



Ohio Revised Code

Section 3901.22 Hearings on violation - orders - administrative remedies.

Effective: September 1, 2002

Legislation: Senate Bill 129 - 124th General Assembly

(A) The superintendent of insurance may conduct hearings to determine whether violations of section 3901.20 of the Revised Code have occurred. Any person aggrieved with respect to any act that the person believes to be an unfair or deceptive act or practice in the business of insurance, as defined in section 3901.21 or 3901.211 of the Revised Code or in any rule of the superintendent, may make written application to the superintendent for a hearing to determine if there has been a violation of section 3901.20 of the Revised Code. The application shall specify the grounds to be relied upon by the applicant. If the superintendent finds that the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the superintendent shall hold a hearing to determine whether the act specified in the application is a violation of section 3901.20 of the Revised Code. Notice of any hearing held under the authority of this section, the conduct of the hearing, the orders issued pursuant to it, the review of the orders and all other matters relating to the holding of the hearing shall be governed by Chapter 119. of the Revised Code.

(B) Upon good cause shown, the superintendent shall permit any person to intervene, appear, and be heard at the hearing, either in person or by counsel.

(C) The superintendent shall send a copy of the order to those persons intervening in the hearing.

(D) If the superintendent, by written order, finds that any person has violated section 3901.20 of the Revised Code, the superintendent shall issue an order requiring that person to cease and desist from engaging in the violation. In addition, the superintendent may impose any or all of the following administrative remedies upon the person:

(1) The superintendent may suspend or revoke the person's license to engage in the business of insurance;

(2) The superintendent may order that an insurance company or insurance agency not employ the



person or permit the person to serve as a director, consultant, or in any other capacity for such time as the superintendent determines would serve the public interest. No application for termination of such an order for an indefinite time shall be filed within two years of its effective date.

(3) The superintendent may order the person to return any payments received by the person as a result of the violation;

(4) If the superintendent issues an order pursuant to division (D)(3) of this section, the superintendent shall order the person to pay statutory interest on such payments.

If the superintendent does not issue orders pursuant to divisions (D)(3) and (4) of this section, the superintendent shall expressly state in the cease-and-desist order the reasons for not issuing such orders.

(5) The superintendent may order the person to pay to the state treasury for credit to the department's operating fund an amount, not in excess of one hundred thousand dollars, equal to one-half of the expenses reasonably incurred by the superintendent to retain attorneys, actuaries, accountants, and other experts not otherwise a part of the superintendent's staff to assist directly in the conduct of any investigations and hearings conducted with respect to violations committed by the person.

(E) If the superintendent has reasonable cause to believe that an order issued pursuant to division (D) of this section has been violated in whole or in part, the superintendent may, unless such order is stayed by a court of competent jurisdiction, request the attorney general to commence and prosecute any appropriate action or proceeding in the name of the state against the person.

Such action may include, but need not be limited to, the commencement of a class action under Civil Rule 23 on behalf of policyholders, subscribers, applicants for policies or contracts, or other insurance consumers for damages caused by or unjust enrichment received as a result of the violation.

(F) In addition to any penalties imposed pursuant to this chapter, the court may, in an action brought pursuant to division (E) of this section, impose any of the following:



(1) For each act or practice found to be in violation of section 3901.20 of the Revised Code, a civil penalty of not more than three thousand five hundred dollars for each violation but not to exceed an aggregate penalty of thirty-five thousand dollars in any six-month period, provided that a series of similar acts or practices prohibited by section 3901.20 of the Revised Code and committed by the same person but not in separate insurance sales transactions shall be considered a single violation;

(2) For each violation of a cease and desist order issued by the superintendent pursuant to this section, a civil penalty of not more than ten thousand dollars;

(3) In addition to any other appropriate relief, the court may order any or all of the remedies specified in division (D) of this section.

(G) The superintendent, under a settlement agreement to which a person has consented in writing for the purpose of assuring the person's correction of a series of offenses and future compliance with the laws of this state relating to the business of insurance, may impose a single penalty in whatever amount the parties determine to be justified under the circumstances.

(H) A court of common pleas, in a civil action commenced by the attorney general on behalf of the superintendent under Civil Rule 65, may grant a temporary restraining order, preliminary injunction, or permanent injunction to restrain or prevent a violation or threatened violation of any provision of section 3901.20 of the Revised Code, if the court finds that the defendant has violated, is violating, or is threatening to violate such provision, that immediate and irreparable injury, loss, or damage will result if such relief is not granted, and that no adequate remedy at law exists to prevent such irreparable injury, loss, or damage.

(I) If the superintendent's position in initiating a matter in controversy pursuant to this section and section 3901.221 of the Revised Code was not substantially justified, upon motion of the person who prevailed in the hearing or in the appropriate court, if an adjudication order was appealed or a civil action was commenced, the superintendent or the court shall order the department of insurance to pay such person an amount, not in excess of one hundred thousand dollars, equal to one-half of the expenses reasonably incurred by the person in connection with the related proceedings. An award pursuant to this division may be reduced or denied if special circumstances make an award unjust or



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if the person engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy. If the department does not pay such award or no such funds are available, the award shall be treated as if it were a judgment under Chapter 2743. of the Revised Code and be payable in accordance with the procedures specified in section 2743.19 of the Revised Code, except that interest shall not be paid in relation to the award.