

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

§ 5613. Penalty for Violation of Business License Requirements.

(a) Any person found operating or engaging in a business to sell merchandise, goods, or commodities, or providing services for compensation without a valid business license shall be subject to a penalty of \$1500.00 and upon written notice to a person under subsection (c) of this section, any continual violation shall subject the person to an additional penalty of \$250.00 per day for every additional day that the person is in violation of the business license provisions.

(b) The agency action provided for in subsection (a) of this section shall subject to Administrative Procedure Act, 1 CMC §§ 9101 *et seq.* Provided further, the secretary is also hereby granted authority to issue citations to any person found in violation of this Act.

(c) The secretary is hereby granted authority to issue a cease and desist order to any person found in violation of the requirement to obtain a business license pursuant to 4 CMC § 5611(a). Any order shall be effective immediately upon its issuance and shall be effective until the violation is cured.

A person may appeal the order to cease operations and if so, shall produce a refundable bond in the amount of \$500.00 to allow for continued business operations pending the hearing under Administrative Procedure Act, 1 CMC §§ 9101 *et seq.* provided that the \$500.00 shall be forfeit if the party does not prevail at said hearing.

(d) There is hereby established a special fund within the Department of Finance for all sums collected under 4 CMC § 5613. From this account, the Department of Finance shall retain 75% of the revenue collected and shall use such funds for the enforcement of this Act; 25% of the all* of the revenue collected shall be remitted to the General Fund.

* So in original.

Source: PL 11-73, § 6, modified; amended and subsection (d) added by PL 18-35 § 3 (Feb. 14, 2014), modified.

Commission Comment: The Commission inserted section symbols and corrected the spelling of “et seq.” pursuant to 1 CMC § 3806(g). As it is unclear whether the reference to “this Act” in subsection (b) is intended to refer to PL 18-35 or to the remainder of this section, the Commission let the reference stand.

Public Law 18-35 (effective Feb. 14, 2014) contained the following additional sections:

Section 1. Findings. The amount of lost revenue in the CNMI that results from the lack of law enforcement is significant. Dishonest business operators are able to take advantage of laws that are too complicated to enforce. Currently, dishonest business operators find that it is profitable to ignore the Sale Receipt Act. To reduce their taxes, they purposely fail to produce the necessary business record of the transactions. The resulting loss to the CNMI coffers is conservatively estimated to be in the

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thousands of dollars per quarter. Likewise, the Legislature also finds that the law relating to the business license provisions in the CNMI are extremely difficult to enforce. As a result, prosecuting violations is also extremely burdensome. The Legislature finds that the process of citing business operators that fail to comply with these laws should be less complicated so as to allow for penalties to be issued — penalties that will serve as a valid deterrent and a fair but effective punitive measure.

The Legislature finds that Title 4, Section 51206 of the CNMI Code, also known as the “Sales Receipts Act of 2002,” needed to be revised and simplified. The new revisions clarified the process by which violators can be cited and penalized. The criminal aspect wherein violators may serve up to one year in jail time was removed and replaced with a higher civil fine. It should also be clear that the Secretary of Finance or her designee can issue citations to enforce the regulations relating to this law. The amendment clarified this already existing authority.

Specifically as to the fines relating to providing a receipt — these fines have been increased from a low of \$0 and a high of \$1000. The new fines are \$250, \$750 and \$1500.00 depending on the number of offenses. In addition, the third violation will trigger an automatic revocation of the business license for a six month period. Language was included in the law to alert Finance to the intent of the law — once a business entity has been found to have violated the law and its business license has been revoked, because it shall be unlawful for the same entity or business to obtain another license for at least six months, this same business cannot circumvent the intent of this law by attempting to obtain a license by any other means.

In addition to revising the Sales Receipts Act, the business license provisions of Title 4, Section 5613 of the CNMI Code also needed to be revised.

Accordingly, the fines have been increased and the law was clarified to ensure that a business without a valid license should not be permitted to operate without said license.

For the sake of clarity, the revisions herein expressly allow for the Department of Finance to issue orders to cease and desist that are effective even before an Administrative hearing is conducted. We find that business operators who violate the law by failing to obtain a valid business license should not be able to avail of the same protections that are provided to those who do hold valid licenses. The protections provided by the APA should be restricted to those operators that can produce good faith evidence that a business license does exist. However, in cases where the licenses is clearly non-existent, the APA should not operate to allow for operations to transpire pending the resolution of the matter. As set forth below, an exception to this general rule would be permitted in the case where the alleged violator produces a \$500.00 bond that will be refunded in the case of a successful appeal.

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Lastly, 75% of the penalties established herein will be used to fund the enforcement of this Act. This earmark is necessary due to the potential for investigations, APA hearings, and other due process measures to be costly, especially so if they are underfunded. The remainder shall be deposited like other civil penalties into the CNMI General Fund where it can be used to provide critical governmental services.

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Section 5. Severability. If any provisions of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby. There is no Savings Clause herein because this legislation is intended to legislatively repeal any and all prior legislation, codified or not, and render null and void any and all contractual provisions not prospectively based on the instant legislation that may have been enacted improperly.