WEST VIRGINIA CODE CHAPTER 47 ARTICLE 11D

WV Legislature

§47-11D-1. Purpose.

The purpose of this article is to establish fair and open procedures for bidding and negotiating for the exhibition of motion pictures within this state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the movie-going public by holding down admission prices to motion picture theatres, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibiting it.

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§47-11D-2. Definitions.

When used in this article, unless the context indicates otherwise:

(1) "Person" includes one or more individuals, partnerships, associations, societies, trusts or corporations.

(2) "Theatre" means any establishment in which motion pictures are exhibited to the public regularly for a charge.

(3) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing.

(4) "Exhibitor" means any person engaged in the business of operating one or more theatres.

(5) "Exhibit" or "exhibition" means showing a motion picture to the public for a charge.

(6) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a motion picture.

(7) "Bid" means a written or oral offer or proposal by an exhibitor to a distributor, in response to an invitation to bid or otherwise, stating the terms under which the exhibitor will agree to exhibit a motion picture.

(8) "License agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor.

(9) "Trade screening" means the showing of a motion picture by a distributor, which showing is open to any of this state's exhibitors who are interested in exhibiting the motion picture.

(10) "Blind bidding" means the bidding for, negotiating for, or offering or agreeing to terms for the licensing or exhibition of a motion picture before that motion picture has been trade screened for this state's exhibitors.

(11) "Run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area, a "second run" is the second exhibition and "subsequent runs" are all exhibitions after the second run.

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§47-11D-3. Blind bidding prohibited; invitation to bid; provisions of article waived as to certain exhibitors.

(a) Blind bidding is hereby prohibited within the state. No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed to, for the exhibition of any motion picture within the state before that motion picture has been trade screened either within the state or, alternatively, at the local exchange serving the geographic area within the state for which bids have been invited.

(b) A distributor shall include in each invitation to bid for a motion picture for exhibition within the state, if such motion picture has not already been trade screened within the state, the date, time and place of the trade screening of the motion picture either within the state or alternatively, at the local exchange serving the geographic area within this state for which bids have been requested.

(c) A distributor shall provide reasonable and uniform notice to all exhibitors in each competitive market within the state of all trade screenings for that competitive market of motion pictures he is distributing.

(d) The provisions of this article are waived with respect to West Virginia exhibitors whose theatres are located within twenty miles of a state line of a state where a provision for prior trade screening before bidding has not been adopted, so long as theatres exist within the other state within twenty miles of the state line between that state and West Virginia and no further than twenty miles from at least one West Virginia exhibitor's theatre in the same competitive market. Any other purported waiver of the requirements of this article shall be void and unenforceable.

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§47-11D-4. Bidding procedures.

If bids are solicited from exhibitors for the licensing of a motion picture within the state, then:

(1) The invitation to bid shall specify (i) the number and length of runs for which the bid is being solicited, whether it is a first, second or subsequent run, and the geographic area for each run; (ii) the earliest availability date of the motion picture; (iii) the names of all exhibitors who are being solicited; (iv) the date and hour the invitation to bid expires; and (v) the location, including the address, where the bids will be opened, which shall be within the state, or at the local exchange serving the geographic area for which the bids have been requested.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and are present at such time.

(3) After being opened, bids shall be subject to examination by any exhibitors, or their agents, who submitted bids. Within seven business days after a bid is accepted, the distributor shall notify in writing each exhibitor who submitted a bid of the terms of the accepted bid and the name of the winning bidder. Bids shall be kept on file at the local exchange for a period of sixty days after acceptance, and may be examined by any competitive exhibitor during that period during the regular business hours of the local exchange.

(4) Once bids are solicited for a particular run, the distributor may subsequently license the picture only by bidding for that run and shall solicit rebids if he does not accept any of the submitted bids.

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