

---

**Chapter 242. AN ACT PLACING CERTAIN MEMBERS OF THE FIRE DEPARTMENT OF THE TOWN OF HANOVER UNDER THE CIVIL SERVICE LAW.**

*Be it enacted, etc., as follows:*

**SECTION 1.** The positions of full-time firefighter, full-time firefighter-EMT, full-time fire captain and deputy fire chief in the fire department of the town of Hanover shall be subject to chapter 31 of the General Laws and the tenure of any incumbent thereof shall be unlimited subject to the provisions of said chapter 31.

**SECTION 2.** Entrance and promotional examinations previously taken by the incumbents cited in section 1 shall serve as qualifying examinations for civil service status.

**SECTION 3.** Firefighter personnel hired during the 6 month period preceding the effective date of this act shall be included as civil service employees under chapter 31 of the General Laws, subject to any applicable probationary period.

**SECTION 4.** Notwithstanding section 58 of chapter 31 of the General Laws, the residency requirement for the positions of full-time firefighter, full-time firefighter - EMT and full-time captain - EMT in the fire department of the town of Hanover shall be determined by Article XXIV of the collective bargaining agreement between the town of Hanover and the Professional Firefighter of Hanover and shall remain a subject of collective bargaining.

**SECTION 5.** This act shall take effect upon its passage.

*The foregoing was laid before the Governor on the Twenty-second day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.*

**Chapter 243. AN ACT RELATIVE TO CERTAIN CONSUMER TRANSACTIONS AND THE SATISFACTION OF SECURITY INTERESTS.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 24 of chapter 90D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-

If the payment in satisfaction of the security interest is in cash or by certified check, cashier's check, teller's check, intra-bank or inter-bank transfer of funds, or an electronic transfer of funds, the payment shall be considered cleared immediately upon receipt by a lienholder.

**SECTION 2.** Said chapter 90D is hereby further amended by inserting after section 24 the following section:-

Section 24A. (a) If a lienholder fails to comply with section 24, an aggrieved party may file a complaint against the lienholder with the registrar. For the purposes of this section, an aggrieved party shall be the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate of title, to whom the lienholder failed to properly deliver the certificate in accordance with section 24.

(b) Notwithstanding subsections (a) and (b) of section 32, the registrar may assess a civil administrative penalty on a lienholder who fails to comply with section 24 or any regulation issued by the registrar pursuant to this section or section 24, if the noncompliance occurred after the registrar had given the lienholder written notice of the noncompliance, and after a reasonable time, as determined by the registrar and stated in the notice, had elapsed for coming into compliance. The reasonable time to be determined by the registrar shall not exceed the time limits defined in section 24. The registrar may assess the penalty without providing the written notice if the failure to comply was (i) part of a pattern of noncompliance and not an isolated instance or (ii) was willful and not the result of error. A lienholder shall not be found liable for such noncompliance if the noncompliance occurred as a result of an action or inaction of the registry or the registrar.

(c) For the purpose of determining whether the noncompliance was part of a pattern of noncompliance and not an isolated instance, the registrar shall consider, but not be limited to, the following: whether the registrar had previously notified the lienholder of noncompliance with section 24 on 2 or more occasions during the previous 90-day period or on at least 1 occasion during the previous 60-day period; whether the current and previous events of noncompliance involved the same owner or person who delivered to the lienholder authorization from the owner to receive a certificate of title, as prescribed in section 24, and whether the current and previous events of noncompliance, considered together, indicate willful disregard of the statute by the lienholder. If a lienholder who has been given notice of noncompliance with section 24 fails to come into compliance within the time period stated in the notice, the civil administrative penalty may be assessed by the registrar upon such lienholder from the date of the notice.

