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By: **Delegates Minnick, McHale, Kirk, Donoghue, and Harrison**  
Introduced and read first time: February 12, 1999  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Commercial Law - Maryland Fair Distributorship Act - Repurchase Costs**  
3                                   **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; making provisions of this Act severable; providing for the  
9 application of this Act; and generally relating to the Maryland Fair  
10 Distributorship Act.

11 BY repealing and reenacting, with amendments,  
12 Article - Commercial Law  
13 Section 11-1304 and 11-1306  
14 Annotated Code of Maryland  
15 (1990 Replacement Volume and 1998 Supplement)

16 BY repealing and reenacting, without amendments,  
17 Article - Commercial Law  
18 Section 11-1307  
19 Annotated Code of Maryland  
20 (1990 Replacement Volume and 1998 Supplement)

21                                   Preamble

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

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

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

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

6 WHEREAS, The Act has proved useful since its enactment in helping to  
7 resolve the differences between distributors and grantors and has served important  
8 State interests and public purposes;

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

13 WHEREAS, The Act does not clearly delineate that arbitration proceedings be  
14 held in Maryland even though actions in Maryland courts are clearly permitted; now,  
15 therefore,

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

18 **Article - Commercial Law**

19 11-1304.

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

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

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

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

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

1 (B) IF ANY REPURCHASE PRICE IS DUE THE DISTRIBUTOR UNDER THE  
2 PROVISIONS OF SUBSECTION (A) OF THIS SECTION, THE REPURCHASE PRICE SHALL  
3 ALSO INCLUDE ALL SHIPPING, PACKING, RESTOCKING, HANDLING, AND OTHER  
4 COSTS RELATED TO THE REPURCHASE TRANSACTION.

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

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

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

13 11-1306.

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

23 11-1307.

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

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

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

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

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