

HOUSE BILL 1182

14

4lr3452

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

Introduced and read first time: February 8, 2024

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Maryland Antitrust Act – Enforcement Remedies**

3 FOR the purpose of altering the definition of “restitution” to include disgorgement in
4 certain provisions relating to remedies under the Maryland Antitrust Act; and
5 generally relating to the Maryland Antitrust Act.

6 BY repealing and reenacting, with amendments,

7 Article – Commercial Law

8 Section 11–209

9 Annotated Code of Maryland

10 (2013 Replacement Volume and 2023 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

12 That the Laws of Maryland read as follows:

13 **Article – Commercial Law**

14 11–209.

15 **(A) IN THIS SECTION, “RESTITUTION” INCLUDES DISGORGEMENT.**

16 **[(a)] (B)** (1) The Attorney General shall institute proceedings in equity to
17 prevent or restrain violations of § 11–204 of this subtitle and may require assistance from
18 any State’s Attorney for that purpose.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

13 **[(b)] (C)** (1) The United States, the State, and any political subdivision
14 organized under the authority of the State is a person having standing to bring an action
15 under this subsection.

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

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

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

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

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

35 **[(c)] (D)** An action brought by the Attorney General as *parens patriae* under
36 subsection **[(b)(5)] (C)(5)** of this section is presumed superior to any class action brought

1 on behalf of the same person.

2 **[(d)] (E)** (1) An action brought to enforce this subtitle shall be commenced
3 within 4 years after the cause of action accrues.

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

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

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