

520 CMR: DEPARTMENT OF PUBLIC SAFETY

520 CMR 1.00: ENFORCEMENT OF CIVIL FINES

Section

1.01: Purpose, Scope, and Definitions

1.02: Assessment of Civil Fines Pursuant to M.G.L. c. 22, § 22

1.03: Appeals

1.01: Purpose, Scope, and Definitions

(1) Purpose and Scope.

(a) The purpose of 520 CMR 1.00 is to establish reasonable standards for the issuance of civil fines pursuant to M.G.L. c. 22, § 22 by authorized personnel of the Department.

(b) 520 CMR 1.00 does not apply to fines issued for the operation of an elevator with an expired certificate pursuant to M.G.L. c. 143, § 65 and 520 CMR 16.00: *Enforcement of Civil Fines for Expired Elevator Certificates*.

(2) Definitions.

Board. The Board of Elevator Regulations.

Commissioner. The Commissioner of the Department of Public Safety.

Department. The Department of Public Safety.

Elevator. Moving stairways, dumbwaiters, moving walks, material lifts, wheelchair lifts, automatic people movers, vertical reciprocating conveyors, orchestra lifts, car lifts, and other associated devices, within the elevator industry recognized by the Board of Elevator Regulations except inclined stair lifts located and installed in residential homes.

Security System. Wires, conduits, apparatus, devices, fixtures, or other appliances installed and interconnected electrically or electronically to permit access control, proprietary signalling, surveillance and the detection of burglary, intrusion, holdup, or other conditions requiring response or the transmission of signals or audible alarms.

1.02: Assessment of Fines Pursuant to M.G.L. c. 22, § 22

(1) 520 CMR 1.02 establishes the standards for the assessment of fines pursuant to M.G.L. c. 22, § 22.

(2) The Commissioner or the Commissioner's designee and such other person as may be specifically authorized may issue a written notice of violation, which shall be a written warning or a citation to assess civil monetary fines of not more than \$5,000. A fine may be imposed for any of the violations identified as follows:

(a) Architectural Access Board.

1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(a) are limited to the Commissioner, the Commissioner's designee, an inspector assigned to the building division, or a designee of the Architectural Access Board.

2. Violations under 520 CMR 1.02(2)(a) include:

- a. Any violation of 521 CMR; and
- b. Any other violations of M.G.L. c. 22, § 13A.

(b) Public Warehouses.

1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(b) are limited to the Commissioner or the Commissioner's designee.

2. Violations under 520 CMR 1.02(2)(b) include:

- a. Maintaining a public warehouse without a license;
- b. Disposing of receipt after attachment; and
- c. Any other violations of M.G.L. c. 105, § 1, 2, or 64.

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(c) Amusements.

1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(c) are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the building division or the engineering division.
2. Violations under 520 CMR 1.02(2)(c) include:
 - a. Any violation of 520 CMR 5.00: *Amusement Devices*;
 - b. Operation or installation of an amusement device without a permit or license;
 - c. Operation of an amusement device without having provided to the Commissioner a certificate of examination and proof of liability insurance;
 - d. Failure to notify the Commissioner of the location and dates of a traveling carnival;
 - e. Continuing to operate an amusement device following an injury reportable to the Commissioner without completing all necessary repairs to the satisfaction of the Commissioner;
 - f. Failure to pay the required fee for investigation following a reportable incident;
 - g. Failure to notify the Commissioner or the Commissioner's designee of a reportable injury;
 - h. Failure to notify the Commissioner or to close a device following cancellation or expiration of insurance;
 - i. Failure to display on an applicable amusement device procedures for braking and allowing the amusement device to come to a safe stop;
 - j. Failure to maintain records;
 - k. Failure to obtain or conduct an inspection;
 - l. Failure to maintain permanent and extensive training, inspection and maintenance policies relative to routine and emergency safety;
 - m. Failure of an amusement park to employ emergency personnel or ambulance services;
 - n. Failure to employ a Certified Maintenance Mechanic certified by the Commissioner to oversee operation, maintenance and inspection of amusement devices;
 - o. Operation of a ride by a minor;
 - p. Failure to maintain a drug and alcohol policy; and
 - q. Any other violations of M.G.L. c. 140, § 205A.

(d) Building Division.

