

§ 95-234. Violation of controlled substance examination regulations; civil penalty.

(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(b) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation.

(e) The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this Article. The rules adopted shall promote individual dignity and privacy while not posing an undue burden on employers. (1991, c. 687, s. 1; 1993, c. 213, s. 3; 1998-215, s. 113; 2003-308, s. 7; 2007-231, s. 11.)