

# 2A:58-10 to 2A:58-12

LEGISLATIVE HISTORY CHECK  
Compiled by the NJ State Law Library

LAWS OF: 1999 CHAPTER: 274

NJSA: 2A:58-10 to 2A:58-12 (Civil Penalty Enforcement Act)

BILL NO: S1063 (Substituted for A2434)

SPONSOR(S): Martin & Zane

DATE INTRODUCED: May 18, 1998

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: November 23, 1998 Re-enacted 11-15-99

SENATE: December 10, 1998 Re-enacted 2-25-99

DATE OF APPROVAL: November 24, 1999

## FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 2<sup>nd</sup> Reprint  
(Amendments during passage denoted by superscript numbers)

### S1063

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

### A2434

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes  
Bill and Sponsors Statement identical to S1063

COMMITTEE STATEMENT: ASSEMBLY: Yes  
Identical to Assembly Statement for S1063

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

**DEPOSITORY COPY**  
**Do Not Remove From Library**

**VETO MESSAGE:**

Yes

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 633-2111 or blupp@njstatelib.org

**REPORTS:**

Yes

Mentioned in statements:

974.901 New Jersey. Law Revision.

L446 1997 Annual Report...February 1, 1998.

[see pp. 4 & Appendices C&E -attached]

(also available at: <http://www.lawrev.state.nj.us/rpts/cpea.pdf>)

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

[Second Reprint]

**SENATE, No. 1063**

---

**STATE OF NEW JERSEY**

**208th LEGISLATURE**

---

INTRODUCED MAY 18, 1998

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator RAYMOND J. ZANE**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

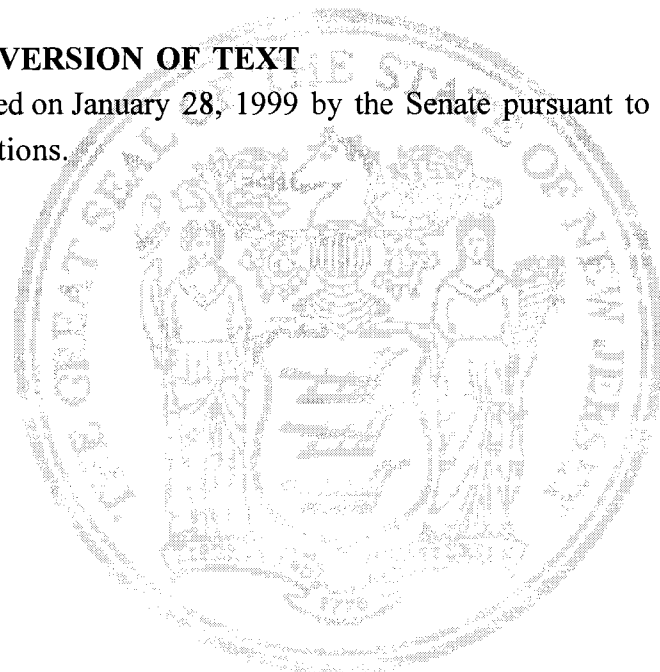
**Assemblyman Carroll**

**SYNOPSIS**

Establishes new civil penalty enforcement act.

**CURRENT VERSION OF TEXT**

As amended on January 28, 1999 by the Senate pursuant to the Governor's recommendations.



**(Sponsorship Updated As Of: 11/24/1998)**

1 AN ACT concerning the enforcement of civil penalties in certain cases,  
2 supplementing Title 2A of the New Jersey Statutes and repealing  
3 N.J.S.2A:58-1 through N.J.S.2A:58-9.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. a. If an administrative agency of the State has assessed a fixed  
9 amount of money as a civil penalty or award after the person against  
10 whom the penalty or award was ordered was afforded an opportunity  
11 for a hearing pursuant to the "Administrative Procedure Act,"  
12 P.L.1968, c.410 (C.52:14B-1 et seq.), at the request of the agency the  
13 Clerk of the Superior Court or the Clerk of the Superior Court, Law  
14 Division, Special Civil Part shall record the final order assessing the  
15 penalty or award on the judgment docket of the court.

16 b. The final order of the agency recorded on the judgment docket  
17 of the court thereafter shall have the same effect as a judgment of the  
18 court.

19  
20 2. a. If a statute or ordinance allows a court action to impose a  
21 civil penalty or a penalty has been imposed that may not be enforced  
22 pursuant to section 1 of this act, an action to impose a penalty shall be  
23 brought as provided by this section.

24 b. The action may be brought in the Superior Court. If the statute  
25 that establishes the civil penalty provides that the action may be  
26 brought in a municipal court, the action may be brought in any  
27 municipal court that has territorial jurisdiction over the action <sup>2</sup>**[if**  
28 **the penalty is less than \$1,000.00**<sup>1</sup> **]**<sup>2</sup> or in the Superior Court.

