

CHAPTER 168
FORMERLY
SENATE BILL NO. 90

AN ACT TO AMEND TITLE 29, CHAPTER 87 OF THE DELAWARE CODE RELATING TO THE DIVISION OF PROFESSIONAL REGULATION AND CHAPTER 101 RELATING TO THE ADMINISTRATIVE PROCEDURES ACT

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend Section 8735(s), Title 29 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

(s) The Division of Professional Regulation may investigate complaints of unauthorized practice of the professions governed by the boards, agencies and commissions named in subsection (a) of this section. ~~The same procedures enumerated in subsection (h) of this section shall apply to these complaints of unlicensed professional practice.~~ The Division may issue citations for unlicensed practice discovered during an investigation into a complaint of unlicensed practice, a complaint otherwise under investigation, or an inspection as follows:

1. Upon discovery of the unlicensed practice of a profession or the unlicensed operation of any facility governed by the boards, agencies and commissions named in subsection (a) of this section, the Division may issue a citation to the person engaging in the unlicensed practice of the profession, or the owner, operator, manager or person otherwise responsible for any facility that is operating without a license or permit required by such board, agency or commission.

2. The citation shall be prepared on a form approved by the Director of the Division and shall clearly state the violation(s) and the penalty. The penalty for the first occurrence of unlicensed practice by an individual or unlicensed operation of a facility shall be no more than \$250.

3. Any person or facility cited may, within 30 days of the issuance of the citation, admit such violation and remit payment of the penalty to the Division or deny such violation and request a hearing to contest the citation. Denials and requests for hearing must be made within 10 days of the issuance of the citation. Failure to deny and request a hearing within 10 days of any citation will be deemed an admission of the violation. Any admitted violations may be referred to appropriate law-enforcement agencies, including the Delaware Department of Justice, for criminal prosecution.

4. Any person or facility who either admits, or after a hearing is found guilty of, engaging in unlicensed practice may be fined up to \$1,000 per day for every day such unlicensed practice occurs after such admission or finding.

5. The Division will not issue a license or permit to any applicant with unpaid penalties issued pursuant to this sub-paragraph.

Section 2: Amend Section 10161, Title 29 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~(c) Any professional licensing board governed by Title 24 and listed in subsection (a) of this section, upon notice, hearing and review afforded by subchapters III and V of this chapter, may issue a cease and desist order to a person that the Board determines is engaged in the practice of the profession regulated by the Board without having lawfully obtained a license or that a person previously licensed by the Board is engaged in the regulated practice of the profession notwithstanding that the person's license has lapsed, expired or has been suspended or revoked.~~

~~(d) The professional licensing boards named in subsection (c) of this section may establish fines for persons that violate cease and desist orders by statute or by regulation in accordance with subchapters I and II of this chapter. Subject to notice, hearing and review afforded by subchapters III and V of this chapter, such professional licensing boards may fine any person who violates a cease and desist order not less than \$100 or more than \$1000. Each day a violation continues may be deemed a separate offense in the Board's discretion.~~

~~(e) In addition to the remedies provided in subsections (c) and (d) of this section, professional licensing boards named in subsection (c) of this section may seek injunctive relief to prevent unauthorized practice of the profession.~~

(~~fc~~) Nothing in this section shall be construed to prevent prosecution under, or be otherwise inconsistent with, Titles 11 and 24.

(~~gd~~) At a properly convened board meeting, the board president or chairperson of any professional licensing board governed by Title 23, 24, or 28 and listed in subsection (a) of this section that is not already authorized by statute to use hearing panels or committees to resolve cases, may nominate at least 3 members of the board, the 3 members being 2 professional members and 1 public member if practical, to serve on a hearing panel to decide disciplinary complaints and complaints of unlicensed practice. Nominees must be approved by a majority vote of the board members present at the properly convened meeting. The board president or chairperson shall designate 1 member of a hearing panel to serve as the hearing panel chair. Hearing panels shall consist of board members only.

(~~he~~) Notice of the panel hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of this title. All hearings shall be informal without use of rules of evidence. A verbatim record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the hearing panel must be made by majority vote of the hearing panel members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(1) If the hearing panel determines that no violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order dismissing the complaint.

(2) If the hearing panel determines that a violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order stating its proposed findings of fact, conclusions of law, and disciplinary sanctions.

(3) If the respondent fails or refuses to appear, the hearing panel may nevertheless proceed to hear the complaint and render a decision.

(~~if~~) Orders issued by the hearing panel are not final until approved by the board having jurisdiction. By majority vote of the members present at a properly convened board meeting, the board shall approve or reject the hearing panel's written order based only on the information contained in the order. The board shall overturn the decision of a hearing panel only if it decides that a hearing panel decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If a board does not approve the hearing panel's order, the matter must be remanded to the hearing panel for further proceedings in accordance with the board's written reasons for withholding its approval. Where the respondent is in disagreement with the action of the board, the respondent may appeal the board's decision in accordance with the provisions of the Administrative Procedures Act. The court shall hear the appeal on the record. Stays shall be granted in accordance with § 10144 of this title. Copies of orders must be served personally or by registered or certified mail to each party.

Approved August 06, 2013