

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

1560 Broadway, Suite 850
Denver, Colorado 80202



Bulletin No. B-1.3

Administrative Fines and Penalties

I. Background and Purpose

The purpose of this bulletin is to advise regulated entities of the guidelines used by the Colorado Division of Insurance (“Division”) in the assessment of administrative fines and penalties for certain violations of the Colorado Revised Statutes and the regulations of the Division.

Colorado Revised Statutes, titles 10 and 12, and other provisions governing entities regulated by the Division and subject to enforcement action, are specific as to the formal remedies available to the Commissioner in the event a regulated entity is in violation of the law.

It is not the primary objective of the Commissioner to levy fines and penalties, but rather, to promote a greater degree of compliance with the law. However, such sanctions can be useful enforcement mechanisms and will be utilized at the discretion of the Commissioner. In addition to assessing fines and penalties for conduct which is not in compliance with the law, the Commissioner anticipates that corrective action will be undertaken by the regulated entity to bring all activities into compliance, and to make restitution to affected parties, where appropriate.

The Commissioner recognizes that resolution of an issue without the expense and formality of a hearing and/or a direct order from the Commissioner is most cost effective for all parties. Therefore, the Commissioner encourages informal resolution of issues to the greatest extent possible, consistent with the framework provided by this bulletin.

Bulletins are the Division’s interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin applies to all entities and persons regulated by the Division.

III. Division Position

A. Definitions. As used in this bulletin, unless the context otherwise requires:

1. “Commissioner” means the commissioner of insurance, or the Commissioner’s designee.
2. “Error ratio” means, with respect to sampling, the percent of cases, incidents, or files in error in relation to the total number sampled.
3. “Investigation” means any official formal or informal Division review, analysis, inquiry, or research into referrals, complaints, or inquiries to determine compliance with the law.

4. “Violation” means an act or occurrence of noncompliance with a statute, regulation, stipulation, or order, regardless of whether the regulated entity or person acted in good faith, or whether the regulated entity or person actually knew the conduct was not in compliance with the law. Each separate act or occurrence of noncompliance is a separate violation. Each violation may result in a fine or penalty.
5. “Willful” means any conduct that the regulated entity or person knew or reasonably should have known was a violation, or a violation committed with a frequency that indicates a tendency to engage in a general business practice, or an act substantially similar to a prior violation.

B. General Provisions.

1. Effective August 8th, 2008, a surcharge of 15% may be imposed pursuant to HB 08-1216 and §24-34-108(2), C.R.S.
2. For certain violations, the maximum fining authority increases for acts occurring on or after August 4, 2008, pursuant to HB 08-1407. This increased fining authority is noted for appropriate violations in Appendix A.
3. Unless another time period is specified by the Division in writing, all fines and penalties are due and payable immediately with checks made payable to the “Colorado Division of Insurance”. Attach a copy of the statement or letter assessing such fine or penalty. Send all remittances to the Colorado Division of Insurance, “ATTENTION: Cash Management”.
4. Guidance to Promote Voluntary Settlement. As a result of an examination, market conduct action, or investigation, the Division may make recommendations to regulated entities or persons when violations are indicated. The Division encourages voluntary resolution of compliance issues and incorporation of compliance and corrective action plans in the form of a stipulation included in a final order.
5. Fines and Penalties Are Determined by Commissioner. The Commissioner shall determine appropriate fines and penalties.
6. Bulletin Does Not Limit Commissioner’s Authority. This bulletin shall not supersede or limit the Commissioner's authority to: suspend, revoke or refuse to renew a regulated entity's certificate of authority, issue a cease and desist order, initiate criminal, civil or administrative proceedings, apply for injunctive or other equitable relief, require other corrective actions in cases in which the imposition of fines or penalties may not be appropriate, or impose any sanctions made available in Colorado statutes pertaining to the business of insurance or other laws. It is within the Commissioner’s authority to evaluate each case separately. The imposition of a fine or penalty in one situation does not limit the Commissioner’s discretion to impose a greater or lesser fine or penalty in another case or to take such further administrative action as is warranted by the circumstances.
7. Use of Error Ratios in Examinations and Investigations. Violations based upon error ratios exceeding 10% are considered serious violations for purposes of calculating fines or penalties. Violations based upon error ratios between 5% and 10% may be assessed fines or penalties depending on the seriousness or the willful nature of the violation.

