
By: Delegates Kach, Frank, Walkup, Klausmeier, Rosapepe, Love, and Exum

Introduced and read first time: February 14, 1996

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Trade Regulation - Maryland Sales Below Cost Act**

3 FOR the purpose of altering and expanding the remedies available under the Sales Below
4 Cost Act for a violation of that Act; providing that the remedies available include an
5 award to a prevailing plaintiff of treble damages, reasonable attorney's fees, and
6 expert witness fees; altering a certain definition; and generally relating to the
7 Maryland Sales Below Cost Act.

8 BY repealing and reenacting, with amendments,
9 Article - Commercial Law
10 Section 11-401(b)
11 Annotated Code of Maryland
12 (1990 Replacement Volume and 1995 Supplement)

13 BY repealing
14 Article - Commercial Law
15 Section 11-405
16 Annotated Code of Maryland
17 (1990 Replacement Volume and 1995 Supplement)

18 BY adding to
19 Article - Commercial Law
20 Section 11-405
21 Annotated Code of Maryland
22 (1990 Replacement Volume and 1995 Supplement)

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

25 **Article - Commercial Law**

26 11-401.

27 (b) "Cost to the retailer" means the lesser of the invoice cost or the replacement
28 cost of the merchandise to the retailer, minus any trade discount REFLECTED ON THE
29 INVOICE, other than a customary discount for cash, plus:

2

1 (1) A freight charge otherwise not included in the invoice cost or the
2 replacement cost of the merchandise;

3 (2) A cartage cost to the retail outlet if performed or paid for by the retailer,
4 which, in the absence of proof of a lesser cost, is 0.75 percent of the cost to the retailer,
5 after adding the freight charge but before adding the cartage cost and any markup;

6 (3) A markup to cover in part the cost of doing business, which, in the
7 absence of proof of a lesser cost, is 5 percent of the cost to the retailer, after adding the
8 freight charge and the cartage cost but before adding any markup; and

9 (4) An additional markup to cover in part the cost of doing business, which,
10 in the absence of proof of a lesser cost, is 2 percent of the cost to the retailer, after adding
11 the freight charge and the cartage cost but before adding any markup, if the retailer:

12 (i) Buys at wholesale or buys directly from the manufacturer or the
13 agent or broker of the manufacturer; and

14 (ii) Receives a wholesale price or discount on merchandise for retail
15 sale.

16 [11-405.

17 On complaint of a person who claims to be injured, a circuit court has jurisdiction to
18 enjoin a retailer or wholesaler from the commission of an act prohibited by this subtitle.]

19 11-405.

20 (A) AN ACTION TO REMEDY ANY VIOLATION OF THIS SUBTITLE MAY BE
21 BROUGHT BY ANY PERSON IN AN APPROPRIATE CIRCUIT COURT.

22 (B) (1) IF, IN AN ACTION BROUGHT TO REMEDY ANY VIOLATION OF THIS
23 SUBTITLE, THE COURT FINDS THAT A PERSON, DIRECTLY OR INDIRECTLY, IS
24 VIOLATING, HAS VIOLATED, OR HAS INDUCED THE VIOLATION OF ANY PROVISION
25 OF THIS SUBTITLE, THE COURT SHALL ENJOIN THE PERSON PRELIMINARILY AND
26 PERMANENTLY FROM ENGAGING IN THE UNLAWFUL CONDUCT.

27 (2) IF AN INJUNCTION IS THE ONLY REMEDY SOUGHT IN AN ACTION, IT
28 IS NOT NECESSARY FOR THE PLAINTIFF TO ALLEGE OR PROVE THAT THE PLAINTIFF
29 HAS BEEN INJURED BY THE VIOLATION.

30 (C) (1) ANY PERSON SHOWN TO HAVE DIRECTLY OR INDIRECTLY
31 VIOLATED THIS SUBTITLE SHALL BE LIABLE TO ANY PERSON INJURED BY THE
32 VIOLATION FOR THE ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
33 VIOLATION.

34 (2) IF ACTUAL DAMAGES ARE AWARDED FOR A VIOLATION OF THIS
35 SUBTITLE, THE PREVAILING PLAINTIFF SHALL BE ENTITLED TO THREE TIMES THE
36 AMOUNT OF THE ACTUAL DAMAGES.

37 (D) IN ANY ACTION BROUGHT UNDER THIS SECTION, A PREVAILING
38 PLAINTIFF SHALL BE AWARDED REASONABLE ATTORNEY'S FEES AND EXPERT
39 WITNESS FEES.

3

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.