

SENATE BILL 684

I4, M4

8lr2131

By: **Senators Middleton, Brinkley, Colburn, Exum, Glassman, and Munson**

Introduced and read first time: February 1, 2008

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Below Cost Sales – Fluid Milk Products**

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 cost 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; requiring the Secretary to issue certain
13 stop–sale notices under certain circumstances; authorizing the Secretary to
14 make certain recommendations to the Secretary of Health and Mental Hygiene;
15 authorizing the Secretary to develop certain procedures for certain assessments
16 to be paid by certain milk dealers; authorizing the circuit court to enjoin a
17 certain milk dealer from certain acts in a certain manner; providing for the
18 intent and applicability of this Act; providing that the Maryland Sales Below
19 Cost Act does not apply to this Act; defining certain terms; and generally
20 relating to sales of fluid milk products in the State.

21 BY repealing and reenacting, with amendments,
22 Article – Commercial Law
23 Section 11–402
24 Annotated Code of Maryland
25 (2005 Replacement Volume and 2007 Supplement)

26 BY adding to
27 Article – Commercial Law
28 Section 11–1501 through 11–1507 to be under the new subtitle “Subtitle 15.
29 Sales Below Cost of Fluid Milk Products”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2007 Supplement)

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

5 **Article – Commercial Law**

6 11–402.

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

9 (1) Is sold in a bona fide clearance sale and is so advertised and
10 marked;

11 (2) Must be sold promptly in order to prevent loss;

12 (3) Is imperfect, damaged, or being discontinued and is so advertised
13 and marked;

14 (4) Is sold on the final liquidation of a business;

15 (5) Is sold for charitable purposes or to relief agencies;

16 (6) Is sold on contract to a department of a government or
17 governmental institution;

18 (7) Is sold by an officer acting under the order or direction of a court;

19 (8) Is sold at a price set in good faith to meet competition; [or]

20 (9) Is motor fuel sold by a retail service station dealer; **OR;**

21 **(10) IS A FLUID MILK PRODUCT AS DEFINED IN SUBTITLE 15 OF**
22 **THIS TITLE.**

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

24 **11–1501.**

25 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
26 **INDICATED.**

1 **(B) “CLASS I FLUID MILK” MEANS PROCESSED MILK SUITABLE FOR USE**
2 **AS BEVERAGES AND DEFINED BY THE UNITED STATES DEPARTMENT OF**
3 **AGRICULTURE AS “CLASS I MILK” IN 7 C.F.R. § 1000.40(A), AS AMENDED.**

4 **(C) “DEALER” MEANS A PROCESSOR, DISTRIBUTOR, OR BROKER WHO**
5 **SELLS PROCESSED CLASS I FLUID MILK TO A RETAILER OR GOVERNMENTAL**
6 **CUSTOMER.**

7 **(D) “FLUID MILK PRODUCT” MEANS ANY CLASS I FLUID MILK PRODUCT**
8 **PROCESSED BY A DEALER THAT, AT THE TIME OF SALE TO A RETAILER,**
9 **DISTRIBUTOR, BROKER OR GOVERNMENTAL CUSTOMER, IS PACKAGED FOR**
10 **RESALE TO OR CONSUMPTION BY CONSUMERS OR BOTH.**

11 **(E) “PERSON” MEANS AN INDIVIDUAL, CORPORATION, OR ANY OTHER**
12 **LEGAL OR COMMERCIAL ENTITY.**

13 **(F) “PROCESSOR” MEANS A PERSON POSSESSING A PERMIT, UNDER**
14 **TITLE 24, SUBTITLE 4 OF THE HEALTH – GENERAL ARTICLE, TO PURCHASE**
15 **RAW MILK FOR PROCESSING INTO CLASS I FLUID MILK.**

16 **(G) “RAW MILK” MEANS MILK THAT HAS NOT BEEN PASTEURIZED.**

17 **(H) “RETAILER” MEANS A PERSON LOCATED IN THE STATE THAT SELLS**
18 **OR OFFERS FOR SALE A FLUID MILK PRODUCT FOR CONSUMPTION AND NOT FOR**
19 **RESALE.**

20 **(I) “SECRETARY” MEANS THE SECRETARY OF AGRICULTURE OR**
21 **DESIGNEE OF THE SECRETARY.**

22 **11-1502.**

23 **(A) THIS SUBTITLE IS NOT INTENDED:**

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

26 **(2) TO AUTHORIZE THE SECRETARY OR ANY OTHER**
27 **GOVERNMENT OFFICIAL TO REQUIRE OR REGULATE THE PRICING OF SALES OF**
28 **RAW MILK.**

29 **(B) TO THE EXTENT THAT A PERSON IS BOTH A DEALER AND A**
30 **RETAILER, THIS SUBTITLE APPLIES ONLY TO THAT PERSON’S SALES AS A**
31 **DEALER.**

1 **11-1503.**

2 (A) A DEALER MAY NOT SELL OR OFFER TO SELL A FLUID MILK
3 PRODUCT TO A RETAILER, DISTRIBUTOR, BROKER, OR STATE OR LOCAL
4 GOVERNMENTAL AGENCY IN THE STATE AT LESS THAN THE DEALER'S COSTS AS
5 CALCULATED UNDER THIS SECTION.

