

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE L. COURT PROFESSIONS REGULATION

CHAPTER 153. COMMISSION ENFORCEMENT

SUBCHAPTER A. GENERAL ENFORCEMENT PROVISIONS

Sec. 153.0001. FILING COMPLAINT. (a) To file a complaint with the commission against a regulated person or another person alleged to have unlawfully engaged in conduct regulated under this subchapter, a person must:

- (1) have personal knowledge of the alleged violation;
- (2) complete a complaint form provided by the commission;
- (3) sign the completed complaint form; and
- (4) attach any pertinent documentary evidence to the complaint form.

(b) On receipt of a properly executed complaint, the commission shall furnish a copy of the complaint and any attachments to the person who is the subject of the complaint.

(c) This section does not preclude the commission, an advisory board of the commission, or a court of this state from filing a complaint.

Added by Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 10, eff. September 1, 2017.

Sec. 153.001. INVESTIGATIONS. The commission may conduct investigations as necessary to enforce the laws administered by the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Sec. 153.002. SUBPOENAS. (a) The commission may issue a subpoena as provided by this section.

(b) The commission may request and, if necessary, compel by subpoena:

(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this subtitle, a law establishing a regulatory program administered by the commission, a rule adopted under this subtitle, or an order issued by the commission or director; and

(2) the attendance of a witness for examination under oath.

(c) A subpoena under this section may be issued throughout this state and may be served by any person designated by the commission or the director.

(d) The commission, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Venue for an action brought under this section is in a district court in:

(1) Travis County; or

(2) any county in which the commission may hold a hearing.

(f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Sec. 153.003. CEASE AND DESIST ORDER. (a) The director may issue a temporary cease and desist order for the duration of an investigation and disciplinary action by the commission if the director determines that the action is necessary to prevent a violation of:

(1) this subtitle;

(2) a law establishing a regulatory program administered by the commission; or

(3) a rule adopted under this subtitle or order issued by the commission or the director.

(b) A cease and desist order may require a person to cease and desist from committing a violation listed under Subsection (a) or from engaging in any practice regulated by the commission as necessary to prevent the violation.

(c) A person to whom a cease and desist order is issued may file a written request for a hearing before the commission. The person must file the hearing request not later than the 10th day after the date of receipt of the order. The commission must conduct the hearing not later than the 30th day after the date of the hearing request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 11, eff. September 1, 2017.

Sec. 153.004. DENIAL, REVOCATION, SUSPENSION, OR REFUSAL TO RENEW; REPRIMAND; PROBATION. (a) The commission may deny, revoke, suspend, or refuse to renew a certification, registration, or license or may reprimand a regulated person for a violation of this subtitle, a law establishing a regulatory program administered by the commission, a rule adopted under this subtitle, or an order issued by the commission or director.

(b) The commission may place on probation a person whose certification, registration, or license is suspended. If a certification, registration, or license suspension is probated, the commission may require the person to:

(1) report regularly to the commission on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or review professional education until

the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

(c) On the commission's motion, or on the recommendation of commission staff, the commission may conduct a hearing to inquire into a suspension. If the commission determines that a person has not corrected the deficiencies that were the grounds of the suspension or has not complied with the conditions imposed by the commission, the commission may revoke or take other disciplinary action against the person's certification, registration, or license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 12, eff. September 1, 2017.

Sec. 153.005. INJUNCTION. (a) The commission may apply to a district court in any county for an injunction to restrain a violation of this subtitle or a rule adopted under this subtitle by a person.

(b) At the request of the commission, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

(c) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

SUBCHAPTER B. ADMINISTRATIVE PENALTY; ADMINISTRATIVE SANCTION

Sec. 153.051. IMPOSITION OF PENALTY. (a) The commission may impose an administrative penalty on a person who violates:

- (1) this subtitle;
- (2) a statute establishing a regulatory program administered by the commission;
- (3) a rule or standard adopted under this subtitle; or
- (4) an order issued by the commission or director under this subtitle.

(b) A proceeding under this subchapter imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction otherwise imposed under this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 13, eff. September 1, 2017.

Sec. 153.052. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) any previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Sec. 153.053. REPORT AND NOTICE OF VIOLATION, PENALTY, AND SANCTION. (a) The commission shall appoint a committee of advisory board members to review a complaint, make the initial written determination on whether a violation occurred, and impose a penalty, a sanction, or both for violations. The committee shall state the committee's written determination as proposed findings of fact and conclusions of law, separately stated.

(b) The committee shall give to the person who is the subject of the complaint reviewed under Subsection (a) written notice by certified mail of the committee's determination on whether a violation occurred and each penalty or sanction, if any.

(c) The notice required under Subsection (b) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of any penalty;
- (3) state any sanction; and
- (4) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, the imposition of the sanction, or any combination.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 13, eff. September 1, 2017.

Sec. 153.054. PENALTY PAID, SANCTION ACCEPTED, OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice sent under Section 153.053, the person in writing may:

(1) accept the determination of the committee appointed under Section 153.053 and the imposition of the penalty or sanction as an agreed order to be presented to the commission; or

(2) request a hearing before the commission on the occurrence of the violation, the imposition or amount of the penalty, the imposition of the sanction, or any combination.

(b) If the person accepts the determination and penalty or sanction as an agreed order, the commission shall review the proposed agreed order and accept, revise, or reject it or remand the matter to the committee for further review. The commission shall give to the person written notice of the commission's determination under this subsection. If the commission revises or rejects the proposed agreed order, the person may:

(1) accept the commission's determination, penalty, or sanction; or

(2) request a hearing not later than the 20th day after the date of receiving notice of the commission's determination.

