

REFERENCE TITLE: health care institutions; civil penalties

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## **HB 2163**

Introduced by  
Representatives Schwiebert: Gutierrez, Stahl Hamilton, Senator Epstein

AN ACT

AMENDING SECTION 36-431.01, ARIZONA REVISED STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-431.01, Arizona Revised Statutes, is amended  
3 to read:

4 36-431.01. Violations; civil penalties; enforcement

5 A. The director may assess a civil penalty against a person who  
6 violates this chapter or a rule adopted pursuant to this chapter in an  
7 amount of not ~~to exceed five hundred dollars~~ MORE THAN \$1,000 for each  
8 violation. Each day that a violation occurs constitutes a separate  
9 violation.

10 B. The director may issue a notice of assessment that shall include  
11 the proposed amount of the assessment. A person may appeal the assessment  
12 by requesting a hearing pursuant to title 41, chapter 6, article 10. When  
13 an assessment is appealed, the director shall take no further action to  
14 enforce and collect the assessment until after the hearing.

15 C. In determining the AMOUNT OF THE civil penalty pursuant to  
16 subsection A of this section, the department shall consider the following:

- 17 1. Repeated violations of statutes or rules.
- 18 2. Patterns of noncompliance.
- 19 3. Types of violations.
- 20 4. Severity of violations.
- 21 5. Potential for and occurrences of actual harm.
- 22 6. Threats to health and safety.
- 23 7. Number of persons affected by the violations.
- 24 8. Number of violations.
- 25 9. Size of the facility.
- 26 10. Length of time that the violations have been occurring.

27 D. Pursuant to interagency agreement specified in section 36-409,  
28 the director may assess a civil penalty, including interest, in accordance  
29 with 42 United States Code section 1396r. A person may appeal this  
30 assessment by requesting a hearing before the director in accordance with  
31 subsection B of this section. Civil penalty amounts may be established by  
32 rules adopted by the director that conform to guidelines or regulations  
33 adopted by the secretary of the United States department of health and  
34 human services pursuant to 42 United States Code section 1396r.

35 E. Actions to enforce the collection of penalties assessed pursuant  
36 to subsections A and D of this section shall be brought by the attorney  
37 general or the county attorney in the name of the state in the justice  
38 court or the superior court in the county in which the violation occurred.

39 F. Penalties assessed under subsection D of this section are in  
40 addition to and not in limitation of other penalties imposed pursuant to  
41 this chapter. All civil penalties and interest assessed pursuant to  
42 subsection D of this section shall be deposited, PURSUANT TO SECTIONS  
43 35-146 AND 35-147, in the nursing care institution resident protection  
44 revolving fund established by section 36-431.02. The director shall use  
45 these monies for the purposes prescribed by 42 United States Code section

1 1396r, including payment for the costs of relocation of residents to other  
2 facilities, maintenance of operation of a facility pending correction of  
3 the deficiencies or closure and reimbursement of residents for personal  
4 monies lost.

5 G. The department shall ~~transmit~~ DEPOSIT penalties assessed under  
6 subsection A of this section ~~to~~ IN the state general fund.