

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL NO. 1148

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “issue” insert “certain types of”; and strike beginning with “establishing” in line 4 down through “process;” in line 5 and substitute “providing that a cease and desist order shall be served in a certain manner, be effective under certain situations, and contain certain information; providing guidelines for requests and completion of evidentiary hearings under certain circumstances; authorizing the Commission to issue a final order under certain circumstances; providing that a certain cease and desist order is void under certain circumstances; prohibiting the Commission from imposing certain penalties under certain circumstances;”.

AMENDMENT NO. 2

On page 1, after line 15, insert:

“(A) IN ADDITION TO ANY OTHERWISE AVAILABLE REMEDY, THE COMMISSION MAY SUMMARILY ORDER A PERSON WHO IS SUBJECT TO THE JURISDICTION OF THE COMMISSION TO CEASE AND DESIST FROM AN ACT OR PRACTICE IF THE COMMISSION DETERMINES FROM SPECIFIC FACTS SHOWN BY AFFIDAVIT OR OTHER STATEMENT MADE UNDER OATH THAT:

(1) THE PERSON HAS ENGAGED IN AN ACT OR PRACTICE THAT CONSTITUTES A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY ORDER OR REGULATION ADOPTED UNDER THIS ARTICLE THAT DIRECTLY CONCERNS CONSUMER PROTECTION OR PUBLIC SAFETY;

(2) IMMEDIATE, SUBSTANTIAL, AND IRREPARABLE HARM WILL RESULT BEFORE THE AFFECTED PERSON COULD HAVE AN OPPORTUNITY TO RESPOND TO THE FACTS ALLEGED;

(Over)

(3) THE NEED FOR THE IMMEDIATE ISSUANCE OF A SUMMARY CEASE AND DESIST ORDER OUTWEIGHS THE AFFECTED PERSON'S RIGHT TO RECEIVE NOTICE AND BE HEARD BEFORE ISSUANCE OF THE ORDER; AND

(4) ISSUANCE OF THE SUMMARY CEASE AND DESIST ORDER IS IN THE PUBLIC INTEREST.

(B) A SUMMARY CEASE AND DESIST ORDER ISSUED BY THE COMMISSION UNDER SUBSECTION (A) OF THIS SECTION SHALL:

(1) BE PERSONALLY AND PROMPTLY SERVED ON THE AFFECTED PERSON OR THE PERSON'S LEGAL REPRESENTATIVE;

(2) BE EFFECTIVE ONLY AFTER IT IS SERVED UNDER ITEM (1) OF THIS SUBSECTION; AND

(3) (I) IDENTIFY THE DATE AND HOUR OF ISSUANCE;

(II) DEFINE THE HARM THAT THE COMMISSION FINDS WILL RESULT IF THE SUMMARY CEASE AND DESIST ORDER IS NOT ISSUED;

(III) STATE THE BASIS FOR THE COMMISSION'S FINDING THAT THE HARM WILL BE IMMEDIATE, SUBSTANTIAL, AND IRREPARABLE;

(IV) STATE THAT ANY PERSON AFFECTED BY THE SUMMARY CEASE AND DESIST ORDER MAY IMMEDIATELY APPLY TO HAVE THE ORDER MODIFIED OR VACATED BY THE COMMISSION;

(V) STATE THAT THE COMMISSION MAY MODIFY OR VACATE THE SUMMARY CEASE AND DESIST ORDER AS REQUESTED OR MAY SET THE MATTER FOR HEARING UNDER SUBSECTION (C) OF THIS SECTION; AND

(VI) PROVIDE NOTICE OF THE OPPORTUNITY FOR AN EVIDENTIARY HEARING TO DETERMINE WHETHER THE SUMMARY CEASE AND

DESIST ORDER SHOULD BE MODIFIED, VACATED, OR ENTERED AS FINAL.

(C) (1) WITHIN 15 CALENDAR DAYS AFTER THE DATE AND HOUR OF SUCCESSFUL SERVICE OF THE SUMMARY CEASE AND DESIST ORDER, THE AFFECTED PERSON MAY FILE A REQUEST FOR AN EVIDENTIARY HEARING WITH THE COMMISSION ON THE PROPRIETY OF A FINAL ORDER.

(2) IF THE COMMISSION RECEIVES A REQUEST FOR AN EVIDENTIARY HEARING ON THE PROPRIETY OF A FINAL ORDER FROM THE AFFECTED PERSON WITHIN THE TIME LIMIT IN PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSION SHALL COMPLETE THE EVIDENTIARY HEARING WITHIN 15 CALENDAR DAYS AFTER THE DATE AND HOUR WHEN THE REQUEST IS RECEIVED.

(3) WITHIN 48 HOURS AFTER COMPLETING THE EVIDENTIARY HEARING REQUESTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSION SHALL ISSUE A FINAL ORDER IN WHICH IT SHALL DETERMINE WHETHER THE AFFECTED PERSON HAS ENGAGED IN AN ACT OR PRACTICE THAT IS IN VIOLATION OF ANY PROVISION OF THIS ARTICLE OR ANY ORDER OR REGULATION ADOPTED UNDER THIS ARTICLE THAT DIRECTLY CONCERNS CONSUMER PROTECTION OR PUBLIC SAFETY.

(4) IF THE COMMISSION DOES NOT RECEIVE A REQUEST FOR AN EVIDENTIARY HEARING ON THE PROPRIETY OF A FINAL ORDER FROM THE AFFECTED PERSON WITHIN THE TIME LIMIT IN PARAGRAPH (1) OF THIS SUBSECTION, THE SUMMARY CEASE AND DESIST ORDER SHALL BECOME FINAL.

(D) IF THE COMMISSION FAILS TO COMPLY WITH SUBSECTION (C)(2) OR (3) OF THIS SECTION, THE SUMMARY CEASE AND DESIST ORDER IS VOID FROM THE TIME OF ISSUANCE.

(E) THE COMMISSION MAY NOT IMPOSE A PENALTY FOR A VIOLATION OF A SUMMARY CEASE AND DESIST ORDER THAT IS VOID UNDER SUBSECTION (D) OF THIS SECTION.”.

(Over)

On pages 1 and 2, strike in their entirety the lines beginning with line 16 on page 1 through line 10 on page 2, inclusive.