(c) If the person fails to respond to the notice sent under Section 153.053, the commission may issue a default order to approve the determination of the committee and impose or revise the committee's proposed penalty, sanction, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 13, eff. September 1, 2017.

Sec. 153.055. NOTICE; HEARING. (a) If the person requests a hearing, the commission shall give to the person written notice of the hearing that includes the time, place, legal authority, and jurisdiction under which the hearing is held and the laws and rules related to the violation.

(b) The person may appear, present evidence, and respond to questions from the commission at the hearing.

(c) The commission shall adopt, revise, or reject the committee's findings of fact and conclusions of law and promptly issue an order on the occurrence of the violation, the amount of any penalty imposed, and the imposition of any sanction. The commission shall give the person notice of the order.

(d) On approval of the supreme court, the commission may adopt rules governing the hearing, including rules on appearance by telephone. To the extent not inconsistent with this subchapter or commission rules, the Texas Rules of Civil Procedure, including discovery rules, apply to the hearing, except that the commission may deviate from those rules as necessary for a full and fair adjudication and determination of fact or law.

(e) The presiding officer of the commission may hold prehearing conferences. The presiding officer may issue orders, including scheduling orders, and may designate the discovery control plan or otherwise limit or modify discovery before a hearing.

(f) The notice of the commission's order under Subsection (c) must include a statement of the right of the person to appeal the order under Section [153.058](#).

(g) On request of the commission, at least one member of the applicable advisory board committee shall attend the hearing to consult with the commission on the reasons for the advisory board committee's determination and proposed penalty or sanction under Section [153.053](#)(a).

(h) At the hearing, the commission shall apply the general rules of evidence applicable in a district court, except that the commission may admit and consider any information the commission determines is relevant, trustworthy, and necessary for a full and fair adjudication and determination of fact or law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. [966](#)), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. [1296](#)), Sec. [21.001](#)(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. [43](#)), Sec. 14, eff.

September 1, 2017.

Sec. 153.056. OPTIONS FOLLOWING DECISION: PAY, ACCEPT, OR APPEAL. Not later than the 30th day after the date the order of the commission imposing an administrative penalty or sanction under Section 153.055 becomes final, the person shall:

(1) accept the obligation to pay the penalty or accept the sanction; or

(2) file an appeal of the commission's order contesting the findings of fact, the conclusions of law, the occurrence of the violation, the imposition or amount of the penalty, the imposition of the sanction, or any combination.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 15, eff. September 1, 2017.

Sec. 153.057. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed in accordance with supreme court rules, the penalty may be collected.

(b) The attorney general may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Sec. 153.058. APPEAL OF DECISION. (a) The supreme court

shall adopt rules governing appeals under this subchapter.

(b) The rules must require the appeal to be made to a special committee consisting of three regional presiding judges. If the alleged violation involves a certified guardian, the committee must consist of two regional presiding judges and the presiding judge of the statutory probate courts.

(c) An appeal must be filed not later than the 30th day after the date the commission's order is issued.

(d) The special committee shall consider the appeal under an abuse of discretion standard of review for all issues except issues involving questions of law. The standard of review for issues involving questions of law is de novo.

(e) The special committee may confer in writing with a certification, registration, or license holder who is in the same profession as the person appealing the commission's order if the special committee provides to the person:

(1) notice of the special committee's request for information; and

(2) a copy of the certification, registration, or license holder's response.

(f) If the special committee sustains the finding that a violation occurred, the special committee may:

(1) uphold or reduce the amount of any penalty and order the person to pay the full or reduced amount of the penalty; and

(2) uphold or reduce any other sanction and order the imposition of the sanction.

(g) If the special committee does not sustain the finding that a violation occurred, the special committee shall order that a penalty is not owed and that a sanction may not be imposed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 16, eff.

September 1, 2017.

Sec. 153.059. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the special committee, the special committee shall order that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the special committee becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 1.01, eff. September 1, 2014.

Redesignated from Government Code, Subtitle K, Title 2 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(21), eff. September 1, 2015.

Sec. 153.060. REISSUANCE OF CERTIFICATE, REGISTRATION, OR LICENSE. (a) The commission may reissue a certificate, registration, or license that has been revoked or that the commissioner has refused to renew as a disciplinary sanction if the individual who was subject to the revocation or nonrenewal applies in writing to the commission and establishes good cause to justify reissuance of the certificate, registration, or license. The applicant has the burden of proving:

(1) the correction of the grounds for the revocation or the commission's refusal to renew the certificate, registration, or license;

(2) good faith efforts to correct, resolve, or otherwise cure the damages arising from the grounds for the revocation or the refusal to renew the certificate, registration, or license;

(3) that reissuance would not pose a threat to public health, safety, and welfare; and

(4) any other rehabilitative efforts.

(b) The commission may impose conditions on the revocation or refusal to renew a certificate, registration, or license that may include:

(1) prohibiting a person from applying for reissuance for a specified period; and

(2) imposing some or all prerequisites for initial certification, registration, or licensure as a prerequisite for reissuance.

(c) The commission may impose appropriate probationary conditions for a specified period on the practice of a person whose certificate, registration, or license is reissued.

Added by Acts 2017, 85th Leg., R.S., Ch. 516 (S.B. 43), Sec. 17, eff. September 1, 2017.