

**Law of The People's Republic Of China on Administrative Penalty (2017
Amendment)[Effective]**

中华人民共和国行政处罚法(2017 修正) [现行有效]

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Law of The People's Republic Of China on Administrative Penalty
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Chapter I General Provisions

Article 1 Pursuant to the Constitution, this Law is enacted for the purpose of standardizing creation and imposition of administrative penalty, ensuring and supervising the effective exercise of administration by administrative organs, safeguarding public interests and public order, and protecting the lawful rights and interests of citizens, legal persons and other organizations.

Article 2 Creation and imposing of administrative penalty shall be governed by this Law.

Article 3 Where administrative penalty needs to be imposed on citizens, legal persons or other organizations for their violations of the order of administration, it shall be prescribed by laws, rules or regulations pursuant to this Law and imposed by administrative organs in compliance with the procedure prescribed by this Law.

Administrative penalty that is not imposed in accordance with law or in compliance with legal procedures shall be invalid.

Article 4 Administrative penalty shall be imposed in adherence to the principles of fairness and openness.

Creation and imposition of administrative penalty shall be based on facts and shall be in correspondence with the facts, nature and seriousness of the violations of law and damage done to society.

Regulations on administrative penalty to be imposed for violations of law must be published; those which are not published shall not be taken as the basis for administrative penalty.

Article 5 In imposing administrative penalty and setting to rights illegal acts, penalty shall be combined with education, so that citizens, legal persons and other organizations shall become aware of the importance of observing law.

Article 6 Citizens, legal persons and other organizations on whom administrative penalty is imposed by administration organs shall have the right to state their cases and the right to defend themselves; those who refuse to accept administrative penalty shall have the right to apply for administrative reconsideration or bring an administrative lawsuit in accordance with law. Citizens, legal persons and other organizations that have suffered damage due to administrative penalty imposed by administrative organs in violation of law shall have the right to demand compensation in accordance with law.

Article 7 Citizens, legal persons and other organizations that are subjected to administrative penalty because of their violations of law shall, in accordance with law, bear civil liability for damage done to others by their illegal acts.

Where an illegal act constitutes a crime, criminal responsibility shall be investigated in accordance with law; no administrative penalty shall be imposed in place of criminal penalty.

Chapter II Types and Creation of Administrative Penalty

Article 8 Types of administrative penalty shall include:

- (1) disciplinary warning;
- (2) fine;
- (3) confiscation of illegal gains or confiscation of unlawful property or things of value;

- (4) ordering for suspension of production or business;
- (5) temporary suspension or rescission of permit or temporary suspension or rescission of license;
- (6) administrative detention; and
- (7) others as prescribed by laws and administrative rules and regulations.

Article 9 Different types of administrative penalty may be created by law.

Administrative penalty involving restriction of freedom of person shall only be created by law.

Article 10 Administrative penalties, with the exception of restricting freedom of person, may be created by administrative rules and regulations.

Where it is necessary to formulate specific provisions, in administrative rules and regulations, regarding violations of law for which administrative penalties have been formulated in laws, it must be done within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws.

Article 11 Administrative penalties, with the exception of restriction of freedom of person and rescission of business license of an enterprise, may be created in local regulations.

Where it is necessary to formulate specific provisions, in local regulations, regarding violations of law for which administrative penalties have been formulated in laws and administrative rules and regulations, it must be done within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and administrative rules and regulations.

Article 12 The ministries and commissions under the State Council may, in the rules they enact, formulate specific provisions within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and administrative rules and regulations.

With regard to violations of administration order against which no laws or administrative rules and regulations have been enacted, the ministries and commissions under the State Council may create administrative penalty of disciplinary warning or a certain amount of fine in the rules they enact, as stipulated in the preceding paragraph. The specific amounts of fine shall be laid down by the State Council.

The State Council may authorize the departments directly under it that have the power of administrative penalty to formulate provisions on administrative penalty in accordance with the first and second paragraph of this Article.

