

CHAPTER 146
FORMERLY
HOUSE BILL NO. 194
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AND MIDWIFERY.

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

Section 1: Section 1. Amend § 107, Title 16 of the Delaware Code by making insertions as shown by underlining as follows:

§ 107. Neglect of duty; penalty.

(a) Whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than \$100 and not more than \$1000, together with costs, unless otherwise provided by law.

(b) [Deleted.]

(c) (1) [Deleted.]

(2) [Deleted.]

(3) [Deleted.]

(d) (1) Notwithstanding the foregoing, whoever refuses, fails or neglects to perform duties required of trained and certified individuals and firms under § 122(3)(t) of this title, or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department regarding the standards for regulation of lead-based paint, including the training and certification of companies and workers engaged in lead-based paint activities, work practice standards and the accreditation of lead-based paint hazard training programs, shall be subject to a criminal penalty up to \$10,000 per day, together with costs, for every day from and after the effective date of an order of the Department specifically directing compliance until such time compliance has been achieved. The Justice of the Peace Courts shall have jurisdiction to adjudicate offenses under this subsection.

(2) In appropriate cases, Department-issued orders concerning lead-based paint activities and duties imposed by law upon such persons engaged in lead-based paint activities governed by this code may be compelled by mandamus or injunction.

(3) At the discretion of the Department, in lieu of criminal action pursuant to paragraph (1) of this subsection, the Secretary shall be authorized to impose an administrative penalty of up to \$10,000 per violation in accordance with the Administrative Procedures Act against any person or entity who violates the provisions of this chapter or the regulations promulgated pursuant to it. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) All fees and penalties assessed by the Department under this statute shall be retained by the Department in order to defray costs associated with the Lead-based Paint Poisoning Prevention Program.

(e) Notwithstanding the foregoing, whoever refuses, fails, or neglects to perform duties required under §122(3)(h) of this title related to non-nurse midwifery or fails to comply with the duly adopted regulations or orders of the Department regarding non-nurse midwifery shall be subject to the following:

i. An administrative fine imposed by the Secretary of not less than \$1,000 nor more than \$10,000 per violation, together with costs pursuant to Department regulations and procedures;

ii. The Department may order that such person(s) cease and desist acts that violate the duly adopted regulations; and

iii. If an order issued pursuant to §107(e)(ii) of this title is violated, such person shall be guilty of a class F felony, with a term of imprisonment not to exceed 3 years.

All fees, fines, costs, and penalties assessed by the Department pursuant to this subsection shall be retained by the Department in order to defray associated costs. Superior Court shall have original jurisdiction to adjudicate criminal offenses under this subsection. Penalties sought or imposed pursuant to this section do not prohibit charges applicable under other titles of the Code, including but not limited to criminal fees, fines, costs, and penalties.

Approved July 31, 2013