

## §12-A. Civil penalty and enforcement provisions

**1. Civil penalty.** Civil penalties may be assessed against any person who:

- A. Violates any provision of this Title, Title 24 or any other law enforced by the superintendent; [PL 1997, c. 634, Pt. B, §1 (RPR).]
- B. Violates any rule lawfully adopted by the superintendent; or [PL 1997, c. 634, Pt. B, §1 (RPR).]
- C. Violates any lawful order of the superintendent that has not been stayed by order of the superintendent or the Superior Court. [PL 1997, c. 634, Pt. B, §1 (RPR).]

The Superior Court, upon an action brought by the Attorney General, may assess a civil penalty of not less than \$500 and not more than \$5,000 for each violation in the case of an individual and not less than \$2,000 and not more than \$15,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty.

The superintendent, following an adjudicatory hearing, may assess a civil penalty of up to \$500 for each violation in the case of an individual and a civil penalty of up to \$10,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty. The superintendent shall notify the Attorney General or the Attorney General's designee of any such adjudicatory hearing at the time that the notice of hearing is issued by the superintendent. The superintendent may not assess a civil penalty if the Attorney General notifies the superintendent that the Attorney General intends to pursue an action in Superior Court to seek civil penalties for the same conduct. If the Attorney General elects to pursue the noticed action in Superior Court, the Attorney General shall notify the superintendent of that decision no later than 7 days prior to the hearing.

[PL 2005, c. 41, §1 (AMD).]

**1-A. Equitable relief; actual damages.** In addition to a civil penalty awarded pursuant to subsection 1, the Superior Court may award to any injured insured or applicant for insurance who is represented by the Attorney General reasonable equitable relief and actual damages.

[PL 1989, c. 826 (NEW).]

**2. Cease and desist orders.** The superintendent may issue a cease and desist order following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the superintendent finds that any person has engaged in or is engaging in any act or practice in violation of any law administered or enforced by the superintendent, any rules promulgated under that law or any lawful order of the superintendent.

A. A cease and desist order is effective when issued, unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004. [PL 1991, c. 298, §1 (AMD).]

B. In the event an appeal is taken, the court shall issue its own order for compliance to the extent that the superintendent's order is affirmed. [PL 1989, c. 269, §3 (NEW).]

C. Violation of any cease and desist order shall be punishable as a violation of this Title in accordance with this section. [PL 1989, c. 269, §3 (NEW).]

[PL 1991, c. 298, §1 (AMD).]

**2-A. Emergency cease and desist.** The superintendent may issue an emergency cease and desist order, without prior notice and hearing, if the complaint shows that a person is engaging in unlicensed insurance activities or is engaging in conduct that creates an immediate danger to the public safety or is causing or is reasonably expected to cause significant, imminent and irreparable public injury.

A. A request for an emergency cease and desist order must be in writing in the form of a verified complaint. [PL 1991, c. 298, §2 (NEW).]

B. An emergency cease and desist order is effective immediately and will continue in force and effect until further order by the superintendent or unless stayed by the superintendent or by a court of competent jurisdiction. [PL 1991, c. 298, §2 (NEW).]

C. Upon issuance of an emergency cease and desist order, the superintendent shall serve on the person affected by the order, by registered or certified mail to the person's last known address, an order that contains a statement of the charges and a notice of hearing. The hearing, held in conformance with Title 5, chapter 375, subchapter IV, must be held within 10 days of the effective date of the emergency order, unless a later time is agreed upon by all parties. [PL 1991, c. 298, §2 (NEW).]

D. At the hearing, the superintendent shall affirm, modify or set aside, in whole or in part, the emergency cease and desist order and may combine and employ any other enforcement or penalty provisions available to the superintendent to arrive at a final order. [PL 1991, c. 298, §2 (NEW).]

E. The superintendent's order after hearing is a final order in all respects and is subject to subsection 2, paragraph A and section 236. [PL 1991, c. 298, §2 (NEW).]  
[PL 1991, c. 298, §2 (NEW).]

**3. Reprimand or censure.** The superintendent may issue a letter of reprimand or censure to any licensee, but only after opportunity for hearing has been provided to any and all persons who are subjects of the reprimand.  
[PL 1989, c. 269, §3 (NEW).]

**4. Refunds of overcharges.** In the event that any insurer, fraternal benefit society, nonprofit hospital service plan, nonprofit medical service plan, nonprofit health care plan, health maintenance organization or preferred provider organization makes charges to any person that are not in conformity with a filing that it is required to submit for approval or disapproval by this Title or Title 24, the superintendent may order that refunds of any overcharges be made.  
[PL 2009, c. 13, §1 (AMD).]

**5. Election of enforcement options.** The superintendent may elect to utilize any or all of the enforcement options provided by this section, in combination or in sequence, as the superintendent deems appropriate. The penalties and provisions of this section are in addition to any other penalty provided by law.  
[PL 1989, c. 269, §3 (NEW).]

**6. Restitution.** The superintendent may order restitution for any insured or applicant for insurance injured by a violation for which a civil penalty may be assessed pursuant to this section.  
[PL 1989, c. 826 (NEW).]

#### SECTION HISTORY

PL 1989, c. 269, §3 (NEW). PL 1989, c. 826 (AMD). PL 1991, c. 298, §§1,2 (AMD). PL 1997, c. 634, §B1 (AMD). PL 2001, c. 165, §B1 (AMD). PL 2005, c. 41, §1 (AMD). PL 2009, c. 13, §1 (AMD).

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