearing escrow account has been established,

103 the court affirms the civil administrative fine, in whole or in part,
104 the department shall be paid the amount thereof with the accumu-
105 lated interest thereon in such interest bearing escrow account. If
106 the court sets aside the civil administrative fine in a case where
107 the amount of the fine has been deposited in an interest bearing
108 account, the affected licensee shall be repaid the amount so set
109 aside, together with the accumulated interest thereon.

110 (f) Each licensee who fails to pay a civil administrative fine
111 imposed pursuant to this section on time, and each licensee who
112 posts a bond pursuant to this section and who fails to pay the com-
113 monwealth on time the amount required hereunder, shall be liable
114 to the commonwealth for up to three times the amount of the civil
115 administrative fine, plus interest from the time the fine became
116 final. The rate of interest shall be the rate set forth in section six C
117 of chapter two hundred and thirty-one.

118 (g) Following the imposition of a fine for any deficiency which
119 presented an immediate danger to patient health and safety, and in
120 the case where said fine is appealed, following the final decision
121 after hearing and/or judicial review, notice of the deficiency or
122 deficiencies and the fines paid therefor shall be posted in the hos-
123 pital or clinic as set forth in regulations promulgated by the
124 department.