

SENATE BILL 239

I4

9lr1498

By: **Senator Frosh**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Antitrust Act – Establishment of Minimum Sale Price for**
3 **Commodities or Services – Prohibited**

4 FOR the purpose of providing that a contract, combination, or conspiracy that
5 establishes a minimum price below which a retailer, wholesaler, or distributor
6 may not sell a commodity or service is an unreasonable restraint of trade or
7 commerce for purposes of a certain provision of the Maryland Antitrust Act; and
8 generally relating to the Maryland Antitrust Act.

9 BY repealing and reenacting, with amendments,
10 Article – Commercial Law
11 Section 11–204
12 Annotated Code of Maryland
13 (2005 Replacement Volume and 2008 Supplement)

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

16 **Article – Commercial Law**

17 11–204.

18 (a) A person may not:

19 (1) By contract, combination, or conspiracy with one or more other
20 persons, unreasonably restrain trade or commerce;

21 (2) Monopolize, attempt to monopolize, or combine or conspire with
22 one or more other persons to monopolize any part of the trade or commerce within the
23 State, for the purpose of excluding competition or of controlling, fixing, or maintaining
24 prices in trade or commerce;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) Directly or indirectly discriminate in price among purchasers of
2 commodities or services of like grade and quality, if the effects of the discrimination
3 may:

4 (i) Substantially lessen competition;

5 (ii) Tend to create a monopoly in any line of trade or commerce;
6 or

7 (iii) Injure, destroy, or prevent competition with any person who
8 grants or knowingly receives the benefit of the discrimination or with customers of
9 either of them;

10 (4) In the course of commerce, pay or contract for the payment of
11 anything of value to or for the benefit of a customer of the person as compensation for
12 or in consideration of any service or facility furnished by or through the customer in
13 connection with the processing, handling, sale, or offering for sale of any service or
14 commodity manufactured, sold, or offered for sale by the person, unless the payment
15 or consideration is available on proportionally equal terms to all other customers
16 competing in the distribution of the service or commodity;

17 (5) Discriminate in favor of one purchaser against another purchaser
18 of a commodity bought for resale, with or without processing, by contracting to
19 furnish, furnishing, or contributing to the furnishing of any service or facility
20 connected with the processing, handling, sale, or offering for sale of the commodity on
21 terms not accorded to all purchasers on proportionally equal terms; or

22 (6) Lease or make a sale or contract for the sale of a patented or
23 unpatented commodity or service for use, consumption, enjoyment, or resale, or set a
24 price charged for the commodity or service or discount from or rebate on the price, on
25 the condition, agreement, or understanding that the lessee or purchaser will not use or
26 deal in the commodity or service of a competitor of the lessor or seller, if the effect of
27 the lease, sale, or contract for sale or the condition, agreement, or understanding may:

28 (i) Substantially lessen competition; or

29 (ii) Tend to create a monopoly in any line of trade or commerce.

30 **(B) FOR PURPOSES OF SUBSECTION (A)(1) OF THIS SECTION, A**
31 **CONTRACT, COMBINATION, OR CONSPIRACY THAT ESTABLISHES A MINIMUM**
32 **PRICE BELOW WHICH A RETAILER, WHOLESALER, OR DISTRIBUTOR MAY NOT**
33 **SELL A COMMODITY OR SERVICE IS AN UNREASONABLE RESTRAINT OF TRADE**
34 **OR COMMERCE.**

35 **[(b)] (C)** Subsection (a)(3) through (6) of this section does not prevent:

1 (1) Differentials which make only due allowance for differences in the
2 cost of manufacture, sale, or delivery resulting from the differing methods or
3 quantities in which the commodity or service is sold or delivered to a purchaser;

4 (2) A person engaged in selling a commodity or service from selecting
5 his own customers in bona fide transactions and not in restraint of trade;

6 (3) A person engaged in selling a commodity or service from granting
7 employee discounts to his own bona fide employees;

8 (4) A seller from introducing evidence to rebut a case brought under
9 subsection (a)(3) through (6) of this section to show that his lower price or the
10 furnishing of services or facilities to a purchaser was made in good faith to meet an
11 equally low price of a competitor, or the services or facilities furnished by a competitor;
12 or

13 (5) Price changes, from time to time, in response to changing
14 conditions affecting the market for or the marketability of a commodity, which
15 changing conditions include an actual or imminent deterioration of a perishable
16 commodity, obsolescence of a seasonal commodity, distress sales under court process,
17 or sales in good faith in discontinuance of business in the commodity.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2009.