

SENATE BILL 676

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14

1999 Regular Session
(9lr2382)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senator Bromwell**

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.

President.

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of requiring a distributor to pay for certain costs related to the
5 ~~repurchase of inventory by a grantor; allowing for *that* arbitration proceedings~~
6 ~~to be conducted in Maryland at the request of either a distributor or a grantor~~
7 ~~*under certain circumstances; requiring a grantor to provide a distributor certain*~~
8 ~~*notice and certain opportunity to cure or dispute under certain circumstances;*~~
9 making provisions of this Act severable; providing for the application of this Act;
10 and generally relating to the Maryland Fair 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)

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

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

11 **Preamble**

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

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

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

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

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

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

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

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

1

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) ~~IN ADDITION TO ANY REPURCHASE AMOUNT DUE THE DISTRIBUTOR~~
 21 ~~UNDER THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, THE GRANTOR SHALL~~
 22 ~~PAY ALL SHIPPING, PACKING, RESTOCKING, HANDLING, AND OTHER COSTS RELATED~~
 23 ~~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 11-1302.1.

33 IN ADDITION TO ANY OTHER PROVISION OF THIS SUBTITLE, WHEN NOTIFYING
 34 A DISTRIBUTOR OF A PROPOSED CANCELLATION OR NONRENEWAL OF ANY
 35 AGREEMENT, A GRANTOR SHALL PROVIDE A NOTICE OF THE DISTRIBUTOR'S
 36 FAILURE TO COMPLY WITH A REASONABLE REQUIREMENT OF THE AGREEMENT AND
 37 AN OPPORTUNITY TO CURE OR DISPUTE THE ASSERTED DEFICIENCY.

1 11-1306.

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

12 11-1307.

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

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

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

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

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