WEST VIRGINIA CODE: §17a-6-25A

§17A-6-25a. Civil penalties.

(a) In addition to any other remedy or penalty provided by law, the commissioner may levy and collect a civil fine, in an amount not to exceed $1,000 for each first violation, against any person who violates the provisions of this article, article six-b, article six-c or article six-d of this chapter, any of the rules or policies implemented to enforce those articles, or any lawful order of the commissioner pursuant to authority set forth in those articles. Every transaction which violates this article, article six-b, article six-c or article six-d of this chapter shall be considered a separate violation. For a second violation, being any violation occurring within three years following any previous violation for which the violator has been disciplined pursuant to section eighteen, article six of this chapter, the commissioner may levy and collect a fine in an amount not to exceed $2,500 and for a third and subsequent violation occurring within the three-year period following the first violation, the commissioner may levy and collect a fine in an amount not to exceed $5,000.

(b) A fine assessed under this section shall not take effect until the commissioner sends to the person against whom the penalty is assessed by certified mail, return receipt requested, a notice of violation finding that the person has committed an offense. The notice shall contain:

(1) A statement of the offense the person committed;

(2) A summary of the facts on which the finding of a violation was made;

(3) The amount of the fine which is being levied; and

(4) An order that the person:

(A) Cease and desist from all future violations and pay the fine; or

(B) Protest in writing the findings of the commissioner or the amount of the assessed fine and request a hearing.

Any request for a hearing must be received by the commissioner within thirty days after the mailing date of the notice of violation. The notice of violation may be sent to any address which the person has used on any title or license application, or other filing or record which the commissioner believes is current. Failure of any person to receive a notice of violation does not preclude the fine from taking effect. However, the commissioner shall accept as timely a request for hearing from any person who, within one year of the date the notice of violation was sent, provides satisfactory proof that he or she did not receive the notice of violation and that good cause exists to excuse his or her failure to receive the notice of violation and that he or she wishes in good faith to assert a protest to the notice of violation.

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The pendency of the one-year period shall not keep any penalty from taking effect, but the commissioner shall stay enforcement of the fine upon his or her acceptance of any notice filed after the thirty-day period pending the outcome of the appeal.

(c) Upon receipt of a timely request, the commissioner shall afford the person a hearing in accordance with the rules of the Division of Motor Vehicles. The commissioner, in addition to considering the evidence relied upon to prove or defend against a finding of a violation, shall also evaluate the appropriateness of the amount of the civil penalty. In making such evaluation, the commissioner shall consider:

(1) The severity of the violation and its impact on the public;

(2) The number of similar or related violations;

(3) Whether the violations were willful or intentional; and

(4) Any other facts considered appropriate.

(d) In addition to any other findings of fact or conclusions of law, the commissioner may reduce the civil penalty to a stated amount. The appellant may, at any time during the pendency of the appeal, enter into a settlement agreement with the commissioner. The settlement agreement may provide for a reduction in the penalty and may provide that the appellant does not admit a violation. The entry into a settlement agreement or the payment of any fine pursuant to a settlement agreement which states that the appellant does not admit a violation shall not amount to an admission of guilt for purposes of any criminal prosecution.

(e) Upon the expiration of all periods for protest or appeal of a notice of violation, including judicial review pursuant to section four, article five, chapter twenty-nine-a of this code, the notice of violation shall have the same force and effect and be enforceable as a judgment entered by any court of law of this state.

(f) If a corporation is found to have committed a violation against which a penalty may be assessed under this section, any officer of the corporation who is found to have knowingly and intentionally committed the violation, to have knowingly and intentionally directed another to commit the violation or to have knowingly and intentionally failed to take reasonable steps to prevent another from committing the violation, may be individually found to be in violation and assessed a civil penalty as provided by this section.

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