

**CHAPTER 487**  
**CONSUMER PROTECTION**

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## Note

Mortgage foreclosure task force, reports to legislature (expires June 30, 2012). L 2010, c 162.

## Cross References

Lease-purchase agreements for personal property, see chapter 481M.

Mandatory seller disclosures in real estate transactions, see chapter 508D.

Service contracts, see chapter 481X.

" **§487-1 Legislative intent.** The public health, welfare and interest require a strong and effective consumer protection program to protect the interests of both the consumer public and the legitimate business person. Toward this end, a permanent office of consumer protection is created to coordinate the services offered to the consumer by various state and county agencies, together with private organizations, and to aid in the development of preventive and remedial programs affecting the interest of the consumer public. [L 1969, c 175, §1; gen ch 1993]

## Case Notes

A duty of care may be established by statute if a legislative enactment lays down requirements of conduct, and provides expressly or by implication that a violation shall entail civil liability in tort; as this section states the purpose behind the creation of an office of consumer protection but does not provide any standard governing conduct or any provision which prescribes a duty, this section does not create nor is indicative of a standard of care in a claim for negligence. 128 H. 423, 290 P.3d 493 (2012).

" **§487-2 Office of consumer protection; director.** There is created within the department of commerce and consumer affairs an office of consumer protection. The director of commerce and consumer affairs shall be the director of the office of consumer protection and may appoint an executive director of the office of consumer protection. The executive director shall have been admitted to practice law before the supreme court of this State and shall be exempt from chapter 76. [L 1969, c 175, §2; am L 1980, c 302, pt of §2; am L 1982, c 204, §2; gen ch 1985; am L 1988, c 60, §3; am L 2000, c 253, §150]

" **§487-3 Personnel.** (a) The director may appoint as staff members persons who have been admitted to practice law before the supreme court of this State without regard to chapter 76. All other employees shall be appointed by the director in accordance with chapter 76.

(b) The director may, by contract, retain the services of special consumer protection attorneys for the prosecution of consumer-related matters. The special consumer protection attorneys shall serve at the pleasure of the director. At the option of the director, special consumer protection attorneys may be compensated on a fixed-price basis, an hourly rate basis, with or without a fixed cap, or through a contingent fee arrangement to be specified in the contract and payable out of all sums the special consumer protection attorney recovers for the State by judgment, order, assurance of voluntary compliance, or settlement. [L 1969, c 175, §3; am L 1995, c 73, §3; am L 2000, c 253, §150]

" **§487-4 Salary and duties of executive director; benefits.** The director may define the executive director's powers and duties and fix the executive director's compensation. The executive director and attorney staff members shall be entitled to participate in any employee benefit plan. [L 1969, c 175, §4; am L 1975, c 58, §21; am L 1982, c 129, §18; am L 1986, c 128, §16; am L 1988, c 60, §4]

" **§487-5 General functions, powers, and duties.** The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The director of the office of consumer protection shall have the following functions, powers, and duties:

- (1) Coordinate the consumer protection activities of all departments, divisions, and branches of state government, and of branches of the county government concerned with consumer protection;
- (2) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;
- (3) Conduct investigations, research, studies, and analysis of matters and take appropriate action affecting the interests of consumers;
- (4) Study the operation of laws affecting consumers and recommend to the governor and the legislature, new laws and amendments of laws in the consumers' interest;

- (5) Adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter, including rules which define with specificity acts or practices which are unfair or deceptive acts or practices in the conduct of any trade or commerce;
- (6) Investigate reported or suspected violations of laws enacted and rules adopted for the purpose of consumer protection and shall enforce such laws and rules by bringing civil actions or proceedings;
- (7) Organize and hold conferences on problems affecting consumers; and undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services;
- (8) Provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations available to the general public; provided that consumer complaints may not be made available to the general public if the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency;
- (9) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- (10) Contract with other county, state, or federal governmental agencies, with nonprofit social services societies, or with private nonprofit trade, professional, or business organizations for the performance of any of the functions of the office not involving the enforcement of rules for the purpose of consumer protection under this section, within the budget limitations for any period not exceeding a budget year, provided that the purposes and policies of this chapter are in no way diluted, abridged, misdirected, or destroyed; and
- (11) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section, including but not limited to, compensation of witnesses in such amounts and for such purposes as shall be prescribed by rules. [L 1969, c 175, §5; am L 1974, c 127, §1; am L 1975, c 57, §1 and c 149, §1; am L 1980, c 191, §2; am L 1985, c 64, §1;

am L 1988, c 60, §5; am L 1989, c 77, §13; am L 1990, c 316, §10; am L 1991, c 3, §4 and c 105, §1]

### Case Notes

Where, pursuant to this section, the director of the office of consumer protection is designated the consumer counsel for the State "and shall represent and protect the State, the respective counties, and the general public as consumers", in bringing civil actions or proceedings for the purpose of enforcing consumer protection laws and rules, the director is statutorily authorized to obtain restitution for injured consumers under §487-14. 110 H. 504, 135 P.3d 113.

