

DEPARTMENT OF ATTORNEY GENERAL

CONSUMER PROTECTION AND CHARITABLE TRUSTS DIVISION

GENERAL RULES

(By authority conferred on the attorney general by section 3 of Act No. 331 of the Public Acts of 1976, being S445.903 of the Michigan Compiled Laws)

R 14.51 Definitions.

Rule 1. As used in these rules:

- (a) "Act" means the Michigan consumer protection act.
- (b) "Attorney general" means the elected attorney general or an assistant attorney general.

History: 1979 AC.

R 14.52 Consumer protection division; enforcement and administration of fact; location; assistant attorney general in charge; powers and duties; investigative agent.

Rule 2. (1) The Michigan consumer protection act shall be regularly enforced and administered by the department of attorney general, consumer protection division, or such other division of the department as from time to time is authorized by the attorney general.

(2) The consumer protection division is located at the Law Building, Lansing, Michigan 48913.

(3) The consumer protection division shall be headed by the assistant attorney general in charge thereof as appointed by the attorney general, which assistant in charge shall have the care, custody, and control of the files and records of the division. In addition, the assistant attorney general in charge shall administer the act and approve all applications for subpoenas, initiation of investigations, commencement and disposition of actions, acceptance of assurances of discontinuances, and promulgation of rules pursuant to the consumer protection act. In the absence of, or when designated by, the assistant in charge, the first assistant attorney general of the consumer protection division may act in the place of the assistant in charge. The assistant in charge is hereby authorized to delegate to such persons within the division such other duties, functions, and responsibilities under the act as he determines from time to time to be appropriate.

(4) Any investigative agent of the attorney general, prosecuting attorney, or any person selected by the officers described in sections 17 to 21 of the act have authority and power to serve a subpoena or other process.

History: 1979 AC.

R 14.53 Notice of intended action; "positive action to cease and desist" defined.

Rule 3. (1) Unless otherwise waived by the court upon good cause shown, the attorney general shall 10 days prior to the commencement of an action under section 5 of the act, serve a notice of intended action upon the person or persons named therein which shall advise the person or persons:

- (a) Of the opportunity to confer with the attorney general in person or by other authorized representative or a stated member of the staff, or
- (b) Of the opportunity to cease and desist or take positive action to cease and desist from the alleged unlawful methods, acts, or practice, and,
- (c) That an action is about to be commenced against the person or persons named in the notice.

(2) The 10-day period shall begin to run from the time the person or persons receive the notice.

(3) A notice may be served upon a person either personally or by certified mail, return receipt requested.

(4) A notice shall be followed by either the commencement of an action, an assurance of discontinuance, or a determination of no cause for action.

(5) For the purposes of this rule, "Positive action to cease and desist" means that the person to whom the notice is directed shall immediately upon receipt begin a course of conduct leading to the complete and total cessation of the alleged methods, acts, and practices; and, in fact, such cessation actually occurs within a reasonable period of time.

History: 1979 AC.

R 14.54 Investigation; subpoena; confidentiality of information; disclosure; copies of documents and reported testimony; representation by counsel of person compelled to appear; investigative agent; powers and duties; "investigative agent" defined.

Rule 4. (1) Investigations of a violation of the act may be initiated by the attorney general, or by other governmental agencies or persons specified in sections 15, 17, 18, 19, 20, and 21 of the act.

(2) Any person may request the attorney general to institute an investigation in respect to any matter over which the attorney general has jurisdiction. Such request may be in the form of a signed statement setting forth the alleged violation of the act with such supporting information as is available and the name and address of the person or persons complained of. No forms or formal procedures are required. A complaint from the public may also be treated by the attorney general as a request for an investigation.

(3) The attorney general or prosecuting attorney may make an application for a subpoena in aid of an investigation under the act.

(4) The receipt of testimony or documentary material pursuant to a subpoena is hereby designated as an investigational proceeding, which shall be either electronically or stenographically recorded or identified in case of documentary material.