Article 13 The people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, of the cities where the people's governments of provinces and autonomous regions are located, and of the larger cities approved as such by the State Council may, within the limits of the acts subject to administrative penalty and the types and range of such penalty as prescribed by laws and regulations, formulate specific provisions in the rules they enact.

With regard to violations of administration order against which no laws or regulations have been enacted, the people's governments may create administrative penalty of disciplinary warning or certain amount of fine in the rules they enact, as stipulated in the preceding paragraph. The specific amounts of fine shall be laid down by the standing committees of the people's congresses of provinces, autonomous regions, and municipalities directly under the Central Government.

Article 14 No administrative penalties shall be created in any other regulatory documents in addition to the ones as stipulated in Articles 9, 10, 11, 12 and 13 of this Law.

Chapter III Organs Imposing Administrative Penalty

Article 15 Administrative penalty shall be imposed by administrative organs that have the power of administrative penalty within the scope of their statutory functions and powers.

Article 16 The State Council or the people's government of a province, autonomous region or municipality directly under the Central Government that is empowered by the State Council may decide to have an administrative organ exercise other administrative organs' power of administrative penalty. However, the power of administrative penalty involving restriction of freedom of person shall only be exercised by the public security organs.

Article 17 Organizations that are authorized by laws and regulations to exercise the power of administering public affairs may impose administrative penalty within the scope of their powers as authorized by law.

Article 18 In accordance with the provisions of laws, regulations or rules, an administrative organ may, within the scope of its powers as prescribed by law, entrust an organization that meets the conditions stipulated in Article 19 of this Law with imposing administrative penalty. An administrative organ may not entrust other organizations or individuals with imposing administrative penalty.

The entrusting administrative organ shall be responsible for supervising the imposition of administrative penalty by the entrusted organization and shall bear legal responsibility for the consequences of the imposition.

The entrusted organization shall, within the scope of authorization, impose administrative penalty in the name of the entrusting administrative organ, and may not further entrust any other organization or individual with imposing the administrative penalty.

Article 19 The organization to be entrusted shall meet the following conditions:

- (1) to be an institution in charge of public affairs established in accordance with law;
- (2) to be staffed with personnel who are familiar with relevant laws, regulations and rules and are experienced in the work; and
- (3) to have the conditions for organizing and conducting the technical tests or technical appraisal that are needed for testing or appraising illegal acts.

Chapter IV Jurisdiction and Application of Administrative Penalty

Article 20 Administrative penalty shall come under the jurisdiction of an administrative organ having the power of administrative penalty of a local people's government at or above the county level in the place where the illegal act is committed, except as otherwise prescribed by laws or administrative rules and regulations.

Article 21 If a dispute arises over jurisdiction between administrative organs, the matter shall be reported to their common administrative organ at the next higher level for designation of jurisdiction.

Article 22 If an illegal act constitutes a crime, the administrative organ must transfer the case to a judicial organ for investigation of criminal responsibility according to law.

Article 23 When enforcing an administrative penalty, the administrative organ shall order the party to put right his illegal acts or to do so within a time limit.

Article 24 For the same illegal act committed by a party, the party shall not be given an administrative penalty of fine for more than once.

Article 25 If a person under the age of 14 commits an illegal act, no administrative penalty shall be imposed on him, but his guardian shall be ordered to discipline and educate him; if a person who has reached the age of 14 but not the age of 18 commits an illegal act, a lighter or mitigated administrative penalty shall be imposed on him.

Article 26 If a mental patient commits an illegal act at a time when he is unable to recognize or cannot control his own conduct, no administrative penalty shall be imposed on him, but his guardian shall be ordered to keep him under close surveillance and arrange for his medical treatment. Administrative penalty shall be imposed on a person whose mental illness is of an intermittent nature and who commits an illegal act when he is in a normal mental state.

