

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

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ENROLLED

*Com. Sub. for*

SENATE BILL NO. 271

(By Mr. *Brotherton and Mr. Huffard*  
*original sponsors*)

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PASSED March 9, 1967

In Effect Ninety days from Passage

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE

THIS DATE 3-17-67

# 271

**ENROLLED**  
JUDICIARY  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 271**

(Mr. BROTHERTON and Mr. HUBBARD original sponsors)

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AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b, relating to the licensing and regulation of closing-out sales, fire sales and defunct business sales; defining certain terms; providing for bonds; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-b, to read as follows:

**ARTICLE 11B. CLOSING-OUT SALES, FIRE SALES AND  
DEFUNCT BUSINESS SALES.**

**§47-11B-1. Legislative findings.**

The Legislature hereby finds and declares that certain  
2 sales of goods, defined in this article as “closing-out sales”,  
3 “sales of goods damaged by fire, smoke or water” or “de-  
4 funct business sales” have heretofore often been adver-  
5 tised and conducted in such manner as to mislead and de-  
6 fraud the public or otherwise harm the public and that  
7 such sales should be licensed and regulated to prevent  
8 misrepresentation and fraud and to protect and promote  
9 the public welfare.

**§47-11B-2. Definitions.**

Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) The term “closing-out sale” shall include but not  
4 be limited to all sales advertised, represented or held forth  
5 under the designation of “quitting business”, “going out  
6 of business”, “discontinuance of business”, “selling out”,  
7 “liquidation”, “lost our lease”, “must vacate”, “forced  
8 out”, “removal”, “branch store-discontinuance sale”,

9 “building coming down”, “end”, “final days”, “last days”,  
10 “lease expires”, “we give up sale”, “we quit sale”, “ware-  
11 house closing sale”, “reorganization sale” and any other  
12 advertising or designation by any other expression or  
13 characterization similar to any of the foregoing and giving  
14 notice to the public that the sale will precede the aban-  
15 donment of a business location.

16 (b) The term “sale of goods damaged by fire, smoke or  
17 water” shall include but not be limited to all sales adver-  
18 tised, represented or held forth under the designation of  
19 “fire sale”, “smoke damage sale”, “water damage sale”,  
20 “flood damage sale”, “insurance sale” and any other ad-  
21 vertising or designation by any other expression or char-  
22 acterization similar to any of the foregoing and giving  
23 notice to the public that the goods, wares or merchandise  
24 offered for sale have been damaged.

25 (c) The term “defunct business sale” shall include **but**  
26 not be limited to all sales advertised, represented or **held**  
27 forth under the designation of “adjuster’s sale”, “admin-  
28 istrator’s sale”, “assignee’s sale”, “bankrupt sale”, “bank-  
29 rupt stock sale”, “benefit of administrator’s sale”, “benefit

30 of creditor's sale", "benefit of trustee's sale", "creditor's  
31 committee sale", "creditor's sale", "executor's sale", "in-  
32 solvent sale", "mortgage sale", "receiver's sale", "trustee's  
33 sale" and any other advertising or designation by any  
34 other expression or characterization similar to any of the  
35 foregoing and conveying the same meaning or giving  
36 notice to the public of a sale resulting from death, busi-  
37 ness failure, or other adversity.

38 (d) "Unusual purchase or addition" shall mean any  
39 purchase of goods, wares or merchandise during the  
40 ninety days preceding the application for a license the  
41 total value of which is at least twenty-five per cent greater  
42 than purchases made by the applicant for a like ninety-  
43 day period during any one of three years next immedi-  
44 ately preceding the year in which the application is made  
45 or his peak purchases for any ninety-day period if he has  
46 been in business for less than three years.

47 (e) "Commissioner" shall mean the state commissioner  
48 of labor.

49 (f) "Person" shall mean any individual, partnership,  
50 association, firm or corporation or the plural thereof.

**§47-11B-3. License required; exceptions.**

It shall be unlawful for any person in this state to  
2 advertise or conduct any sale of any goods, wares or  
3 merchandise which is a “closing-out sale”, “a sale of goods  
4 damaged by fire, smoke or water”, or a “defunct business  
5 sale” unless a license is first obtained to conduct such a  
6 sale from the commissioner as provided in this article.

7 This article shall, however, not be construed to apply  
8 to or affect the following persons:

9 (1) Persons acting pursuant to an order or process of  
10 a court of competent jurisdiction.

11 (2) Persons who are required to file an accounting with  
12 a court of competent jurisdiction.