(5) All information obtained as the result of a subpoena shall be confidential to the office of the attorney general or prosecuting attorney. A request for disclosure by such persons as are authorized access thereto shall be in writing setting forth the description of the information sought, the persons to whom it relates, and the use to which it will be put. The attorney general or prosecuting attorney may decline access upon determination that disclosure is not in the public interest. Upon a determination that the information may be disclosed to such authorized persons, the attorney general or prosecuting attorney may require that the actual costs of reproduction thereof be borne by the person seeking access. An order of the court of competent jurisdiction requiring access and disclosure shall be presumed to be in the public interest.

(6) Upon determination by the attorney general that disclosure to an authorized person is appropriate under the act, the attorney general shall notify the person who supplied the information or materials pursuant to a subpoena of the identity of the person seeking the information and materials, and that it shall be disclosed to that person 10 days from the date of the notice. The notice shall be given by certified mail, return receipt requested.

(7) Any person compelled to produce documentary material or to testify in response to a subpoena may retain or, on payment of prescribed costs of copying, procure a copy of any document submitted by him and of his own testimony as reported.

(8) Any person compelled to appear in person may be accompanied, represented, and advised by counsel as follows:

(a) The counsel for a person shall file with the attorney general an appearance setting forth that the attorney is representing that person.

(b) Counsel for a person may advise his client, in confidence and upon the initiative of either himself or the person, with respect to any question asked of the person, that the person refuse to answer a question. Then counsel may briefly state on the record that he has advised the person not to answer the question and the legal grounds for such refusal.

(c) Where it is claimed that the testimony or other evidence sought from a person is outside the scope of the subpoena or investigation, or that the person is privileged to refuse to answer the question or to produce other evidence, counsel for the person may object on the record to the question or requirement and may state briefly and precisely the grounds therefor.

(d) Following the completion of an examination of a person, the person may on the record be given an opportunity to clarify answers which may need clarification, in order that they may not be left equivocal or incomplete.

(9) For the purposes of conducting an investigation pursuant to section 7 of the act, an investigative agent of the attorney general is hereby authorized to administer oaths and affirmations and conduct investigations, including taking of testimony and receiving documentary material produced by a person.

(10) An "investigative agent" means a regular civil service employee appointed by the attorney general as an investigator whose duties, functions, and responsibilities include the investigation of any civil or criminal law.

History: 1979 AC.

R 14.55 Assurance of discontinuance.

Rule 5. (1) When the attorney general or prosecuting attorney has information indicating that a person or persons may have engaged, are engaging, or are about to engage in a method, act, or practice which may involve violation of the act, and if he deems the public interest shall be fully safeguarded thereby, may afford such person or persons the opportunity to negotiate informally an assurance of discontinuance.

(2) In determining whether the public interest shall be safeguarded by such assurance, the attorney general or prosecuting attorney shall consider:

- (a) The nature and gravity of the alleged violation.
- (b) The prior record and good faith of the parties involved.
- (c) Other factors, including, where appropriate, adequate assurance of voluntary compliance.

(3) An assurance of discontinuance is accepted and final upon signing by the attorney general or prosecuting attorney.

(a) It shall include:

(i) A description of the methods, acts, and practices which a person agrees to permanently discontinue.

(ii) A reference to the provisions of the act or these rules as are applicable.

(iii) A statement that the person does not admit any issue of law or fact.

(b) In addition, the assurance may include:

(i) An agreement to pay the cost of investigation.

(ii) An agreement to hold in escrow an amount pending the outcome of litigation.

(iii) An agreement for an amount of restitution to an aggrieved person.

(4) An assurance may not be introduced in any other proceeding brought by a person other than the parties to the assurance who may introduce it in a proceeding to modify its terms or to enforce its terms in whole or in part.

History: 1979 AC.

R 14.56 Prosecuting attorney; powers and duties.

Rule 6. A prosecuting attorney may initiate and conduct investigations, make ex parte application to the circuit court for a subpoena, and seek such relief as provided in sections 5, 6, 7, 8, 10, and 15 of the act in the same manner and subject to the same restrictions as the attorney general, provided:

(a) Prior to making the application for the subpoena, or the filing of an action, the prosecutor gives to the attorney general 15 days' notice that he, the prosecutor, intends to make such an application or file an action. The 15-day notice may be waived by the attorney general.

(b) The notice shall contain:

(i) The identity of the person or persons against whom the action is to be commenced or the subpoena is to be served or enforced.

