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By: **Delegates Hubbard, Benson, Bobo, Donoghue, Dumais, Elliott,  
Goldwater, Gutierrez, Impallaria, Kach, Kullen, Mandel, Morhaim,  
Murray, Nathan-Pulliam, Pendergrass, Quinter, Rudolph, and V. Turner**

Introduced and read first time: February 9, 2005

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Civil Actions - Defenses - Sales of Food, Drugs, Cosmetics, and Other**  
3 **Health-Related Products**

4 FOR the purpose of abolishing in certain civil actions a defense of indirect contact  
5 with the ~~plaintiff~~ person on whose behalf the action is brought for a person that  
6 sells, distributes, or otherwise disposes of food, drugs, cosmetics, and certain  
7 other health-related products; authorizing the person to prove, as a partial or  
8 complete defense against a damage claim, in order to avoid duplicative liability,  
9 that all or any part of an alleged overcharge ultimately was passed on to another  
10 person by a purchaser or seller in the chain of manufacture, production, or  
11 distribution who paid the alleged overcharge; providing for the application of  
12 this Act; allowing the Attorney General to bring certain actions on behalf of  
13 certain persons; establishing that certain actions are presumed superior to  
14 certain class actions; and generally relating to the sale or distribution of foods,  
15 drugs, cosmetics, and other health-related products.

16 BY adding to  
17 Article - Health - General  
18 Section 21-1114  
19 Annotated Code of Maryland  
20 (2000 Replacement Volume and 2004 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - Commercial Law  
23 Section 11-209(b)(5) and (c)

1 Annotated Code of Maryland  
2 (2000 Replacement Volume and 2004 Supplement)

3 BY adding to  
4 Article - Commercial Law  
5 Section 11-209(c)  
6 Annotated Code of Maryland  
7 (2000 Replacement Volume and 2004 Supplement)

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

10 **Article - Health - General**

11 21-1114.

12 IN ANY ACTION BROUGHT BY THE ATTORNEY GENERAL UNDER § 11-209 OF THE  
13 COMMERCIAL LAW ARTICLE, A PERSON THAT SELLS, DISTRIBUTES, OR OTHERWISE  
14 DISPOSES OF ANY DRUG, MEDICINE, COSMETIC, FOOD, FOOD ADDITIVE, OR  
15 COMMERCIAL FEED, AS DEFINED IN § 6-101 OF THE AGRICULTURE ARTICLE, OR  
16 MEDICAL DEVICE:

17 (1) MAY NOT ASSERT AS A DEFENSE THAT THE PERSON DID NOT DEAL  
18 DIRECTLY WITH THE ~~PLAINTIFF~~ PERSON ON WHOSE BEHALF THE ACTION IS  
19 BROUGHT; AND

20 (2) MAY PROVE, AS A PARTIAL OR COMPLETE DEFENSE AGAINST A  
21 DAMAGE CLAIM, IN ORDER TO AVOID DUPLICATIVE LIABILITY, THAT ALL OR ANY  
22 PART OF AN ALLEGED OVERCHARGE ULTIMATELY WAS PASSED ON TO ANOTHER  
23 PERSON BY A PURCHASER OR SELLER IN THE CHAIN OF MANUFACTURE,  
24 PRODUCTION, OR DISTRIBUTION WHO PAID THE ALLEGED OVERCHARGE.

25 **Article - Commercial Law**

26 11-209.

27 (b) (5) The Attorney General may bring an action on behalf of the State or  
28 any of its political subdivisions OR AS PARENS PATRIAE ON BEHALF OF PERSONS  
29 RESIDING IN THE STATE to recover the damages provided for by this subsection or any  
30 comparable provision of federal law.

31 (C) AN ACTION BROUGHT BY THE ATTORNEY GENERAL AS PARENS PATRIAE  
32 UNDER SUBSECTION (B)(5) OF THIS SECTION IS PRESUMED SUPERIOR TO ANY CLASS  
33 ACTION BROUGHT ON BEHALF OF THE SAME PERSON.

34 [(c)] (D) (1) An action brought to enforce this subtitle shall be commenced  
35 within 4 years after the cause of action accrues.

1           (2)     For the purposes of this subsection, a cause of action for a continuing  
2 violation accrues at the time of the latest violation.

3           (3)     Whenever the State commences a criminal proceeding under this  
4 subtitle or the United States commences a criminal antitrust proceeding under the  
5 federal antitrust laws, any civil action under this section related to the subject matter  
6 of the criminal proceeding shall be commenced within 1 year after the conclusion of  
7 the proceeding or within 4 years after the cause of action accrued, whichever is later.

8     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
9 construed to apply only prospectively and may not be applied or interpreted to have  
10 any effect on or application to any action brought under Section 11-209 of the  
11 Commercial Law Article ~~on or after~~ before the effective date of this Act.

12     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2005.