13 (3) Persons acting in accordance with their powers and  
14 duties as public officers such as sheriffs, constables and  
15 marshals.

16 (4) Any publisher or employee of a newspaper,  
17 magazine or any operator or employee of a radio or tele-  
18 vision broadcasting station who publishes or broadcasts  
19 any such advertisement in good faith without knowledge  
20 of its false, deceptive and misleading character or without

21 knowledge that the provisions of this act are not being  
22 complied with.

23 (5) Persons conducting sales by and on behalf of  
24 licensed insurers.

**§47-11B-4. License application requirements.**

Any person desiring to conduct a sale regulated by this  
2 article shall make a written application under oath to the  
3 commissioner. Said application shall be accompanied by  
4 the approved bond specified in section nine of this article.  
5 If the application is for a “closing-out sale” or a “defunct  
6 business sale”, it shall be filed at least ten days prior to  
7 the date on which such sale is to commence. If the ap-  
8 plication is for a “sale of goods damaged by fire, smoke  
9 or water”, it may be made at any time prior to the date  
10 on which such sale is to commence.

11 All applications for a licensed sale regulated by this  
12 article shall set forth and contain the following informa-  
13 tion:

14 (1) The name and address of the applicant who must  
15 be the true owner of the goods, wares or merchandise to  
16 be sold, and if the applicant be a partnership, the names

17 and addresses of all partners, or if the applicant be a cor-  
18 portion or association, the date and place of incorpora-  
19 tion or organization, the address of the principal office  
20 within the state and the names and addresses of all the  
21 officers of the applicant.

22 (2) The name and address of the person or persons  
23 who will be in charge and responsible for the conduct of  
24 such sale.

25 (3) The exact address of the place at which the pro-  
26 posed sale is to be conducted and the length of time the  
27 applicant has been engaged in business at such location.

28 (4) The date on which it is proposed to begin the sale.

29 (5) The nature of the occupancy where such sale is  
30 to be held whether by lease or otherwise and the effective  
31 date of termination of such occupancy.

32 (6) The reason for the urgent and expeditious disposal  
33 of the goods, wares or merchandise to be offered at such  
34 sale.

35 (7) A statement of the descriptive name of the sale and  
36 the reasons why the name is truthfully descriptive of the  
37 sale.



38 (8) A statement that the business is to be terminated  
39 permanently or reopened at another location, the location  
40 of the premises at which the business is to be moved, if  
41 the applicant intends to resume the operation of the  
42 business upon the termination of the sale, and the name or  
43 designation under which such business is to be resumed.

44 (9) A full, complete, detailed and itemized inventory  
45 of the goods, wares and merchandise to be offered at such  
46 sale as disclosed by applicant's records which inventory  
47 shall:

48 (i) Itemize the goods to be offered for sale and con-  
49 tain sufficient information concerning each item includ-  
50 ing quantity, make, brand name, model and manufac-  
51 turer's number, if any, to clearly identify it.

52 (ii) List separately any goods to be offered for sale  
53 which were purchased and received during a ninety-day  
54 period immediately prior to the date of making applica-  
55 tion for the license.

56 (iii) The total retail value of the inventory of  
57 goods, wares and merchandise to be offered at such sale  
58 based on the inventory used for applicant's most recent

59 federal income tax return adjusted for sales and pur-  
60 chases.

61 (iv) If the application is for a license to conduct a  
62 "sale of goods damaged by fire, smoke or water" and  
63 the applicant was not the owner at the time when the  
64 goods, wares and merchandise to be offered at the con-  
65 templated sale were damaged, he shall attach to the said  
66 application certified copies of the bill of sale and all other  
67 documents connected with such transfer obtained by him  
68 from the previous owner of such goods, wares and  
69 merchandise.

70 (v) If the application is for a license to conduct a  
71 "defunct business sale" and the applicant was not the  
72 owner of the goods, wares and merchandise to be offered  
73 at the contemplated sale at the time of occurrence of the  
74 circumstances warranting the termination of such busi-  
75 ness, he shall attach to the application certified copies of  
76 the bill of sale and the official appraisal made by the  
77 trustee, receiver, assignee for benefit of creditor, referee  
78 in bankruptcy or the personal representative of a de-  
79 cedent.

80 (10) A statement that no goods will be added to the  
81 inventory after the application is made.

82 (11) A statement that all goods included in such in-  
83 ventory have been purchased by the applicant for resale  
84 on bona fide orders without cancellation privileges and  
85 that said inventory comprises no goods purchased on  
86 consignment.

