

HOUSE BILL 595

D3, I4

4lr2234

By: **Chair, Judiciary Committee (By Request – Office of the Attorney General)**

Introduced and read first time: January 24, 2024

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Enforcement Actions Brought by the Attorney General**
3 **– Statute of Limitations**

4 FOR the purpose of providing that certain civil enforcement actions brought by the
5 Attorney General may be instituted at any time; and generally relating to civil
6 enforcement actions brought by the Attorney General.

7 BY repealing and reenacting, without amendments,
8 Article – Commercial Law
9 Section 11–204 and 11–213
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2023 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Commercial Law
14 Section 11–209
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2023 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 5–107
20 Annotated Code of Maryland
21 (2020 Replacement Volume and 2023 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Commercial Law**

25 11–204.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) A person may not:

2 (1) By contract, combination, or conspiracy with one or more other persons,
3 unreasonably restrain trade or commerce;

4 (2) Monopolize, attempt to monopolize, or combine or conspire with one or
5 more other persons to monopolize any part of the trade or commerce within the State, for
6 the purpose of excluding competition or of controlling, fixing, or maintaining prices in trade
7 or commerce;

8 (3) Directly or indirectly discriminate in price among purchasers of
9 commodities or services of like grade and quality, if the effects of the discrimination may:

10 (i) Substantially lessen competition;

11 (ii) Tend to create a monopoly in any line of trade or commerce; or

12 (iii) Injure, destroy, or prevent competition with any person who
13 grants or knowingly receives the benefit of the discrimination or with customers of either
14 of them;

15 (4) In the course of commerce, pay or contract for the payment of anything
16 of value to or for the benefit of a customer of the person as compensation for or in
17 consideration of any service or facility furnished by or through the customer in connection
18 with the processing, handling, sale, or offering for sale of any service or commodity
19 manufactured, sold, or offered for sale by the person, unless the payment or consideration
20 is available on proportionally equal terms to all other customers competing in the
21 distribution of the service or commodity;

22 (5) Discriminate in favor of one purchaser against another purchaser of a
23 commodity bought for resale, with or without processing, by contracting to furnish,
24 furnishing, or contributing to the furnishing of any service or facility connected with the
25 processing, handling, sale, or offering for sale of the commodity on terms not accorded to
26 all purchasers on proportionally equal terms; or

27 (6) Lease or make a sale or contract for the sale of a patented or unpatented
28 commodity or service for use, consumption, enjoyment, or resale, or set a price charged for
29 the commodity or service or discount from or rebate on the price, on the condition,
30 agreement, or understanding that the lessee or purchaser will not use or deal in the
31 commodity or service of a competitor of the lessor or seller, if the effect of the lease, sale, or
32 contract for sale or the condition, agreement, or understanding may:

33 (i) Substantially lessen competition; or

34 (ii) Tend to create a monopoly in any line of trade or commerce.

1 (b) For purposes of subsection (a)(1) of this section, a contract, combination, or
2 conspiracy that establishes a minimum price below which a retailer, wholesaler, or
3 distributor may not sell a commodity or service is an unreasonable restraint of trade or
4 commerce.

5 (c) Subsection (a)(3) through (6) of this section does not prevent:

6 (1) Differentials which make only due allowance for differences in the cost
7 of manufacture, sale, or delivery resulting from the differing methods or quantities in which
8 the commodity or service is sold or delivered to a purchaser;

9 (2) A person engaged in selling a commodity or service from selecting his
10 own customers in bona fide transactions and not in restraint of trade;

11 (3) A person engaged in selling a commodity or service from granting
12 employee discounts to his own bona fide employees;

13 (4) A seller from introducing evidence to rebut a case brought under
14 subsection (a)(3) through (6) of this section to show that his lower price or the furnishing of
15 services or facilities to a purchaser was made in good faith to meet an equally low price of
16 a competitor, or the services or facilities furnished by a competitor; or

17 (5) Price changes, from time to time, in response to changing conditions
18 affecting the market for or the marketability of a commodity, which changing conditions
19 include an actual or imminent deterioration of a perishable commodity, obsolescence of a
20 seasonal commodity, distress sales under court process, or sales in good faith in
21 discontinuance of business in the commodity.