1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(d) are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the building division of the Department.
2. Violations under 520 CMR 1.02(2)(d) include:
 - a. Performing construction supervising without possessing a valid construction supervisor license;
 - b. Failure of construction supervisor license holder to supervise work;
 - c. Failure of construction supervisor license holder to produce his license at a job site;
 - d. Failure of construction supervisor license holder to notify the building official of violations;
 - e. Noncompliance with notice requirements regarding an unsafe structure;
 - f. Hindering an inspector from entering a building or enclosure;
 - g. Knowingly selling, fabricating, assembling, glazing, installing, consenting or causing to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location; and
 - h. Any other violations of 780 CMR 110.R.5: *Licensing of Construction Supervisors* or M.G.L. c. 143, § 3V, 9, or 50.

(e) Elevator.

1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(e) are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the elevator division of the Department.

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2. Violations under 520 CMR 1.02(2)(e) include:
 - a. Failure to obtain a permit;
 - b. Failure to pay the required inspection fee;
 - c. Failure to arrange annual inspection;
 - d. Failure to post certificate of inspection;
 - e. Operating elevator after receiving notice of unsafe condition or removing notice of unsafe conditions;
 - f. Failure to report unsafe conditions and/or accident;
 - g. Working without a license; and
 - h. Any other violations of M.G.L. c. 143, § 65, 71, or 71D.
 3. Authorized individuals issuing a citation for failure to arrange for annual inspection, may not also cite an owner or operator under 520 CMR 16.00: *Enforcement of Civil Fines for Expired Elevator Certificates* for the same unit.
- (f) Engineering.
1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(f) are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the engineering division of the Department.
 2. Violations under 520 CMR 1.02(2)(f) include:
 - a. Any violation of 520 CMR 6.00: *Hoisting Machinery*;
 - b. Operation of hoisting machinery without a license;
 - c. Allowing an unlicensed person to operate hoisting machinery;
 - d. Having charge of or operation of a steam boiler or engine or its appurtenances without a license;
 - e. Failure to engage in periodic attendance of a boiler or engine of nine to 250 horsepower in the aggregate;
 - f. Failure to engage in noncontinuous attendance of a boiler or engine of 251 to 500 horsepower in the aggregate;
 - g. Failure to engage in continuous attendance of a boiler or engine of 501 horsepower or more in the aggregate;
 - h. Operation of a boiler without inspection;
 - i. Unsafe operation of a boiler, including excess temperature or pressure;
 - j. Failure to report boiler location;
 - k. Removal or tampering with safety appliance or boiler tag;
 - l. Failure to hold license or certificate of competency to inspect boilers;
 - m. Failure to provide safety appliance for heating boiler;
 - n. Failure to display boiler certificate of inspection;
 - o. Failure to notify of boiler safety defect;
 - p. Prevention of boiler inspector's entry onto premises;
 - q. Failure to forward boiler inspection;
 - r. Failure to pay boiler fees;
 - s. Insurance company's failure to report cancellation or refusal of insurance on a boiler;
 - t. Working as a pipefitter without a license;
 - u. Working as a refrigeration technician without a license;
 - v. Working as a sprinkler fitter without a license; and
 - w. Any other violations of M.G.L. c. 146, §§ 5 through 41, 46, 53 through 54A, 70 through 80, or 89.
- (g) S-licenses.
1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(g) are limited to the Commissioner or the Commissioner's designee.
 2. Violations under 520 CMR 1.02(2)(g) include:
 - a. Engaging, advertising, or holding oneself out as in the business of installing, repairing or offering maintenance for security systems without an S-license;
 - b. Engaging, advertising, or holding oneself out as in the business of installing, repairing, or offering maintenance for security systems with a fraudulent S-license;
 - c. Installing, repairing, or maintaining a security system without a certificate of clearance;
 - d. Installing, repairing, or maintaining a security system with a fraudulent certificate of clearance;

