

# SENATE BILL 239

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9lr1498  
CF HB 657

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By: **Senator Frosh**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 10, 2009

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## CHAPTER \_\_\_\_\_

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;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

8                   (i) Substantially lessen competition;

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

10 or

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

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

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

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

32                   (i) Substantially lessen competition; or

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

34           **(B) FOR PURPOSES OF SUBSECTION (A)(1) OF THIS SECTION, A**  
35 **CONTRACT, COMBINATION, OR CONSPIRACY THAT ESTABLISHES A MINIMUM**  
36 **PRICE BELOW WHICH A RETAILER, WHOLESALER, OR DISTRIBUTOR MAY NOT**

1 **SELL A COMMODITY OR SERVICE IS AN UNREASONABLE RESTRAINT OF TRADE**  
2 **OR COMMERCE.**

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

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

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

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.