

SENATE BILL 497

I4, M4

8lr1738

By: **Senator Conway**

Introduced and read first time: February 1, 2008

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Sales Below Cost of Fluid Milk Products Act**

3 FOR the purpose of prohibiting certain milk dealers from selling or offering to sell
4 certain fluid milk products to certain entities in the State at less than a certain
5 cost; prohibiting certain milk dealers from selling certain fluid milk products in
6 combination with certain other items under certain circumstances; providing for
7 the calculation of certain costs of certain fluid milk products in a certain
8 manner; requiring certain milk dealers to present certain costs to the Secretary
9 of Agriculture for certification in a certain manner; requiring the Secretary to
10 consider certain information as confidential under certain circumstances;
11 requiring the Secretary to enforce this Act in a certain manner; requiring the
12 Secretary to adopt certain regulations; authorizing a circuit court to enjoin a
13 certain milk dealer from certain acts in a certain manner; providing for the
14 intent and applicability of this Act; providing that the Maryland Sales Below
15 Cost Act does not apply to this Act; defining certain terms; and generally
16 relating to sales of fluid milk products in the State.

17 BY repealing and reenacting, with amendments,
18 Article – Commercial Law
19 Section 11–402
20 Annotated Code of Maryland
21 (2005 Replacement Volume and 2007 Supplement)

22 BY adding to
23 Article – Commercial Law
24 Section 11–1501 through 11–1506 to be under the new subtitle “Subtitle 15.
25 Sales Below Cost of Fluid Milk Products”
26 Annotated Code of Maryland
27 (2005 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Commercial Law**

4 11–402.

5 This subtitle does not apply to an advertisement, offer to sell, retail sale, or
6 wholesale sale, if the merchandise:

- 7 (1) Is sold in a bona fide clearance sale and is so advertised and
8 marked;
- 9 (2) Must be sold promptly in order to prevent loss;
- 10 (3) Is imperfect, damaged, or being discontinued and is so advertised
11 and marked;
- 12 (4) Is sold on the final liquidation of a business;
- 13 (5) Is sold for charitable purposes or to relief agencies;
- 14 (6) Is sold on contract to a department of a government or
15 governmental institution;
- 16 (7) Is sold by an officer acting under the order or direction of a court;
- 17 (8) Is sold at a price set in good faith to meet competition; [or]
- 18 (9) Is motor fuel sold by a retail service station dealer; **OR**
- 19 **(10) IS A FLUID MILK PRODUCT AS DEFINED IN SUBTITLE 15 OF**
20 **THIS TITLE.**

21 **SUBTITLE 15. SALES BELOW COST OF FLUID MILK PRODUCTS.**

22 **11–1501.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

25 **(B) “CLASS I FLUID MILK” MEANS PROCESSED MILK SUITABLE FOR USE**
26 **AS BEVERAGES AND DEFINED BY THE UNITED STATES DEPARTMENT OF**
27 **AGRICULTURE AS “CLASS I MILK” AT C.F.R. § 1000.40(A), AS AMENDED.**

1 (C) "DEALER" MEANS A PROCESSOR, DISTRIBUTOR, OR BROKER THAT
2 SELLS PROCESSED MILK TO A RETAILER OR GOVERNMENTAL CUSTOMER.

3 (D) "FLUID MILK PRODUCT" MEANS A CLASS I FLUID MILK PRODUCT
4 PROCESSED BY A DEALER THAT, AT THE TIME OF ITS SALE TO A RETAILER,
5 DISTRIBUTOR, BROKER, OR GOVERNMENTAL CUSTOMER, IS PACKAGED FOR
6 RESALE TO OR CONSUMPTION BY CONSUMERS OR BOTH.

7 (E) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, OR ANY OTHER
8 LEGAL OR COMMERCIAL ENTITY.

9 (F) "PROCESSOR" MEANS A PERSON POSSESSING A LICENSE TO
10 PURCHASE RAW MILK FOR PROCESSING INTO CLASS I FLUID MILK.

11 (G) "RAW MILK" MEANS MILK THAT HAS NOT BEEN PASTEURIZED.

12 (H) "RETAILER" MEANS A PERSON LOCATED IN THE STATE THAT SELLS
13 OR OFFERS FOR SALE A FLUID MILK PRODUCT FOR CONSUMPTION AND NOT FOR
14 RESALE.

15 (I) "SECRETARY" MEANS THE SECRETARY OF AGRICULTURE OR A
16 DESIGNEE OF THE SECRETARY.

17 11-1502.

18 (A) THIS SUBTITLE IS NOT INTENDED TO:

19 (1) REGULATE OR LIMIT IN ANY WAY THE PRICE AT WHICH A
20 RETAILER MAY RESELL FLUID MILK PRODUCTS TO CONSUMERS; OR

21 (2) AUTHORIZE THE SECRETARY OR ANY OTHER GOVERNMENT
22 OFFICIAL TO REQUIRE OR REGULATE THE PRICING OF SALES OF RAW MILK.

23 (B) TO THE EXTENT THAT A PERSON IS BOTH A DEALER AND A
24 RETAILER, THIS SUBTITLE APPLIES ONLY TO THAT PERSON'S SALES AS A
25 DEALER.

26 11-1503.

27 (A) A DEALER MAY NOT SELL OR OFFER TO SELL A FLUID MILK
28 PRODUCT TO A RETAILER, DISTRIBUTOR, BROKER, OR STATE OR LOCAL
29 GOVERNMENTAL AGENCY IN THE STATE AT LESS THAN THE DEALER'S COST AS
30 CALCULATED UNDER THIS SECTION.

