

CHAPTER 43

(Senate Bill 239)

AN ACT concerning

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

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

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

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

Article – Commercial Law

11–204.

(a) A person may not:

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

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

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

(i) Substantially lessen competition;

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

or

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

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

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

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

(i) Substantially lessen competition; or

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 14, 2009.