

Sc. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f) (3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

penalty by:

(2) request the court to stay enforcement of the

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section [2001.176](#), Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter [2001](#),

Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0650, eff. April 2, 2015.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs. Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.