

# SENATE BILL 858

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CF HB 1415

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By: ~~Senator Smith~~ Senators Smith, Astle, Benson, Feldman, Hershey, Jennings,  
Klausmeier, Mathias, Middleton, Oaks, Reilly, and Rosapepe

Introduced and read first time: February 3, 2017

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2017

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

1 AN ACT concerning

### 2 **Commercial Law – Maryland Antitrust Act – Indirect Purchasers**

3 FOR the purpose of altering the circumstances under which a person, whose business or  
4 property has been injured or threatened with injury by a violation of certain  
5 provisions of law, may maintain an action for damages, an injunction, or both,  
6 against any person who has committed the violation, regardless of whether the  
7 person maintaining the action dealt directly or indirectly with the person who has  
8 committed the violation; altering a certain defense that a defendant may raise in  
9 certain actions for damages; making stylistic changes; and generally relating to civil  
10 actions to enforce State antitrust laws.

11 BY repealing and reenacting, with amendments,  
12 Article – Commercial Law  
13 Section 11–209(b)  
14 Annotated Code of Maryland  
15 (2013 Replacement Volume and 2016 Supplement)

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

### 18 **Article – Commercial Law**

19 11–209.

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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.



(b) (1) The United States, the State, and any political subdivision organized under the authority of the State is a person having standing to bring an action under this subsection.

(2) (i) A person whose business or property has been injured or threatened with injury by a violation of § 11–204 of this subtitle may maintain an action for damages or for an injunction or both against any person who has committed the violation[.

(ii) The United States, the State, or any political subdivision organized under the authority of this State may maintain an action under subparagraph (i) of this paragraph for damages or for an injunction or both] regardless of whether [it] **THE PERSON MAINTAINING THE ACTION** dealt directly or indirectly with the person who has committed the violation.

**(II)** In any action under this subsection **FOR DAMAGES BY AN INTERMEDIATE PURCHASER OR SELLER IN THE CHAIN OF MANUFACTURE, PRODUCTION, OR DISTRIBUTION**, any defendant, as a partial or complete defense [against a damage claim], may, in order to avoid duplicative liability, prove that all or any part of an alleged overcharge was [ultimately] passed on to [the United States, the State, or any political subdivision organized under the authority of this State,] **A LATER PURCHASER OR ULTIMATE END–USER ALSO MAINTAINING AN ACTION FOR DAMAGES UNDER THIS SUBSECTION** [by a purchaser or seller in the chain of manufacture, production, or distribution who paid an alleged overcharge].

(3) If an injunction is issued, the complainant shall be awarded costs and reasonable attorney's fees.

(4) In an action for damages, if an injury due to a violation of § 11–204 of this subtitle is found, the person injured shall be awarded three times the amount of actual damages which results from the violation, with costs and reasonable attorney's fees.

(5) The Attorney General may bring an action on behalf of the State or any of its political subdivisions or as parens patriae on behalf of persons residing in the State to recover the damages provided for by this subsection or any comparable provision of federal law.

**SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect October 1, 2017.