29 c. The court shall decide the case in a summary manner without a  
30 jury unless otherwise provided in the statute imposing the penalty.  
31 The court shall hear testimony on any factual issues, and if it finds that  
32 the violation occurred, shall impose a penalty as provided by the  
33 statute. <sup>1</sup>**The defendant shall not be precluded from contesting the**  
34 **amount of the penalty.**<sup>1</sup>

35 d. Unless precluded by the statute imposing the penalty, informal  
36 disposition may be made of any case by stipulation, agreed settlement,  
37 or consent order. Payment of a penalty pursuant to an informal  
38 disposition shall be considered a prior violation for the purpose of  
39 determining subsequent offender status.

40 e. An action in Superior Court to impose a civil penalty may be

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> **Assembly AJU committee amendments adopted September 17, 1998.**

<sup>2</sup> **Senate amendments adopted in accordance with Governor's recommendations January 28, 1999.**

1 joined with an action brought to restrain related violations.

2 f. If a judgment for a civil penalty is rendered against a defendant,  
3 payment shall be made to the court and shall be remitted to the State  
4 Treasurer of New Jersey, unless other disposition is provided for in the  
5 statute imposing the penalty.

6

7 3. This chapter shall be known as the "Penalty Enforcement Law  
8 of <sup>2</sup>~~[1998]~~1999 <sup>2</sup>." References to the "penalty enforcement law"  
9 which this law replaces shall be treated as references to this law.

10

11 4. N.J.S.2A:58-1 through N.J.S.2A:58-9 are repealed.

12

13 5. This act shall take effect 30 days following enactment.

1 of 1998." References to the "penalty enforcement law" which this law  
2 replaces shall be treated as references to this law.

3  
4 4. N.J.S.2A:58-1 through N.J.S.2A:58-9 are repealed.

5  
6 5. This act shall take effect 30 days following enactment.

7  
8  
9 STATEMENT

10  
11 The civil penalty enforcement law (N.J.S.A.2A:58-1 et seq.)  
12 establishes procedures for the judicial enforcement of civil penalties.  
13 The provisions of this law have been recently reviewed by the New  
14 Jersey Law Revision Commission, which concluded in a report issued  
15 in November, 1997 that the provisions of the present civil penalty  
16 enforcement act are confusing and ambiguous. Therefore, the  
17 Commission recommended that the present law be repealed and that  
18 a new statute dealing with the enforcement of civil penalties be  
19 enacted. This bill embodies those recommendations.

20 Section 1 of the bill covers actions to enforce civil penalties or  
21 awards for violations where the facts have been judged and monetary  
22 penalties or awards have been determined in contested cases under the  
23 provisions of the Administrative Procedures Act (N.J.S.A.52:14B-1 et  
24 seq.). Since in those circumstances there are no facts to be  
25 determined, section 1 authorizes an administrative agency to have a  
26 final order imposing a civil penalty or award entered on either the  
27 judgment docket of the Superior Court or the judgment docket of the  
28 Special Civil Part. After docketing, an order is treated in the same  
29 way as a judgment: it may be enforced against the property of the  
30 person against whom the order runs and a court may conduct  
31 proceedings to require payment. Allowing the choice of court dockets  
32 allows an agency to select the enforcement procedures appropriate to  
33 the penalty or award imposed.

34 Section 2 of the bill governs cases where a statute allows an  
35 administrative agency, an officer or a private party to bring an action  
36 to impose a civil penalty for a violation of law. In such a case, where  
37 there has been no prior administrative adjudication, the court must  
38 decide whether the violation occurred and what the appropriate  
39 penalty is. While the proceedings are summary, a hearing must be  
40 conducted and testimony taken. Section 2, in accord with present  
41 practice, applies to ordinances as well as statutes.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 1063

with committee amendments

# STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 1998

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1063.

The civil penalty enforcement law (N.J.S.A.2A:58-1 et seq.) establishes procedures for the judicial enforcement of civil penalties. The provisions of this law have been recently reviewed by the New Jersey Law Revisions Commission which concluded in a report issued in November, 1997 that the provisions of the present civil penalty enforcement act are confusing and ambiguous. Therefore, the Commission recommended that the present law be repealed and a new statute dealing with the enforcement of civil penalties be enacted. This bill embodies those recommendations.

The bill addresses two types of situations: those in which a hearing had been provided pursuant to the "Administrative Procedures Act" in section 1 and all other cases in section 2.

