

[215 Ill. Comp. Stat. §§ 5/401 through 5/401.5.]

§§ 5/401 through 5/401.5: Director of Insurance, Hearings and Review

§ 401. General powers of the director.

The Director is charged with the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of this State. He shall have the power

- (a) to make reasonable rules and regulations as may be necessary for making effective such laws;
- (b) to conduct such investigations as may be necessary to determine whether any person has violated any provision of such insurance laws;
- (c) to conduct such examinations, investigations and hearings in addition to those specifically provided for, as may be necessary and proper for the efficient administration of the insurance laws of this State; and
- (d) to institute such actions or other lawful proceedings as he may deem necessary for the enforcement of the Illinois Insurance Code or of any Order or action made or taken by him under this Code. The Attorney General, upon request of the Director, may proceed in the courts of this State to enforce an Order or decision in any court proceeding or in any administrative proceeding before the Director.

Whenever the Director is authorized or required by law to consider some aspect of criminal history record information for the purpose of carrying out his statutory powers and responsibilities, then, upon request and payment of fees in conformance with the requirements of Section 2605-400 of the Department of State Police Law (20 ILCS 2605/2605-400), the Department of State Police is authorized to furnish, pursuant to positive identification, such information contained in State files as is necessary to meet the requirements of such authorization or statutes.

§ 401.1.

(1) This Section applies to all companies and persons subject to examination by the Director, or purporting to do insurance business in this State, or in the process of organization with intent to do such business therein, or for whom a Certificate of Authority is required for the transaction of business, or whose Certificate of Authority is revoked or suspended.

(2) Whenever it appears to the Director that any person or company subject to this Code is conducting its business and affairs in such a manner as to threaten to render it insolvent, or that it is in a hazardous condition, or is conducting its business and affairs in a manner which is hazardous to its policyholders, creditors or the public, or that it has committed or engaged in, or is committing or engaging in, any unlawful act, or any act, practice or transaction which under any provision of this Code would constitute ground rendering the person subject to conservation, liquidation or rehabilitation proceedings and that irreparable loss and injury to the property and business of a person or company has occurred or may occur unless the Director acts immediately, the Director may, without notice, and before hearing, issue and cause to be served

upon such person or company an order requiring such person or company to forthwith cease and desist from engaging further in the acts, practices or transactions which are causing such conduct, condition or ground to exist.

(3) At the same time an order is served pursuant to paragraph (2) of this Section, the Director must issue and also serve upon the person or company a notice of hearing to be held at a time and place fixed therein which may not be less than 20 or more than 30 days after the service thereof. The notice must contain a statement of the conduct, condition or ground which the Director deems violative of the provisions of this Section.

(4) If, after hearing as provided by paragraph (3) of this Section, any of the statements as to conduct, conditions or grounds in the notice are found to be true, the Director may make such order or orders as may be reasonably necessary to correct, eliminate or remedy such conduct, conditions or grounds.

(5) Any person or company subject to an order pursuant to this Article is entitled to judicial review of the order in accordance with the provisions of the Administrative Review Law.

(6) If any person or company violates or fails to comply with any order of the Director or any part thereof which as to such person has become final and is still in effect, the Director may, after a hearing and notice at which it is determined that a violation of such order has been committed, further order that:

(a) Such person shall forfeit and pay to the State of Illinois a sum not to exceed \$100 per day for each and every day that such violation or failure to comply shall continue, but in no event to exceed a maximum amount of \$5,000. Such liability shall be enforced in an action brought in any court of competent jurisdiction by the Director in the name of the people of the State of Illinois; and

(b) Proceedings be commenced to revoke or suspend any license or Certificate of Authority held by such person under this Code, in accordance with the procedures provided therefor.

(7) The powers vested in the Director by this Section are additional to any and all other powers and remedies vested in the Director by law, and nothing herein shall be construed as requiring that the Director shall employ the powers conferred herein instead of or as a condition precedent to the exercise of any other power or remedy vested in the Director.

(8) Any order or notice of the Director hereunder may be served on any person, in the same manner and with the same effect as provided for in civil actions in a Circuit Court of this State.

§ 401.3. Advisory council; powers and duties.

There is created within the Department an advisory council to review and make recommendations to the Department regarding rules to be adopted with respect to continuing education courses for which the approval of the Department is required under the provisions of this Code. In addition, the advisory council shall make recommendations to the Department regarding rules with respect to course materials, curriculum, and credentials of instructors.

The advisory council shall be comprised of 7 members appointed by the Director. One member shall be an educational instructor who has regularly provided educational offerings for more than 5 out of the last 10 years to individuals licensed under this Code. Three members shall be recommended by the leadership of 3 statewide trade organizations whose memberships are primarily composed of individuals licensed under this Code, none of which may come from the same organization. Three members shall represent a domestic company.

The members' terms shall be 3 years or until their successors are appointed, and the expiration of their terms shall be staggered. No individual may serve more than 3 consecutive terms.

The Director shall appoint an employee of the Department to serve as the chairperson of the advisory council, ex officio, without a vote.

Four voting advisory council members shall constitute a quorum. A quorum is necessary for all advisory council decisions and recommendations.

§ 401.5. Investigation of insurance law violations.

(a) If the Director of Insurance has cause to believe that a person has engaged in, or is engaging in, an act, activity, or practice that constitutes a business offense, misdemeanor, or felony violation of the Illinois Insurance Code or related insurance laws, he or she shall designate appropriate investigators or agents to investigate the violations. For purposes of carrying out investigations under this Section, the Department of Insurance is deemed a criminal justice agency under all federal and State laws and regulations, and as such shall have access to any information that concerns or relates to a violation of the Illinois Insurance Code or related insurance laws and that is available to criminal justice agencies.

(b) The Director of Insurance may transmit or receive written or oral information relating to possible violations of the insurance laws of this State received by or from any other criminal justice agencies, whether federal, State, or local, if, in the opinion of the Director, the transmittal is appropriate and may further the effective prevention of criminal activities.

(c) The Department of Insurance's papers, documents, reports, or evidence relevant to the subject of an investigation under this Section is not subject to public inspection for so long as the Department deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relevant to the subject of an investigation under this Section is not subject to subpoena until opened for public inspection by the Department, unless the Department consents, or until, after notice to the Department and a hearing, the court determines the Department would not be unnecessarily hindered by the subpoena. No officer, agent, or employee of the Department is subject to subpoena in civil actions by a court of this State to testify concerning a matter of which they have knowledge under a pending insurance fraud investigation by the Department.

(d) No insurer, or employees or agents of an insurer, are subject to civil liability for libel or otherwise by virtue of furnishing information required by the insurance laws of this State or required by the Department of Insurance as a result of its investigation. No cause of action exists and no liability may be imposed, either civil

or criminal, against the State, the Director, any officer, agent, or employee of the Department of Insurance, or individuals employed or retained by the Director, for an act or omission by them in the performance of a power or duty authorized by this Section, unless the act or omission was performed in bad faith and with intent to injure a particular person.

(e) The powers vested in the Director by this Section are additional to other powers and remedies vested in the Director by law, and nothing in this Section shall be construed as requiring that the Director shall employ the powers conferred in this Section instead of or as a condition precedent to the exercise of any other power or remedy vested in the Director. The Director may establish systems and procedures for carrying out investigations under this Section as are necessary to avoid the impairment or compromise of his or her authority under this Section or any other law relating to the regulation of insurance.