



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.)*

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 9. Rates and Rating and Other Organizations [1850.4 - 1861.16] (*Chapter 9 added by Stats. 1947, Ch. 805.)*

ARTICLE 7. Hearings, Procedure and Judicial Review [1858 - 1858.7] (*Article 7 added by Stats. 1947, Ch. 805.)*

1858. (a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization, may file a written complaint with the commissioner requesting that the commissioner review the manner in which the rate, plan, system, or rule has been applied with respect to the insurance afforded to that person. In addition, the aggrieved person may file a written request for a public hearing before the commissioner, specifying the grounds relied upon.

(b) The commissioner shall advise the insurer or rating organization that a complaint has been filed against it and the nature of the complaint and provide the insurer or rating organization with an opportunity to respond to the complaint.

(c) If the commissioner has information concerning a similar complaint, he or she may deny the request for a public hearing until a determination is made or a public hearing is held on the similar complaint or may consolidate similar complaints for determination or public hearing. If he or she believes, after review and investigation of the facts alleged in the complaint and the facts alleged in any response to the complaint, that probable cause for the complaint does not exist or that the complaint is not made in good faith, he or she shall so advise the complainant and shall deny any request made for a public hearing. If he or she believes, after review and investigation of the facts alleged in the complaint and the facts alleged in any response to the complaint, that probable cause for the complaint does exist, that the complaint charges a violation of this chapter, and that the complainant would be aggrieved if the violation is proven, he or she shall proceed as provided in Section 1858.1 unless the complaint was accompanied by a request for public hearing, in which case he or she shall proceed as provided in Section 1858.2.

(d) Nothing in this section prohibits or limits the right of any aggrieved person, either prior to or in conjunction with the filing of a written complaint with the commissioner under this section, from requesting an insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to the insurance afforded to that person.

(Amended by Stats. 1987, Ch. 1289, Sec. 1.)

1858.01. (a) Whenever a written complaint has been filed with the commissioner, the commissioner shall review and investigate the matter complained of as provided by Section 1858 and shall make a determination whether there is probable cause to believe that a violation of this chapter has occurred. This determination shall be made within a reasonable time, but in no event more than 60 days after the complaint regarding a policy in a personal line of insurance or 90 days in the case of a policy in a class of commercial insurance is filed unless the complainant consents to a greater time or unless the complainant enters into informal conciliation of the complaint. The time and location of the conciliation shall be mutually agreeable to the complainant and to the insurer.

(b) Whenever a written complaint is accompanied by written request for a public hearing, the commissioner shall review and investigate the matter complained of as provided in Section 1858 and shall grant or deny the request for a public hearing within a reasonable time, but in no event more than 90 days when the complaint is regarding a policy in a personal line of insurance or 120 days in the case of a policy in a class of commercial insurance, unless the complainant consents to a greater time or unless the complainant enters into informal conciliation of the complaint. The time and location of the conciliation shall be mutually agreeable to the complainant and to the insurer.

(c) In the event the complainant enters into informal conciliation of the complaint, the time set forth in subdivisions (a) and (b) for making a determination or for granting or denying a request for a public hearing shall be tolled for up to 10 working days until informal conciliation results in resolution of the complaint or informal conciliation is ended without resolution of the complaint. Should informal conciliation fail to result in resolution of the complaint, the commissioner shall review the facts presented by the complainant and the insurer or rating organization, together with the facts alleged in the complaint and any response to the complaint, to determine whether probable cause exists to believe that a violation of this chapter has occurred.

(d) For purposes of this subdivision, "personal insurance" means all coverages combined in private passenger automobile insurance policies as those policies are described in Section 660 and all forms combined in property or multiperil insurance policies as those policies are described in Section 675.

(e) For purposes of this subdivision, "commercial insurance" means any class, as defined by the Insurance Services Office of commercial insurance and any class of insurance designated under subdivisions (b) and (c) of Section 1857.9.

(Added by Stats. 1987, Ch. 1289, Sec. 1.5.)