Section 1 of the bill covers actions to enforce civil penalties or awards or violations where the facts have been judged and monetary penalties or awards have been determined in contested cases under the provisions of the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.) Since in those circumstances there are no facts to be determined, section 1 authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or the judgment docket of the Special Civil Part. After docketing, an order is treated in the same way as a judgment; it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing the choice of court dockets allows an agency to select the enforcement procedures appropriate to the penalty or award imposed.

Section 2 of the bill governs cases where a statute allows an administrative agency, an officer or a private party to bring an action to impose a civil penalty for a violation of law. In such a case, where there has been no prior administrative adjudication, the court must decide whether the violation occurred and what the appropriate penalty is. While the proceedings are summary, a hearing must be conducted and testimony taken. Section 2, in accord with present

practice, applies to ordinances as well as statutes.

The committee adopted amendments in section 2 of the bill. In subsection b. of section 2 the jurisdiction of the municipal court is limited to actions in which the penalty is less than \$1,000.00. All penalties \$1,000.00 or higher would be heard in Superior Court. In subsection c. the committee added a sentence providing that the defendant shall not be precluded from contesting the amount of the penalty in the hearing.

As amended, this bill is identical to A-2434 (1R).



SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 1063**

**STATE OF NEW JERSEY**

DATED: JUNE 15, 1998

The Senate Judiciary Committee reports favorably Senate Bill No. 1063.

The civil penalty enforcement law (N.J.S.A.2A:58-1 et seq.) establishes procedures for the judicial enforcement of civil penalties. The provisions of this law have been recently reviewed by the New Jersey Law Revisions Commission which concluded in a report issued in November, 1997 that the provisions of the present civil penalty enforcement act are confusing and ambiguous. Therefore, the Commission recommended that the present law be repealed and a new statute dealing with the enforcement of civil penalties be enacted. S-1063 embodies those recommendations.

Section 1 of the bill covers actions to enforce civil penalties or awards or violations where the facts have been judged and monetary penalties or awards have been determined in contested cases under the provisions of the Administrative Procedures Act (N.J.S.A.52:14B-1 et seq.) Since in those circumstances there are no facts to be determined, section 1 authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or the judgment docket of the Special Civil Part. After docketing, an order is treated in the same way as a judgment; it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing the choice of court dockets allows an agency to select the enforcement procedures appropriate to the penalty or award imposed.

Section 2 of the bill governs cases where a statute allows an administrative agency, an officer or a private party to bring an action to impose a civil penalty for a violation of law. In such a case, where there has been no prior administrative adjudication, the court must decide whether the violation occurred and what the appropriate penalty is. While the proceedings are summary, a hearing must be conducted and testimony taken. Section 2, in accord with present practice, applies to ordinances as well as statutes.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

January 25, 1999

**SENATE BILL NO. 1063  
(FIRST REPRINT)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1063 (First Reprint) with my recommendations for reconsideration.

**A. Summary of the Bill**

This bill adopts the recommendations of the New Jersey Law Revision Commission concerning the civil penalty enforcement law (N.J.S.A. 2A:58-1 et seq.). According to the Commission, the current penalty enforcement law is somewhat confusing and ambiguous; so this bill repeals it and places it with a clearer law. Additionally, the bill imposes a monetary limit upon civil penalty actions that are brought in municipal courts. Civil penalty actions with a potential for a recovery of \$1,000 or more would have to be brought in the Superior Court under this bill.

**B. Recommended Action**

While the majority of the substantive revisions to the civil penalty enforcement law are sound, various departments in the Executive Branch, including the Department of Environmental Protection, the Department of Law and Public Safety and the Department of Transportation, as well as the Administrative Office of the Courts, have advised me of their concern with a \$1,000 monetary limit upon civil penalty actions brought in the municipal courts. This requirement will force tens of thousands of penalty enforcement actions from the municipal courts to the Superior Court every year. This will unnecessarily add to the burden on Superior Court dockets and will result in significant additional costs to the State agencies bringing civil penalty enforcement actions. Moreover, an underlying statute that authorizes use of the civil penalty enforcement act already contains a municipal court screening mechanism. Accordingly, I believe that the monetary cap upon penalty actions brought in municipal court be eliminated.

In addition, I recommend a technical change so that this law shall be known as the "Penalty Enforcement Law of 1999," rather than 1998.

51063

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

Therefore, I herewith return Senate Bill No. 1063 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 2, Lines 27-28:

Delete "if the penalty is less than \$1,000"

Page 3, Section 3, Line 7:

Delete "1998" insert "1999"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ John J. Farmer, Jr.

