WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1937

ENROLLED

HOUSE BILL No. 441

(By Mr. McCung)

PASSED March 13, 1937

In Effect 90 days from Passage
AN ACT to provide for a uniform contract between nonresident manufacturers and their agents, dealers, distributors and representatives engaged in the sale, merchandising or repairing of manufactured articles in this state; to promote fair trade practice between the manufacturer and its agents, dealers, distributors or representatives, and to provide for an equitable adjustment of all contracts entered into between them, and to further provide for the enforcement of such contracts and a penalty for the violation of this act.

Be it enacted by the Legislature of West Virginia:

Section 1. That any nonresident person, partnership, association of persons, or corporation engaged in the manufacture and distribution of articles, transacting the business of manufacturing, distribution and sale of manufactured
articles, parts or accessories thereof in the state of West Virginia, shall file in the office of the secretary of state the form of contract which is to be entered into between such manufacturer with its agent, dealer or representative in this state, and upon the approval by the attorney general of such contract, the contract shall become binding on all parties thereto, and in the event of a breach of such contract, the party injured or damaged by such breach may have recourse for the liquidation of his damages to a board of arbitration and award as provided by article ten, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, and the failure to file such contract with the secretary of state shall render the contract unenforceable.

Sec. 2. Any person, partnership, association of persons, or corporation, whether they are residents or nonresidents of the state of West Virginia, damaged by the breach of such contract, may in each instance of such injury or (damage recover all actual damages thereby sustained) in addition to the penalties herein provided and may maintain its, or his, action against one or more of the parties to such contract, its officers or agents.
Sec. 3. This act shall not affect any existing contract be-
tween any person, partnership, association of persons or
corporation acting as the agent, dealer, distributor or
representative of any nonresident manufacturer, nor
shall it affect the relationship of any parties now act-
ing as the agent, dealer, distributor or representative of
any manufacturer without contract in this state; but, it is
provided that if any manufacturer should, after the passage
of this act, without good cause or without tendering reim-
bursement for the damage or injury sustained by its agent,
dealer, distributor or representative, cancel the existing con-
tract or should, without good cause, refuse to continue the
business relationship now existing between such manufacturer
and its agent, dealer, distributor or representative without
contract, the agent, dealer, distributor or representative so
injured by the loss of his or its agency, dealership or repre-
sentation may sue and recover all actual damages sustained
by him, it or them, and for a violation of the provisions of this
act a nonresident corporation shall forfeit its right to do
business in this state and shall also forfeit not less than five
hundred dollars nor more than one thousand dollars to the
state of West Virginia, and shall be proceeded against by the
attorney general in the manner and form as provided for a
quo warranto proceeding or injunction under the laws of
this state.

Sec. 4. In any action taken under this act proof by the
party plaintiff that he has been compelled to discontinue the
relationship of manufacturer, agent, dealer or representative
on account of the unlawful act or breach of said contract by
the party defendant or that the party defendant has threat-
ened to cancel said contract without good cause and without
first having submitted the question for an adjustment of a
breach of said contract to a board of arbitration and award,
shall be conclusive evidence of damage, and in every case
proof of any unlawful purpose or agreement to violate the
terms of said contract, shall entitle the party injured thereby
to all damage sustained by him, and shall, in addition thereto,
subject the party violating said contract to the penalty pro-
vided in this act.

Sec. 5. All acts or parts of acts in conflict herewith are
hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the

Takes effect

passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within Disapproved this the 19th day of March, 1937.

Governor.

Filed in the office of the Secretary of State of West Virginia

Wm. S. O'Brien, Secretary of State