

HB 1182_OAG_Walker_FAV_S.pdf

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
ANTITRUST DIVISION

March 25, 2024

TO: The Honorable Senator Pamela Beidle
Chair, Finance Committee

FROM: Schonette J. Walker
Chief, Antitrust Division, Office of the Attorney General

RE: HB 1182 – Commercial Law – Maryland Antitrust Act – Enforcement Remedies (**Support**)

The Office of the Attorney General’s Antitrust Division supports House Bill 1182. This Bill would clarify that the remedy of restitution as delineated in the Maryland Antitrust Act includes disgorgement.

Maryland courts have long held that a key element of a restitution claim is forcing a wrongdoer to disgorge or give up benefits it would be unjust for them to keep.¹ One important objective of restitution is to eliminate profit from wrongdoing. The primary purpose of restitution, therefore, is not necessarily to fully compensate plaintiffs, but to do equity. In *Linton*, an important Consumer Protection Act case, the Court of Appeals (now the Maryland Supreme Court), discussed that restitution compels the full disgorgement of profits by a wrongdoer, not only because that is the moral outcome, but also because any lesser requirement would inadequately deter future unlawful behavior.² Like the Consumer Protection Act discussed in the cases noted, the Maryland Antitrust Act contains a statutory provision that provides for restitution. Also like the Consumer Protection Act, the Maryland Antitrust Act does not define

¹ *Consumer Protection v. Consumer Pub.*, 304 Md. 731, 776 (1985).

² *Linton v. Consumer Protection Division*, 467 Md. 502, 519-520 (2020).

the word “restitution” nor does it mention the word disgorgement. Although case law has filled in this void for the Consumer Protection Act, there has not been similar case law development with respect to the Antitrust Act.

In Antitrust case law, we have seen that where a remedy is not identified in the statute, it has been deemed unavailable to the Attorney General.³ Clarifying that the current restitution provision in the Maryland Antitrust Act encompasses disgorgement will make clear that those found to have violated the Maryland Antitrust Act may be required by a court to disgorge benefits obtained by their wrongdoing, because retaining those benefits would be unjust.

Support of this legislation is in line with the goals and principles of the Attorney General’s Office to vigorously enforce Maryland’s competition laws and pursue all available remedies to promote, for the benefit of all Marylanders, the fair operation of Maryland markets. I respectfully request the Finance Committee favorably report HB 1182.

³ See e.g. *State v. Jonathan Logan, Inc.*, 301 Md. 63, 482 A.2d 1(1984) (where the MATA did not explicitly list restitution as an available equitable remedy, it was not available to the Attorney General). The legislature added restitution to language of the Act in 1993--1993 Maryland Laws Ch. 632 (S.B. 196).

HB 1182 - FIN - MBA - UNF - GR 24.pdf

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Position: UNF



HB 1182 - Commercial Law - Maryland Antitrust Act - Enforcement Remedies

Committee: Senate Finance Committee

Date: March 26, 2024

Position: Unfavorable

The Maryland Bankers Association (MBA) **OPPOSES** HB 1182. This legislation adds language to Section 11-209 of the Commercial Law Article for antitrust violations stating that restitution includes disgorgement.

If a court were to determine that someone violated the Maryland Antitrust Act, Section 11-209 of the Commercial Law Article provides the court with the ability to enter a judgment to remove the effects and prevent the continuation of the violation. The judgment can include injunction, restitution, divestiture, and suspension. In addition, a court may assess a daily fine of \$10,000 for the duration of the violation, as each day constitutes a separate violation.

The MBA firmly believes that the role of the court in antitrust cases is to make the victims of an antitrust violation whole. The penalties established in Section 11-209 give a court a wide variety of tools to make victims whole and establish penalties against violators. Adding disgorgement provides no benefit to a victim of a violation and instead adds yet another fine to someone who is already subject to a fine of millions of dollars.

Adding disgorgement to the current penalties is unnecessary and excessive. Accordingly, the MBA urges issuance of a **UNFAVORABLE** report on HB 1182.

The Maryland Bankers Association (MBA) represents FDIC-insured community, regional, and national banks, employing more than 26,000 Marylanders and holding more than \$209 billion in deposits in over 1,200 branches across our State. The Maryland banking industry serves customers across the State and provides an array of financial services including residential mortgage lending, business banking, estates and trust services, consumer banking, and more.