

**SUBCHAPTER H. EMERGENCY CEASE AND DESIST ORDERS**  
**REPEAL OF 28 TAC §§1.902, 1.904, 1.906 - 1.911**  
**28 TAC §§1.901, 1.903, and 1.905**

**INTRODUCTION.** The Commissioner of Insurance adopts the repeal of 28 TAC §§1.902, 1.904, and 1.906 - 1.911; the amended subchapter title for 28 TAC Chapter 1, Subchapter H; and amendments to 28 TAC §§1.901, 1.903, and 1.905, concerning emergency cease and desist orders. The Commissioner adopts the amended subchapter title for 28 TAC Chapter 1, Subchapter H; the repeal of §§1.902, 1.904, 1.906 - 1.911; and the amendments to §1.901 without changes to the proposed text and the amendments to §1.903 and §1.905 with nonsubstantive changes to the proposed text, which was published in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2107). The Texas Department of Insurance (TDI) revised §1.903 to correct a grammatical error and §1.905 to clarify a reference to TDI.

**REASONED JUSTIFICATION.** The amendments to §§1.901, 1.903, and 1.905 and repeal of §§1.902, 1.904, and 1.906 - 1.911 are necessary to implement §§3 - 5 of Senate Bill 1809, 87th Legislature, 2021, and House Bill 1461, 73rd Legislature, 1993.

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 State 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 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 And the repeal of §§1.902, 1.904, and 1.906 - 1.911 removes sections that are outdated, obsolete, or unnecessary.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 amendments to 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), (C), and (D) 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.

The adopted text has been changed from the text as proposed by inserting the word "and" at the end of paragraph (4)(C).

**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."

The adopted text has been changed from the text as proposed by clarifying a reference to the Texas Department of Insurance.

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed amendments and repeals.

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

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments 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.

**TEXT.**

**§1.901. Issuance of Emergency Cease and Desist Orders.**

The Commissioner of Insurance may issue an emergency cease and desist order, ex parte, upon application by the staff of the Texas Department of Insurance.

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

An emergency cease and desist order will contain the following:

- (1) the name and last known address of the affected person;
- (2) a short and plain statement of the alleged conduct that supports issuing the order under Insurance Code §83.051;
- (3) a requirement that the affected person immediately cease and desist from the described conduct, acts, methods, or practices;
- (4) a statement of the rights of the affected person to request a hearing to contest the order. This statement will include:
  - (A) the specific statutes or rules found to have been violated;

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

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

(D) notice that the burden of requesting the hearing is on the affected person; and

(5) a statement of the penalties that may be assessed against the affected person if the affected person violates the order.

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

A person who is affected by the issuance of an emergency cease and desist order and who desires a hearing regarding such order must file a written request for hearing with the chief clerk of the Texas Department of Insurance no later than the 60th day after the date on which the person is served the order. The chief clerk will send a copy of the request to the staff attorney responsible for representing the Texas Department of Insurance at the hearing.

**SUBCHAPTER H. EMERGENCY CEASE AND DESIST ORDERS.**

**Repeal of 28 TAC §§1.902, 1.904, and 1.906 - 1.911.**

**STATUTORY AUTHORITY.** The Commissioner adopts the repeal of §§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.

**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.**

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on July 21, 2022.

DocuSigned by:  
  
75578E954EFC48A...  
James Person, General Counsel  
Texas Department of Insurance

# 2022-7388

TITLE 28. INSURANCE  
Part I. Texas Department of Insurance  
Chapter 1. General Administration

Adopted Sections and Repeals  
Page 7 of 7

The Commissioner adopts the amended subchapter title for 28 TAC Chapter 1, Subchapter H; amendments to 28 TAC §§1.901, 1.903, and 1.905; and repeal of 28 TAC §§1.902, 1.904, and 1.906 - 1.911.

DocuSigned by:  
  
FC5D7EDDFFBB4F8...  
Cassie Brown  
Commissioner of Insurance

Commissioner's Order No. 2022-7388