(ii) A description of the alleged violation of the act or these rules.

(iii) A brief statement of the relief to be sought.

(iv) If known, a statement of any past or pending actions or subpoenas brought or served against such person under the act.

(c) A legal action shall not be commenced with respect to any course of action taken in good faith reliance upon the ruling, where all relevant facts were fully, completely, and accurately presented to the attorney general.

History: 1979 AC.

R 14.57 Declaratory ruling.

Rule 7. (1) Any person may request a ruling from the attorney general as specified in section 63 of Act No. 306 of the Public Acts of 1969, being S24.263 of the Michigan Compiled Laws, with respect to a course of action to determine whether the action is in compliance with the act or these rules. It is the policy of the attorney general to consider such requests and, where practical, make such a ruling. A request for a ruling shall ordinarily be considered inappropriate where:

(a) The same, or substantially the same, course of action is under investigation or is, or has been, the subject of a current action, order, judgment, or decree initiated or obtained by the attorney general, a prosecuting attorney, or another governmental agency.

(b) The course of action, or its effects, may be such that an informed decision thereon cannot be made or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

(2) A request for a ruling shall be submitted in writing to the attorney general and include full and complete information regarding the course of action. Citations of legal authority supporting the theory or position of the requester may accompany the request.

(3) Any ruling given is without prejudice to the right of the attorney general to reconsider the questions involved, and where the public interest requires, to prospectively change the ruling. Sixty days' notice of prospective change shall be given to the requester so that the person may discontinue the course of action taken in reliance upon the ruling.

History: 1979 AC.

R 14.58 Request for evidence of facts on which claims made to consumers are based.

Rule 8. To implement section 5(2) of the act, in connection with a determination to issue a notice of intended action or initiation of an investigation pursuant to a determination of violation of a provision of the act or these rules, the attorney general or a prosecuting attorney may make written request to a person doing business in Michigan, or in whose behalf claims are made to consumers in Michigan, to provide to the attorney general or prosecuting attorney making the request evidence of the facts on which such claims are based, if such claims:

(a) Purport to be based on factual, objective, or clinical evidence, or that

(b) Compare that product's or service's characteristics, ingredients, uses, benefits, effectiveness, price, or safety to that of other products or services, except to the extent such claims are statements of opinion.

History: 1979 AC.

R 14.59 Complaint.

Rule 9. (1) Any person may complain to the attorney general or prosecuting attorney, alleging an actual or suspected violation of the act or these rules. The complaint shall be in writing on the form prescribed or approved by the attorney general. A person, upon signing the complaint, verifies that the facts set forth therein are true to the best of his information, knowledge, and belief.

(2) A complaint form shall include:

(a) The name, address, telephone number, and zip code of the complainant and respondent.

(b) A space for the identification of the subject matter of the complaint, by violation code number.

(c) A space for the identification of the respondent, by standard industrial classification number.

(d) A space for the identification of the property or services involved, by a standard keyword.

(e) The name and address of the agency receiving the complaint.

(3) A complaint, or a record thereof, filed with a prosecuting attorney shall be promptly duplicated and a copy shall be forwarded to the attorney general, consumer protection division.

(4) A complaint filed with a prosecuting attorney shall be a public record and be open for inspection in the same manner as public records of the attorney general and as provided in these rules.

History: 1979 AC.

R 14.60 Publication of information; subscription; fees; waiver.

Rule 10. (1) The consumer protection division shall publish, on a subscription basis, the following information:

- (a) Rules promulgated pursuant to the act.
- (b) Copies of final judgments rendered under the act, provided to the division by clerks of the courts pursuant to section 12(1) of the act.
- (c) Assurances of discontinuance.
- (d) Declaratory rulings rendered by the attorney general.
- (e) Forms prescribed by the attorney general.

(2) A person desiring to subscribe to the information set forth in subrule (1) shall forward to the consumer protection division a written request therefor setting forth therein the material to which subscription is sought, and accompanying the request a fee in the appropriate amount, which fee shall be determined by reference to subrule (3). The division shall determine the correctness of the fee and may advise the person as to the correct fee. Failure to pay the correct fee shall be sufficient grounds to reject the request for subscription.