Chief Counsel to the Governor

>

---

**Transfer interrupted!**

TITLE>

**Office of the Governor**

PO BOX 004  
TRENTON, NJ 08625

**NEWS RELEASE**

CONTACT: Gene Herman  
609-777-2600

RELEASE: November 24, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

**S-1063**, sponsored by Senators Robert Martin (R-Essex/Morris/Passaic) and Raymond J. Zane (D-Salem /Cumberland/Gloucester), and Assembly Member Michael Patrick Carroll (R- Morris), establishes a new civil penalty enforcement act. The bill incorporates recommendations the Governor made in a conditional veto.

**S-1112**, sponsored by Senator Gerald Cardinale (R-Bergen), permits insurers to file and use life insurance policy contract forms in New Jersey if the forms were approved in at least 42 other states. The bill incorporates recommendations the Governor made in a conditional veto.

**S-235**, sponsored by Senator James S. Cafiero (R-Cape May/Atlantic/Cumberland) and Assembly Members Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and John C. Gibson (R-Cape May/Atlantic/Cumberland), makes certain changes in the requirements for and enforcement of cancellation of mortgages of record. The bill incorporates recommendations the Governor made in a conditional veto.

**S-761**, sponsored by Senators Joseph M. Kyrillos, Jr. (R-Middlesex/Monmouth) and Bernard F. Kenny, Jr. (D-Hudson) and Assembly Members Steve Corodemus (R-Monmouth) and Louis A. Romano (D-Hudson), exempts the purchase, repair and maintenance of commuter ferries from the sales and use tax. The bill incorporates recommendations the Governor made in a conditional veto.

**A-2884**, sponsored by Assembly Members Joseph Azzolina (R-Middlesex/Monmouth) and George F. Geist (R-Camden/Gloucester), requires the New Jersey Economic Development Authority (EDA), in consultation with the Department of Military and Veterans' Affairs, to establish informational sessions to advise veterans of business assistance programs available from the EDA and assist them in applying to these programs.

---

**NJ InTouch**

974.901  
L446  
c-3

JUN 2 - 1998



State of New Jersey

**N J L R C**

New Jersey Law Revision Commission

ANNUAL REPORT

1997

Report to the Legislature of the State of New Jersey  
as provided by C. 1:12A-9.

February 1, 1998

respondendum in appropriate circumstances allows a court to imprison the defendant in a civil action before the trial of a claim. Again, the writ is related to a more general power of the courts to issue temporary restraints and interlocutory injunctions.

The Report and Recommendations advises the Legislature to repeal the capias ad respondendum et satisfaciendum writs because the remedy of imprisonment of a person based on the filing of a civil action is inappropriate under contemporary standards and is probably unconstitutional.

### C. Civil Penalty Enforcement Act

In 1997, the Commission completed the Report and Recommendations Relating to the Civil Penalty Enforcement Act (see Appendix C). The Civil Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) now provides for judicial enforcement of civil penalties. Court Rule 4:70. (Summary Proceedings for the Collection of Statutory Penalties) complements the statute. Civil penalty enforcement actions reach the courts in notably different stages of development. Many penalties are presented in the form of a final administrative order. In these cases, the facts have been judged and monetary penalties have been determined pursuant to the provisions of the Administrative Procedure Act (N.J.S. 52:14B-1 et seq.). Appeal from final orders emanating from such procedures is to the Appellate Division. Other cases involve actions in which (1) no hearing on the facts has been provided, or (2) a penalty for a fixed total amount of money has not been determined. This category includes actions by state agencies which have not made use of the Administrative Procedure Act procedures for contested cases and by municipal agencies to which those procedures do not apply.

The Report and Recommendations contains a proposed statute that distinguishes two distinct categories of actions. The first category describes actions to enforce civil penalties or awards in uncontested cases under the provisions of the Administrative Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. In these cases, there are no issues for a judge to examine. What is sought is enforcement of a case that has been decided elsewhere, in an administrative tribunal. If a party wants to present any issue to a court, appeal is available. The second category of penalty enforcement actions are those cases where the facts have not been determined administratively. In all such cases, the statute requires that the court provide a hearing and make a judgment.

NJLR C

FINAL REPORT

CIVIL PENALTY ENFORCEMENT ACT

153 Halsey Street, 7<sup>th</sup> Floor  
Newark, New Jersey 07102  
201-648-4575  
(Fax) 648-3123  
*email: [reviser@superlink.net](mailto:reviser@superlink.net)*  
*web site: <http://www.lawrev.state.nj.us>*

November 1997

APPENDIX C  
c:\rpts\cpea.doc

## Introduction

The Civil Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) now provides for judicial enforcement of civil penalties. Court Rule 4:70. (Summary Proceedings for the Collection of Statutory Penalties) complements the statute. Civil penalty enforcement actions reach the courts in notably different stages of development. Many penalties are presented in the form of a final administrative order. In these cases, the facts have been judged and monetary penalties have been determined pursuant to the provisions of the Administrative Procedure Act (N.J.S. 52:14B-1 et seq.). Appeal from final orders emanating from such procedures is to the Appellate Division. Other cases involve actions in which (1) no hearing on the facts has been provided, or (2) a penalty for a fixed total amount of money has not been determined. This category includes actions by state agencies which have not chosen to make use of the Administrative Procedure Act procedures for contested cases and by municipal agencies to which those procedures do not apply.

