§ 345. Violations, penalties, procedures. 1. Any manufacturer or contractor in the apparel industry who has failed to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have violated this article.

2. Any manufacturer or contractor in the apparel industry who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have violated this article.

3. Any manufacturer or contractor in the apparel industry who contracts for the performance of any apparel industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor who is required to register, but whom the manufacturer or contractor knows has failed to register, failed to renew its registration or has had its registration revoked by the commissioner shall be deemed to have violated this article.

4. (a) The commissioner may impose a civil penalty upon a manufacturer or contractor of up to one thousand five hundred dollars for the initial violation of subdivision one, two or three of this section and up to three thousand dollars for the second or subsequent violation of subdivision one, two or three of this section. Instead of, or in addition to, such civil penalty, the commissioner may assess and collect an administrative penalty of not more than two hundred fifty dollars for the first violation and of not more than five hundred dollars for each subsequent violation. No administrative penalty shall be levied pursuant to this paragraph unless the commissioner provides the violator with notification of the violation and of the penalty by certified mail and with an opportunity to request a hearing within fifteen days following receipt of such notice. If a hearing is requested, the commissioner may issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, such notice shall become a final order upon the expiration of such fifteen-day period. Payment of such administrative penalty is due when a final order is issued or when the notice becomes a final order. Any administrative penalty imposed

pursuant to this paragraph may be recovered with costs upon an appeal to the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules and upon a final determination that the finding of the commissioner was in error. Any civil or administrative penalty paid pursuant to this subdivision shall be applied to enforcement and administrative costs of the special task force. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of previous violations of this article and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) The order imposing such civil penalty may be served personally or by certified mail. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivision one, two or three of this section alleged to have been violated.

5. (a) An order issued under this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

(b) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. If any manufacturer or contractor shall have failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

7. (a) No manufacturer or contractor shall perform services or hold itself out as being able to perform services as a registered manufacturer unless such manufacturer or contractor holds a valid registration pursuant to this article. The intentional failure of an apparel manufacturer or contractor to comply with the registration requirements of section three hundred forty-one of this article shall be a class B misdemeanor. The officers and agents of any corporation who knowingly permit such corporation to violate the registration requirements of section three hundred forty-one of this article shall be guilty of a class B misdemeanor.

(b) A manufacturer or contractor which knowingly violates paragraph (a) of this subdivision within three years of having been found guilty of violating this subdivision shall be guilty of a class A misdemeanor, as defined in the penal law.

8. (a) The commissioner may, after a hearing thereon, require, as a condition of continued registration, the payment of a surety bond or may revoke the registration of any manufacturer or contractor for any period ranging from thirty days to one year upon being found guilty of a second violation of the same provision of this article within any two-year period. In assessing whether to require a surety bond or revoke such registration, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of previous violations and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) Such surety bond shall be payable to the state and shall be for the benefit of production employees damaged by any failure of a manufacturer or contractor to pay wages or benefits or otherwise comply with the provisions of this chapter. Such surety bond shall be in the sum and form that the commissioner shall deem to be necessary to protect such production employees but shall in no case exceed twenty-five hundred dollars per production employee.

9. Any manufacturer or contractor who contracts, for the second time within any three year period, for the performance of any apparel

industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor whom the manufacturer or contractor knows has failed to comply with the registration requirements of section three hundred forty-one of this article shall, if such other manufacturer or contractor has failed to pay any civil penalty assessed under subdivision one of section three hundred forty-five of this article, be liable to pay a civil penalty equal to the civil penalty that such other manufacturer or contractor has been assessed. Nothing herein shall affect the right of any manufacturer to possess or repossess any apparel, or sections or components of apparel, that are located at any contractor with whom it has contracted.

10. (a) Any manufacturer or contractor in the apparel industry who ships, delivers or sells any apparel or sections of apparel; who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article;

(b) Any retailer who sells any apparel or sections of apparel, who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article. Except that no violation of this article shall be deemed to have occurred if the retailer acquired the apparel or sections of apparel without notice from the commissioner of any violations of article six or nineteen of this chapter and with the written or electronically transmitted assurance of such manufacturer or contractor, given before or after production, whether as part of the retailer's vendor approval process, purchase contract requirements, electronically transmitted purchase order acknowledgments or invoices, or otherwise, that such goods would be, or were, produced in compliance with this article or, generally, all applicable laws; and

(c) Subject to the exceptions in paragraph (b) of this subdivision, the supreme court of the state shall have jurisdiction, upon petition of the attorney general, to restrain the shipping, delivery, sale or purchase by any manufacturer, contractor or retailer of apparel or sections of apparel upon a showing that such apparel or sections of apparel were, during the previous one hundred eighty days, produced in violation of article six or nineteen of this chapter or sold in

violation of paragraph (a) or (b) of this subdivision. Such proceeding shall be brought in the county in which the violation is alleged to have taken place. In any such proceeding the court may make allowances to the attorney general provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. In connection with such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.