

SENATE BILL 676

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1999 Regular Session
9lr2382
CF 9lr1447

By: **Senator Bromwell**
Introduced and read first time: February 15, 1999
Assigned to: Rules
Re-referred to: Finance, February 22, 1999

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 19, 1999

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law - Maryland Fair Distributorship Act - Repurchase Costs**
3 **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 arbitration proceedings to be
6 conducted in Maryland at the request of either a distributor or a grantor;
7 making provisions of this Act severable; providing for the application of this Act;
8 and generally relating to the Maryland Fair Distributorship Act.

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

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

19 Preamble

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

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

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

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

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

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

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

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

21

Article - Commercial Law

22 11-1304.

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

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

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

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

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

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

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

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

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

16 11-1306.

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

26 11-1307.

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

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

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

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

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