

INSURANCE CODE

TITLE 2. TEXAS DEPARTMENT OF INSURANCE

SUBTITLE B. DISCIPLINE AND ENFORCEMENT

CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 83.001. DEFINITIONS. In this chapter:

(1) "Authorized person" means an individual or entity described by Section 83.002.

(2) "Emergency" means a sudden, urgent occurrence that requires immediate action.

(3) "Unauthorized person" means an individual or a corporation, association, partnership, or other artificial person who directly or indirectly does an act of insurance business that is:

(A) described by Section 101.051 or 101.052; and

(B) not done in accordance with specific authorization of law.

(4) "Unfair act" means an unfair method of competition, an unfair or deceptive act or practice, or an unfair claim settlement practice as defined under Chapter 541 or 542 or a rule adopted under either chapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 19, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.003, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.011, eff. April 1, 2009.

Sec. 83.002. APPLICATION OF CHAPTER.

(a) This chapter applies to each company regulated by the commissioner, including:

(1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(2) a domestic or foreign, stock or mutual, fire or

casualty insurance company;

- (3) a Mexican casualty company;
- (4) a domestic or foreign Lloyd's plan insurer;
- (5) a domestic or foreign reciprocal or interinsurance exchange;
- (6) a domestic or foreign fraternal benefit society;
- (7) a domestic or foreign title insurance company;
- (8) a stipulated premium insurance company;
- (9) a nonprofit legal service corporation;
- (10) a statewide mutual assessment company;
- (11) a local mutual aid association;
- (12) a local mutual burial association;
- (13) an association exempt under Section [887.102](#);
- (14) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter [842](#);
- (15) a county mutual insurance company; and
- (16) a farm mutual insurance company.

(b) This chapter also applies to:

- (1) an agent of an entity described by Subsection (a);
- and
- (2) an individual or a corporation, association, partnership, or other artificial person who:
 - (A) is engaged in the business of insurance;
 - (B) holds a permit, certificate, registration, license, or other authority under this code; or
 - (C) is regulated by the commissioner.

(c) This chapter also applies to:

- (1) a person appointed as a qualified inspector under Section [2210.254](#); and
- (2) a person acting as a qualified inspector under Section [2210.254](#) without being appointed as a qualified inspector under either of those sections.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 20, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.004, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.012, eff. April 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 1, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 8, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.003, eff. September 1, 2017.

Sec. 83.003. RULES. The commissioner may adopt reasonable rules to implement this chapter, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.004. PROCEEDINGS UNDER OTHER LAW. The commissioner may proceed solely under this chapter or under this chapter in conjunction with other applicable law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE OF ORDERS

Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER. (a) The commissioner ex parte may issue an emergency cease and desist order if:

(1) the commissioner believes that:

(A) an authorized person engaging in the business of insurance is:

(i) committing an unfair act; or

(ii) in a hazardous condition or a hazardous financial condition under Section 843.406 or Subchapter A, Chapter 404, as determined by the commissioner; or

(B) an unauthorized person:

(i) is engaging in the business of insurance in violation of Chapter 101 or in violation of a rule adopted under that chapter; or

(ii) is engaging in the business of insurance in violation of Chapter 101 and is committing an unfair act; and

(2) it appears to the commissioner that the alleged conduct:

(A) is fraudulent;

(B) is hazardous or creates an immediate danger to the public safety; or

(C) is causing or can be reasonably expected to cause public injury that:

(i) is likely to occur at any moment;

(ii) is incapable of being repaired or rectified; and

(iii) has or is likely to have influence or effect.

(b) An order is final on the 31st day after the date it is received, unless the affected person requests a hearing under Section 83.053.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.013, eff. April 1, 2009.

Sec. 83.052. NOTICE. (a) On issuance of an order under Section 83.051, the commissioner shall serve on the affected person an order that:

(1) contains a statement of the charges; and

(2) requires the person immediately to cease and desist from the acts, methods, or practices stated in the order.

(b) The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.053. REQUEST FOR HEARING. (a) A person affected by an order is entitled to request a hearing to contest the order.

(b) The affected person must request the hearing not later

than the 30th day after the date on which the person receives the order required by Section 83.052.

(c) A request to contest an order must:

- (1) be in writing;
- (2) be directed to the commissioner; and
- (3) state the grounds for the request to set aside or modify the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.054. HEARING. (a) On receiving a request for a hearing under Section 83.053, the commissioner shall serve notice of the time and place of the hearing.

(b) The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code. The hearing must be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

(c) At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed.

(d) Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall affirm, modify, or set aside in whole or in part the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.055. EFFECT OF ORDER PENDING HEARING. Pending a hearing under this subchapter, an order continues in effect unless the order is stayed by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. ENFORCEMENT

Sec. 83.101. AUTHORITY OF COMMISSIONER. If the commissioner reasonably believes that a person has violated an order issued under this chapter, the commissioner may:

- (1) initiate proceedings under this subchapter to impose an administrative penalty or direct restitution;

(2) refer the matter to the attorney general for enforcement;

(3) initiate a proceeding to revoke the person's certificate of authority; or

(4) pursue another action the commissioner considers appropriate under applicable law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.102. DETERMINATION OF VIOLATION. In determining whether an order has been violated, the commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.103. HEARING ON ADMINISTRATIVE PENALTY. (a) If the commissioner pursues action to impose an administrative penalty under Section [83.101\(1\)](#), the commissioner shall serve on the person notice of the time and place of a hearing to be held not earlier than the 21st day after the date the notice is received.

(b) The notice must contain a statement of the facts or conduct alleged to violate the order.

(c) The commissioner shall serve the notice by registered or certified mail, return receipt requested, to the person's last known address.

(d) The hearing is subject to the procedures for contested cases under Chapter [2001](#), Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.104. IMPOSITION OF ADMINISTRATIVE PENALTY; RESTITUTION. (a) After a hearing, if the commissioner determines that an order has been violated, the commissioner may:

(1) impose an administrative penalty of \$25,000 for each act of violation;

(2) direct the person against whom the order was issued to make complete restitution to each Texas resident, Texas insured, and entity operating in this state that is harmed by the violation; or

(3) impose the penalty and direct restitution.

(b) A person directed to make restitution shall make the restitution in the form and amount and within the period determined by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.105. FAILURE TO PAY PENALTY. If a person fails to pay a penalty assessed under this subchapter, the commissioner may:

(1) refer the matter to the attorney general for enforcement; or

(2) cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued under this code as provided by Chapter 82.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. JUDICIAL REVIEW; JUDICIAL ACTION

Sec. 83.151. APPEAL. A person affected by an order of the commissioner under Section 83.051 or 83.104 may appeal the order by filing suit in a district court in Travis County not later than the 20th day after the date of the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.152. EFFECT OF PETITION ON ORDER OR RELATED DECISION. A petition for appeal filed under Section 83.151 does not stay or vacate an order or a decision made under Subchapter B unless the court, after hearing, issues an order that specifically stays or vacates the order or decision.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.153. JUDICIAL ACTION FOR ENFORCEMENT OF ORDER; ATTORNEY'S FEES. The department may recover reasonable attorney's fees if judicial action is necessary to enforce an order issued under Section 83.051 or 83.104.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.