

AMENDED IN SENATE JUNE 19, 2002

AMENDED IN ASSEMBLY APRIL 11, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3023

**Introduced by Committee on Insurance (Calderon (Chair),
Chavez, Diaz, Dutra, Frommer, Havice, Horton, Kehoe, Nakano,
and Vargas)**

March 7, 2002

An act to amend Sections 790.05, 790.06, and 790.07 of, and to add Section 21.5 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 3023, as amended, Committee on Insurance. Insurance: unfair practices.

Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law prohibits unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. Existing law requires the commissioner to commence hearings when the commissioner has reason to believe that a person has been engaged or is engaging in any unfair method of competition or any unfair or deceptive act or practice, as specified. Existing law requires the hearings to be conducted in accordance with the Administrative Procedure Act.

This bill would ~~require~~ *authorize* those hearings to be conducted by an administrative law judge ~~selected pursuant to the Administrative Procedures Act or appointed by the Insurance Commissioner~~ *in the administrative law bureau that provides administrative hearing*

services in the Department of Insurance if certain conditions are satisfied. The bill would prohibit an administrative law judge appointed by the commissioner from being supervised by the commissioner or by an employee in the legal ~~division~~ branch of the Department of Insurance.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21.5 is added to the Insurance Code, to
2 read:

3 21.5. (a) ~~“Administrative law judge” in reference to the~~
4 ~~presiding officer at a hearing pursuant to this code means any of~~
5 ~~the following:~~

6 (1) ~~An administrative law judge employed by the Office of~~
7 ~~Administrative Hearings.~~

8 (2) ~~An administrative law judge appointed by the~~
9 ~~commissioner pursuant to civil service rules, as specified by~~
10 ~~statute. “Administrative law bureau” or “administrative hearing~~
11 ~~bureau” means the unit within the Department of Insurance that~~
12 ~~provides administrative hearings.~~

13 (b) ~~An administrative law judge appointed pursuant to~~
14 ~~paragraph (2) of subdivision (a) by the commissioner pursuant to~~
15 ~~civil service rules shall be employed within the administrative law~~
16 ~~bureau and shall not be supervised directly by the commissioner~~
17 ~~or be supervised directly or indirectly by an employee in the legal~~
18 ~~division branch of the department.~~

19 SEC. 2. Section 790.05 of the Insurance Code is amended to
20 read:

21 790.05. Whenever the commissioner shall have reason to
22 believe that a person has been engaged or is engaging in this state
23 in any unfair method of competition or any unfair or deceptive act
24 or practice defined in Section 790.03, and that a proceeding by the
25 commissioner in respect thereto would be to the interest of the
26 public, he or she shall issue and serve upon that person an order to
27 show cause containing a statement of the charges in that respect,
28 a statement of that person’s potential liability under Section
29 790.035, and a notice of a hearing thereon to be held at a time and
30 place fixed therein, which shall not be less than 30 days after the



1 service thereof, for the purpose of determining whether the
2 commissioner should issue an order to that person to, pay the
3 penalty imposed by Section 790.035, and to cease and desist those
4 methods, acts, or practices or any of them.

5 If the charges or any of them are found to be justified the
6 commissioner shall issue and cause to be served upon that person
7 an order requiring that person to pay the penalty imposed by
8 Section 790.035 and to cease and desist from engaging in those
9 methods, acts, or practices found to be unfair or deceptive.

10 The hearing shall be conducted in accordance with the
11 Administrative Procedure Act, Chapter 5 (commencing at Section
12 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
13 except that the hearings ~~shall~~ *may* be conducted by an
14 administrative law judge ~~appointed pursuant to Section 11502 of~~
15 ~~the Government Code or appointed by the commissioner in the~~
16 *administrative law bureau when the proceedings involve a*
17 *common question of law or fact with another proceeding arising*
18 *under other Insurance Code sections that may be conducted by*
19 *administrative law bureau administrative law judges.* The
20 commissioner and the appointed administrative law judge shall
21 have all the powers granted under the Administrative Procedure
22 Act.

23 The person shall be entitled to have the proceedings and the
24 order reviewed by means of any remedy provided by Section
25 12940 of this code or by the Administrative Procedure Act.

26 SEC. 3. Section 790.06 of the Insurance Code is amended to
27 read:

28 790.06. (a) Whenever the commissioner shall have reason to
29 believe that any person engaged in the business of insurance is
30 engaging in this state in any method of competition or in any act
31 or practice in the conduct of the business that is not defined in
32 Section 790.03, and that the method is unfair or that the act or
33 practice is unfair or deceptive and that a proceeding by him or her
34 in respect thereto would be in the interest of the public, he or she
35 may issue and serve upon that person an order to show cause
36 containing a statement of the methods, acts or practices alleged to
37 be unfair or deceptive and a notice of hearing thereon to be held
38 at a time and place fixed therein, which shall not be less than 30
39 days after the service thereof, for the purpose of determining
40 whether the alleged methods, acts or practices or any of them



1 should be declared to be unfair or deceptive within the meaning of
2 this article. The order shall specify the reason why the method of
3 competition is alleged to be unfair or the act or practice is alleged
4 to be unfair or deceptive.