(3) The following fees shall be paid by a person annually:

- (a) One of the items in subrule (1)..... \$ 25.00
- (b) Two of the items in subrule (1)..... \$ 50.00
- (c) Three of the items in subrule (1)..... \$ 75.00
- (d) Four of the items in subrule (1)..... \$100.00
- (e) All material described in subrule (1)..... \$125.00

History: 1979 AC.

R 14.61 Investigation by regulatory board or officer.

Rule 11. (1) Whenever a regulatory board or officer identified in sections 17 to 21 of the act proposes to conduct an investigation, requiring the use of a subpoena to be issued under the act, of a method, act, or practice for which the board or officer has probable cause to believe there is a violation of the act or a rule promulgated thereunder, the regulatory board or officer shall:

- (a) File with the attorney general an application therefor, stating in substance:
 - (i) The person or persons to be subpoenaed.
 - (ii) A reasonably precise description of the documentary material to be produced.
 - (iii) A reasonably precise description of the method, act, or practice to be investigated.
 - (iv) The pertinent provisions of the act or rule which the method, act, or practice violates.
 - (v) What steps have been taken to secure the recordation or transcription of testimony taken and who shall bear the costs thereof.
 - (vi) What safeguards shall be undertaken to keep confidential any documentary material or information obtained, describing what procedures shall be followed to prevent such material or information from being disclosed to any other person than the board or officer or the attorney general.
- (b) Designate from among the staff of the board or officers an investigating officer or officers who shall be in charge of conducting the investigation pursuant to the subpoena.
- (c) Take such steps and procure, if necessary, such devices to secure from public inspection or copying any material or information obtained under subpoena, except as otherwise provided in section 7(6) of Act No. 331 of the Public Acts of 1976, being S445.907(6) of the Michigan Compiled Laws.

(2) A regulatory board or officer specified in sections 17 to 21 of Act No. 331 of the Public Acts of 1976 shall not disclose any documentary material or information to any person, unless consented to by the attorney general.

(3) Upon conclusion of an investigation, the regulatory board or officer specified in sections 17 to 21 of Act No. 331 of the Public Acts of 1976 shall make a full report to the attorney general, which report shall contain as a minimum:

- (a) The identity of the person or persons investigated.
- (b) A summary of the information obtained, or in lieu thereof, complete and legible copies of all transcriptions, reports, and documentary material.
- (c) A concise statement of any alleged violations of the act, together with a reference to any support therefor, found in any testimony or documentary material.
- (d) A concise statement of a proposed course of action.
- (e) Recommendation for action.

History: 1979 AC.

R 14.62 Public records.

Rule 12. (1) All records compiled, received, or maintained by the consumer protection division are public records, except those otherwise exempt pursuant to Act No. 331 of the Public Acts of 1976 and Act No. 442 of the Public Acts of 1976.

(2) Upon submitting an oral or written request which describes the record sufficiently to enable the appropriate staff member of the attorney general to find the record, a person has the right to inspect, copy, or receive copies of the record.

(3) A person may subscribe to future issuances of public records which are issued on a regular basis. A subscription shall be valid for 6 months and shall be renewable.

(4) Records may be inspected during regular office hours at a place designated by the attorney general, which shall, as far as possible, be convenient to the person who wishes to inspect the record.

(5) Where a request to inspect a public record is made, the attorney general may, with consent of the party requesting the record, provide the person with a copy of the record without charge in lieu of providing a place for inspection. Where a person requests 1 or more copies of a public record and the cost of providing copies is substantial, a reasonable fee may be imposed, but such fee shall not exceed the maximum charges allowable by section 4 of Act No. 442 of the Public Acts of 1976, being S15.234 of the Michigan Compiled Laws.

(6) Where more than 1 person wishes to inspect the same public record at the same time, the attorney general may limit the number of persons who may inspect the record at 1 time to a reasonable number.

(7) A person inspecting a record shall not write anything upon the record nor fold nor mutilate it. Violation of this requirement shall subject a person to criminal penalties imposed by section 491 of Act No. 328 of the Public Acts of 1931, as amended, being S750.491 of the Michigan Compiled Laws.

(8) A person inspecting a public record shall promptly return the record to the custodian after completion of the inspection.

History: 1979 AC.