

537.6108 Administrative enforcement orders.

1. For purposes of this section, “*administrator*” means either the attorney general or the attorney general’s designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. Except as provided in subsection 6, after notice and hearing the administrator may order a person to cease and desist from engaging in violations of this chapter. A person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the district court for enforcement of the cease and desist order if the person prevails in the proceeding for review, or as provided in subsection 5. The proceeding for review or enforcement is initiated by filing a petition in the district court. Copies of the petition shall be served upon all parties of record.

2. Within thirty days after service of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or grant any temporary relief or restraining order it deems just, and enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

4. The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree in an equitable proceeding. The administrator’s copy of the testimony shall be available at reasonable times to all parties for examination without cost.

5. A proceeding for review under this section must be initiated within thirty days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain a decree of the district court for enforcement of the cease and desist order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after copy of the order was received, and that the person against whom the order was directed is subject to the jurisdiction of the court.

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 537.6111.

[C75, 77, 79, 81, §537.6108]

Referred to in §537.6103, 537.6105