5 The hearings provided by this section shall be conducted in
6 accordance with the Administrative Procedure Act (Chapter 5
7 (commencing with Section 11500) of Part 1 of Division 3 of Title
8 2 of the Government Code), except that the hearings ~~shall~~ *may* be
9 conducted by an administrative law judge ~~appointed pursuant to~~
10 ~~Section 11502 of the Government Code or appointed by the~~
11 ~~commissioner~~ *in the administrative law bureau when the*
12 *proceedings involve a common question of law or fact with another*
13 *proceeding arising under other Insurance Code sections that may*
14 *be conducted by administrative law bureau administrative law*
15 *judges. The commissioner and the appointed administrative law*
16 *judge shall have all the powers granted under the Administrative*
17 *Procedure Act. If the alleged methods, acts, or practices or any of*
18 *them are found to be unfair or deceptive within the meaning of this*
19 *article the commissioner shall issue and service upon that person*
20 *his or her written report so declaring.*

21 (b) If the report charges a violation of this article and if the
22 method of competition, act or practice has not been discontinued,
23 the commissioner may, through the Attorney General of this state,
24 at any time after 30 days after the service of the report cause a
25 petition to be filed in the superior court of this state within the
26 county wherein the person resides or has his or her principal place
27 of business, to enjoin and restrain the person from engaging in the
28 method, act or practice. The court shall have jurisdiction of the
29 proceeding and shall have power to make and enter appropriate
30 orders in connection therewith and to issue any writs as are
31 ancillary to its jurisdiction or are necessary in its judgment to
32 prevent injury to the public *pendente lite*.

33 (c) A transcript of the proceedings before the commissioner,
34 including all evidence taken and the report and findings shall be
35 filed with the petition. If either party shall apply to the court for
36 leave to adduce additional evidence and shall show, to the
37 satisfaction of the court, that the additional evidence is material
38 and there were reasonable grounds for the failure to adduce the
39 evidence in the proceeding before the commissioner, the court may
40 order the additional evidence to be taken before the commissioner



1 and to be adduced upon the hearing in the manner and upon the
2 terms and conditions as to the court may seem proper. The
3 commissioner may modify his or her findings of fact or make new
4 findings by reason of the additional evidence so taken, and shall
5 file modified or new findings with the return of the additional
6 evidence.

7 (d) If the court finds that the method of competition
8 complained of is unfair or that the act or practice complained of is
9 unfair or deceptive, that the proceeding by the commissioner with
10 respect thereto is to the interest of the public and that the findings
11 of the commissioner are supported by the weight of the evidence,
12 it shall issue its order enjoining and restraining the continuance of
13 the method of competition, act or practice.

14 SEC. 4. Section 790.07 of the Insurance Code is amended to
15 read:

16 790.07. Whenever the commissioner shall have reason to
17 believe that any person has violated a cease and desist order issued
18 pursuant to Section 790.05 or a court order issued pursuant to
19 Section 790.06, after the order has become final, and while the
20 order is still in effect, the commissioner may, after a hearing at
21 which it is determined that the violation was committed, order that
22 person to forfeit and pay to the State of California a sum not to
23 exceed five thousand dollars (\$5,000) plus any penalty due under
24 Section 790.05, which may be recovered in a civil action, except
25 that, if the violation is found to be willful, the amount of the
26 penalty may be a sum not to exceed fifty-five thousand dollars
27 (\$55,000) plus the penalty due under Section 790.05.

28 For the purposes of this section, the failure to pay any penalty
29 imposed pursuant to Section 790.035 which has become final shall
30 constitute a violation of the cease and desist order.

31 For any subsequent violation of the cease and desist order or of
32 the court order or the order to pay the penalty, while the order is
33 still in effect, the commissioner may, after hearing, suspend or
34 revoke the license or certificate of that person for a period not
35 exceeding one year; provided, however, no proceeding shall be
36 based upon the subsequent violation unless the same was
37 committed or continued after the date on which the order imposing
38 the penalty pursuant to the preceding paragraph became final.

39 The hearings provided by this section shall be conducted in
40 accordance with the Administrative Procedure Act, except that the



1 hearings ~~shall~~ *may* be conducted by an administrative law judge
2 ~~appointed pursuant to Section 11502 of the Government Code or~~
3 ~~appointed by the commissioner in the administrative law bureau~~
4 *when the proceedings involve a common question of law or fact*
5 *with another proceeding arising under other Insurance Code*
6 *sections that may be conducted by administrative law bureau*
7 *administrative law judges.* The commissioner and the appointed
8 administrative law judge shall have all the powers granted under
9 the Administrative Procedure Act.
10 The person shall be entitled to have the proceedings and the
11 order of the commissioner therein reviewed by means of any
12 remedy provided by Section 12940 or by the Administrative
13 Procedure Act.