1858.02. (a) The commissioner may seek resolution of a complaint by informal conciliation at any time and may require the complainant and insurer or rating organization to meet and confer for the purposes of resolving the matter complained of by informal conciliation. The commissioner may decline to find probable cause for a complaint and may deny a request for a public hearing if the complainant refuses to enter into informal conciliation at the commissioner's request. Likewise, the commissioner may find probable cause for a complaint and may act to hold a public hearing, whether or not a request for a public hearing accompanied the complaint, if the insurer or rating organization refuses to enter into informal conciliation at the commissioner's request.

(b) Communications to the commissioner in respect to resolution of a complaint by informal conciliation shall be made to him or her in official confidence within the meaning of Sections 1040 and 1041 of the Evidence Code and shall not be disclosed by the commissioner. However, the commissioner may report on the results of informal conciliation.

(Added by Stats. 1987, Ch. 1289, Sec. 1.6.)

1858.05. Whenever a written complaint and request for hearing with the commissioner has been filed pursuant to Section 1858, and the complaint concerns medical malpractice insurance, the commissioner shall within 30 days either by order deny the hearing or proceed as provided in Sections 1858.1 or 1858.2. The complainant may petition the court for an order to compel compliance with this section.

(Added by Stats. 1975, 2nd Ex. Sess., Ch. 2.)

1858.07. (a) Any person who uses any rate, rating plan, or rating system in violation of this chapter is liable to the state for a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of this section.

(b) The penalty imposed by this section shall be imposed by and determined by the commissioner as provided by Section 1858.3, except that no penalty shall be imposed by the commissioner if a person has used any rate, rating plan, or rating system that has been approved for use by the commissioner in accordance with the provisions of this chapter.

The penalty imposed by this section is appealable by means of any remedy provided by Section 12940 or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1989, Ch. 726, Sec. 1. Effective September 25, 1989.)

1858.1. If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in Section 1858, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he or she shall give notice in writing to that insurer, organization, group, or association stating therein in what manner and to what extent that noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which that noncompliance may be corrected, and specifying therein the amount of any penalty that may be due under Section 1858.07.

An insurer, organization, group, or association served with that notice of noncompliance may, within the time specified therein, (a) establish to the satisfaction of the commissioner that the noncompliance does not exist, or (b) request a public hearing, notice of which shall be given at least 30 days prior to the date set for hearing, or (c) enter into an informal conciliation with the commissioner and any complainant making a complaint pursuant to Section 1858 to resolve the matter complained of, or (d) enter into a consent order with the commissioner to correct the specified noncompliance within a period of time specified in the consent order, and to pay any penalty due under Section 1858.07. A consent order shall provide that in the event the noncompliance is not corrected within the time specified therein that, in addition to any penalty due under Section 1858.07, a money penalty of not to exceed ten thousand dollars (\$10,000) shall attach and be collected by the commissioner for each day the violation of the consent order continues. This money penalty shall not exceed in the aggregate the sum of one hundred thousand dollars (\$100,000) plus the penalty due under Section 1858.07. In addition to or in lieu of the procedure provided herein the commissioner may proceed with a public hearing as provided in Section 1858.2.

For the purposes of this section, the failure to pay any penalty imposed pursuant to Section 1858.07 which has become final shall constitute a violation of a notice of noncompliance or of a consent order issued under this section.

(Amended by Stats. 1989, Ch. 726, Sec. 2. Effective September 25, 1989.)

1858.15. Once commenced, an examination pursuant to Section 1858.1 shall be promptly conducted and concluded within a reasonable time. If the examination is being conducted as the result of a written complaint and request for hearing filed pursuant to Section 1858, and the complaint concerns medical malpractice insurance, the complainant may petition the court for an order to compel compliance with this section.

(Added by Stats. 1975, 2nd Ex. Sess., Ch. 2.)

1858.2. (a) If the insurer, organization, group, or association does not make those changes as may be necessary to correct the noncompliance specified in the notice issued under Section 1858.1, or if the insurer, organization, group, or association has failed to establish to the satisfaction of the commissioner that the noncompliance does not exist, the commissioner shall hold a public hearing by mailing a notice to that insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(b) In the event that the insurer and complainant resolve the matter and the insurer has consented to a rating modification, then that modification shall apply to other policyholders underwritten by the insurer for that class of insurance.

