

HOUSE BILL 785

Unofficial Copy
14

1999 Regular Session
(9r1447)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Delegates Minnick, McHale, Kirk, Donoghue, and Harrison**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law - Maryland Fair Distributorship Act - ~~Repurchase Costs~~**
3 **and Notice and Arbitration Requirements**

4 FOR the purpose of ~~clarifying that the price for repurchase of inventory includes~~
5 ~~certain costs related to the repurchase transaction; requiring certain arbitration~~
6 ~~proceedings to be conducted in Maryland; requiring certain disputes relating to~~
7 ~~the application of the Maryland Fair Distributorship Act be submitted to~~
8 ~~arbitration~~ requiring that arbitration proceedings be conducted in Maryland at
9 the request of either a distributor or a grantor under certain circumstances;
10 requiring a grantor to provide a distributor certain notice and certain
11 opportunity to cure or dispute under certain circumstances; making provisions of
12 this Act severable; ~~making provisions of this Act severable;~~ providing for the
13 application of this Act; and generally relating to the Maryland Fair
14 Distributorship Act.

15 BY repealing and reenacting, with amendments,
16 Article - Commercial Law

1 Section ~~11-1304~~ and 11-1306
2 Annotated Code of Maryland
3 (1990 Replacement Volume and 1998 Supplement)

4 BY adding to
5 Article - Commercial Law
6 Section 11-1302.1
7 Annotated Code of Maryland
8 (1990 Replacement Volume and 1998 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - Commercial Law
11 Section 11-1307
12 Annotated Code of Maryland
13 (1990 Replacement Volume and 1998 Supplement)

14 **Preamble**

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

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

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

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

26 ~~WHEREAS, The Act has proved useful since its enactment in helping to~~
27 ~~resolve the differences between distributors and grantors and has served important~~
28 ~~State interests and public purposes;~~

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

33 ~~WHEREAS, The Act does not clearly delineate that arbitration proceedings be~~
34 ~~held in Maryland even though actions in Maryland courts are clearly permitted; now,~~
35 ~~therefore,~~

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

Article—Commercial Law

2 ~~11-1304.~~

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

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

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

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

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

20 (B) ~~IF ANY REPURCHASE PRICE IS DUE THE DISTRIBUTOR UNDER THE~~
21 ~~PROVISIONS OF SUBSECTION (A) OF THIS SECTION, THE REPURCHASE PRICE SHALL~~
22 ~~ALSO INCLUDE ALL SHIPPING, PACKING, RESTOCKING, HANDLING, AND OTHER~~
23 ~~COSTS RELATED TO THE REPURCHASE TRANSACTION.~~

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

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

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

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

Article - Commercial Law

1 11-1302.1.

2 IN ADDITION TO ANY OTHER PROVISION OF THIS SUBTITLE, WHEN NOTIFYING
 3 A DISTRIBUTOR OF A PROPOSED CANCELLATION OR NONRENEWAL OF ANY
 4 AGREEMENT, A GRANTOR SHALL PROVIDE A NOTICE OF THE DISTRIBUTOR'S
 5 FAILURE TO COMPLY WITH A REASONABLE REQUIREMENT OF THE AGREEMENT AND
 6 AN OPPORTUNITY TO CURE OR DISPUTE THE ASSERTED DEFICIENCY.

7 11-1306.

8 If a dispute arises between the grantor and the distributor relating to THE
 9 APPLICATION OF THIS SUBTITLE, THE REQUIREMENTS OF § 11-1302.1 OF THIS
 10 SUBTITLE, the notice of cancellation or nonrenewal, the plan for the correction of the
 11 deficiencies described by the grantor as the reasons for cancellation or nonrenewal,
 12 whether or not the distributor has complied with the plan and corrected the
 13 deficiencies described by the grantor as the reasons for cancellation or nonrenewal, or
 14 the purchase price or fair market value of any merchandise subject to repurchase
 15 under § 11-1304 of this subtitle, the grantor and distributor ON THE REQUEST OF
 16 EITHER PARTY shall submit the dispute to arbitration IN THE STATE under the
 17 Maryland Uniform Arbitration Act.

18 11-1307.

19 (a) The laws of the State shall apply to agreements under this subtitle to
 20 which a distributor with a principal place of business in the State is a party. This
 21 subtitle shall be construed to provide the minimum terms and conditions applicable to
 22 grantors and distributors covered by this subtitle.

23 (b) This subtitle does not limit or restrict the rights of a grantor or distributor
 24 at any time to seek in the State all legal and equitable remedies for any violation of
 25 this subtitle or any material breach of an agreement.

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

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 36 invalid provision or application, and for this purpose the provisions of this Act are
 37 declared severable.

38 ~~SECTION 3. 2. 3. AND BE IT FURTHER ENACTED, That this Act shall apply~~
 39 ~~to all distributorships in existence on or after October~~ July 1, 1999.

1 SECTION 4. ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect ~~October~~ July 1, 1999.