



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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MEMORANDUM

**To:** The Honorable Marvin L. Abney  
Chairman, House Finance Committee

The Honorable William J. Conley, Jr.  
Chairman, Senate Finance Committee

**From:** Thomas A. Mullaney  
Executive Director/State Budget Officer

**Date:** May 17, 2019

**Subject:** New Article for the FY 2020 Appropriations Act (19-H-5151)

The Governor requests that an additional article, entitled "Relating to Multi-State Litigation Efforts," be submitted alongside the other articles submitted on January 17, 2019. This article amends current statute to allow the Department of the Attorney General (Department) to increase its participation in multi-state litigation by: 1) allowing the Department to pursue suits that would have otherwise been exempt under the Rhode Island Deceptive Trade Practices Act; and 2) increasing the amount of funds retained by the Department from settlement proceeds in order to support increasing the efforts of the Department in pursuing multi-state litigation. The amendment will also increase the amount of revenues transferred to the General Fund.

In the first section, this article will preserve the Department's ability to aggressively pursue violations the Deceptive Trade Practices Act on behalf of Rhode Islanders and participate in multistate settlements that benefit the state. By clarifying and restoring the legislative intent of the Act's exemption, the Department will ensure its ability to restrain deceptive practices that are violations of the Chapter. The proposed amendment also expands the ability of the Department to collect civil penalties.

In the second section, this article amends current statute to allow the Department to recoup the costs of attorneys' fees and costs as a part of settlement proceeds, allowing the Department to finance additional staff, training, investigation, and litigation costs to increase settlement proceeds in all actions moving forward. The Department expects to hire four additional staff attorneys and a paralegal, estimated to cost \$511,300 in FY 2020. The Department also anticipates that training, investigation, and litigation costs will total between \$400,000 and \$800,000 per fiscal year. A forthcoming amendment will include an additional \$625,000 in restricted receipt expenditures to support these costs. The amendment also ensures that all settlement proceeds are allocated

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pursuant to the annual appropriations process. Lastly, the proposed amendment will increase the Department's ability to participate in multi-state litigation, which will lead to increased revenues to the General Fund. An additional \$5.0 million is anticipated in FY 2019 and an additional \$1.3 million in FY 2020.

If you have any questions about this new article, please feel free to contact me at 222-6300.

TAM: 20-Amend 28

Cc: Sharon Reynolds Ferland, House Fiscal Advisor  
Stephen Whitney, Senate Fiscal Advisor  
Peter F. Neronha, Attorney General  
Adi Goldstein, Deputy Attorney General  
Kate Sabatini, Chief of Staff, Office of the Attorney General  
Aida Crosson, Director of Administration, Office of the Attorney General

## NEW ARTICLE

### RELATING TO MULTI-STATE LITIGATION EFFORTS

SECTION 1. Sections 6-13.1-4, 6-13.1-5, 6-13.1-5.2, and 6-13.1-8 of the General Laws in Chapter 6-13.1 entitled “Deceptive Trade Practices” is hereby amended to read as follows:

#### **6-13.1-4. Exemptions.**

(1) Nothing in this chapter shall apply to actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States;

(2) For actions brought by the attorney general, the exemption in § 6-13.1-4(1) applies only if the person claiming the exemption shows that:

(a) The person’s business activities are subject to regulation by a state or federal agency; and

(b) The specific activity, and the manner in which the activity is performed, that would otherwise constitute a violation of this chapter, is expressly authorized, permitted, or required by a state or federal agency or by applicable law, rule or regulation.

#### **6-13.1-5. Restraining prohibited acts.**

(a) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act, or practice declared to be unlawful by § 6-13.1-2, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of the method, act, or practice, upon the giving of appropriate notice to that person. The notice must generally state the relief sought and be served in accordance with § 6-13.1-7 and at least three (3) days before the hearing of the action.

(b) The action may be brought in the superior court of the county in which the person shall dwell or be found; or have his principal place of business; or with consent of the parties; or if the person is a nonresident or has no principal place of business within this state or if the superior court shall not be in session in the counties previously said to be applicable, may be brought in the superior court of

Providence County. The superior courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter and the injunctions shall be issued without bond.

(c) The court may make any additional orders or judgments that may be necessary to restore to any person in interest any moneys or property, real or personal, that may have been acquired by means of any practice in this chapter declared to be unlawful, including the appointment of a receiver in any case where the superior court finds that the assets of a corporation are in danger of being misapplied, dissipated, wasted, or lost, or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

(d) Actions under this chapter may be brought without regard to the pendency of criminal proceedings arising out of the same acts or practices and no action shall bar the institution of criminal proceedings arising out of the same acts or practices. No involuntary admission by any person in the action shall be admissible in any subsequent criminal proceeding.

(e) Any person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation. For the purposes of this section, the superior court of a county issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in those cases the attorney general, acting in the name of the state, may petition for recovery of civil penalties.

#### **6-13.1-5.2. Private and class actions.**

(a) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by § 6-13.1-2, may bring an action under the rules of civil procedure in the superior court of the county in which the seller or lessor resides; is found; has his or her principal place of business or is doing business; or in the superior court of the county as is otherwise provided by law, to recover actual damages or two

hundred dollars (\$200), whichever is greater. The court may, in its discretion, award punitive damages and may provide other equitable relief that it deems necessary or proper.

(b) Persons entitled to bring an action under subsection (a) of this section may, if the unlawful method, act, or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent the similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in subsection (a) of this section. In any action brought under this section, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of any action brought under subsection (a) or (b) of this section, the clerk of court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of the judgment or decree to the attorney general.

(d) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(e) Any permanent injunction, judgment, or order of the court made under § 6-13.1-5 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by § 6-13.1-2.

#### **6-13.1-8. Civil Penalties.**

Any person who violates the ~~terms of an injunction issued under § 6-13.1-5~~ provisions of this chapter shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation. ~~For the purposes of this section, the superior court of a county issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in those cases, .~~ The attorney general, acting in the name of the state, may petition for recovery of civil penalties.

SECTION 2. Section 42-9-19 of the General Laws in Chapter 42-19 entitled "Department of Attorney General" is hereby amended to read as follows:

**42-9-19. Acceptance of settlements – Attorney General settlement restricted account.**

(a) The attorney general is hereby authorized and empowered to accept in the name of the state any settlement resulting from a multi-state initiative. The attorney general is additionally authorized and empowered to recover attorneys' fees and costs which shall be considered settlement proceeds for purposes of this chapter.

(b) ~~Such~~ Such settlement proceeds shall be transferred to the general treasurer for deposit in the general fund. The general treasurer shall transfer ~~ten~~ thirty percent (~~40~~30%) of such proceeds, ~~up to sixty five thousand dollars (\$65,000) in any fiscal year,~~ to the "attorney general multi-state initiative restricted receipt account." Any balance in this restricted account of more than one and a half million dollars (\$1,500,000) at the end of a fiscal year shall be transferred to the state general fund. The restricted receipt account shall be used ~~solely~~ to pay for ~~any fees or membership dues~~ staff, operational, and litigation costs associated with multi-state initiatives.

(c) Expenditure of all settlement proceeds accepted by the attorney general shall be subject to the annual appropriation process and approval by the general assembly and the terms of the relevant master settlement agreement.

SECTION 3. This article shall take effect upon passage.