(d) Whenever the registrar seeks to assess a civil administrative penalty pursuant to section 24, the registrar shall cause to be served upon the lienholder, either by service in hand, or by certified mail, return receipt requested, written notice of his intent to assess a civil administrative penalty, which shall include a concise statement of the alleged act or omission for which the civil administrative penalty is sought to be assessed, the law that has not been complied with as a result of the alleged act or omission, the amount that the registrar seeks to assess as a civil administrative penalty for each alleged act or omission, a statement of the lienholder's right to an adjudicatory hearing on the proposed assessment, the requirements the lienholder shall comply with to avoid being considered to have waived the right to an adjudicatory hearing, and the manner of payment thereof if the lienholder elects to pay the penalty and waive an adjudicatory hearing.

(e) Whenever the registrar seeks to assess a civil administrative penalty on a lienholder, the lienholder shall have the right to an adjudicatory hearing under chapter 30A,

which shall apply except when inconsistent with this section. The lien holder shall be considered to have waived the right to an adjudicatory hearing unless, within 21 days of the date of the registrar's notice that he seeks to assess a civil administrative penalty, the lienholder files with the registrar a written statement denying the occurrence of any of the acts or omissions alleged by the registrar in the notice, or asserting that the money amount of the proposed civil administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter 30A, the registrar shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the registrar. If a lienholder waives his right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver. If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, the civil administrative penalty shall be final upon the expiration of 30 days if no action for judicial review of the decision is commenced pursuant to chapter 30A.

(f) A lienholder who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk magistrate of the reviewing court. The establishment of the interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within 20 days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon the demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of the interest-bearing escrow account, the posting of a bond payable directly to the commonwealth in the amount of 125 per cent of the assessed penalty.

(g) If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of the requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty, the registrar shall be paid the amount thereof together with interest at the rate set forth in section 6C of chapter 231. If, after the review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of the penalty, in whole or in part, the registrar shall be paid the amount thereof together with the accumulated interest thereon in the interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of the penalty has been deposited in an interest-bearing escrow account, the lienholder on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.

(h) Each lienholder who fails to pay a civil administrative penalty on time, and each lienholder who issues a bond pursuant to this section and who fails to pay to the registrar on time the amount required hereunder, shall be liable to the registrar for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate

set forth in section 6C of chapter 231.

(i) In determining the amount of each civil administrative penalty in accordance with subsection (c) of section 32, the registrar shall include, but not be limited to, the following in its considerations: the actual and potential impact on aggrieved parties and other affected parties of the failure to comply; the actual and potential damages suffered, and actual or potential costs incurred, by the commonwealth, including, but not limited to, the registrar, or by any other party; whether the lienholder being assessed the civil administrative penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of the noncompliance; whether the lienholder being assessed the civil administrative penalty has previously failed to comply with any regulation, order, license, or approval issued or adopted by the registrar, or any law which the registrar has the authority or responsibility to enforce; making compliance less costly than noncompliance; deterring future noncompliance; the financial condition of the lienholder being assessed the civil administrative penalty; and the public interest.

(j) The registrar shall promulgate rules and regulations to carry out this section and section 24.

**SECTION 3.** Section 32 of said chapter 90D is hereby amended by adding the following subsection:-

(c) Notwithstanding subsections (a) and (b), a lienholder who is found to be in violation of section 24 in accordance with the procedures set forth in section 24A shall be punished by a fine of not less than \$500 for a first offense. For each successive violation, the fine shall not be less than \$1,000 nor more than \$2,000; but, if the lienholder has been cited and punished by the registrar for noncompliance 5 or more times in the preceding 12 month period, the penalty shall not be less than \$5,000 for each subsequent offense.

*The foregoing was laid before the Governor on the Twenty-second day of July, 2004 and after ten days had the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.*

## **Chapter 244. AN ACT RELATIVE TO CREDIT UNION BOARDS OF DIRECTORS.**

*Be it enacted, etc., as follows:*

Chapter 171 of the General Laws is hereby amended by striking out section 25, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:-

Section 25. A credit union may provide life insurance, group accident and health insurance or group medical, surgical or hospital insurance or benefits or all or any combination thereof, for its employees, officers, and directors. Directors ineligible for the group benefit may be reimbursed up to the net dollar amount of the individual participant