

LC001923

IN GENERAL ASSEMBLY

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
PROTECTING RHODE ISLANDERS FROM COERCIVE ECONOMIC TACTICS AT
GROCERY STORES

(Lieutenant Governor)

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW — GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

PROTECTING RHODE ISLANDERS FROM COERCIVE ECONOMIC TACTICS AT GROCERY STORES

(1) “Channels of trade” means the distinct and diverse pathways through which covered goods are marketed, distributed, and sold to consumers in the United States, including traditional supermarkets, hypermarkets, discount stores, convenience stores, online or e-commerce retailers, specialty food stores, mass merchandisers, wholesale clubs, and any other retail establishments, platforms, or entities that engage in the sale of covered goods, either primarily or as a segment of their broader retail offering, and compete for consumer grocery dollars.

(2) “Covered goods” means a grocery item, including any item described in paragraph (1) or (2) of the definition of eligible foods under section 271.2 of title 7, Code of Federal Regulations, or a consumer-packaged goods and excludes gasoline, prescription drugs, tobacco, and alcoholic

1 beverages.

2 (3) “Covered retailer” means a person that sells covered goods to end purchasers at one or
3 more physical locations in Rhode Island.

4 (4) “Covered supplier” means a person that:

5 (i) Produces and sells covered goods in Rhode Island; and,

6 (ii) Sells, directly or through its agent or any third party with which the covered supplier
7 contracts, covered goods produced or manufactured by the person, directly or through its agent or
8 any third party with which the covered supplier contracts, to covered retailers or covered
9 wholesalers in an aggregate amount exceeding six billion dollars (\$6,000,000,000) (as adjusted
10 each year by an amount equal to the percentage increase, if any, in the Consumer Price Index for
11 All Urban Consumers published by the Department of Labor) per year.

12 (5) “Covered wholesaler” means a person that purchases covered goods for the purpose of
13 reselling or distributing them to covered retailers in Rhode Island.

14 (6) “Dominant covered retailer” means a covered retailer with:

15 (i) Annual retail sales of covered goods in an aggregate amount exceeding eighteen billion
16 dollars (\$18,000,000,000) (as adjusted each year by an amount equal to the percentage increase, if
17 any, in the Consumer Price Index for All Urban Consumers published by the Department of Labor);
18 and

19 (ii) Not less than one storefront or distribution center located in more than twenty (20)
20 states including Rhode Island operated by the covered retailer, the covered retailer’s parent
21 company, and/or subsidiaries of the same parent company.

22 (7) “Person” includes:

23 (i) Each entity that a person owns or controls, in whole or in part; and

24 (ii) Each entity that owns or controls the person, in whole or in part;

25 (8) “Pricing differential” means, with respect to the volume unit basis of a covered good
26 purchased by a covered retailer or covered wholesaler compared to the volume unit basis of a
27 product purchased a dominant covered retailer, means:

28 (i) The difference in price of the product multiplied by the quantity sold; or

29 (ii) The difference in the price equivalent of the terms of sale of the product, discounted to
30 present value, if needed, to account for any difference in payment terms, multiplied by the quantity
31 sold.

32 (9) “Same covered good” means, with respect to two (2) different covered goods, a covered
33 good and any other covered good sold under the same brand that differs only in quantity or
34 packaging.

1 (10) “Same terms of sale” means, with respect to two (2) different agreements, terms of
2 sale that are identical on a per unit basis, excluding shipping and delivery costs, which may vary
3 on account of distance, speed, or method of shipping and delivery, or availability of self-
4 distribution.

5 (11) “Terms of sale” means all substantive terms and conditions of sale commonly subject
6 to negotiation and competition, including price, discounts, rebates, delivery terms, payment terms,
7 package size, promotional allowances, marketing devices, merchandising arrangements, terms of
8 distribution, and any other similar terms, considered on a per unit basis as appropriate.

9 (12) “Volume unit basis” means the base unit of measurement, not exceeding a truckload,
10 by which purchase quantities are measured in purchase agreements between a covered supplier and
11 a covered retailer or covered wholesaler.