Article 27 A party shall be given a lighter or mitigated administrative penalty in accordance with law, if:

- (1) he has taken the initiative to eliminate or lessen the harmful consequences occasioned by his illegal act;
- (2) he has been coerced by another to commit the illegal act;
- (3) he has performed meritorious deeds when working in coordination with administrative organs to investigate violations of law; or
- (4) he is under other circumstances for which he shall be given a lighter or mitigated administrative penalty in accordance with law.

Where a person commits a minor illegal act, promptly puts it right and causes no harmful consequences, no administrative penalty shall be imposed on him.

Article 28 If an illegal act constitutes a crime, for which a People's Court sentences him to criminal detention or fixed-term imprisonment, and if an administrative organ has already imposed administrative detention on the party, the length of detention shall be made the same as the term of imprisonment in accordance with law.

If an illegal act constitutes a crime, for which a People's Court imposes a fine on the party, and if an administrative organ has already done so, the amount of the fine imposed by the latter shall be made the same as that by the former.

Article 29 Where an illegal act is not discovered within two years of its commission, administrative penalty shall no longer be imposed, except as otherwise prescribed by law.

The period of time prescribed in the preceding paragraph shall be counted from the date the illegal act is committed; if the act is of a continual or continuous nature, it shall be counted from the date the act is terminated.

Chapter V Decision on An Administrative Penalty

Article 30 Where citizens, legal persons or other organizations violate administration order and should be given administrative penalty according to law, administrative organs must ascertain facts; if the facts about the violations are not clear, no administrative penalty shall be imposed.

Article 31 Before deciding to impose administrative penalties, administrative organs shall notify the parties of the facts, grounds and basis according to which the administrative penalties are to be decided on and shall notify the parties of the rights that they enjoy in accordance with law.

Article 32 The parties shall have the right to state their cases and to defend themselves. Administrative organs shall fully heed the opinions of the parties and shall reexamine the facts, grounds and evidence put forward by the parties; if the facts, grounds and evidence put forward by the parties are established, the administrative organs shall accept them. Administrative organs shall not impose heavier penalties on the parties just because the parties have tried to defend themselves.

Section 1 Summary Procedure

Article 33 If the facts about a violation of law are well-attested and there are legal basis and if, the citizen involved is to be fined not more than 50 yuan or the legal person or other organization involved is to be fined not more than 1,000 yuan or a disciplinary warning is to be given, such administrative penalty may be decided on the spot. The party shall carry out the decision on administrative penalty in accordance with the provisions of Articles 46, 47 and 48 of this Law.

Article 34 If a law-enforcing officer decides to impose administrative penalty on the spot, he shall show the party his identification papers for law enforcement, fill out an established and coded form of decision for administrative penalty. The form of decision for administrative penalty shall be given to the party on the spot.

In the form of decision for administrative penalty as stipulated in the preceding paragraph shall be clearly recorded the illegal act committed by the party, the basis for administrative penalty, the amount of fine, the time and place, and the title of the administrative organ. Such form shall also be signed or sealed by the law-enforcing officer.

Law-enforcing officers must submit their decisions on administrative penalty made on the spot to the administrative organs where they belong for the record.

Article 35 If a party refuses to accept the decision on administrative penalty made on the spot, he may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Section 2 Ordinary Procedure

Article 36 Except for the administrative penalties which may be imposed on the spot as provided in Article 33 of this Law, administrative organs, when discovering that citizens, legal persons or other organizations have committed acts for which administrative penalty should be imposed according to law, shall conduct investigation in a comprehensive, objective and fair manner and collect relevant evidence; when necessary, they may conduct inspection in accordance with the provisions of laws and regulations.

Article 37 When administrative organs conduct investigations or inspections, there shall be not less than two law-enforcing officers, who shall show their identification papers to the party or other persons concerned. The party and other persons concerned shall truthfully answer the questions and assist in the investigation or inspection; they may not obstruct such investigation or inspection. Written record shall be made for the inquiry or inspection.