(c) If the insurer, organization, group, or association has refused to enter into informal conciliation at the request of the commissioner, the commissioner may hold a public hearing, whether or not the complaint was accompanied by a request for a public hearing, by mailing a notice to the insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(d) If a hearing noticed under subdivisions (a) and (c) is based upon a complaint made pursuant to Section 1858, the commissioner shall also mail notice to the complainant not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(e) If upon sufficient complaint as provided in Section 1858 and upon review and investigation of the complaint, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by that insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, the commissioner shall hold a public hearing by mailing a notice to the complainant and to the insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(f) Within 60 days of submission of a matter for decision following a public hearing thereon pursuant to this section, the commissioner shall issue his or her decision or order.

(g) With respect to public hearings under this section, the commissioner may at his or her discretion, grant preference to a hearing in which the complainant has reached the age of 70 years.

(Amended by Stats. 1989, Ch. 1176, Sec. 1.)

1858.3. If after a hearing pursuant to Section 1858.2 the commissioner finds:

(a) That any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he or she shall issue an order to the insurer or rating organization which has been the subject of the hearing specifying in what respects that violation exists and stating when, within a reasonable period of time, the further use of that rate or rating system by that insurer or rating organization in contracts of insurance made thereafter shall be prohibited. The commissioner may, in addition to that order, direct the insurer or rating organization to take such other corrective action as he or she may deem necessary and proper.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it other than the provisions dealing with rates, rating plans, or rating systems, he or she may issue an order to that insurer, organization, group, or association which has been the subject of the hearing specifying in what respects that violation exists and requiring compliance within a reasonable time thereafter.

(c) Any order of the commissioner issued pursuant to subdivision (a) shall specify the amount of the penalty due under Section 1858.07, and any order issued pursuant to subdivision (a) or (b) shall provide that, in addition, a money penalty of not to exceed ten thousand dollars (\$10,000) shall attach and be collected by the commissioner for each day such person fails to comply within the time specified therein with the provisions of that order in the same manner as that provided in Section 1858.1. This penalty shall not exceed in the aggregate the sum of one hundred thousand dollars (\$100,000) plus any penalty due under Section 1858.07.

(Amended by Stats. 1989, Ch. 726, Sec. 3. Effective September 25, 1989.)

1858.35. On or before May 1 of each year, the commissioner shall submit a report to the Legislature and the Governor stating the number and type of complaints received under this article and the status and disposition of these complaints. The commissioner may

make any recommendations for improving the efficiency and effectiveness of complaint handling under this article.

No information shall be provided under this section pertaining to a specified complaint against a specific insurer or rating organization. However, the commissioner may report that information in the aggregate.

(Amended by Stats. 1989, Ch. 1381, Sec. 1.)

1858.4. In addition to other penalties provided in this code, the commissioner shall suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in that order, which fails to comply within the time limited by that order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him or her pursuant to Section 1858.3 and effective pursuant to Section 1858.6.

(Amended by Stats. 1987, Ch. 1289, Sec. 5.)

1858.5. Except as otherwise provided in this chapter, all proceedings in connection with the denial, suspension or revocation of a license or certificate of authority under this chapter shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted to him therein.

(Added by Stats. 1947, Ch. 805.)

1858.6. Any finding, determination, rule, ruling or order made by the commissioner under this chapter shall be subject to review by the courts of the State and proceedings on review shall be in accordance with the provisions of the Code of Civil Procedure. In such proceedings on review, the court is authorized and directed to exercise its independent judgment on the evidence and unless the weight of the evidence supports the findings, determination, rule, ruling or order of the commissioner, the same shall be annulled.

Notwithstanding any other provision of law to the contrary, a petition for review of any such finding, determination, rule or order, may be filed at any time before the effective date thereof. No such finding, determination, rule, or order shall become effective before the expiration of 20 days after notice and a copy thereof are mailed or delivered to the person affected, and any finding, determination, rule, or order of the commissioner so submitted for review shall not become effective for a further period of 15 days after the petition for review is filed with the court. The court may stay the effectiveness thereof for a longer period.

(Amended by Stats. 1949, Ch. 174.)

1858.7. Whenever the commissioner determines that a rate is excessive or not excessive, he shall, upon the written request of any complainant, disclose the basis upon which such rate was determined to be excessive or not excessive in writing to the complainant.

(Added by Stats. 1978, Ch. 180.)