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W. P. Robinson
C. C.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

HOUSE BILL No. 441

(By Mr. McClung)



PASSED March 13, 1937

In Effect 90 days from Passage

44

ENROLLED
House Bill No. 441

(BY MR. McCLUNG)

[Passed March 13, 1937; in effect ninety 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,
2 association of persons, or corporation engaged in the manu-
3 facture and distribution of articles, transacting the business
4 of manufacturing, distribution and sale of manufactured

5 articles, parts or accessories thereof in the state of West Vir-
6 ginia, shall file in the office of the secretary of state the form
7 of contract which is to be entered into between such manu-
8 facturer with its agent, dealer or representative in this state,
9 and upon the approval by the attorney general of such con-
10 tract, the contract shall become binding on all parties thereto,
11 and in the event of a breach of such contract, the party in-
12 jured or damaged by such breach may have recourse for the
13 liquidation of his damages to a board of arbitration and
14 award as provided by article ten, chapter fifty-five of the code
15 of West Virginia, one thousand nine hundred thirty-one, and
16 the failure to file such contract with the secretary of state
17 shall render the contract unenforceable.

Sec. 2. Any person, partnership, association of persons,
2 or corporation, whether they are residents or nonresidents
3 of the state of West Virginia, damaged by the breach of such
4 contract, may in each instance of such injury or (damage
5 recover all actual damages thereby sustained) in addition to
6 the penalties herein provided and may maintain its, or his,
7 action against one or more of the parties to such contract,
8 its officers or agents.

Sec. 3. This act shall not affect any existing contract between 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 acting 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 reimbursement for the damage or injury sustained by its agent, dealer, distributor or representative, cancel the existing contract 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 representation 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

22 state of West Virginia, and shall be proceeded against by the
23 attorney general in the manner and form as provided for a
24 quo warranto proceeding or injunction under the laws of
25 this state.

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

Sec. 5. All acts or parts of acts in conflict herewith are
2 hereby repealed.

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

Barth B. Guthrie
.....
Chairman Senate Committee

Deed B. Baker
.....
Chairman House Committee

Originated in the.....

Takes effect..... passage.

Shenandoah
.....
Clerk of the Senate

Geo. S. Hance
.....
Clerk of the House of Delegates

Chas. E. Hodge
.....
President of the Senate

J. P. Thomas
.....
Speaker House of Delegates

The within *is disapproved* this the *19th*

day of *March*, 1937,

*for reasons assigned in
the message hereto attached.*

Sam A. Holt
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State