When collecting evidence, administrative organs may obtain evidence through sampling; under circumstances where there is a likelihood that the evidence may be destroyed or lost, or difficult to

obtain later, administrative organs may, with the approval of their leading members, first register the evidence for preservation and shall make a timely decision on its disposition within seven days. During this period of time, the party and other persons concerned may not destroy or transfer the evidence.

If a law-enforcing officer shares a direct interest with the party, he shall withdraw.

Article 38 After an investigation has been concluded, leading members of an administrative organ shall examine the results of the investigation and make the following decisions in light of different circumstances:

(1) to impose administrative penalty where an illegal act has really been committed and for which administrative penalty should be imposed, in light of the seriousness and the specific circumstances of the case;

(2) to impose no administrative penalty where an illegal act is minor and which may be exempted from administrative penalty according to law;

(3) to impose no administrative penalty where the facts about an illegal act are not established;

(4) to transfer the case to a judicial organ where an illegal act constitutes a crime.

Before imposing a heavier administrative penalty for an illegal act which is of a complicated or grave nature, the leading members of an administrative organ shall make a collective decision through discussion.

Before the person in charge of the administrative authority makes a decision, the person that conducts the examination of administrative penalty decisions shall conduct examination. The person of an administrative authority who conducts the examination of administrative penalty decisions for the first time shall pass the national uniform legal profession qualification examination and obtain the legal profession qualification.

Article 39 To impose administrative penalty according to the provisions of Article 38 of this Law, an administrative organ shall fill out form of decision for administrative penalty. The following particulars shall be clearly recorded in a form of decision for administrative penalty:

(1) name, or title, and address of the party;

(2) facts and evidence for the violation of law, regulations or rules;

(3) type of and basis for administrative penalty;

(4) manner of and time limit for enforcement of administrative penalty;

(5) channel and time limit for applying for administrative reconsideration or bringing an administrative lawsuit if the party refuses to accept the decision on administrative penalty; and

(6) title of the administrative organ that makes the decision on administrative penalty and the date on which the decision is made.

To the form of decision for administrative penalty must be affixed the seal of the administrative organ that makes the decision on administrative penalty.

Article 40 The form of decision for administrative penalty shall be given to the party on the spot after announcement of the decision; if the party is not present, the administrative organ shall, within seven days, serve the form of decision for administrative penalty on the party in accordance with the relevant provisions of the Civil Procedure Law.

Article 41 If, before making a decision on administrative penalty, an administrative organ or its law-enforcing officer, fails to notify, as stipulated in Articles 31 and 32 of this Law, the party of the facts about the violation, grounds and basis on which the administrative penalty is imposed, or refuses to heed the party's statement and self-defense, the decision on administrative penalty shall be invalid, except that the party relinquishes the right to make a statement or to defend himself.

Section 3 Procedure of Hearing

Article 42 An administrative organ, before making a decision on administrative penalty that involves ordering for suspension of production or business, rescission of business permit or license or imposition of a comparatively large amount of fine, shall notify the party that he has the right to request a hearing; if the party requests a hearing, the administrative organ shall arrange for the hearing. The party shall not bear the expenses for the hearing arranged by the administrative organ. The hearing shall be arranged according to the following procedure:

- (1) To request a hearing, the party shall do it within three days after being notified by the administrative organ;
- (2) The administrative organ shall, seven days before the hearing is held, notify the party of the time and place for the hearing;
- (3) The hearing shall be held openly, except where State secrets, business secrets or private affairs are involved;
- (4) The hearing shall be presided over by a person other than the investigator of the case designated by the administrative organ; if the party believes that the person has a direct interest in the current case, he shall have the right to apply for the person's withdrawal;
- (5) The party may participate in the hearing in person, or he may entrust one or two persons to act on his behalf;
- (6) The investigator shall, when the hearing is conducted, put forward the facts about the violations of law committed by the party, the evidence and recommendation for administrative penalty; the party may defend himself and make cross-examination; and
- (7) Written record shall be made for the hearing; the written record shall be shown to the party for checking, and when the party acknowledges that the record is free of error, he shall sign or affix. If the party has objection to the administrative penalty that involves restriction of freedom of person, the relevant provisions of Law on Public Security Administrative Punishments shall apply.