22 11-209.

23 (a) (1) The Attorney General shall institute proceedings in equity to prevent
24 or restrain violations of § 11-204 of this subtitle and may require assistance from any
25 State's Attorney for that purpose.

26 (2) In a proceeding under this section, the court shall determine whether a
27 violation has been committed and enter any judgment or decree necessary to:

28 (i) Remove the effects of any violation it finds; and

29 (ii) Prevent continuation or renewal of the violation in the future.

30 (3) The court may exercise all equitable powers necessary for this purpose,
31 including but not limited to injunction, restitution to any person of any money or real or
32 personal property acquired from that person by means of any violation, divestiture of
33 property or business units, and suspension or termination of the right of a foreign
34 corporation or association to do business in the State.

1 (4) (i) In addition to the equitable remedies or other relief authorized
2 by this section, the court may assess against any person who violates § 11–204 of this
3 subtitle a civil penalty not exceeding \$10,000 for each violation, to be paid to the General
4 Fund of the State.

5 (ii) Each day that a violation of § 11–204 of this subtitle continues is
6 a separate violation.

7 (b) (1) The United States, the State, and any political subdivision organized
8 under the authority of the State is a person having standing to bring an action under this
9 subsection.

10 (2) (i) A person whose business or property has been injured or
11 threatened with injury by a violation of § 11–204 of this subtitle may maintain an action
12 for damages or for an injunction or both against any person who has committed the
13 violation regardless of whether the person maintaining the action dealt directly or
14 indirectly with the person who has committed the violation.

15 (ii) In any action under this subsection for damages by an
16 intermediate purchaser or seller in the chain of manufacture, production, or distribution,
17 any defendant, as a partial or complete defense, may, in order to avoid duplicative liability,
18 prove that all or any part of an alleged overcharge was passed on to a later purchaser or
19 ultimate end–user also maintaining an action for damages under this subsection.

20 (3) If an injunction is issued, the complainant shall be awarded costs and
21 reasonable attorney’s fees.

22 (4) In an action for damages, if an injury due to a violation of § 11–204 of
23 this subtitle is found, the person injured shall be awarded three times the amount of actual
24 damages which results from the violation, with costs and reasonable attorney’s fees.

25 (5) The Attorney General may bring an action on behalf of the State or any
26 of its political subdivisions or as *parens patriae* on behalf of persons residing in the State
27 to recover the damages provided for by this subsection or any comparable provision of
28 federal law.

29 (c) An action brought by the Attorney General as *parens patriae* under subsection
30 (b)(5) of this section is presumed superior to any class action brought on behalf of the same
31 person.

32 (d) (1) **(I) [An] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
33 **PARAGRAPH, AN** action brought to enforce this subtitle shall be commenced within 4 years
34 after the cause of action accrues.

35 **(II) A CIVIL ENFORCEMENT ACTION BROUGHT BY THE**
36 **ATTORNEY GENERAL TO ENFORCE THIS SUBTITLE MAY BE INSTITUTED AT ANY**
37 **TIME.**

1 (2) For the purposes of this subsection, a cause of action for a continuing
2 violation accrues at the time of the latest violation.

3 (3) Whenever the State commences a criminal proceeding under this
4 subtitle or the United States commences a criminal antitrust proceeding under the federal
5 antitrust laws, any civil action under this section related to the subject matter of the
6 criminal proceeding shall be commenced within 1 year after the conclusion of the
7 proceeding or within 4 years after the cause of action accrued, whichever is later.

8 11–213.

9 This subtitle may be cited as the Maryland Antitrust Act.

10 **Article – Courts and Judicial Proceedings**

11 5–107.

12 **(A)** Except as provided in **SUBSECTION (B) OF THIS SECTION**, § 5–106 of this
13 subtitle, § 1–303 of the Environment Article, and § 8–1815 of the Natural Resources Article,
14 a prosecution or suit for a fine, penalty, or forfeiture shall be instituted within one year
15 after the offense was committed.

16 **(B) A CIVIL ENFORCEMENT ACTION BROUGHT BY THE ATTORNEY GENERAL**
17 **MAY BE INSTITUTED AT ANY TIME.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2024.