The statute provides that civil penalties are collected by summary action, but the statute leaves "summary" undefined. R. 4:70-4(b) directs that in a summary hearing "the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter." The ambiguous nature of the actions complicates the undefined nature of the proceedings. In cases where enforcement of a final administrative order is sought, it is not clear what testimony is to be heard and what matters are to be determined. As a result, cases hold that, in an enforcement action, a court should not examine the factual basis for the penalty; Dept. of Community Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980). Where there is a final administrative order based on a contested case, the party against whom it was entered has a choice: he may appeal the administrative decision, or he may accept it and allow it to be enforced. However, where there is no final administrative decision of a contested case, this caselaw is inapposite; the court must determine the facts.

A similar problem occurs where an administrative agency is authorized to award payment of damages to a third party. Here, the Civil Penalty Enforcement Law does not apply, but, in some cases, similar specific provisions do. For Example, the Director of the Division of Civil Rights may award damages to a person who has suffered unlawful discrimination. N.J.S. 10:5-17. Such an award is enforceable by a "summary civil action brought by the director in Superior Court." N.J.S. 10:5-19. While the statute leaves the nature of the summary action undefined, the same logic that applies to a penalty enforcement case should control. An enforcement action should not re-examine the facts; if a party seeks to challenge the administrative finding, he should appeal it.

To remedy these defects, the proposed statute distinguishes two distinct categories of actions. The first category may be described as actions to enforce civil penalties or awards for violations where the facts have been judged and monetary penalties or awards



have been determined in contested cases under the provisions of the Administrative Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. This approach follows the model of N.J.S. 2A:16-11 and 2B:12-26 which provide for docketing Special Civil Part judgments and municipal court judgments in the Superior Court to give them the same effect as other Superior Court judgments. The proposed statute abandons the ambiguous form of a "summary action." In these cases, there are no issues for a judge to examine. What is sought, is enforcement of a case that has been decided elsewhere, in an administrative tribunal. The most efficient method of enforcement where no issues need decision is direct docketing on the Superior Court judgment docket. If a party wants to present any issue to a court, appeal is available.

Section 2 of the proposed statute provides for the second category of penalty enforcement actions: cases where the facts have not been determined administratively. In all such cases, where a statute or ordinance authorizes enforcement in summary proceedings under the civil penalty enforcement law, the statute requires that the court provide a hearing and make a judgment.

#### **PROPOSED STATUTE:**

##### **Section 1. Proceedings to enforce civil penalties and awards**

a. If an administrative agency of the State has assessed a fixed amount of money as a civil penalty or award after the person subject to the penalty or award was afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, at the request of the agency, the clerk of the Superior Court or the Clerk of the Superior Court, Law Division, Special Civil Part shall record the final order assessing the penalty or award on the judgment docket of the court.

b. The final order of the agency recorded on the judgment docket of the court thereafter shall have the same effect as a judgment of the court.

Source: New

#### **COMMENT**

This section provides a mechanism for enforcement of administrative penalties and awards of damages in cases where the violation has been established and the penalty or award set in administrative proceedings. These matters are "contested cases" under the Administrative Procedure Act; N.J.S. 52:14B-1 through 15. As such, a person against whom payment of the penalty or award is sought has the right to notice, a hearing, and findings of fact before an adverse administrative adjudication is entered. 52:14B-9 and 10. An appeal may be taken to the Superior Court Appellate Division from the final administrative orders. Rules of Court 2:2-3(a)(2). Because of procedural protections afforded within the administrative process, courts have been unwilling to allow re-litigation of the basis for penalties as part of the enforcement process. Dept. of Community Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980). The restrictions on the role of the court remove any real purpose to a full court action to enforce a penalty or award. The purpose of court involvement is to make the judicial enforcement power available to enforce the administrative order. Docketing the penalties and awards as judgments on the judgment docket serves that purpose.

The jurisdictional provision, subsection (b), differs slightly from the current provision, 2A:58-2. While both allow the statute imposing a penalty to specify which courts have jurisdiction over a penalty action, the subsection provides for jurisdiction in both the Superior Court and the appropriate municipal court if the statute is silent.

Subsection (f) is substantially identical to 2A:58-8.

