

2013 -- S 0840

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS --  
ANTITRUST LAW

Introduced By: Senators Goodwin, Ruggerio, Miller, Goldin, and Jabour

Date Introduced: April 04, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 6-36-7, 6-36-10, 6-36-11 and 6-36-12 of the General Laws in  
2 Chapter 6-36 entitled "Antitrust Law" are hereby amended to read as follows:

3           **6-36-7. Scope of chapter.** -- (a) This chapter applies to: (1) any contract, combination, or  
4 conspiracy, wherever created, formed, or entered into; (2) any establishment, maintenance, or use  
5 of monopoly power; and (3) any attempt or conspiracy to establish, maintain, or use monopoly  
6 power; wherever any of the foregoing has an impact on trade or commerce of this state sufficient  
7 to invoke the jurisdiction of the superior court.

8           (b) In deciding whether conduct restrains or monopolizes trade or commerce or may  
9 substantially lessen competition within this state, determination of the relevant market or  
10 effective area of competition shall not be limited by the boundaries of this state. However, some  
11 portion of the relevant market or effective area of competition must be at least in part within this  
12 state.

13           (c) No action or proceeding instituted pursuant to the provisions of this chapter shall be  
14 barred on the ground that the activity or conduct complained of in any way affects or involves  
15 interstate or foreign commerce.

16           (d) In any action under this chapter, the fact that a person or public body has not dealt  
17 directly with the defendant shall not bar or otherwise limit recovery. Provided, however, that  
18 courts shall exclude from the amount of monetary relief awarded in the action any amount of

1 [monetary relief which duplicates amounts which have been awarded for the same injury.](#)

2 **6-36-10. Injunction against and civil penalties for violations of this chapter.** -- (a)

3 Jurisdiction of courts. - The superior court of this state shall have jurisdiction to prevent and  
4 restrain violations of this chapter, provided that the statutory minimum amount in controversy is  
5 properly present. In addition to granting prohibitory injunctions and other restraints for a period  
6 and upon terms and conditions necessary to deter the defendant from, and insure against, the  
7 committing of future violations of this chapter, the courts may grant mandatory injunctions  
8 reasonably necessary to dissipate the ill effects of the violation. The courts may issue appropriate  
9 decrees upon consent and stipulation by the parties. The courts may also issue restraining orders.  
10 Under no circumstances shall the state [or a public body](#) be required to post bond in any action  
11 under this chapter.

12 (b) ~~Attorney general~~—Right to injunctive relief. - ~~(1)~~ The attorney general may institute  
13 proceedings to prevent and restrain violations of this chapter as provided in subsection (a) of this  
14 section.

15 ~~(e)~~~~(2)~~ Any person [or public body](#) including the United States, [whether a direct or indirect](#)  
16 [purchaser](#), may institute proceedings for injunctive relief, temporary or permanent, as provided in  
17 subsection (a) of this section, against threatened loss or damage to his or her property or business  
18 by a violation of this chapter. A preliminary injunction may be issued upon a showing that the  
19 danger of irreparable loss or damage is immediate and, within the court's discretion, the execution  
20 of proper bond against damages for an injunction improvidently granted. If the court issues a  
21 permanent injunction, the plaintiff shall be awarded reasonable attorney's fees, filing fees, and  
22 reasonable costs of the suit. Reasonable costs for the suit may include, but shall not be limited to,  
23 the expenses of discovery and document reproduction.

24 ~~(d)~~~~(c)~~ Civil penalty. - In addition to injunctive relief authorized pursuant to ~~subsection~~  
25 [subsections \(a\) and \(b\)](#) of this section, any person who violates this chapter may be liable for a  
26 civil penalty ~~in a suit by the attorney general of this state~~ of not more than fifty thousand dollars  
27 (\$50,000) for each violation.

28 **6-36-11. Enforcement.** -- (a) Action for treble damages. - Any person or public body,

29 including the United States, who shall be injured in his or her business or property by reason of a  
30 violation of the provisions of this chapter may sue in superior court and shall recover threefold  
31 the damages sustained by him or her, together with reasonable costs of suit and any reasonable  
32 attorneys' fees that may be granted at the discretion of the court. The reasonable costs of suit may  
33 include, but shall not be limited to, the expenses of discovery and document reproduction. [In any](#)  
34 [action under this section the fact that a person or public body has not dealt directly with the](#)

1 defendant shall not bar or otherwise limit recovery. Provided, however, that the court shall  
2 exclude from the amount of the damages awarded in the action, any amount of monetary relief  
3 which duplicates amounts which have been awarded for the same injury, but shall not exclude  
4 reasonable costs and attorneys' fees.