Violations based upon error ratios less than 5% may be considered not serious violations and not subject to fine or penalty, unless, for example, the consumer impact is great or a general business practice is evidenced. Regardless of the error ratio for any violation, the Commissioner may require that corrective action be taken.

8. **Prior Corrective Activities.** The Commissioner may waive or reduce a fine or penalty for violations for which successful corrective activities were initiated and implemented by the regulated entity or person before the violation was noted in examination or otherwise brought to the attention of the Division. Such corrective activities may include remedial procedures put in place to assure that the violation does not recur, personnel actions taken when appropriate, and making any injured party whole.
9. **Impact of Fines and Penalties on Solvency.** The Commissioner may waive or reduce the fine or penalty that would otherwise be imposed if the payment of such fine or penalty would reduce a regulated entity's surplus to an extent that the regulated entity is insolvent.
10. **Penalty and Fine Calculation.** Penalties and fines for each separate violation are cumulative, subject to aggregate limitations.
11. **Imposition of Fines and Penalties.** A regulated entity or person may be fined or penalized for multiple actions, including:
 - (a) A fine or penalty imposed for violation of statute, rule, regulation or order of the Commissioner. Such fine or penalty is due and payable immediately;
 - (b) Additional separate fine(s) or penalty(ies) may be levied upon a regulated entity's or person's failure to initiate corrective action, or take other measures, as ordered by the Commissioner.
12. **Factors Considered in Determining Seriousness of Violation.** The following factors may be considered in establishing the seriousness of a violation for purposes of determining the appropriate fine or penalty:
 - (a) Whether the regulated entity or person knew or reasonably should have known that its conduct was a violation;
 - (b) Frequency of the violation and related violations that, when viewed in the aggregate, evidence general business practices;
 - (c) Impact on the availability of benefits to the consumer;
 - (d) Cooperation or lack of cooperation of the regulated entity or person;
 - (e) Costs involved in remedying the problem or in making restitution to affected consumers;
 - (f) Corrective activities that are substantially initiated only after the violation or possibility of violation is formally noted or brought to the attention of the regulated entity or person by the Division;

- (g) Severity of actual financial harm or other damage to any insured, claimant, applicant, or other person(s) caused directly or indirectly by the violation;
 - (h) Degree of potential harm to which any insured or claimant was exposed by the violation;
 - (i) Financial gain or loss to the regulated entity or person from the violation;
 - (j) Whether the conduct is a similar or repeat violation;
 - (k) Previous fines, penalties or enforcement imposed by the Commissioner against the regulated entity or person for unrelated conduct.
13. All fines and penalties arising through regulatory activities of the Division will be reported as they occur to the National Association of Insurance Commissioner's database services as appropriate.

C. Specific Provisions.

1. Response to Division Inquiries. The failure of regulated entities or persons to respond to Division inquiries, comment forms, or complaints in accordance with Regulation 1-1-8 is considered willful noncompliance, even if the regulated entity's or person's position is ultimately supported. Therefore, a penalty of up to \$1,000 will be assessed for violation of Regulation 1-1-8.
2. Form Filings.
 - (a) Regulated entities filing health, private passenger automobile, and claims made policy forms, that do not receive prior approval from the Division, certify that the forms are in compliance with the insurance laws of Colorado. The Division considers any violations of requirements for such forms to be willful for purposes of fine and penalty calculation.
 - (b) For policy forms of regulated entities required to have prior approval from the Division, the Division considers use of such forms without prior approval from the Division willful for the purposes of fine and penalty calculation.
3. Rate Filings. Regulated entities are required to file and, in some cases, receive prior approval from the Division before using rates. The Division considers the use of rates which have not been previously filed and/or approved by the Division willful for purposes of fine and penalty calculation.
4. Existing law specifies the fining authority of the Division. Appendix A includes a list of statutory references and fine amounts authorized by statute as references for interested parties.