### **Section 3. References to chapter**

This chapter shall be known as "the penalty enforcement law of 1997." References to the "penalty enforcement law" which this law replaces shall be treated as references to this law.

Source: N.J.S. 2A:58-9.

#### **COMMENT**

To avoid transition problems, this section provides that any penalty statute that now refers to the current law be treated without amendment as referring to the new law.

This section authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or of the Special Civil Part. After docketing, an order is treated in the same way as a judgment; it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing the choice of court dockets allows an agency to select the enforcement procedures appropriate to the penalty or award imposed.

Other statutes allow particular agencies to file certificates of debt or liens in certain circumstances. The section does not affect those remedies.

## Section 2. Actions to adjudge violation and impose civil penalties

a. If a statute or ordinance allows a court action to impose a civil penalty or a penalty has been imposed that may not be enforced pursuant to section 1, an action to impose a penalty shall be brought as provided by this section.

b. The action may be brought in the Superior Court. If the statute that establishes the civil penalty provides that the action may be brought in a municipal court, the action may be brought in any municipal court that has territorial jurisdiction over the action or in the Superior Court.

c. The court shall decide the case in a summary manner and without a jury unless otherwise provided in the statute imposing the penalty. It shall hear testimony on any factual issues, and if it finds that the violation occurred, impose a penalty as provided by the statute.

d. Unless precluded by the statute imposing the penalty, informal disposition may be made of any case by stipulation, agreed settlement, or consent order. Payment of a penalty pursuant to an informal disposition shall be considered a prior violation for the purpose of determining subsequent offender status.

e. An action in Superior Court to impose a civil penalty may be joined with an action brought to restrain related violations.

f. If a judgment for a civil penalty is rendered against a defendant, payment shall be made to the court and shall be remitted to the state treasurer of New Jersey, unless other disposition is provided for in the statute imposing the penalty.

Source: 2A:58-1 through 3; 2A:58-8.

### COMMENT

This section is derived from N.J.S. 2A:58-1 and 3. It governs cases where a statute allows an administrative agency, an officer or a private party to bring an action to impose a civil penalty for a violation of law. In such a case, there has been no prior administrative adjudication; the court must decide whether the violation occurred and what the appropriate penalty is. While the proceedings are summary, testimony must be taken. Subsection (c) incorporates the N.J.S. 2A:58-3 bench trial requirement.

Subsection (a) applies this enforcement procedure to ordinances as well as statutes. That is in accord with practice; see Verona v. Shalit, 96 N.J. Super. 20 (App. Div. 1967) and Court Rule 4:70. Subsection (d) is based on a similar Administrative Procedure Act provision for informal disposition. See, 52:14B-9(d). It allows more flexibility to the administrative agency than the current provision: 2A:58-5.

### APPENDIX C

c:\rpts\cpea.doc



State of New Jersey



TENTATIVE REPORT

relating to

**THE CIVIL PENALTY ENFORCEMENT ACT**

July 1997

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

**COMMENTS SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN OCTOBER 1, 1997.**

Please send comments concerning this tentative report or direct any related inquiries, to:

John M. Cannel, Esq., Executive Director  
NEW JERSEY LAW REVISION COMMISSION  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 648-3123  
email: [reviser@superlink.net](mailto:reviser@superlink.net)  
web site: <http://www.lawrev.state.nj.us>

APPENDIX E

c:\enforce\TRPT.doc

-1-

## Introduction

The Civil Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) now provides for judicial enforcement of civil penalties. Court Rule 4:70. (Summary Proceedings for the Collection of Statutory Penalties) complements the statute. Civil penalty enforcement actions reach the courts in notably different stages of development. Many penalties are presented in the form of a final administrative order. In these cases, the facts have been judged and monetary penalties have been determined pursuant to the provisions of the Administrative Procedure Act (N.J.S. 52:14B-1 et seq.). Appeal from final orders emanating from such procedures is to the Appellate Division. Other cases involve actions in which (1) no hearing on the facts has been provided, or (2) a penalty for a fixed total amount of money has not been determined. This category includes actions by state agencies which have not chosen to make use of the Administrative Procedure Act procedures for contested cases and by municipal agencies to which those procedures do not apply.

The statute provides that civil penalties are collected by summary action, but the statute leaves "summary" undefined. R. 4:70-4(b) directs that in a summary hearing "the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter." The ambiguous nature of the actions complicates the undefined nature of the proceedings. In cases where enforcement of a final administrative order is sought, it is not clear what testimony is to be heard and what matters are to be determined. As a result, cases hold that, in an enforcement action, a court should not examine the factual basis for the penalty; *Dept. of Community Affairs v. Wertheimer*, 177 N.J. Super. 595 (App. Div. 1980). Where there is a final administrative order based on a contested case, the party against whom it was entered has a choice: he may appeal the administrative decision, or he may accept it and allow it to be enforced. However, where there is no final administrative decision of a contested case, this caselaw is inapposite; the court must determine the facts.