87 (12) A statement that no merchandise listed in the in-  
88 ventory has been the subject of a licensed sale conducted  
89 within one year prior to the date of the application unless  
90 such merchandise was damaged by fire, smoke or water  
91 while in the possession of the applicant.

**§47-11B-5. Investigation of application; grounds for denial;  
revocation of license.**

(a) Upon receipt of the application, the commissioner  
2 may in his discretion make or cause to be made an exami-  
3 nation or order an investigation of the applicant and all  
4 the facts contained in the application and inventory in  
5 relation to the proposed sale. A license shall be denied  
6 or refused if any one or more of the following facts or  
7 circumstances are found by him to exist:

8 (1) That the applicant has not been the owner of the  
9 business advertised or described in the application for  
10 a license hereunder for a period of at least three months  
11 prior to the date of the application or if the applicant  
12 be a partnership, corporation or association controlling  
13 interest in the corporation or association was transferred  
14 within six months prior to the date of the application  
15 for a license hereunder except:

16 (i) Where the application is for a license for a "sale of  
17 goods damaged by fire, smoke or water" or a "defunct  
18 business sale" and the inventory listed in the application  
19 contains only those goods, wares or merchandise which  
20 were on the premises at the time of the occurrence of  
21 the circumstances warranting the granting of a license  
22 hereunder.

23 (ii) Upon the death of a person doing business in this  
24 state, his heirs, distributees, devisees, legatees or their  
25 successors and assigns shall have the right to apply at  
26 any time for a license hereunder.

27 (iii) Where a business is required or compelled to be  
28 discontinued because the premises whereupon it is being

29 conducted has been condemned, taken for purposes of  
30 urban renewal or development, or because the premises  
31 must be vacated because of legal or judicial proceedings.

32 (2) That in the case of a "closing-out sale" the appli-  
33 cant either as owner, partner, member of an association,  
34 or principal stockholder of a corporation was granted  
35 a prior license hereunder within one year preceding the  
36 date of the filing of the application.

37 (3) That the inventory contains goods, wares or mer-  
38 chandise not purchased by the applicant for resale on  
39 bona fide orders without cancellation privileges.

40 (4) That the inventory contains goods, wares or mer-  
41 chandise purchased by the applicant on consignment  
42 except if the consigned goods, wares or merchandise have  
43 been damaged while in the consignee's possession.

44 (5) That the applicant except in the case of an appli-  
45 cation for a license to conduct a "sale of goods damaged  
46 by fire, smoke or water" or a "defunct business sale"  
47 either as owner, partner, officer of an association, or  
48 principal stockholder of a corporation was granted a prior  
49 license hereunder within one year preceding the date of

50 the filing of the application at the particular location  
51 for which the license is sought or within one year prior  
52 to the date of filing of the application has conducted a  
53 sale in connection with which he advertised or repre-  
54 sented that the entire business conducted at the particu-  
55 lar location for which the license is sought was to be  
56 closed out or terminated.

57 (6) That the applicant has within one year, prior to  
58 the filing of the application, been convicted of a violation  
59 of this article.

60 (7) That the goods, wares or merchandise as described  
61 in the inventory were transferred or assigned to the  
62 applicant prior to the date of the filing of the application  
63 and that said transfer or assignment was not made for  
64 a valuable and adequate consideration.

65 (8) That the inventory contains goods, wares or mer-  
66 chandise purchased by the applicant or added to his stock  
67 in contemplation of such sale and for the purpose of  
68 selling the same at such sale. For this purpose any  
69 unusual purchase or addition to the stock of such goods,  
70 wares and merchandise made within ninety days prior

71 to the date of the filing of such application shall be pre-  
72 sumptive evidence that such purchase or additions were  
73 made in contemplation of such sale and for the purpose  
74 of selling the same at such sale.

75 (9) That any representation made in the application  
76 is false.