IV. For More Information

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V. History

- Originally issued as bulletin 1-98, January 1, 1998.
- Reissued May 8, 2007.
- Reissued August 8, 2008.

APPENDIX A

The following statutory references are provided to assist interested parties in understanding the authority of the Colorado Division of Insurance to levy fines and penalties. The failure to list a statutory reference impacts neither the applicability of Bulletin B-1.3 nor any Colorado law.

Please note that the below-referenced sections of statute have separate definitions and limitations on terms such as “company”, “insurer”, “person”, “regulated entity”, etc. Please see the appropriate definitions section of statute if you need further clarification of these terms to determine applicability; the terms used in this Bulletin are those used in each section of law.

Market Conduct Examinations § 10-1-205, C.R.S. **Financial Examinations § 10-1-205, C.R.S.** **Market Conduct Actions § 10-1-215, C.R.S.**

After consideration of the financial examination, market conduct examination or other market conduct action of an insurer, the Commissioner may impose:

For Negligent Violations: A penalty of not more than \$1,000 for every act in violation of any law, rule, or prior lawful order of the Commissioner described in the report of examination or as determined in the course of another market conduct action, not to exceed an aggregate penalty of \$10,000. Pursuant to HB 08-1407 amending these statutes, for acts occurring on or after August 4, 2008, penalties of not more than \$3,000 for every act may be imposed, not to exceed an aggregate penalty of \$30,000.

For Willful Violations: A penalty of not more than \$10,000 for every act or violation of any law, rule, or prior lawful order of the Commissioner described in the report of examination or as determined in the course of another market conduct action, not to exceed an aggregate penalty of \$300,000 annually. Pursuant to HB 08-1407 amending these statutes, for acts occurring on or after August 4^h, 2008, penalties of not more than \$30,000 for every act may be imposed, not to exceed an aggregate penalty of \$750,000 annually.

Violations of Notification Requirements Concerning Terminations of Insurance Producer Bail Bonding Agent Appointments § 10-2-415.7, C.R.S.

Any insurer which fails to notify the Commissioner and insurance producer bail bonding agent appointee of a termination of appointment within fifteen days of termination; or, fails to notify the Commissioner of the reason for a termination of an agent’s appointment if the reason was any of the causes listed in §§ 10-1-128, 10-2-801, 12-7-106 or 12-7-109, C.R.S., or refuses to provide requested information concerning the same, shall, after notice and hearing, be subject to a penalty of up to \$1,000 for each violation.

Violations of “For Cause” Producer Termination Reporting Requirement § 10-2-416(6) C.R.S.

Any insurer or authorized representative who fails to report a required reportable “for cause” termination or reports with actual malice, may be subject to a fine of \$1,000 for each violation. Pursuant to HB 08-1407 amending these statutes, for violations occurring on or after August 4, 2008, penalties of not more than \$3,000 for every violation may be imposed.

Violations of Licensing Requirements for Producers § 10-2-804, C.R.S.

Any person who violates any provision of title 10, article 2 may, after notice and hearing be subject to a fine of not more than \$1,000 for each violation. Pursuant to HB 08-1407 amending these statutes, for violations occurring on or after August 4, 2008, penalties of not more than \$3,000 for every violation may be imposed.

Violations of Reinsurance Intermediary Requirements § 10-2-911, C.R.S.

A reinsurance intermediary, insurer or reinsurer who is in violation of any provision of title 10, article 2, part 9 shall, after notice and hearing, pay a penalty not to exceed \$5,000 for each separate violation.

