

2016 -- H 7570

LC004474

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO COMMERCIAL LAW-GENERAL REGULATORY PROVISIONS-
DECEPTIVE TRADE PRACTICES

Introduced By: Representatives McKiernan, Bennett, Hull, Carnevale, and O'Brien

Date Introduced: February 11, 2016

Referred To: House Small Business

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 6-13.1-7 of the General Laws in Chapter 6-13.1 entitled "Deceptive
2 Trade Practices" is hereby amended to read as follows:

3 **6-13.1-7. Investigations -- Procedure -- Remedies for failure to comply.** -- (a) When it
4 appears to the attorney general that a person has engaged in, is engaging in, or is about to engage
5 in, any act or practice declared to be unlawful by this chapter, or when the attorney general
6 believes it to be in the public interest that an investigation should be made to ascertain whether a
7 person in fact has engaged in, is engaging in, or is about to engage in, any act or practice declared
8 to be unlawful by this chapter, he or she may execute, in writing, and cause to be served upon any
9 person who is believed to have information, documentary material, or physical evidence relevant
10 to the alleged or suspected violation, an investigative demand stating the general subject matter of
11 the investigation and the statute and section under which the suspected violation is alleged and
12 require the person to furnish, under oath or otherwise, a report in writing stating the relevant facts
13 and circumstances of which the person has knowledge, or to appear and testify or to produce
14 relevant documentary material or physical evidence for examination, at any reasonable time and
15 place that may be stated in the investigative demand, concerning the advertisement, sale, or
16 offering for sale of any goods or services or the conduct of any trade or commerce that is the
17 subject matter of the investigation. All civil investigative demands ~~shall~~ may, at the discretion of
18 the attorney general, be filed in the superior court of the county in which the person served with

1 the demand shall dwell or have his principal place of business.

2 (b) At any time before the return date specified in an investigative demand, or within
3 twenty (20) days after the demand has been served, whichever period is shorter, a petition to
4 extend the return date or to modify or set aside the demand, stating good cause, may be filed in
5 the superior court in which the person served with the demand shall dwell or have his or her
6 principal place of business, or in the superior court of Providence County.

7 (c) To accomplish the objectives and to carry out the duties prescribed by this chapter,
8 the attorney general, in addition to other powers conferred upon him or her by this chapter, may
9 issue subpoenas to any person; administer an oath or affirmation to any person; conduct hearings
10 in aid of any investigation or inquiry; and prescribe any forms and promulgate any rules and
11 regulations that may be necessary, which rules and regulations shall have the force of law;
12 provided that none of the powers conferred by this chapter shall be used for the purpose of
13 compelling any natural person to furnish testimony or evidence that might tend to incriminate the
14 person or subject him or her to a penalty or forfeiture; and provided further that information
15 obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed
16 by the attorney general or his or her employees beyond the extent necessary for law enforcement
17 purposes in the public interest.

18 (d) Service of any notice, demand, or subpoena under this chapter shall be made
19 personally within this state, but if personal service cannot be obtained, substituted service may be
20 made in the following manner:

21 (1) Personal service without this state;

22 (2) The mailing of any notice, demand, or subpoena under this chapter by registered or
23 certified mail to the last known place of business, residence, or abode within or without this state
24 of the person for whom the service is intended;

25 (3) As to any person other than a natural person, in the manner provided in the rules of
26 civil procedure as if a complaint or other pleading which institutes a civil proceeding had been
27 filed; or

28 (4) Service that the superior court may direct in lieu of personal service within this state.

29 (e) A person upon whom a demand is served pursuant to the provisions of this section
30 shall comply with the terms of the demand unless otherwise provided by order of court. Subject
31 to the protections provided for in subsection (c) of this section relating to self incrimination, any
32 person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil
33 investigative demand under this section, removes from any place, conceals, withholds, or
34 destroys, mutilates, alters, or by any other means falsifies any documentary material in the

1 possession, custody, or control of any person subject of any demand, or knowingly conceals any
2 relevant information, shall be fined not more than five thousand dollars (\$5,000).

3 (f) If any person fails or refuses to file any statement or report, or obey any subpoena or
4 investigative demand issued by the attorney general, the attorney general may file in the superior
5 court of the county in which the person shall dwell or be found; or has his or her principal place
6 of business; or of Providence County, if the superior court at the previously mentioned county
7 shall not be in session, or if the person is a nonresident or has no principal place of business in
8 this state; or of the other county as may be agreed upon by the parties to the petition; and serve
9 upon the person a petition for an order of the court for the enforcement of this section, and the
10 petition may request and the court shall have jurisdiction to grant after notice and a hearing, an
11 order:

12 (1) Granting injunctive relief to restrain the person from engaging in the advertising or
13 sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or
14 suspected violation;

15 (2) Vacating, annulling, or suspending the corporate charter of a corporation created by
16 or under the laws of this state or revoking or suspending the certificate of authority to do business
17 in this state of a foreign corporation or revoking or suspending any other licenses, permits, or
18 certificates issued pursuant to law to the person that are used to further the allegedly unlawful
19 practice; and

20 (3) Granting any other relief that may be required, until the person files the statement or
21 report, or obeys the subpoena or investigative demand.

22 (g) Any final order so entered shall be subject to appeal to the state supreme court. Any
23 disobedience of any final order entered under this section by any court shall be punished as a
24 contempt of court.

25 (h) The information and materials supplied to the attorney general pursuant to an
26 investigative demand shall not be permitted to become public or disclosed by the attorney general
27 or their employees beyond the extent necessary for deceptive trade practices enforcement
28 purposes in the public interest.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would provide that information and materials supplied to the attorney general
2 pursuant to an investigative demand not be made public or disclosed by the attorney general
3 beyond the extent necessary for enforcement of deceptive trade practice prohibitions, and would
4 make discretionary the formerly mandatory requirement that civil investigative demand be filed
5 in the Superior Court.

6 This act would take effect upon passage.

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