**§47-11B-6. Duration of sale; license fee.**

A license to conduct a sale issued pursuant to this arti-  
2 cle shall be good for no more than a period of thirty con-  
3 secutive calendar days and may be renewed for one con-  
4 secutive period not exceeding thirty consecutive calendar  
5 days upon the affidavit of the applicant that the goods  
6 listed in the inventory have not been disposed of and that  
7 no new goods have been or will be added to the inventory  
8 previously filed pursuant to this article by purchase,  
9 acquisition on consignment, or otherwise. The application  
10 for renewal shall be made not more than ten days prior  
11 to the time of the expiration of the license and shall con-  
12 tain a new inventory of the goods remaining on hand at  
13 the time the application for renewal is made which new  
14 inventory shall be prepared and furnished in the same

15 manner and form as the original inventory. The commis-  
16 sioner shall receive from the applicant for such license,  
17 upon the granting thereof, a fee of fifty dollars and upon  
18 the renewal thereof a fee of one hundred dollars. The  
19 applicant shall not be entitled to a refund of the fee paid  
20 if said application is refused, denied or revoked.

**§47-11B-7. Revocation of license; grounds.**

The commissioner may, on his own initiative, or shall,  
2 upon the written and verified complaint of any resident  
3 of this state, investigate any person licensed by him under  
4 the provisions of this article to determine if such person  
5 is violating or has violated this article. The commissioner  
6 shall immediately revoke such person's license if, after  
7 such investigation, he shall determine that:

- 8 (1) Any sale by the applicant is conducted in violation  
9 of any provision of this article,
- 10 (2) The applicant has made any material misstatement  
11 in his application for said license,
- 12 (3) The applicant has failed to include in the inventory  
13 required by the provisions of this article the goods, wares  
14 or merchandise required to be contained in such inven-  
15 tory,



16 (4) The applicant has added or permitted to be added  
17 to said sale or offered or permitted to be offered at said  
18 sale any goods, wares or merchandise not described in the  
19 original application and inventory, or

20 (5) The applicant made or permitted to be made any  
21 false, misleading or deceptive statements in advertising  
22 said sale, whether written or oral, or in displaying,  
23 ticketing or pricing goods, wares or merchandise offered  
24 for sale.

**§47-11B-8. Notice of denial, refusal or revocation of license;  
judicial review thereof.**

Whenever the commissioner shall deny or refuse to  
2 issue a license or shall revoke any license, he shall make  
3 and enter an order to that effect and shall cause a copy  
4 of such order to be served in person or by certified mail,  
5 return receipt requested, on the applicant or person li-  
6 censed by him, as the case may be. Such order shall be  
7 accompanied by findings of fact and conclusions of law  
8 upon which such order was made and entered. Any per-  
9 son adversely affected by an order made and entered by  
10 the board is entitled to judicial review thereof. Such

11 judicial review shall be in the circuit court for the county  
12 in which the sale is to be or is being conducted. The judg-  
13 ment of the circuit court shall be final unless reversed,  
14 vacated or modified on appeal to the supreme court of ap-  
15 peals of West Virginia. Legal counsel and services for  
16 the commissioner in appeal proceedings in any circuit  
17 court and the supreme court of appeals shall be provided  
18 by the attorney general or his assistants, and in appeal  
19 proceedings in any circuit court by the prosecuting at-  
20 torney of the county as well, all without additional com-  
21 pensation. The commissioner, with the written approval  
22 of the attorney general, may employ special counsel to  
23 represent the commissioner in a particular proceeding.

**§47-11B-9. Bond required.**

No license shall be issued unless the applicant files  
2 with the commissioner a bond with corporate surety pay-  
3 able to the state of West Virginia conditioned upon the  
4 faithful observance of all the provisions of this article,  
5 the payment to any municipality or the state of all taxes  
6 due and owing or which may become due and the in-  
7 demnifying of any purchaser at such sale who suffers any

8 loss by reason of misrepresentation made in connection  
9 with such sale: *Provided*, That the aggregate liability  
10 of the surety for all breaches of the conditions of the  
11 bond shall in no event exceed the amount of said bond.  
12 The amount of said bond shall be determined as follows:  
13 five per cent of the first one hundred thousand dollars  
14 of the retail value of all the goods, wares and merchan-  
15 dise to be offered at such sale, two per cent of the next  
16 four hundred thousand dollars and one per cent of the  
17 balance. Said bond shall be approved as to form and  
18 sufficiency by the prosecuting attorney or his assistant  
19 of the county in which such sale is to be conducted.

