

§1310-A. Administrative enforcement

1. Authority. The administrator, within the limits provided by law, may:

A. Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter, refer complaints to the Department of Professional and Financial Regulation, Bureau of Financial Institutions pursuant to subsection 9 or refer cases to the Attorney General, who shall appear for and represent the administrator in court; [PL 2013, c. 228, §1 (NEW).]

B. Counsel groups and persons on their rights and duties under this chapter; [PL 2013, c. 228, §1 (NEW).]

C. Establish programs for the education of consumers with respect to the provisions of this chapter; [PL 2013, c. 228, §1 (NEW).]

D. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public; [PL 2013, c. 228, §1 (NEW).]

E. Issue advisory rulings designed to clarify the applicability of any statutory provision of this chapter necessary or proper to effectuate its purposes; [PL 2013, c. 228, §1 (NEW).]

F. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party; and [PL 2013, c. 228, §1 (NEW).]

G. Require registration of consumer reporting agencies located in this State or serving users within this State through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8. The administrator is authorized to participate in the nationwide mortgage licensing system and registry.

In all cases, whether licensing is through the nationwide mortgage licensing system and registry, as defined in Title 9-A, section 13-102, subsection 8, or otherwise, the administrator may establish, by rule, requirements for registration, including but not limited to:

(1) Background checks for:

(a) Criminal history through fingerprint or other databases;

(b) Civil or administrative records;

(c) Credit history; or

(d) Any other information determined necessary by the nationwide mortgage licensing system and registry;

(2) The payment of fees to apply for or renew registrations, except that the fee for an initial application may not exceed \$500 and for a renewal may not exceed \$500. If licensing is through the nationwide mortgage licensing system and registry, an applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. Renewal applications received after the due date are subject to an additional fee of \$100;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Other requirements for application for, amendment of or revocation of a registration or any other such activities as the administrator considers necessary.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 245, Pt. D, §4 (RPR).]
[PL 2021, c. 245, Pt. D, §4 (AMD).]

2. Investigatory powers. The administrator has the following investigatory powers except in cases in which the Department of Professional and Financial Regulation, Bureau of Financial Institutions or the Attorney General has exclusive authority pursuant to subsection 9.

A. The administrator may annually investigate any person whom the administrator believes has engaged in conduct governed by this chapter, except that the administrator may, at any time, investigate any person the administrator believes to be a consumer reporting agency. If the administrator has reasonable cause to believe that any person has violated this chapter, the administrator may investigate that person at any time. During any investigation, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator finds a violation of this chapter, the administrator shall so notify all parties to the transactions involved. [PL 2013, c. 228, §1 (NEW).]

B. If the records of a person under investigation are located outside this State, the person, at the administrator's option, may either make the original records or facsimiles of the record available to the administrator at a convenient location within this State or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where the records are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located or federal officials, to inspect the records on the administrator's behalf. [PL 2013, c. 228, §1 (NEW).]

C. The expenses of the administrator necessarily incurred in the examination of persons subject to this chapter must be chargeable to that person in the same manner and for the same expenses set forth in Title 9-A, section 6-106, subsection 6, except that users of consumer reports may not be charged examination expenses unless the administrator finds a violation of this chapter. [PL 2013, c. 228, §1 (NEW).]

[PL 2013, c. 228, §1 (NEW).]

3. Administrative enforcement orders. After notice and hearing, the administrator may order a person to cease and desist from engaging in violations of this chapter. The administrator may also order affirmative action designed to correct past or future violations of this chapter. Any hearing held under this subsection must be conducted in accordance with the procedures of Title 5, chapter 375, subchapter 4. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may, through the Attorney General, obtain an order of the court for enforcement of its order in the Superior Court. The proceedings for review or enforcement must be initiated and conducted in accordance with Title 5, chapter 375, subchapter 7.

[PL 2013, c. 228, §1 (NEW).]

4. Assurance of discontinuance. If it is claimed that a person has engaged in conduct that could be subject to any order by the administrator, the administrator shall first attempt to negotiate an assurance in writing that the person will not engage in the same or similar conduct in the future, prior to initiating an enforcement order under subsection 3. The assurance may include, but is not limited to, admissions of past specific acts by the person or that such acts violated this chapter or other statutes. A violation of an assurance of discontinuance is a violation of this chapter.

[PL 2013, c. 228, §1 (NEW).]

5. Civil action. The administrator, through the Attorney General, may bring a civil action against a person to recover a civil penalty for knowingly violating this chapter or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in a knowing violation of this

chapter or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the defendant establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, a penalty may not be imposed under this subsection.

[PL 2013, c. 228, §1 (NEW).]

6. Remedies not affected. The grant of powers to the administrator in this section does not affect remedies available to the Attorney General or to consumers under this chapter or under other principles of law or equity.

[PL 2013, c. 228, §1 (NEW).]

7. Venue. The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division in which a respondent resides or transacts business.

[PL 2013, c. 228, §1 (NEW).]

8. Bureau of Insurance. With respect to those examinations authorized by subsection 2, paragraph A, the administrator shall, where applicable, coordinate examinations for compliance with this chapter with examinations conducted by the Department of Professional and Financial Regulation, Bureau of Insurance for compliance with Title 24-A.

[PL 2013, c. 228, §1 (NEW).]

9. Bureau of Financial Institutions. When a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A is a person subject to this chapter and the Department of Professional and Financial Regulation, Bureau of Financial Institutions charters or regulates the supervised financial organization, the Bureau of Financial Institutions has exclusive authority pursuant to this chapter over the supervised financial organization. This authority is in addition to the authority of the Bureau of Financial Institutions in Title 9-B. The Attorney General has authority to enforce the provisions of this chapter for any other supervised financial organization that is a person subject to this chapter.

[PL 2013, c. 228, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 228, §1 (NEW). PL 2021, c. 245, Pt. D, §4 (AMD).

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