A similar problem occurs where an administrative agency is authorized to award payment of damages to a third party. Here, the Civil Penalty Enforcement Law does not apply, but, in some cases, similar specific provisions do. For Example, the Director of the Division of Civil Rights may award damages to a person who has suffered unlawful discrimination. N.J.S. 10:5-17. Such an award is enforceable by a "summary civil action brought by the director in Superior Court." N.J.S. 10:5-19. While the statute leaves the nature of the summary action undefined, the same logic that applies to a penalty enforcement case should control. An enforcement action should not re-examine the facts; if a party seeks to challenge the administrative finding, he should appeal it.

To remedy these defects, the proposed statute distinguishes two distinct categories of actions. The first category may be described as actions to enforce civil penalties or awards for violations where the facts have been judged and monetary penalties or awards have been determined in contested cases under the provisions of the Administrative

APPENDIX E

c:\enforce\trpt.doc

Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. This approach follows the model of N.J.S. 2A:16-11 and 2B:12-26 which provide for docketing Special Civil Part judgments and municipal court judgments in the Superior Court to give them the same effect as other Superior Court judgments. The proposed statute abandons the ambiguous form of a "summary action." In these cases, there are no issues for a judge to examine. What is sought, is enforcement of a case that has been decided elsewhere, in an administrative tribunal. The most efficient method of enforcement where no issues need decision is direct docketing on the Superior Court judgment docket. If a party wants to present any issue to a court, appeal is available.

Section 2 of the proposed statute provides for the second category of penalty enforcement actions: cases where the facts have not been determined administratively. In all such cases, where a statute or ordinance authorizes enforcement in summary proceedings under the civil penalty enforcement law, the statute requires that the court provide a hearing and make a judgment.

### **Section 1. Proceedings to enforce civil penalties and awards**

a. If an administrative agency of the State has assessed a fixed amount of money as a civil penalty or award pursuant to the Administrative Procedure Act, at the request of the agency, the clerk of the Superior Court or the Clerk of the Superior Court, Law Division, Special Civil Part shall record the final order assessing the penalty or award on the judgment docket of the court.

b. The final order of the agency recorded on the judgment docket of the court thereafter have the same effect as a judgment of the court.

Source: New

#### **COMMENT**

This section provides a mechanism for enforcement of administrative penalties and awards of damages in cases where the violation has been established and the penalty or award set in administrative proceedings. These matters are "contested cases" under the Administrative Procedure Act; N.J.S. 52:14B-1 through 15. As such, a person against whom payment of the penalty or award is sought has the right to notice, a hearing, and findings of fact before an adverse administrative adjudication is entered. 52:14B-9 and 10. An appeal may be taken to the Superior Court Appellate Division from the final administrative orders. Rules of Court 2:2-3(a)(2). Because of procedural protections afforded within the administrative process, courts have been unwilling to allow re-litigation of the basis for penalties as part of the enforcement process. *Dept. of Community Affairs v. Wertheimer*, 177 N.J. Super. 595 (App. Div. 1980). The restrictions on the role of the court remove any real purpose to a full court action to enforce a penalty or award. The purpose of court involvement is to make the judicial enforcement power available to enforce the administrative order. Docketing the penalties and awards as judgments on the judgment docket serves that purpose.

This section authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or of the Special Civil Part. After docketing, an order is treated in the same way as a judgment: it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing

Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. This approach follows the model of N.J.S. 2A:16-11 and 2B:12-26 which provide for docketing Special Civil Part judgments and municipal court judgments in the Superior Court to give them the same effect as other Superior Court judgments. The proposed statute abandons the ambiguous form of a "summary action." In these cases, there are no issues for a judge to examine. What is sought, is enforcement of a case that has been decided elsewhere, in an administrative tribunal. The most efficient method of enforcement where no issues need decision is direct docketing on the Superior Court judgment docket. If a party wants to present any issue to a court, appeal is available.

Section 2 of the proposed statute provides for the second category of penalty enforcement actions: cases where the facts have not been determined administratively. In all such cases, where a statute or ordinance authorizes enforcement in summary proceedings under the civil penalty enforcement law, the statute requires that the court provide a hearing and make a judgment.

### **Section 1. Proceedings to enforce civil penalties and awards**

a. If an administrative agency of the State has assessed a fixed amount of money as a civil penalty or award pursuant to the Administrative Procedure Act, at the request of the agency, the clerk of the Superior Court or the Clerk of the Superior Court, Law Division, Special Civil Part shall record the final order assessing the penalty or award on the judgment docket of the court.

b. The final order of the agency recorded on the judgment docket of the court thereafter have the same effect as a judgment of the court.