**§47-11B-10. Branch stores and warehouses.**

If the applicant owns, conducts or operates more than  
2 one store or warehouse in connection with such store or  
3 warehouse specified in the application, the license issued  
4 will apply only to the one store or warehouse for which  
5 it was issued and no other store or warehouse may ad-  
6 vertise or represent in any way that it is cooperating  
7 with or participating in any way in the licensed sale, nor  
8 shall the licensed store or warehouse or any person

9 advertise or represent that any other person, store or  
10 warehouse is cooperating with or participating in the  
11 licensed sale. The licensed sale conducted by any store  
12 or warehouse of a chain or group of stores or warehouses  
13 shall be conducted solely at the location of the store or  
14 warehouse for which the license was obtained and no  
15 goods, wares or merchandise shall be brought from any  
16 other store or warehouse and placed on sale at the store  
17 or warehouse licensed to conduct a sale hereunder.

**§47-11B-11. Substitution, addition and commingling of goods  
voids license; certain purchases prohibited.**

(a) Any substitution for or addition to goods described  
2 in an inventory filed pursuant to this article or any  
3 change in the time or place for a sale conducted pur-  
4 suant to this article shall be unlawful and shall void any  
5 license issued to conduct a sale pursuant to this article  
6 and such license shall be revoked.

(b) In the case of a sale licensed under this article  
8 conducted by any person licensed under this article in  
9 addition to conducting a business or selling other goods,  
10 wares or merchandise not included in the inventory ac-

11 companying the application, the goods to be sold at such  
12 sale shall be clearly and distinctly segregated, marked  
13 or identified and advertised, if at all, so that both on  
14 display and in advertising such goods may be readily  
15 distinguished from other stocks and their identity readily  
16 ascertained. Any commingling of such goods with other  
17 stocks of such person in such a manner as to cause the  
18 goods to lose their separate identity either on display  
19 or in advertising shall be unlawful.

**§47-11B-12. Copy of application, inventory and license to be posted; license to be referred to in advertisements.**

A copy of the application for a license to conduct a sale  
2 under this article, including a copy of the inventory  
3 filed therewith, shall be posted in a conspicuous place in  
4 the sales room or place where the inventoried goods are  
5 to be sold so that the public may be informed of the facts  
6 relating to the goods before purchasing same. Any ad-  
7 vertisement or announcement published in connection  
8 with the sale shall conspicuously show on its face the  
9 number of the license, the date of its expiration, and if  
10 applicable, the location where the business is to be re-  
11 sumed.

**§47-11B-13. Opening of a similar business within one year of sale prohibited.**

Opening of a business similar to the one for which the  
2 sale licensed pursuant to this article was conducted except  
3 the licensed “sale of goods damaged by fire, smoke or  
4 water” by the person, partner of a partnership, officer of  
5 an association, or principal stockholder of a corporation  
6 who or which conducted the sale upon the same premises  
7 within one year of the termination of the sale shall con-  
8 stitute a violation of this article. Every day in which  
9 business is conducted within the prohibited period of  
10 one year shall constitute a separate violation of this  
11 article.

**§47-11B-14. Records.**

(a) Suitable books and records concerning said sale  
2 shall be kept by the licensee for the duration of the li-  
3 censed sale and one year thereafter and shall be open for  
4 inspection by the commissioner or his duly authorized  
5 representative.

(b) Upon the termination of a sale licensed hereunder  
6 the applicant shall within thirty days of such termination  
7 file a statement with the commissioner stating:  
8

9 (1) The total retail value of the goods, wares or  
10 merchandise not disposed of during the sale, and

11 (2) The ultimate disposition thereof and if trans-  
12 ferred to another, the name and address of the transferee.

**§47-11B-15. Penalties for violations.**

Any person who shall violate any of the provisions of  
2 this article, is guilty of a misdemeanor and upon convic-  
3 tion thereof, shall be punished by a fine of not more than  
4 one hundred dollars or by imprisonment not exceeding  
5 thirty days. Each day any sale is conducted in violation of  
6 the provisions of this article shall constitute and be a  
7 separate violation of the provisions of this article.

**§47-11B-16. Severability.**

If any part or parts of this article shall be held to be  
2 unconstitutional or invalid, such unconstitutionality or  
3 invalidity shall not affect the constitutionality or validity  
4 of the remaining part or parts of this article. The Legis-  
5 lature hereby declares that it would have passed the re-  
6 maining part or parts of this article if it had known that  
7 such part or parts would be declared unconstitutional or  
8 invalid.

**§47-11B-17. Effective date.**

This article shall become effective on the first day of  
2 July, one thousand nine hundred sixty-seven.



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

William Tompa  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Howard Carson  
President of the Senate

N. Fabian White  
Speaker House of Delegates

The within approved this the 17  
day of March, 1967.

Huette C. Smith  
Governor

PRESENT THE

GO

Date 3/17/67

Time 9:30am