" **§487-6 Consumer advisory council.** There shall be a consumer advisory council consisting of eleven members who shall be appointed by the governor and serve at the governor's pleasure. There shall be at least one member from each of the counties of the State. The chairperson of the council shall be selected by the members. Each member shall serve without pay and shall be reimbursed for necessary expenses incurred while attending meetings and while in the discharge of the member's responsibilities. The council shall assist the office of consumer protection and the director of commerce and consumer affairs in an advisory capacity in carrying out the duties and functions of the office. [L 1969, c 175, §7; am L 1982, c 204, §3; gen ch 1985, 1993]

" **[§487-7] Cooperation with office of consumer protection.** Each department, agency, officer and employee of the State and of the counties shall cooperate with and assist the office of consumer protection in the performance of the functions, powers and duties of the office. [L 1969, c 175, §7]

" **[§487-8] Powers and duties of other departments and agencies.** Nothing contained in this chapter shall be deemed to delegate or detract in any way from the functions, powers and duties prescribed by law for any other department or agency of the State, nor to interrupt or preclude the direct relationships of any such department or agency or units of county government in the performance of such functions, powers and duties. [L 1969, c 175, §8]

" **§487-9 Investigations.** The director in the course of the director's investigations may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects which the director deems relevant to the

investigation. Service of the subpoena may be made personally within this State, but if personal service cannot be obtained, substituted service may be made on any witness over whom the courts can exercise jurisdiction pursuant to chapter 634, in the following manner:

- (1) Personal service outside the State;
- (2) Mailing by registered or certified mail to the last known place of business, residence, or abode within or without this State of the person to be served;
- (3) As to any person other than a natural person, in the manner provided in the Hawaii rules of civil procedure as if a complaint had been filed; or
- (4) Such service as the circuit court may direct in lieu of personal service within this State.

Upon application by the director, obedience to the subpoena may be enforced by the circuit courts of this State in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court. If the person is a nonresident or has no principal place of business within this State, obedience to the subpoena may also be enforced by a circuit court of this State in the county where the subpoena was issued. The director may conduct hearings in aid of any investigation or inquiry, and may prescribe forms and adopt rules as may be necessary in the interest of the consumer public. [L 1969, c 175, §9; am L 1976, c 94, §1; gen ch 1985; am L 1998, c 200, §1]

#### **Cross References**

Hearings, see chapter 91.

#### **Rules of Court**

Service of process, see HRCF rule 4.

" **§487-10 Investigators, appointment and powers.** The director shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all the powers and authority of a police officer or of a deputy sheriff in the service of process or in the service of subpoenas. [L 1969, c 175, §10; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2016, c 5, §1]

" **§487-11 REPEALED.** L 1988, c 60, §6.

" **[\$487-12] Assurance of voluntary compliance.** In lieu of instituting or continuing an investigation or action pursuant to section 487-5(6), the director may accept written assurance of voluntary compliance from the person or persons suspected of violation. The director will obtain the agreement of the affected consumers where possible. In no event shall the fact that a person who enters into an assurance of voluntary compliance be considered an admission of violation, nor shall such written assurance constitute prima facie evidence of any violation. The assurance may include a stipulation for reimbursement to some or all consumers who have been damaged by an alleged unlawful act or practice and payment of costs of investigation. All assurances of voluntary compliance may be made a matter of public record. A consumer need not accept restitution pursuant to the stipulation, but the consumer's stipulated agreement to the assurance or the consumer's acceptance and full performance of restitution shall bar recovery of any other damages in any action on account of the same acts or practices by the consumer against the person or persons making restitution. [L 1974, c 61, §1; gen ch 1985]

#### **Revision Note**

Section "487-5(6)" substituted for "487-5(5)".

" **§487-13 Unlicensed acts; penalties.** (a) Any person who furnishes commodities or services for which a license, registration, or certificate is required from the department of commerce and consumer affairs or any board or commission thereunder without having such license, registration, or certificate is engaged in an unlawful act or practice and shall be subject to the penalty provided in subsection (b).