Article 43 When a hearing is concluded, the administrative organ shall make a decision in accordance with the provisions of Article 38 of this Law.

Chapter VI Enforcement of Administrative Penalty

Article 44 After a decision on administrative penalty has been made in accordance with law, the party shall carry it out within the time limit set by the decision on administrative penalty.

Article 45 If the party refuses to accept the decision on administrative penalty and applies for administrative reconsideration or brings an administrative lawsuit, enforcement of the administrative penalty shall not be suspended, except as otherwise prescribed by law.

Article 46 The administrative organ that makes the decision on a fine shall be separated from the organ that collects the fine.

Except for circumstances under which fines shall be collected on the spot according to the provisions of Articles 47 and 48 of this Law, no administrative organs that make the decision on administrative penalty or their law-enforcing officers shall collect fines themselves.

The parties shall, within 15 days from the date they receive the forms of decision for administrative penalty, pay the fines to the banks as designated. The banks shall accept the fines and turn them over directly to the State Treasury.

Article 47 If a decision on administrative penalty is made on the spot in accordance with the provisions of Article 33 of this Law, law enforcing officers may collect fines on the spot under one of the following circumstances:

- (1) The fines imposed according to law is not more than 20 yuan; or
- (2) It is difficult to carry out the decision if the fine is not collected on the spot.

Article 48 If, after a decision on fine is made by an administrative organ or its law-enforcing officers in accordance with the provisions of Article 33 or Article 38 of this Law, it is really difficult for the party in the area which is outlying, on water or not easily accessible to pay the fine to the bank as designated, the administrative organ or its law-enforcing officers may, upon the request of the party, collect the fine on the spot.

Article 49 Where fines are collected on the spot by an administrative organ or its law-enforcing officers, the parties shall be given receipts for the fines as are uniformly made and issued by finance departments of provinces, autonomous regions or municipalities directly under the Central Government; if such receipts are not given, the parties shall have the right to refuse to pay the fines.

Article 50 Fines collected by law-enforcing officers on the spot shall be turned over to administrative organs within two days from the date the fines are collected; fines collected on the spot on water shall be turned over to administrative organs within two days from the date of landing; the administrative organs shall, within two days, deliver the fines over to the banks as designated.

Article 51 If the parties fail to carry out the decision on administrative penalty within the time limit, the administrative organ that made the decision on administrative penalty may adopt the following measures:

- (1) to impose an additional fine at the rate of 3% of the amount of the fine per day;
- (2) in accordance with law, to sell by auction the sealed up or seized property or things of value or to transfer the frozen deposits to offset the fine; and
- (3) to apply to a People's Court for compulsory enforcement.

Article 52 If the parties truly have financial difficulties and need to postpone payment of the fines or pay them in installments, payment may be put off for the time being or made in installments after the parties have applied to and obtained approval of the administrative organs.

Article 53 With the exception of the confiscated articles or goods that should be destroyed in accordance with law, the illegal property or things of value that have been confiscated according to law shall be sold by public auction in accordance with the regulations of the State or shall be

disposed of in accordance with relevant State regulations.

Fines, confiscated illegal gains or money obtained from sale by auction of the confiscated illegal property or things of value shall be turned over to the State Treasury in full, and no administrative organs or individuals may, in any manner, withhold, or share these out privately, or do so in disguised form; no finance department shall, in any manner, give the back to the administrative organs that decided to impose the fines or give them back the illegal gains they confiscated or the money they obtained from sale by auction of the confiscated illegal property or things of value.

Article 54 Administrative organs shall establish a sound supervisory system for administrative penalty. People's governments at or above the county level shall exercise stricter supervision and inspection of administrative penalty.

A citizen, a legal person or other organization shall have the right to make an appeal or accusation against an administrative penalty imposed by an administrative organ. The administrative organ shall carefully examine the appeal or accusation, and when it finds that the administrative penalty is wrong, it shall take the initiative to correct it.