5 (b) Action by attorney general. - The attorney general shall investigate suspected  
6 violations of the provisions of this chapter and if he or she shall conclude that a violation is  
7 imminent, is occurring, or has occurred, he or she may institute on behalf of the state of Rhode  
8 Island or any of its departments, subdivisions, agencies, or its cities and towns, an action in  
9 superior court seeking appropriate relief. The attorney general may bring an action in federal  
10 court on behalf of the state of Rhode Island or any of its political subdivisions or agencies, or its  
11 cities and towns, to recover the damages provided for by the federal antitrust laws, and pursuant  
12 to the federal laws may undertake any measures that he or she deems necessary for the successful  
13 conduct of the action.

14 **6-36-12. Attorney general -- Suits parens patriae.** -- (a) The attorney general may  
15 bring a civil action in superior court in the name of the state, as parens patriae on behalf of  
16 persons residing in this state, to secure monetary relief as provided in this section for injuries  
17 sustained by the persons to their property by reason of any violation of this chapter. The court  
18 shall exclude from the amount of monetary relief awarded in this action any amount of monetary  
19 relief:

20 (1) Which duplicates amounts which have been awarded for the same injury; or

21 (2) Which is properly allocable to persons who have excluded their claims pursuant to  
22 subsection (c)(1) of this section.

23 (b) The court shall award the state as monetary relief threefold the total damage  
24 sustained as described in subsection (a) of this section and the costs of suit, including a  
25 reasonable attorney's fee.

26 (c) (1) In any action brought under subsection (a) of this section the attorney general  
27 shall, at the times, in the manner, and with the content that the court may direct cause notice of  
28 the action to be given by publication.

29 (2) Any person on whose behalf an action is brought under subsection (a) may elect to  
30 exclude from adjudication the portion of the state claim for monetary relief attributable to him or  
31 her by filing notice of the election with the court within the time specified in the notice given  
32 pursuant to subsection (c)(1) of this section.

33 (3) The final judgment in an action under subsection (a) shall be res judicata as to any  
34 claim under section 6-36-11 by any person on behalf of whom the action was brought and who

1 fails to give the notice within the period specified in the notice given pursuant to subsection (c)(1)  
2 of this section.

3 (d) An action under subsection (a) shall not be dismissed or compromised without the  
4 approval of the court, and notice of any proposed dismissal or compromise shall be given by  
5 publication at the times, in the manner, and with the content that the court may direct.

6 (e) In any action under subsection (a):

7 (1) The amount of the plaintiff's attorney's fees, if any, shall be determined by the court,  
8 and any attorney's fees awarded to the attorney general shall be deposited with the state as general  
9 revenues; and

10 (2) The court may, in its discretion, award a reasonable attorney's fee to a prevailing  
11 defendant upon a finding that the attorney general has acted in bad faith, vexatiously, wantonly,  
12 or for oppressive reasons.

13 (f) Monetary relief recovered in an action under this section shall: (1) be distributed in  
14 any manner that the court in its discretion may authorize; or (2) be deemed a civil penalty by the  
15 court and deposited with the state as general revenues; subject in either case to the requirement  
16 that any distribution procedure adopted afford each person a reasonable opportunity to secure his  
17 or her appropriate portion of the net monetary relief.

18 (g) In any action under this section the fact that a person or public body has not dealt  
19 directly with the defendant shall not bar or otherwise limit recovery. Provided, however, that the  
20 court shall exclude from the amount of monetary relief awarded in the action any amount of  
21 monetary relief which duplicates amounts which have been awarded for the same injury. No  
22 provision of this chapter shall be construed to limit the standing of any person or public body,  
23 whether the person or public body is a direct or indirect purchaser, from bringing suit on his or  
24 her own behalf.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS --  
ANTITRUST LAW

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- 1           This act would make a number of definition changes and clarifications to the Rhode
- 2   Island antitrust statutes.
- 3           This act would take effect upon passage.

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