(b) Any person who engages in an unlawful act or practice as provided in subsection (a) shall be fined by a sum not less than \$500 nor more than \$2,500 for each unlawful act or practice, which sum shall be collected in a civil suit brought by the office of consumer protection or the department of commerce and consumer affairs.

(c) Any contract for the furnishing of commodities or services by an unlicensed, unregistered, or uncertificated person shall be void and shall prevent such person from recovering the contract price or the reasonable value thereof. [L 1974, c 120, §1; am L 1977, c 18, §1; am L 1982, c 204, §4; am L 1988, c 101, §1; am L 2008, c 19, §67]

" **§487-14 Restitution.** (a) In any action brought by the director of the office of consumer protection, the court may

include in its orders or judgments such provisions as may be necessary to effect restitution. Any person in whose favor restitution is ordered need not accept restitution, but the person's acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(c) Whenever a domestic or foreign limited liability company is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the limited liability company and the individual members, managers, or agents of the limited liability company who authorized, ordered, had done, or participated in any of the unlawful acts and practices that caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(d) The office of consumer protection may establish and maintain an account for purposes of holding and disbursing moneys received or recovered by it and which are due consumers as restitution.

(e) The director of the office of consumer protection may assign to a consumer for collection that portion of any judgment awarding restitution to that consumer.

(f) If a person commits a violation of section 480-2 which is directed toward, targets, or injures an elder, the court, in addition to the restitution authorized by [subsection] (a), may award the elder an additional sum up to but not to exceed the amount of restitution ordered in subsection (a). In determining the amount, if any, of an award under this subsection, the court shall consider the factors set forth in section 480-13.5. [L 1975, c 99, §1; am L 1976, c 111, §1; gen ch 1985; am L 1987, c 69, §1; am L 1989, c 230, §3; am L 1991, c 53, §1; am L 1996, c 92, §18; am L 1998, c 179, §3]

### **Cross References**

Some other actions or penalties for violations committed against elders, see §§28-94, 412:3-114.5, 444-10.7, 454-4.5, 480-13, 480-13.5, 485A-603.5, and 485A-604.5.



## Case Notes

Where, pursuant to §487-5, the director of the office of consumer protection is designated the consumer counsel for the State "and shall represent and protect the State, the respective counties, and the general public as consumers", in bringing civil actions or proceedings for the purpose of enforcing consumer protection laws and rules, the director is statutorily authorized to obtain restitution for injured consumers under this section. 110 H. 504, 135 P.3d 113.

Cited: 451 F. Supp. 2d 1147.

" **§487-15 Injunction.** The director of commerce and consumer affairs or the office of consumer protection may bring civil proceedings to enjoin any violation of section 487-13(a) or any other unlawful act or practice affecting consumers, trade, or commerce. [L 1979, c 198, §1; am L 1982, c 204, §5; am L 1989, c 230, §4]

## Rules of Court

Injunctions, see HRCF rule 65.

" **[§487-16] Appointment of receiver; powers; limitation.**

(a) If the director initiates any action in circuit court under this chapter against a person for allegedly engaging in unfair or deceptive acts or practices in violation of section 480-2, the court may appoint a receiver for the assets of such person upon application by the director and proof submitted at a hearing on the application which is sufficient to establish that:

- (1) The person previously engaged in a pattern of unfair or deceptive acts or practices which resulted in substantial actual damages to consumers;
- (2) The person is outside the State or is actually removing or about to remove self or property outside the State or is concealing self or property; or
- (3) The appointment of a receiver is necessary to preserve the assets of the person for the benefit of consumers allegedly damaged by the person's unfair or deceptive acts or practices.

(b) Subject to the limitation in subsection (c), a receiver appointed by the court pursuant to subsection (a) may sue for, collect, receive, and take into possession all the goods and chattels, rights, credits, moneys, effects, lands, tenements, books, records, documents, papers, choses in action,

bills, notes, and property of every description, including property with which such property has been commingled, which is owned by or owing to the defendant. The receiver may sell, convey, or assign the property and hold or dispose of the proceeds thereof subject to the approval of the court.

(c) Prior to the judgment, the receiver shall exercise such powers enumerated in subsection (b) as may be necessary to preserve the assets of the defendant pending the judgment. [L 1983, c 35, §1]

#### **Rules of Court**

Receivers, see HRCF rule 66.