Violations of Managing General Agents Requirements § 10-2-1007(1)(a), C.R.S.

Any person who is in violation of any provision of title 10, article 2, part 10 may, after notice and hearing, be required to pay a penalty not to exceed \$5,000 for each separate violation.

Violations of Regional Home Office Application Requirements § 10-3-209(1)(b)(II)(B), C.R.S.

Any company which is subject to the filing requirements of §10-3-209(1)(b)(II)(B), C.R.S. and fails to file an application for qualification of an office in Colorado as a home or regional home office by March 1 of the application year shall be charged a late charge of \$100 per day for each day after March 1 through March 31 of the same year; after which time applications shall be denied.

Violations of Insurance Holding Company Systems Act § 10-3-810, C.R.S.

Any insurer, director, officer, employee or agent of an insurer who fails, without just cause, to file a registration statement, amendment, or notice of shareholder distribution, may be subject, after notice and hearing, to:

A civil penalty of not more than \$5,000 for each violation, based on the alleged violator's history of previous violations, the good faith of the alleged violator in attempting to achieve rapid compliance after notification of the violation, the gravity and willfulness of the violation, the potential deterrent effect of the civil penalty, and such other considerations as may be specified by the commissioner.

Violations of Any Provision of Title 10, Article 3, Part 11, C.R.S.

Unfair Methods of Competition and Unfair or Deceptive Act or Practices § 10-3-1104, C.R.S.

Violations of Any Rule or Lawful Order of the Commissioner § 10-3-1108, C.R.S.

A person who engages in an unfair method of competition or an unfair or deceptive act or practice, or has violated any other provision of this title or any rule or lawful order of the Commissioner, after notice and hearing, may be subject to:

For Negligent Violations: A penalty of not more than \$1,000 for every act or violation of law, not to exceed an aggregate penalty of \$10,000. Pursuant to HB 08-1407 amending these statutes, for acts occurring on or after August 4, 2008, penalties of not more than \$3,000 for every act may be imposed, not to exceed an aggregate penalty of \$30,000.

For Willful Violations: A penalty of not more than \$10,000 for every act or violation by an insurer, not to exceed an aggregate penalty of \$300,000 annually. Pursuant to HB 08-1407 amending these statutes, for acts occurring on or after August 4, 2008, penalties of not more than \$30,000 for every violation may be imposed, not to exceed an aggregate penalty of \$750,000 annually.

Violations of Cease and Desist Orders § 10-3-1109, C.R.S.

A regulated entity or person that violates a cease and desist order issued by the Commissioner after notice and hearing, may be subject to:

Individuals: A penalty of not more than \$500 for each act or violation.

Insurers: A penalty of not more than \$10,000 for each act or violation.

Insurers: In accordance with § 10-3-904.6(5), C.R.S., an insurer who violates a cease and desist order regarding unauthorized insurance, may, after notice and hearing, be subject to a civil penalty of \$25,000 for each act or violation.

Violations of Insurance Identification Database Reporting Requirements § 10-4-615, C.R.S.

A fine of not more than \$250 per day shall be assessed for each day an insurer fails to report timely and accurate motorist insurance identification information to the Department of Revenue.

Violations of Preneed Funeral Contract Licensing Requirements § 10-15-103(5)(a), C.R.S.

A late fee of \$100 per day may be imposed upon any person for the delinquent filing of a renewal application.

Violations of Preneed Funeral Contract Seller Requirements § 10-15-114(1), C.R.S.

Any contract seller who is in violation of title 10, article 15 may have a fine imposed not to exceed \$1000 for each separate offense.

Violations of Licensing Requirements for Bail Bondsman § 12-7-106, C.R.S.

Except where required by § 12-7-106(1)(e) and (f), C.R.S., any person in violation of § 12-7-106, C.R.S., in lieu of suspension, revocation or refusal to renew a license, may be subject to a penalty of not less than \$300 nor more than \$1,000 for each offense.