

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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House Bill No. 104

(By MR. SPEAKER, MR. THOMAS)

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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 distinguishing 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
- 2 hereby defined as follows:
- 3 (a) 'Commodity' means any subject of commerce.
- 4 (b) 'Producer' means any grower, baker, maker, manu-
- 5 facturer, bottler, packer, converter or processor.

6 (c) 'Wholesaler' means any person selling a commodity
7 other than a producer or retailer.

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

10 (e) 'Person' means an individual, a corporation, a part-
11 nership, an association, a joint-stock company, a business
12 trust or any unincorporated organization.

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

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

12 (b) That the buyer will require of any dealer to whom
13 he may resell such commodity an agreement that he will not,

14 in turn, resell at less than the minimum price stipulated by
15 the seller.

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

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

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

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

6 (a) The offering or giving of any article of value in con-
7 nection with the sale of such commodity;

8 (b) The offering or the making of any concession of any
9 kind whatsoever (whether by the giving of coupons or other-
10 wise) in connection with any such sale; or

11 (c) The sale or offering for sale of such commodity in
12 combination with any other commodity, shall be deemed a
13 violation of such resale price restriction, for which the
14 remedies prescribed by section six of this act shall be avail-
15 able.

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

Sec. 5. No contract containing any of the provisions
2 enumerated in section two of this act shall be deemed to pre-
3 clude the resale of any commodity covered thereby without
4 reference to such contract in the following cases:

5 (a) In closing out the owner's stock for the bona fide
6 purpose of discontinuing dealing in any such commodity and

7 plain notice of the fact is given to the public; provided the
8 owner of such stock shall give to the producer or distributor
9 of such commodity prompt and reasonable notice in writing
10 of his intention to close out said stock, and an opportunity
11 to purchase such stock at the original invoice price, plus any
12 transportation, storage or other legitimate or regular costs.

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

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

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

Sec. 6. Wilfully and knowingly advertising, offering for

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

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

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

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

Sec. 10. This act may be known and cited as the 'Fair
2 Trade Act.'

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carl B. Galt
Chairman Senate Committee

Deak Baker
Chairman House Committee

Originated in the *House*

Takes effect *from* passage.

Charles H. Hays
Clerk of the Senate

Geo. S. Hall
Clerk of the House of Delegates

Chas E. Hoyle
President of the Senate

James Ray Thomas
Speaker House of Delegates

The within *Approved* this the *27th*

day of *February*, 1937.

James S. Johnston
Governor.