

SENATE BILL 843

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 4; Title 11; Title 43; Title 44; Title 45; Title 53; Title 56; Title 57; Title 59; Title 60; Title 62; Title 63; Title 64; Title 65; Title 67; Title 68; Title 69; Title 70 and Title 71, relative to civil penalties assessed by departments of this state.

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

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 1, is amended by adding the following language as a new, appropriately designated section:

4-3-125.

(a) Notwithstanding any law to the contrary:

(1) If a department believes that a person whose business or activities are licensed or regulated by the department is not in compliance with any law, rule, or regulation promulgated by the department which subjects the person to civil penalties, then, prior to assessing any civil penalty against such person, the department shall issue to the person by certified mail, delivery service with delivery receipt, or via hand delivery a written citation that states:

(A) The nature and location of the violation, including an exact citation to the law, rule, or regulation alleged to have been violated;

(B) The requirements necessary to remedy the violation;

(C) The time for abatement of the violation, which such time shall be no less than twenty (20) business days; and

(D) The civil penalties that shall be assessed if the person fails to remedy the violation within the time for abatement.

(2) Upon receipt of the citation, the person shall immediately post a copy of the citation at or near each location referred to in the citation.

(3) Upon the expiration of the time for abatement, if the person:

(A) Remedies the violation in accordance with the requirements described in subdivision (a)(1)(B), then such person shall not be assessed any civil penalty, including but not limited to fines, fees, or interest; and

(B) Fails to remedy the violation, then the department may proceed to assess civil penalties as otherwise provided by law, rule or regulation.

(b)

(1) At any time within the time for abatement described in subdivision (a)(1)(C), the person may advise the department of objections to the citation.

(2) Upon receipt of such objections, the department shall notify any applicable board or commission that regulates such business or activity, and such board, commission, or the department, as applicable, shall afford an opportunity for a hearing to be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) After such hearing, the board, commission, or department, as applicable, shall issue an order affirming, modifying, or vacating the citation. Such order shall become final thirty (30) days after its issuance.

(c) The department may suspend or extend the initial time for abatement upon a showing by the person of a good faith effort to comply with the remedy requirements, and that failure to comply with the remedy requirements is due to factors beyond the person's reasonable control.

(d)

(1) In the event that any provision of federal law is contrary to this section, then such federal law shall control.

(2) In the event that any provision of state or local law is contrary to this section, then this section shall control.

(e) This section shall not prohibit the immediate application of criminal penalties to any person.

SECTION 2. The affected departments are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to all violations occurring on or after the effective date of this act.