

455B.109 Schedule of fines — violations.

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter* or rules, permits or orders adopted or issued under this chapter.* In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by noncompliance by the violator.
- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.*

2. Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under subsection 1.

3. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

4. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

5. a. Except as provided in paragraph “b”, civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

b. The following provisions shall apply to animal feeding operations:

(1) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(2) Civil penalties assessed by the department and interest on the penalties, arising out of violations committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

(3) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving open feedlot operations under chapter 459A, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(4) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving dry bedded confinement feeding operations under chapter 459B, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

6. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, §1; 86 Acts, ch 1245, §1899; 92 Acts, ch 1111, §1; 95 Acts, ch 195, §12; 2002 Acts, ch 1137, §2, 71; 2005 Acts, ch 136, §25; 2008 Acts, ch 1032, §57; 2009 Acts, ch 155, §24, 34

[SP] *Sections formerly contained in this chapter were transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.601 – 459.604

[SP] For future amendment to subsection 5, effective July 1, 2012, see 2011 Acts, ch 128, §34, 45

[T] Section not amended; footnote added