

65-5708. Orders to comply with certain requirements; enforcement; civil penalties; action by health care professional to obtain information; disposition of moneys from civil penalties. (a) The secretary of health and environment, the adjutant general or the attorney general may order a facility owner or operator to comply with the requirements of section 302(c) or 303(d) of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto. The secretary of health and environment, the adjutant general or attorney general may bring an action to enforce the order in the district court of the judicial district where the facility is located by a civil penalty of not more than \$25,000 for each day the violation or failure to comply continues.

(b) For a violation of the requirements of section 304 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$25,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of: (A) Not more than \$25,000 per day for each day the violation continues, for the first violation; and (B) not more than \$75,000 per day for each day the violation continues, for the second or a subsequent violation.

(c) For a violation of the requirements of section 312 or 313 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto, or for denial of the accesses provided for in K.S.A. 65-5711, and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$25,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of not more than \$25,000 per day for each day the violation continues.

(d) For a violation of section 311 or 323(b) of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$10,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of not more than \$10,000 per day for each day the violation continues.

(e) The secretary of health and environment may impose a late fee at the rate of 10% per annum on any outstanding fee (including late fee) owed the department under K.S.A. 65-5704, and amendments thereto, or rules and regulations promulgated thereunder. The late fee shall be imposed on the first of each month following the date a fee was due. Payment made prior to the next succeeding month shall satisfy the requirements of this section.

(f) Any health care professional entitled to information pursuant to section 323 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto, may bring an action in the district court to require a facility owner or operator to provide such information.

(g) Except as provided by subsection (h), any civil penalty recovered pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(h) At the request of the secretary of health and environment, the adjutant general or the attorney general, a county or district attorney may bring an action for a civil penalty as provided by this section, in which case 1/2 of any penalty recovered in such action shall be paid to the county treasurer for deposit in the county treasury and credit to the county general fund. The remainder shall be remitted to the state treasurer for disposition as provided by subsection (g).

History: L. 1987, ch. 231, § 8; L. 1991, ch. 202, § 4; L. 2001, ch. 5, § 264; July 1.