Source: New

#### **COMMENT**

This section provides a mechanism for enforcement of administrative penalties and awards of damages in cases where the violation has been established and the penalty or award set in administrative proceedings. These matters are "contested cases" under the Administrative Procedure Act; N.J.S. 52:14B-1 through 15. As such, a person against whom payment of the penalty or award is sought has the right to notice, a hearing, and findings of fact before an adverse administrative adjudication is entered. 52:14B-9 and 10. An appeal may be taken to the Superior Court Appellate Division from the final administrative orders. Rules of Court 2:2-3(a)(2). Because of procedural protections afforded within the administrative process, courts have been unwilling to allow re-litigation of the basis for penalties as part of the enforcement process. *Dept. of Community Affairs v. Wertheimer*, 177 N.J. Super. 595 (App. Div. 1980). The restrictions on the role of the court remove any real purpose to a full court action to enforce a penalty or award. The purpose of court involvement is to make the judicial enforcement power available to enforce the administrative order. Docketing the penalties and awards as judgments on the judgment docket serves that purpose.

This section authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or of the Special Civil Part. After docketing, an order is treated in the same way as a judgment: it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing

#### **APPENDIX E**

c:\enforce\trpt.doc

the choice of court dockets allows an agency to select the enforcement procedures appropriate to the penalty or award imposed.

## Section 2. Actions to adjudge violation and impose civil penalties

a. If a statute or ordinance allows a court action to impose a civil penalty, that action shall be brought as provided by this section.

b. The action may be brought in either the Superior Court or any municipal court that has territorial jurisdiction over the action unless the statute that establishes the civil penalty specifies otherwise.

c. The court shall decide the case in a summary manner and without a jury unless otherwise provided in the statute imposing the penalty. It shall hear testimony, and if it finds that the violation occurred, impose a penalty as provided by the statute.

d. Unless precluded by the statute imposing the penalty, informal disposition may be made of any case by stipulation, agreed settlement, or consent order.

e. An action in Superior Court to impose a civil penalty may be joined with an action brought to restrain related violations.

f. If a judgment for a civil penalty is rendered against a defendant, payment shall be made to the court and shall be remitted to the state treasurer of New Jersey, unless other disposition is provided for in the statute imposing the penalty.

Source: 2A:58-1 through 3; 2A:58-8.

### COMMENT

This section is derived from N.J.S. 2A:58-1 and 3. It governs cases where a statute allows an administrative agency, an officer or a private party to bring an action to impose a civil penalty for a violation of law. In such a case, there has been no prior administrative adjudication; the court must decide whether the violation occurred and what the appropriate penalty is. While the proceedings are summary, testimony must be taken. Subsection (c) incorporates the N.J.S. 2A:58-3 bench trial requirement.

Subsection (a) applies this enforcement procedure to ordinances as well as statutes. That is in accord with practice; see *Verona v. Shalit* 96 N.J. Super. 20 (App. Div. 1967) and Court Rule 4:70. Subsection (d) is based on a similar Administrative Procedure Act provision for informal disposition. See, 52:14B-9(d). It allows more flexibility to the administrative agency than the current provision: 2A:58-5.

The jurisdictional provision, subsection (b), differs slightly from the current provision, 2A:58-2. While both allow the statute imposing a penalty to specify which courts have jurisdiction over a penalty action, the subsection provides for jurisdiction in both the Superior Court and the appropriate municipal court if the statute is silent.

Subsection (f) is substantially identical to 2A:58-8.



### Section 3. References to chapter

This chapter shall be known as "the penalty enforcement law of 1997." References to the "penalty enforcement law" which this law replaces shall be treated as references to this law.

Source: N.J.S. 2A:58-9.

#### COMMENT

To avoid transition problems, this section provides that any penalty statute that now refers to the current law be treated without amendment as referring to the new law.

TABLE OF DISPOSITIONS

CURRENT	PROPOSED	COMMENT
2A:58-1	Section 2(c)	
2A:58-2	Section 2(b)	
2A:58-3	Section 2(c)	
2A:58-4	deleted	unnecessary
2A:58-5	Section 2(d)	
2A:58-6	deleted	unnecessary
2A:58-7	deleted	unnecessary
2A:58-8	Section 2(f)	
2A:58-9	Section 3	

974.901  
L446  
C-3

JUN 7 - 1998



State of New Jersey

**N J L R C**

New Jersey Law Revision Commission

ANNUAL REPORT

1997

Report to the Legislature of the State of New Jersey  
as provided by C. 1:12A-9.

February 1, 1998