
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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2005

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)
24 Annotated Code of Maryland

1 (2000 Replacement Volume and 2004 Supplement)

2 BY adding to

3 Article - Commercial Law

4 Section 11-209(c)

5 Annotated Code of Maryland

6 (2000 Replacement Volume and 2004 Supplement)

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

9 **Article - Health - General**

10 21-1114.

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

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

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

24 **Article - Commercial Law**

25 11-209.

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

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

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

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

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

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

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