

SUBCHAPTER H. EMERGENCY CEASE AND DESIST ORDERS
28 TAC §§1.901 - 1.911

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend the title of 28 TAC Chapter 1, Subchapter H, and §§1.901, 1.903, and 1.905 and repeal 28 TAC §§1.902, 1.904, and 1.906 - 1.911, concerning emergency cease and desist orders. The proposed amendments and repeals implement §§3 - 5 of Senate Bill 1809, 87th Legislature, 2021, and House Bill 1461, 73rd Legislature, 1993.

EXPLANATION. As it relates to emergency cease and desist orders, SB 1809 (1) establishes different criteria for issuing orders against authorized and unauthorized persons, (2) extends the deadline to the 60th day after the order is served for an affected person to request a hearing, (3) requires TDI to docket the case with the State Office of Administrative Hearings within 30 days of receiving the hearing request, and (4) requires the person requesting the hearing to show why the order should not be affirmed. HB 1461 shifted most of the Board of Insurance's authority to the Commissioner of Insurance on September 1, 1993, including the authority to issue emergency cease and desist orders.

The proposed amendment to the title of Subchapter H adds the word "Emergency" before the current words "Cease and Desist Orders," to clarify that the subchapter applies to emergency cease and desist orders issued under the Commissioner's authority granted in Insurance Code Chapter 83. Amendments to §§1.901, 1.903, and 1.905 align these sections with current statutes and update agency name references. And the repeal of §§1.902, 1.904, and 1.906 - 1.911 removes sections that are outdated, obsolete, or unnecessary.

The proposed amendments to and repeal of the sections are described in the following paragraphs.

Section 1.901. Amendments to §1.901 replace "State Board of Insurance" with "Texas Department of Insurance" to reflect the agency's current name and capitalize the phrase "commissioner of insurance" to conform with the agency's current style.

Section 1.903. Amendments to §1.903:

- align the required contents for an order with the current statutory criteria for issuing emergency cease and desist orders;

- insert the phrase "emergency cease and desist" before the word "order" in the section's title and the first sentence of the section;

- replace the existing language "person against whom the order is entered" with the phrase "affected person" throughout the section to reflect the statutory language;

- change the text of current paragraph (2) to update the language so that it fully addresses conduct that could support issuing a cease and desist order under Insurance Code §83.051;

- copy the language from current paragraph (5) into a new paragraph (3), with modifications to improve its clarity;

- incorporate the existing language of paragraph (3) into a new paragraph (4), breaking the text into subparagraphs (A), (B), and (C) and revising it for clarity and consistency with Insurance Code §83.053 and the other proposed amendments; and

- redesignate existing paragraph (4) as paragraph (5) and revise it for clarity and consistency with the other proposed amendments.

Section 1.905. An amendment to §1.905 changes the deadline for an affected person to request a hearing to the 60th day after the order is served, to reflect the timeframe provided by Insurance Code §83.053. Another amendment requires TDI's chief clerk, rather than the affected person, to provide a copy of the hearing request to TDI staff. In addition, the proposed amendments change nonsubstantive editorial and

formatting elements to conform the section to the agency's current style and to improve clarity. Also, the phrase "emergency cease and desist" is inserted before the word "order" and "State Board of Insurance" is replaced with "Texas Department of Insurance."

Repeal of §§1.902, 1.904, and 1.906 - 1.911. TDI repeals §§1.902, 1.904, and 1.906 - 1.911 because they are outdated, obsolete, or unnecessary.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Leah Gillum, deputy commissioner of the Fraud and Enforcement Division, has determined that during each year of the first five years the proposed amendments and repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by the statute. Ms. Gillum made this determination because the amendments and repeals as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with them.

Ms. Gillum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and repeals are in effect, Ms. Gillum expects that administering them will have the public benefit of ensuring that TDI's rules are accurate and transparent by reflecting the current Insurance Code §§83.051, 83.053, and 83.054 and including updated Insurance Code citations and the current state agency name.

Ms. Gillum does not expect that the proposed amendments and repeals will impose new economic costs on persons required to comply with them. Any associated costs are due to statute or other current regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments and repeals will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if there was a cost, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendments to §§1.901, 1.903, and 1.905 are necessary to implement legislation. The proposed amendments implement HB 1461 and SB 1809.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments and repeals are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand or limit an existing regulation, but will repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rules' applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 23, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on May 23, 2022. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER H. CEASE AND DESIST ORDERS
28 TAC §§1.902, 1.904, and 1.906 - 1.911

STATUTORY AUTHORITY. TDI proposes to repeal §§1.902, 1.904, and 1.906 - 1.911 under Insurance Code §83.003 and §36.001.