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

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

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

16 (II) INGREDIENT COSTS, WHICH ARE THE CERTIFIED
17 AVERAGE PER OUNCE COSTS INCURRED BY THE DEALER DURING THE
18 JUST-COMPLETED CALENDAR MONTH FOR EACH INGREDIENT ADDED BY THE
19 DEALER TO CLASS I FLUID MILK IN PROCESSING FLUID MILK PRODUCTS;

20 (III) PACKAGE COSTS, WHICH ARE THE CERTIFIED UNIT
21 COSTS OF CARTONS, BOTTLES, AND OTHER CONTAINERS IN WHICH THE DEALER
22 PACKAGES FLUID MILK PRODUCTS FOR RESALE BY RETAILERS TO CONSUMERS,
23 INCURRED BY THE DEALER DURING THE JUST-COMPLETED CALENDAR
24 QUARTER;

25 (IV) TRANSPORTATION COSTS TO DELIVER THE FLUID MILK
26 PRODUCT TO THE DEALER'S CUSTOMER; AND

27 (V) ALL OTHER COSTS INCURRED DIRECTLY OR
28 INDIRECTLY BY A DEALER.

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

33 (3) (I) FOR COSTS OR PRICE TO BE CERTIFIED UNDER THIS
34 SUBSECTION, THE DEALER SHALL PRESENT THE PARTICULAR COSTS ACTUALLY

1 INCURRED BY THE DEALER DURING THE JUST-COMPLETED CALENDAR MONTH
2 TO THE SECRETARY, UNDER OATH, IN A FORM AND AT A TIME DESIGNATED BY
3 REGULATIONS ADOPTED BY THE SECRETARY.

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

7 11-1504.

8 (A) THE SECRETARY SHALL:

9 (1) ENFORCE THIS SUBTITLE;

10 (2) INVESTIGATE SUSPECTED VIOLATIONS OF THIS SUBTITLE;

11 (3) DEVELOP A SYSTEM OF ACCOUNTING USING GENERALLY
12 ACCEPTED ACCOUNTING PRACTICES FOR THE PURPOSE OF ENSURING
13 COMPLIANCE WITH THIS SUBTITLE; AND

14 (4) 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 (D) IF THE SECRETARY RECEIVES A COMPLAINT IN WRITING THAT A
24 DEALER IS SELLING CLASS I FLUID MILK PRODUCTS BELOW COST, THE
25 SECRETARY SHALL INVESTIGATE AND DETERMINE WITHIN 3 BUSINESS DAYS OF
26 THE RECEIPT OF THE COMPLAINT WHETHER THE ALLEGATIONS CONTAINED IN
27 THE COMPLAINT ARE TRUE.

28 (E) IF A DEALER IS IN VIOLATION OF THIS SUBTITLE, THE SECRETARY:

29 (1) SHALL ISSUE A STOP-SALE NOTICE; AND

30 (2) MAY RECOMMEND TO THE SECRETARY OF HEALTH AND
31 MENTAL HYGIENE THAT A DEALER'S PERMIT ISSUED UNDER TITLE 21,

1 **SUBTITLE 4 OF THE HEALTH - GENERAL ARTICLE BE SUSPENDED OR**
2 **REVOKED.**

3 **11-1505.**

4 (A) **THE SECRETARY SHALL DEVELOP A PROCEDURE FOR COLLECTING**
5 **ASSESSMENTS FROM DEALERS.**

6 (B) **THE ASSESSMENTS COLLECTED UNDER THIS SECTION SHALL BE:**

7 (1) **SET SO AS TO PRODUCE FUNDS TO APPROXIMATE THE COSTS**
8 **OF ENFORCING THIS SUBTITLE;**

9 (2) **ASSESSED PROPORTIONALLY TO EACH DEALER BASED ON**
10 **EACH DEALER'S SALES OF CLASS I FLUID MILK PRODUCTS IN THE STATE.**

11 **11-1506.**

12 (A) **ON COMPLAINT BY THE SECRETARY OR ANY AFFECTED PERSON, A**
13 **CIRCUIT COURT MAY:**

14 (1) **ENJOIN A DEALER FROM ANY ACT PROHIBITED BY THIS**
15 **SUBTITLE; AND**

16 (2) **AWARD DAMAGES, COSTS, AND REASONABLE ATTORNEY'S**
17 **FEES.**

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

21 **11-1507.**

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

24 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2008.**