

Effective 5/10/2016

58-1-502 Unlawful and unprofessional conduct -- Penalties.

- (1) Unless otherwise specified in this title, a person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.
- (2)
 - (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:
 - (i) issue a citation to the person according to this section and any pertinent rules;
 - (ii) attempt to negotiate a stipulated settlement; or
 - (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
 - (b)
 - (i) The division may assess a fine under this Subsection (2) against a person who violates Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, as evidenced by:
 - (A) an uncontested citation;
 - (B) a stipulated settlement; or
 - (C) a finding of a violation in an adjudicative proceeding.
 - (ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections.
 - (c) Except for a cease and desist order, the division may not assess the licensure sanctions cited in Section 58-1-401 through a citation.
 - (d) A citation shall:
 - (i) be in writing;
 - (ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;
 - (iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.
 - (e) The division may issue a notice in lieu of a citation.
 - (f)
 - (i) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
 - (ii) The period to contest a citation may be extended by the division for cause.
 - (g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
 - (h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
 - (i) The division may not issue a citation under this section after the expiration of one year following the occurrence of a violation.
 - (j) The director or the director's designee shall assess fines according to the following:

- (i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to \$1,000;
 - (ii) for a second offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000; and
 - (iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000 for each day of continued offense.
- (3)
- (a) An action for a first or second offense that has not yet resulted in a final order of the division may not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.
 - (b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
- (4)
- (a) The director may collect a penalty that is not paid by:
 - (i) either referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.
 - (b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect the penalty.
 - (c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Amended by Chapter 238, 2016 General Session