

SENATE BILL 657

I4

3lr2886
CF HB 776

By: **The President (By Request – Office of the Attorney General)**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Maryland Antitrust Act – Premerger Notification**
3 **Requirement and Remedies**

4 FOR the purpose of requiring a person who has acquired certain voting securities or assets
5 of another person to file a certain notice with the Attorney General under certain
6 circumstances; exempting certain information or documentary material filed with
7 the Attorney General from the Maryland Public Information Act except under
8 certain circumstances; altering a certain definition relating to remedies for a
9 violation of the Maryland Antitrust Act; and generally relating to the Maryland
10 Antitrust Act.

11 BY renumbering
12 Article – Commercial Law
13 Section 11–205 through 11–213
14 to be Section 11–206 through 11–214, respectively
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2022 Supplement)

17 BY adding to
18 Article – Commercial Law
19 Section 11–205
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2022 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Commercial Law
24 Section 11–210(a)
25 Annotated Code of Maryland
26 (2013 Replacement Volume and 2022 Supplement)
27 (As enacted by Section 1 of this Act)

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 MARYLAND,
2 That Section(s) 11–205 through 11–213 of Article – Commercial Law of the Annotated Code
3 of Maryland be renumbered to be Section(s) 11–206 through 11–214, respectively.

4 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
5 as follows:

6 **Article – Commercial Law**

7 **11–205.**

8 **(A) THE FOLLOWING CLASSES OF TRANSACTIONS ARE EXEMPT FROM THE**
9 **REQUIREMENTS OF THIS SECTION:**

10 **(1) ACQUISITIONS OF GOODS OR REALTY TRANSFERRED IN THE**
11 **ORDINARY COURSE OF BUSINESS;**

12 **(2) ACQUISITIONS OF BONDS, MORTGAGES, DEEDS OF TRUST, OR**
13 **OTHER OBLIGATIONS THAT ARE NOT VOTING SECURITIES;**

14 **(3) TRANSFERS TO OR FROM A FEDERAL OR STATE AGENCY OR A**
15 **POLITICAL SUBDIVISION;**

16 **(4) TRANSACTIONS SPECIFICALLY EXEMPTED FROM THIS SECTION;**

17 **AND**

18 **(5) OTHER ACQUISITIONS, TRANSFERS, OR TRANSACTIONS THAT ARE**
19 **EXEMPTED BY THE ATTORNEY GENERAL IN ACCORDANCE WITH SUBSECTION (D) OF**
20 **THIS SECTION.**

21 **(B) (1) A PERSON ACQUIRING, EITHER DIRECTLY OR INDIRECTLY, ANY**
22 **VOTING SECURITIES OR ASSETS OF ANOTHER PERSON, SHALL FILE A NOTIFICATION**
23 **WITH THE ATTORNEY GENERAL IF:**

24 **(I) AS A RESULT OF THE ACQUISITION, THE ACQUIRING**
25 **PERSON WOULD HOLD AN AGGREGATE TOTAL AMOUNT OF THE VOTING SECURITIES**
26 **AND ASSETS OF THE ACQUIRED PERSON IN EXCESS OF \$8,000,000; AND**

27 **(II) THE ACQUIRING OR ACQUIRED PERSON IS SUBJECT TO THE**
28 **JURISDICTION OF A COURT OF THE STATE.**

29 **(2) IN FISCAL YEAR 2025 AND EACH FISCAL YEAR THEREAFTER, THE**
30 **AMOUNT IN PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL BE ADJUSTED AND**
31 **PUBLISHED TO REFLECT THE PERCENTAGE CHANGE IN THE GROSS NATIONAL**

1 PRODUCT FOR THE FISCAL YEAR COMPARED TO THE GROSS NATIONAL PRODUCT
2 FOR THE IMMEDIATELY PRECEDING FISCAL YEAR.

3 (C) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS
4 SECTION SHALL:

5 (I) IDENTIFY:

6 1. ALL PARTIES TO THE ACQUISITION;

7 2. THE ASSETS BEING TRANSFERRED IN THE
8 ACQUISITION; AND

9 3. THE ANTICIPATED CLOSING DATE OF THE
10 ACQUISITION; AND

11 (II) BE FILED NOT LATER THAN 60 CALENDAR DAYS BEFORE
12 THE CLOSING OF THE ACQUISITION.

13 (2) IF A PERSON IS REQUIRED TO FILE A NOTIFICATION WITH THE
14 U.S. DEPARTMENT OF JUSTICE AND THE U.S. FEDERAL TRADE COMMISSION IN
15 ACCORDANCE WITH 5 U.S.C. § 18A, THE PERSON MAY COMPLY WITH THIS
16 SUBSECTION BY FILING WITH THE ATTORNEY GENERAL THE SAME MATERIALS THE
17 PERSON FILES WITH THE U.S. DEPARTMENT OF JUSTICE AND THE U.S. FEDERAL
18 TRADE COMMISSION.

19 (D) (1) INFORMATION OR DOCUMENTARY MATERIAL FILED WITH THE
20 ATTORNEY GENERAL IN ACCORDANCE WITH THIS SECTION IS NOT SUBJECT TO THE
21 MARYLAND PUBLIC INFORMATION ACT.

22 (2) INFORMATION OR DOCUMENTARY MATERIAL MAY BE DISCLOSED
23 IF IT IS FOUND TO BE RELEVANT TO AN ADMINISTRATIVE OR JUDICIAL ACTION OR
24 PROCEEDING.

25 (E) THE ATTORNEY GENERAL MAY:

26 (1) DEFINE ANY TERMS USED IN THIS SECTION;

27 (2) EXEMPT CLASSES OF PERSONS, ACQUISITIONS, TRANSFERS, OR
28 TRANSACTIONS THAT ARE NOT LIKELY TO VIOLATE THE PROVISIONS OF THIS
29 SECTION FROM THE REQUIREMENTS OF THIS SECTION; AND

30 (3) ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

1 11–210.

2 (a) **(1)** IN THIS SUBSECTION, “RESTITUTION” INCLUDES DISGORGEMENT.

3 ~~[(1)]~~ **(2)** The Attorney General shall institute proceedings in equity to
4 prevent or restrain violations of § 11–204 of this subtitle and may require assistance from
5 any State’s Attorney for that purpose.

6 ~~[(2)]~~ **(3)** In a proceeding under this section, the court shall determine
7 whether a violation has been committed and enter any judgment or decree necessary to:

8 (i) Remove the effects of any violation it finds; and

9 (ii) Prevent continuation or renewal of the violation in the future.

10 ~~[(3)]~~ **(4)** The court may exercise all equitable powers necessary for this
11 purpose, including but not limited to injunction, restitution to any person of any money or
12 real or personal property acquired from that person by means of any violation, divestiture
13 of property or business units, and suspension or termination of the right of a foreign
14 corporation or association to do business in the State.

15 ~~[(4)]~~ **(5)** (i) In addition to the equitable remedies or other relief
16 authorized by this section, the court may assess against any person who violates § 11–204
17 of this subtitle a civil penalty not exceeding \$10,000 for each violation, to be paid to the
18 General Fund of the State.

19 (ii) Each day that a violation of § 11–204 of this subtitle continues is
20 a separate violation.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2023.