

BY: Finance Committee

AMENDMENTS TO HOUSE BILL NO. 785

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, before “Arbitration” insert “Repurchase Costs and”; strike beginning with “requiring” in line 6 down through “arbitration” in line 8 and substitute “requiring a distributor to pay for certain costs related to the repurchase of inventory by a grantor; requiring that arbitration proceedings be conducted in Maryland at the request of either a distributor or a grantor; making provisions of this Act severable”; and in line 13, before “11-1306” insert “11-1304 and”.

AMENDMENT NO. 2

On page 1, after line 20, insert:

“Preamble

WHEREAS, The Maryland Fair Distributorship Act was enacted in 1993 in order to provide reasonable protection to the wholesale commercial distributors in the State in their relationships with manufacturers and grantors; and

WHEREAS, The Act generally requires notice prior to cancellation, provides an opportunity for cure, and requires the use of arbitrations to resolve disputes more quickly; and

WHEREAS, Maryland is located in one of the largest consumer markets in the country and is well situated for distribution operations within and without the State; and

WHEREAS, The Act was amended in 1995 to clarify the application of Maryland law to disputes between the parties and to ensure that Maryland distributors and grantors could seek remedies under the Act in Maryland's courts; and

WHEREAS, The Act has proved useful since its enactment in helping to resolve the

(Over)

differences between distributors and grantors and has served important State interests and public purposes; and

WHEREAS, The Act requires repurchase of a distributor's inventory by the grantor under certain circumstances but does not require payment of related shipping, packing, and other expenses, which leaves the distributor with unnecessary costs that cannot be recouped; and

WHEREAS, The Act does not clearly delineate that arbitration proceedings be held in Maryland unless the parties mutually agree otherwise even though actions in Maryland courts are clearly permitted; now, therefore,

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

Article - Commercial Law

11-1304.

(a) Except as provided in subsection [(c)] (D) of this section, on cancellation or nonrenewal of an agreement by a grantor for any reason, including a distributor's failure to cure under § 11-1305 of this subtitle, the grantor shall have the right to, and must at the option of the distributor, repurchase all merchandise sold by the grantor to the distributor, and the distributor must sell the merchandise to the grantor, at a price equal to:

(1) An amount agreed on by the parties; or

(2) (i) With respect to merchandise that is still in its original condition, is part of the grantor's current product line, and was shipped within 6 months of the cancellation or nonrenewal, the purchase price paid by the distributor;

(ii) With respect to all other merchandise, including samples, display models, and damaged merchandise, the wholesale fair market value of the merchandise less depreciation, or the purchase price paid by the distributor, whichever is less; and

(iii) With respect to special tools, accessories, display equipment, and other similar items, the purchase price paid by the distributor, less depreciation, or an amount agreed upon by the parties.

(B) IN ADDITION TO ANY REPURCHASE AMOUNT DUE THE DISTRIBUTOR UNDER THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, THE GRANTOR SHALL PAY ALL SHIPPING, PACKING, RESTOCKING, HANDLING, AND OTHER COSTS RELATED TO THE REPURCHASE TRANSACTION.

[(b)] (C) The repurchase requirements under subsection (a) of this section shall be completed within 30 days after the effective date of cancellation or nonrenewal, unless the parties agree otherwise.

[(c)] (D) The distributor's option to repurchase under subsection (a) of this section does not apply if the reason for cancellation or nonrenewal includes any of the reasons listed in § 11-1303(d) of this subtitle.

[(d)] (E) Repurchase of inventory under this section is not subject to the bulk transfers provisions of Title 6 of this article.”.

On page 3, in line 20, strike “Article - Commercial Law”.

AMENDMENT NO. 3

On page 3, in line 28, after “distributor” insert “ON THE REQUEST OF EITHER PARTY”.

AMENDMENT NO. 4

On page 4, after line 6, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”;

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and in lines 7 and 9, strike “2.” and “3.”, respectively, and substitute “3.” and “4.”, respectively.

AMENDMENT NO. 5

On page 4, in lines 8 and 10, in each instance, strike “October” and substitute “July”.