

§ 78C-28. Injunctions; cease and desist orders; civil penalties.

(a) Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this Chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition to any other remedies provided by this Chapter, the Administrator may apply to the court hearing this matter for an order of restitution whereby the defendant in such action shall be ordered to make restitution of those sums shown by the Administrator to have been obtained by him in violation of any of the provisions of this Chapter. Such restitution shall be payable, in the discretion of the court, to the Administrator or receiver appointed pursuant to this section for the benefit of those persons whose assets were obtained in violation of this Chapter, or directly to those persons. The court may not require the Administrator to post a bond.

- (b) (1) If the Administrator determines after giving notice of an opportunity for a hearing, that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may order such person to cease and desist from such unlawful act or practice and take such affirmative action as in the judgment of the Administrator will carry out the purposes of this Chapter.
- (2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order.
- (3) No order under subsection (b) of this section, except an order issued pursuant to G.S. 78C-28(b)(2), may be entered without prior notice or an opportunity for hearing. The Administrator may vacate or modify an order under subsection (b) of this section upon his finding that the conditions which required such an order have changed and that it is in the public interest to so vacate or modify.
- (4) A final order issued pursuant to the provisions of subsection (b) of this section shall be subject to review as provided in G.S. 78C-29.

(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

- (1) Imposing a civil penalty of up to two thousand five hundred dollars (\$2,500) for a single violation or of up to twenty-five thousand dollars (\$25,000) for multiple violations in a single proceeding or a series of related proceedings; and
- (2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any reimbursement imposed under this subsection shall be paid into the General Fund. No order authorized by this subsection may be entered without prior notice of an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1991, c. 456, s. 7; 1997-462, s. 9; 1998-215, s. 121; 2001-126, s. 6.)