1 **(B) A DEALER MAY NOT SELL FLUID MILK PRODUCTS IN COMBINATION**
2 **WITH ANY OTHER ITEM OF MERCHANDISE IF THE OTHER ITEM IS GIVEN FREE OF**
3 **CHARGE OR SOLD BELOW ITS COST.**

4 **(C) (1) FOR PURPOSES OF THIS SECTION, THE DEALER'S COST IS, AS**
5 **APPORTIONED TO EACH FLUID MILK PRODUCT SOLD OR OFFERED FOR SALE TO**
6 **A RETAILER OR GOVERNMENTAL CUSTOMER, THE SUM OF THE DEALER'S:**

7 **(I) BASIC COST OF RAW MILK, WHICH IS THE CERTIFIED**
8 **AVERAGE PER GALLON PRICE PAID BY THE DEALER FOR ALL RAW MILK**
9 **RECEIVED DURING THE JUST-COMPLETED CALENDAR MONTH AT THE DEALER'S**
10 **PLANT IN WHICH THE FLUID MILK PRODUCT WAS PRODUCED;**

11 **(II) INGREDIENT COSTS, WHICH ARE THE CERTIFIED**
12 **AVERAGE PER OUNCE COSTS INCURRED BY THE DEALER DURING THE**
13 **JUST-COMPLETED CALENDAR MONTH FOR EACH INGREDIENT ADDED BY THE**
14 **DEALER TO CLASS I FLUID MILK IN PROCESSING FLUID MILK PRODUCTS;**

15 **(III) PACKAGE COSTS, WHICH ARE THE CERTIFIED UNIT**
16 **COSTS OF CARTONS, BOTTLES, AND OTHER CONTAINERS IN WHICH THE DEALER**
17 **PACKAGES FLUID MILK PRODUCTS FOR RESALE BY RETAILERS TO CONSUMERS,**
18 **INCURRED BY THE DEALER DURING THE JUST-COMPLETED CALENDAR**
19 **QUARTER;**

20 **(IV) EITHER:**

21 **1. A MARKUP OF A PERCENTAGE ON THE COMBINED**
22 **BASIC COST OF RAW MILK, INGREDIENT COSTS, AND PACKAGE COSTS, TO COVER**
23 **PARTLY THE DEALER'S PRESUMPTIVE PROCESSING AND DOING-BUSINESS**
24 **COSTS; OR**

25 **2. IF THE DEALER CAN DEMONSTRATE THAT THE**
26 **ACTUAL COSTS, DIRECT AND INDIRECT, ARE LESS THAN THE MARKUP, THEN**
27 **THE ACTUAL COSTS; AND**

28 **(V) TRANSPORTATION COSTS TO DELIVER THE FLUID MILK**
29 **PRODUCT TO THE DEALER'S CUSTOMER.**

30 **(2) IF THE DEALER IS NOT A PROCESSOR, THE DEALER'S COST IS**
31 **THE PURCHASE PRICE PAID FOR THE PROCESSED FLUID MILK PRODUCTS, BUT**
32 **NOT LESS THAN THE PROCESSOR'S OWN COSTS, PLUS OTHER ACTUAL COSTS,**
33 **INCLUDING MARKETING AND TRANSPORTATION, INCURRED BY THE DEALER.**

1 (3) (I) FOR COSTS OR PRICE TO BE CERTIFIED UNDER THIS
2 SUBSECTION, THE DEALER SHALL PRESENT THE PARTICULAR COSTS ACTUALLY
3 INCURRED BY THE DEALER DURING THE JUST-COMPLETED CALENDAR MONTH
4 TO THE SECRETARY, UNDER OATH, IN A FORM AND AT A TIME DESIGNATED BY
5 REGULATIONS ADOPTED BY THE SECRETARY.

6 (II) EXCEPT FOR PURPOSES OF ENFORCEMENT OF THIS
7 SUBTITLE, THE SECRETARY SHALL CONSIDER ALL INFORMATION CERTIFIED BY
8 A DEALER AS CONFIDENTIAL.

9 **11-1504.**

10 (A) THE SECRETARY SHALL:

11 (1) ENFORCE THIS SUBTITLE;

12 (2) INVESTIGATE SUSPECTED VIOLATIONS OF THIS SUBTITLE;

13 AND

14 (3) ADOPT REGULATIONS TO CARRY OUT AND ENFORCE THIS
15 SUBTITLE.

16 (B) THE SECRETARY MAY COMPEL THE PRODUCTION OF BOOKS,
17 RECORDS, AND TESTIMONY AS MAY BE NECESSARY FOR THE PERFORMANCE OF
18 THE SECRETARY'S DUTIES UNDER THIS SUBTITLE, INCLUDING THE
19 PRODUCTION OF INFORMATION PROVIDED BY A DEALER TO ANY OTHER
20 FEDERAL OR STATE REGULATORY AUTHORITY.

21 (C) THE SECRETARY MAY EMPLOY INSPECTORS AND OTHER STAFF TO
22 ENFORCE THIS SUBTITLE.

23 **11-1505.**

24 (A) ON COMPLAINT OF THE SECRETARY OR ANY AFFECTED PERSON, A
25 CIRCUIT COURT MAY:

26 (1) ENJOIN A DEALER FROM ANY ACT PROHIBITED BY THIS
27 SUBTITLE; AND

28 (2) AWARD DAMAGES, COSTS, AND REASONABLE ATTORNEY'S
29 FEES.

1 **(B) IN AN ACTION FOR INJUNCTIVE RELIEF, THE COMPLAINANT NEED**
2 **NOT ALLEGE OR PROVE THAT AN ADEQUATE REMEDY AT LAW DOES NOT EXIST**
3 **OR THAT THE COMPLAINANT HAS SUFFERED ACTUAL DAMAGES.**

4 **11-1506.**

5 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND SALES BELOW COST OF**
6 **FLUID MILK PRODUCTS ACT.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2008.