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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 25, 1999

CHAPTER _____

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)

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Preamble

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

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

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

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

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

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

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

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 11-1304.

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

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

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

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

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

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

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

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

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

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Article - Commercial Law

21 11-1306.

22 If a dispute arises between the grantor and the distributor relating to THE
 23 APPLICATION OF THIS SUBTITLE, the notice of cancellation or nonrenewal, the plan
 24 for the correction of the deficiencies described by the grantor as the reasons for
 25 cancellation or nonrenewal, whether or not the distributor has complied with the plan
 26 and corrected the deficiencies described by the grantor as the reasons for cancellation
 27 or nonrenewal, or the purchase price or fair market value of any merchandise subject
 28 to repurchase under § 11-1304 of this subtitle, the grantor and distributor shall
 29 submit the dispute to arbitration IN THE STATE under the Maryland Uniform
 30 Arbitration Act.

31 11-1307.

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

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

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

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

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