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- e. Falsely stating or representing oneself to acquire a certificate of clearance;
 - f. Allowing an employee to work without a certificate of clearance; and
 - g. Any other violations of M.G.L. c. 147, § 57 or 60.
- (h) Horse Drawn Carriages.
 - 1. Authorized individuals who may issue a warning or citation under 520 CMR 1.02(2)(h) are limited to the Commissioner or the Commissioner's designee.
 - 2. Violations under 520 CMR 1.02(2)(h) include: Any violation of 520 CMR 13.00: *The Operation of Horse Drawn Carriages for Public Hire on Public Roads and Ways of the Commonwealth to Ensure Public Safety.*
- (3) Fines assessed under 520 CMR 1.02(2) shall be administered as follows:
 - (a) For a first offense, violators will receive a warning or a fine of up to \$1,000 per violation;
 - (b) For a second offense, violators will receive a fine ranging from \$1,000 to \$3,000 per violation;
 - (c) For third and subsequent offenses, violators will receive a fine ranging from \$3,000 to \$5,000 per violation;
 - (d) Unless the violator files an appeal pursuant to 520 CMR 1.03, fines shall be due within 120 days of receipt of the notice of violation;
 - (e) A repeat offense shall be deemed a first offense if it occurs three or more years after the most recent offense.
- (4) Recreational Tramways. The Commissioner may issue a written notice of violation, which shall be a written warning or a citation to assess civil monetary fines of not more than \$1,000 for a violation of M.G.L. c. 143, §§ 71K and 71N; provided, however, that a designee of the Recreational Tramway Board may also issue a warning or citation under M.G.L. c. 143, §§ 71K and 71N.
 - (a) Violations under 520 CMR 1.02(4) include:
 - 1. Operation of a recreational tramway without a license;
 - 2. Failure to warn of maintenance or snow-making equipment usage;
 - 3. Failure to mark trail maintenance and emergency vehicles;
 - 4. Failure to mark snow-making hydrant locations;
 - 5. Failure to post the limitations on actions against ski area operators;
 - 6. Failure to maintain signs properly; and
 - 7. Any other violations of M.G.L. c. 143, §§ 71K or 71N.
 - (b) Fines assessed under 520 CMR 1.02(4) shall be administered as follows:
 - 1. For a first offense, violators will receive a warning or a fine of up to \$1,000 per violation;
 - 2. For a second offense, violators will receive a fine ranging from \$500 to \$1,000 per violation;
 - 3. For third and subsequent offenses, violators will receive the maximum fine of \$1,000 per violation;
 - 4. Unless the violator files an appeal pursuant to 520 CMR 1.03, fines shall be due within 120 days of receipt of the notice of violation.
 - 5. A repeat offense shall be deemed a first offense if it occurs three or more years after the most recent offense.
- (5) Factors in Determining Amount of Penalty. In determining the amount of the administrative penalty for fines assessed under 520 CMR 1.02, the Department of Public Safety and/or authorized designee shall consider some or all of the following factors:
 - (a) The willfulness of the violation;
 - (b) Previous violations resulting in the imposition of administrative penalties;
 - (c) Whether the violation resulted in an accident involving bodily injury or death;
 - (d) The actual or potential danger to the public;
 - (e) Whether the violator did everything reasonable to attempt to comply with the law or regulation;
 - (f) Whether imposition of the administrative penalty is likely to deter future noncompliance; and
 - (g) The interests of public safety.

1.02: continued

(6) Failure to Pay Fines. If a violator fails to pay a fine issued pursuant to 520 CMR 1.02, the Department may take action including, but not limited, to the following until such time as the fine has been paid in full:

- (a) The Department will not issue a license, certificate or permit;
- (b) The Department may prohibit the licensee, certificate holder, or permit holder from renewing their license, certificate or permit;
- (c) The Department may prevent the individual from sitting for any examination required to obtain a license, certificate or permit;
- (d) The Department will refer all outstanding debts to the Office of the State Comptroller which is authorized to initiate collection proceedings in accordance with M.G.L. c. 7A, § 3; M.G.L. c. 7A, § 18 and 815 CMR 9.00: *Collection of Debts*.

1.03: Appeals

(1) 520 CMR 1.03 establishes the appeal process for all fines assessed pursuant to 520 CMR 1.00.

(2) Notice. The Department shall provide written notice of alleged violation(s) and intent to impose administrative penalties to the violator on a Notice form authorized by the Department. The Notice shall specify:

- (a) The provision(s) of the law or regulation with which there has been non-compliance;
- (b) The amount that is to be assessed as a penalty for each alleged violation;
- (c) The procedure for requesting a hearing as set forth in 520 CMR 1.03(3).

(3) Appeals. Warnings are not subject to appeal. A person aggrieved by the issuance of a fine may make written demand upon the Commissioner for an appeal hearing before the Commissioner or his or her designee. The hearing shall be held promptly and in accordance with M.G.L. c. 30A and 801 CMR 1.02: *Informal/Fair Hearing Rules*. A hearing officer shall have the duty to reach a fair, independent and impartial decision based upon the issues and evidence presented at the hearing and in accordance with the law. Any person aggrieved by a determination of the Department may appeal to the Superior Court in accordance with M.G.L. c. 30A, § 14.

(4) Fees. The Commissioner may assess a fee for appeals filed under 520 CMR 1.03, to be determined by the secretary of administration and finance under M.G.L. c. 7, § 3B.

(5) The failure to appeal within 120 days of the issuance of a fine constitutes a waiver of the right to appeal and all fines set forth in the notice shall be imposed.

REGULATORY AUTHORITY

520 CMR 1.00: M.G.L. c. 22, § 22.