Chapter VII Legal Responsibility

Article 55 If an administrative organ imposes an administrative penalty in any of the following manners, it shall be ordered by the administrative organ at the higher level or a relevant department to make correction, and administrative sanctions may, in accordance with law, be imposed upon the persons who are directly in charge and other persons who are directly responsible for the offense:

- (1) without statutory basis for administrative penalty;
- (2) by altering the types and range of administrative penalty, without authorization;
- (3) in violation of the legal procedure for administrative penalty; or
- (4) in violation of the provisions of Article 18 of this Law concerning entrusting an organization with imposition of administrative penalty.

Article 56 If administrative organs, when imposing penalties on the parties, do not use the documents for fines and confiscation of property or things of value, or use the documents for fines and confiscation of property or things of value that are prepared and issued by non- statutory departments, the parties shall have the right to refuse to accept the penalties and the right to accuse them. The administrative organs at higher levels or relevant departments shall confiscate and destroy the illegal documents in use and shall, in accordance with law, impose administrative sanctions upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 57 If administrative organs, in violation of the provisions of Article 46 of this Law, collect fines themselves, if finance departments, in violation of the provisions of Article 53 of this Law, give back to administrative organs fines or money obtained from sale by auction of confiscated illegal property or things of value, the administrative organs at higher levels or relevant departments shall order them to make correction and shall, in accordance with law, impose administrative sanctions upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 58 The fines, confiscated illegal gains or property or things of value that are withheld, shared out privately or done so in disguised form by administrative organs shall be recovered by

finance departments or relevant departments, the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions according to law; if the offense is serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with law.

If law-enforcing officers, taking advantage of their functions, ask for or accept other person's property or things of value or take into their own possession fines they have collected and, if the offense constitutes a crime, they shall be investigated for criminal responsibility in accordance with law; if the offense is of a minor nature and does not constitute a crime, administrative sanctions shall be imposed upon them in accordance with law.

Article 59 If administrative organs use or destroy the property or things of value they have seized and thus cause losses to the parties, they shall give compensation to the parties according to law, and administrative sanctions shall, in accordance with law, be imposed upon the persons who are directly in charge and other persons who are directly responsible for the offense.

Article 60 If administrative organs violate law when enforcing measures of inspection or execution and thus inflict damage on the person or property of citizens or cause losses to legal persons or other organizations, they shall be liable for compensation according to law, and the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions in accordance with law; if the offense is serious enough to constitute a crime, criminal responsibility shall be investigated according to law.

Article 61 If administrative organs, for the purpose of seeking departmental gain, do not transfer cases to judicial organs for investigation of criminal responsibility as they should do in accordance with law but impose administrative penalty in place of criminal penalty, the administrative organs at higher levels or relevant departments shall order them to make correction; if they refuse to do so, administrative sanctions shall be imposed upon the persons who are directly in charge; persons who practise irregularities for personal gain, cover up or connive at violations of law shall be investigated for criminal responsibility according to the relevant provisions of the Criminal Law.

Article 62 If illegal acts that should be checked and punished are not checked and punished due to dereliction of duty by law-enforcing officers, and thus damaging the lawful rights and interests of citizens, legal persons and other organizations, public interests and public order, the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions in accordance with law; if the violation is serious enough to constitute a crime, criminal responsibility shall be investigated according to law.

Chapter VIII Supplementary Provisions

Article 63 Specific measures for implementing the provisions of Article 46 of this Law concerning separation of the organs that make the decision on imposing fines from the organs that collect fines shall be formulated by the State Council.

Article 64 This Law shall be implemented as of October 1, 1996.

Provisions regarding administrative penalty in the regulations and rules, enacted before the promulgation of this Law, that do not comply with the provisions of this Law shall be amended in accordance with the provisions of this Law from the date of promulgation of this Law, and such amendment shall be finished before December 31, 1997.

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