WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1937

ENROLLED

HOUSE BILL No. 104

(By Mr. Speaker, Mr. Thomas)

PASSED February 19, 1937

In Effect from Passage
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AN ACT to protect trade-mark owners, producers, distributors and
the general public against injurious and uneconomic practices
in the distribution of competitive commodities bearing a dis-
tinguishing trade-mark, brand or name, through the use of
voluntary contracts establishing minimum resale prices and
providing for refusal to sell unless such minimum resale prices
are observed.

Be it enacted by the Legislature of West Virginia:

Section 1. The following terms, as used in this act, are
hereby defined as follows:

(a) ‘Commodity’ means any subject of commerce.

(b) ‘Producer’ means any grower, baker, maker, manu-
facturer, bottler, packer, converter or processor.
(c) 'Wholesaler' means any person selling a commodity other than a producer or retailer.

(d) 'Retailer' means any person selling a commodity to consumers for use.

(e) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization.

Sec. 2. No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the state of West Virginia by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not,
in turn, resell at less than the minimum price stipulated by
the seller.

(c) That the seller will not sell such commodity:

(1) to any wholesaler, unless such wholesaler will agree
not to resell the same to any retailer unless the retailer will
in turn agree not to resell the same except to consumers for
use and at not less than the stipulated minimum price, and
such wholesaler will likewise agree not to resell the same to
any other wholesaler unless such other wholesaler will make
the same agreement with any wholesaler or retailer to whom
he may resell; or

(2) to any retailer, unless the retailer will agree not to
resell the same except to consumers for use and at not less
than the stipulated minimum price.

Sec. 3. For the purpose of preventing evasion of the re-
sale price restrictions imposed in respect of any commodity
by any contract entered into pursuant to the provisions of
this act (except to the extent authorized by the said con-
tract):

(a) The offering or giving of any article of value in con-
nection with the sale of such commodity;
8. (b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or
9. (c) The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by section six of this act shall be available.

Sec. 4. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name.

Sec. 5. No contract containing any of the provisions enumerated in section two of this act shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:
(a) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and
plain notice of the fact is given to the public; provided the
owner of such stock shall give to the producer or distributor
of such commodity prompt and reasonable notice in writing
of his intention to close out said stock, and an opportunity
to purchase such stock at the original invoice price, plus any
transportation, storage or other legitimate or regular costs.

(b) When the trade-mark, brand or name is removed or
wholly obliterated from the commodity and is not used or
directly or indirectly referred to in the advertisement or sale
thereof;

(c) When the goods are altered, second-hand, damaged,
defaced, or deteriorated and plain notice of the fact is given
to the public in the advertisement and sale thereof, such no-
tice to be conspicuously displayed in all advertisements and
to be affixed to the commodity;

(d) But nothing contained in this article shall apply to
sales by executors, administrators, receivers or assignees
under a voluntary assignment for the benefit of creditors,
trustees in bankruptcy or by any one acting under judicial
process.

Sec. 6. Wilfully and knowingly advertising, offering for
sale or selling any commodity at less than the price stipulated
in any contract entered into pursuant to the provisions of
this act, whether the person so advertising, offering for sale
or selling is or is not a party to such contract, is unfair
competition and is actionable at the suit of any person dam-
aged thereby.

Sec. 7. This act shall not apply to any contract or agree-
ment between or among producers, except as provided in sub-
division (c) of section two of this act, or between or among
wholesalers or between or among retailers as to sale or re-
sale prices.

Sec. 8. If any provision of this act, or the application
thereof to any person or circumstance, is held invalid, the
remainder of the act, and the application of such provisions
to other persons or circumstances, shall not be affected
thereby.

Sec. 9. All acts or parts of acts inconsistent herewith are
hereby repealed to the extent of such inconsistency.

Sec. 10. This act may be known and cited as the 'Fair
Trade Act.'
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was this the 27th day of January 1937.

Governor.

Filed in the office of the Secretary of State of West Virginia. FEB 27 1937

Wm. S. O'BRIEN, Secretary of State