12 **6-61-3. Ensuring price fairness.**

13 It shall be unlawful for:

14 (1) A covered supplier, directly or through its agent, to fail to extend the same terms of sale
15 of a covered good to all covered retailers and covered wholesalers that purchase the covered good
16 on the same volume unit basis in reasonably contemporaneous sales;

17 (2) A covered supplier to fail to provide, within fourteen (14) days of a written request
18 from a covered retailer or covered wholesaler that has purchased a covered good or received an
19 offer including terms of sale for a covered good from the covered supplier, directly or through its
20 agent, the anonymized terms of sale from all contracts with dominant covered retailers that
21 purchased the same covered good on the same volume unit basis during the one hundred eighty
22 (180) day period prior to which the purchase or offer including terms of sale was made;

23 (3) A covered supplier, directly or through its agent, to refuse the sale of a covered good to
24 a covered retailer or a covered wholesaler if:

25 (i) The covered retailer is not a dominant covered retailer;

26 (ii) The covered retailer or the covered wholesaler has made and completed payment for
27 purchases from the covered supplier within the previous twelve (12) months;

28 (iii) The covered retailer or the covered wholesaler has made a request of the covered
29 supplier to provide to such retailer or wholesaler the same terms of sale provided to other covered
30 retailers or covered wholesalers, consistent with the terms of this section; and

31 (iv) A refusal by the covered supplier to sell a covered good to the covered retailer or
32 covered wholesaler has no commercially reasonable justification;

33 (4) A dominant covered retailer, or its purchasing agent or any third party through which a
34 dominant covered retailer contracts to purchase covered goods, directly or indirectly, to take any

action that such dominant covered retailer, purchasing agent, or third party intends, knows, or should know will coerce or induce a covered supplier to violate this section.

6-61-4. Agency liability.

A covered supplier or dominant covered retailer, as applicable, shall be liable for any violation of § 6-61-3 by a contracted third party.

6-61-5. Defenses.

A person alleged to have engaged in unlawful conduct described in § 6-61-3 shall not be liable for such conduct on showing, by a preponderance of the evidence, that:

(1) Any difference in the terms of sale was predominantly attributable to a covered retailer engaging in self-distribution of the covered good at issue or otherwise lowering the overall costs of the covered supplier through genuine efficiencies including, but not limited to, economies in distribution or manufacturing;

(2) A covered retailer, in exchange for commercially reasonable consideration, voluntarily accepted terms of sale relating to a covered good that were not the same terms of sale as the terms of sale offered to another covered retailer;

(3) The terms of sale applied only to cases in which there was an actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

6-61-6. Covered supplier immunity.

Provided that a covered supplier did not collude with the relevant dominant retailer in any scheme violative of the antitrust laws, a covered supplier shall be immune from liability for a violation of § 6-61-3 where the defendant covered supplier shows by a preponderance of the evidence that:

(1) The violation was imposed on or required of the defendant covered supplier by a dominant covered retailer;

(2) The defendant covered supplier would have suffered substantial harm to its business were it to refuse the demand of the dominant retailer; and

(3) The defendant covered supplier made a good faith effort to disclose the dominant covered retailer's conduct to the office of the attorney general.

6-61-7. Enforcement.

The attorney general or a covered retailer, covered wholesaler, or covered supplier injured by a violation of this chapter may file suit to:

(1) Obtain an injunction to cure a violation of this chapter;

(2) Obtain a civil penalty or damages in an amount not greater than:

1 (i) One and one-half (1½) the actual damages, or
2 (ii) The pricing differential suffered by a covered retailer or a covered wholesaler; or
3 (3) Both subsections (a)(1) and (a)(2) of this section.
4 **6-61-8. Rules of construction.**
5 Definition. For purposes of this chapter, the term “antitrust laws”:
6 (1) Has the meaning given that term in subsection (a) of the first section of the Clayton Act
7 (15 U.S.C. 12(a); and
8 (2) Includes:
9 (i) Section 45 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such
10 section 45 applies to unfair methods of competition; and
11 (ii) Includes any Rhode Island law similar to the laws described in subsection (1) and (2)(i)
12 of this section.
13 (2) No effect on antitrust laws. Notwithstanding any provision of this chapter or an
14 amendment made by this chapter, this chapter shall not be construed to limit, impair, or supersede
15 any of the antitrust laws.
16 **6-61-9. Severability.**
17 If any portion of this chapter is found by a court of competent jurisdiction to be unlawful,
18 such finding shall not affect any other portion of said chapter not specifically so found.
19 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 --
PROTECTING RHODE ISLANDERS FROM COERCIVE ECONOMIC TACTICS AT
GROCERY STORES

- 1 This act would create a new chapter to protect Rhode Island consumers from coercive
- 2 tactics at grocery stores.
- 3 This act would take effect upon passage.

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