
By: **Senators Grosfeld, Britt, Brochin, Della, Exum, Forehand, Gladden,
Hafer, Hooper, Hughes, Jones, Kelley, Klausmeier, and Teitelbaum**
Introduced and read first time: February 3, 2005
Assigned to: Finance

A BILL ENTITLED

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

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

20 BY repealing and reenacting, with amendments,
21 Article - Commercial Law
22 Section 11-209(b)(5) and (c)
23 Annotated Code of Maryland
24 (2000 Replacement Volume and 2004 Supplement)

25 BY adding to
26 Article - Commercial Law
27 Section 11-209(c)
28 Annotated Code of Maryland
29 (2000 Replacement Volume and 2004 Supplement)

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

3 **Article - Health - General**

4 21-1114.

5 IN ANY ACTION BROUGHT UNDER § 11-209 OF THE COMMERCIAL LAW ARTICLE,
6 A PERSON THAT SELLS, DISTRIBUTES, OR OTHERWISE DISPOSES OF ANY DRUG,
7 MEDICINE, COSMETIC, FOOD, FOOD ADDITIVE, OR COMMERCIAL FEED, AS DEFINED
8 IN § 6-101 OF THE AGRICULTURE ARTICLE, OR MEDICAL DEVICE:

9 (1) MAY NOT ASSERT AS A DEFENSE THAT THE PERSON DID NOT DEAL
10 DIRECTLY WITH THE PLAINTIFF; AND

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

16 **Article - Commercial Law**

17 11-209.

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

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

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

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

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

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

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