Insurance Code §83.003 provides that the Commissioner may adopt reasonable rules to implement Chapter 83.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §1.907 implements SB 1809, 87th Legislature, 2021. The proposed repeal of §1.911 implements HB 1461, 73rd Legislature, 1993. The proposed repeal of §§1.902, 1.904, 1.906, and 1.908 - 1.910 implement Insurance Code Chapter 83.

TEXT.

§1.902. Criteria for Issuance of Emergency Cease and Desist Orders.

§1.904. Service of Emergency Cease and Desist Orders.

§1.906. When the Hearing Must Be Held.

§1.907. Agreements To Hold the Hearing at a Later Date.

§1.908. Notice of Hearing on Emergency Cease and Desist Orders.

§1.909. Burden of Proof.

§1.910. Motion for Stay.

§1.911. Appeal to the Board.

**SUBCHAPTER H. CEASE AND DESIST ORDERS
28 TAC §§1.901, 1.903, and 1.905.**

STATUTORY AUTHORITY. TDI proposes amendments to the title of 28 TAC Chapter 1, Subchapter H, and to §§1.901, 1.903, and 1.905 under Insurance Code §83.003 and §36.001.

Insurance Code §83.003 provides that the Commissioner may adopt reasonable rules to implement Chapter 83.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter H of 28 TAC Chapter 1 implements Insurance Code Chapter 83. Section 1.901 implements Insurance Code §83.051(a). Section 1.903 implements Insurance Code §83.052. Section 1.905 implements Insurance Code §83.053.

TEXT.

SUBCHAPTER H. EMERGENCY CEASE AND DESIST ORDERS

§1.901. Issuance of Emergency Cease and Desist Orders.

The Commissioner [~~commissioner~~] of Insurance [~~insurance~~] may issue an emergency cease and desist order, ex parte, upon application by the staff of the Texas Department [~~State Board~~] of Insurance.

§1.903. Contents of the Emergency Cease and Desist Order.

An emergency cease and desist [~~The~~] order will [~~must~~] contain the following [~~information~~]:

(1) the name and last known address of the affected person [~~against whom the order is entered~~];

(2) a short and plain statement of the [~~immediate danger to the public safety, or of the~~] alleged conduct that supports issuing the order under Insurance Code §83.051 [~~which is causing or which is reasonably expected to cause significant, imminent,~~

~~and irreparable public injury justifying the issuance of the order, and of the factual bases of the order];~~

(3) a requirement that the affected person immediately cease and desist from the described conduct, acts, methods, or practices;

(4) [(3)] a statement of the rights of the affected person to request [against whom the order is entered with regard to requesting] a hearing to contest the order. [show that the cease and desist order should not be affirmed. (] This statement will [must] include;

(A) [a reference to] the specific statutes or rules found to have been violated; [;]

(B) a statement of [the] legal authority and jurisdiction under which the order is issued; [;]

(C) [specific reference to] the time limit for requesting a hearing to contest [review] the order, including citation to Insurance Code Chapter 83 and this subchapter;

(D) notice [and reference to the statute or statutes in which the time limit is contained. This statement must include the fact] that the burden of requesting the hearing is on the affected person [against whom the order was entered]; and

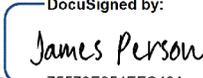
(5) [(4)] a statement of the penalties that [which] may be assessed against the affected person if the affected person violates the order. [against whom the order was entered in the event of violation of the order; and]

~~[(5) a requirement that the person against whom the order is entered immediately cease and desist from the acts, methods, or practices stated.]~~

§1.905. Request for Hearing on Emergency Cease and Desist Orders.

A person who is ~~[adversely]~~ affected by the issuance of an emergency ~~[a]~~ cease and desist order and who desires a hearing regarding such order must file a written request for hearing with the chief ~~[docket]~~ clerk of the Texas Department ~~[hearings section of the State Board]~~ of Insurance no later than the 60th ~~[30th]~~ day after the date on which the person is served ~~[receives]~~ the order. The chief clerk will send a copy of the request to the TDI staff attorney responsible for representing TDI at the hearing. ~~[person filing the written request for hearing must send copies of the request for hearing to the commissioner of insurance, to the attention of the docket clerk of the hearings section, with copies sent to the staff of the State Board of Insurance, if known.]~~

Issued in Austin, Texas, on April 6, 2022.

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James Person, General Counsel
Texas Department of Insurance