

SECTION .0800 – SANCTIONS AND ENFORCEMENT

18 NCAC 10 .0801 CIVIL SANCTIONS

(a) If, upon investigation, the Electronic Commerce Section finds that a Certification Authority has violated any provision of the Electronic Commerce Act or the rules in this Chapter, or finds that the Certification Authority has had a license revoked or suspended in any other jurisdiction, the Electronic Commerce Section may revoke or suspend any license issued under the Electronic Commerce Act and the rules in this Chapter. The revocation or suspension may be in addition to any civil monetary penalty issued against the Certification Authority. As a condition of license reinstatement following a period of suspension, the Electronic Commerce Section may require that the Certification Authority submit updated or additional documentation or assurances regarding its operations.

(b) If, upon investigation, the Electronic Commerce Section finds that a Certification Authority has violated any provision of the Electronic Commerce Act or the rules in this Chapter, the Electronic Commerce Section may assess a civil monetary penalty of not more than five thousand dollars (\$5,000 US) for each violation. The civil monetary penalty may be in addition to any revocation or suspension of the Certification Authority's license. As a condition of continued licensure following assessment of a civil monetary penalty, the Electronic Commerce Section may require that the Certification Authority submit updated or additional documentation or assurances regarding its operations.

(c) Adjustment factors. In determining the length of any suspension or amount of any civil monetary penalty, the Electronic Commerce Section shall consider:

- (1) The organizational size of the Certification Authority cited for violating the provisions of the Electronic Commerce Act;
- (2) The good faith of the Certification Authority cited, including but not limited to any procedures or processes implemented by the violator to prevent the violation from recurring;
- (3) The gravity of the violation;
- (4) The prior record of the violator in complying or failing to comply with the Electronic Commerce Act or the rules in this Chapter; and
- (5) The risk of harm cause by the violation.

(d) Continuing Violations. After the receipt of notice of a violation, if any Certification Authority willfully continues to violate by action or inaction the Electronic Commerce Act or the rules in this Chapter, each day or transaction the violation continues or is repeated may be considered a separate violation.

(e) Civil Sanction Notification. When the Electronic Commerce Section determines that a civil sanction shall be assessed, the Electronic Commerce Section shall notify the Certification Authority of the following information by electronic mail, if possible, and by any means permitted under Rule 4 of the North Carolina Rules of Civil Procedure:

- (1) The nature of the violation;
- (2) The proposed civil sanction;
- (3) That the proposed civil sanction will become final unless within 60 days after receiving notice of the proposed sanction the Certification Authority either:
 - (A) takes exception to the proposed sanction by filing a contested case petition with the Office of Administrative Hearings; or
 - (B) submits a written request for the reduction of the proposed sanction; and
- (4) The procedure for taking exception to the violation or seeking the reduction of the proposed sanction.

(f) Civil Sanction Finality. The Certification Authority must file a contested case petition pursuant to G.S. 150B-23 or submit a written request for the reduction of the proposed sanction within 60 days of receipt of the notice of the proposed civil sanction or the proposed sanction shall become the sanction imposed. Notice shall be deemed received at the time of service by any method permitted under Rule 4 of the North Carolina Rules of Civil Procedure.

(g) Request for Reduction of Proposed Civil Sanction. A Certification Authority that admits a cited violation but wishes to seek reduction of the length of a proposed suspension or the amount of a proposed civil monetary penalty may request reduction of the proposed civil sanction.

- (1) Any request for reduction of a proposed civil sanction shall be submitted to the Electronic Commerce Section in writing and must include a written statement supporting the reduction request. Requests for reduction of a proposed sanction are solely for the purpose of allowing the Certification Authority to contest the reasonableness of the proposed civil sanction arising under

this Rule. The Certification Authority shall not attempt to contest the existence of a violation or raise questions of law in the request for reduction of the proposed sanction.

- (2) The Electronic Commerce Section shall determine if the proposed sanction is to be reduced pursuant to a reduction request and shall notify the Certification Authority of its decision in writing.
- (3) If the Electronic Commerce Section determines that the reduction request raises issues of fact or questions of law, the Electronic Commerce Section may decline to consider the reduction request, and shall notify the Certification Authority by certified or registered mail that it must file a contested case petition with the Office of Administrative Hearings in order to preserve its claim and legal rights. The Certification Authority must file a contested case petition with the Office of Administrative Hearings within 60 days of receipt of notice or the sanction assessed shall be final.
- (4) If the reduction request does not raise issues of fact or questions of law, the Electronic Commerce Section shall determine if the proposed sanction is to be reduced, and shall notify the Certification Authority of its decision in writing by electronic mail, if possible, and by any other means permitted under Rule 4 of the North Carolina Rules of Civil Procedure. In the event the Electronic Commerce Section denies the reduction request, or grants the reduction request in an amount unacceptable to the Certification Authority, the Certification Authority must file a contested case petition with the Office of Administrative Hearings within 60 days of receipt of notice of the Electronic Commerce Section's decision, or the decision shall become the final decision. Notice shall be deemed received at the time of service by any method permitted under Rule 4 of the North Carolina Rules of Civil Procedure.

(h) Payment. Any civil monetary penalty shall be due within 60 days of the date of the initial assessment of the penalty, except that if the Certification Authority files a contested case petition pursuant to G.S. 150B-23 or submits a written request for reduction of the penalty, the penalty shall be due within 60 days of the date of the final decision. The penalty shall be paid with cash or certified funds by personal delivery or certified mail to the Electronic Commerce Section. In the event the Certification Authority fails to pay the penalty assessed within the time periods set forth in this Rule, the Electronic Commerce Section may collect the amount of the penalty from the bond required by the rules in this Chapter.

*History Note: Authority G.S. 66-58.6; 66-58.10;
Temporary Adoption Eff. February 23, 1999;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*