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Time 9:20 A.M.

OFFICE
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

ENROLLED

Committee Substitute for
SENATE BILL NO. 251

(By Mr. Gelston)

PASSED March 7, 1979

In Effect ninety days from Passage



No. 251

19 MAR 27 P11:45

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 251
(MR. NELSON, *original sponsor*)

[Passed March 7, 1979; in effect ninety days from passage.]

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-d, relating to governing and regulating the process by which films are to be distributed and selected for distribution to the theatres of this state; setting forth definitions; prohibiting blind bidding except with respect to certain theatres; requiring trade screenings; and establishing bidding procedures.

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-d, to read as follows:

ARTICLE 11D. THE MOTION PICTURE FAIR COMPETITION ACT.

§47-11D-1. Purpose.

1 The purpose of this article is to establish fair and
2 open procedures for bidding and negotiating for the
3 exhibition of motion pictures within this state in order
4 to prevent unfair and deceptive acts or practices and un-
5 reasonable restraints of trade in the business of motion
6 picture distribution within this state; to promote fair
7 and effective competition in that business; and to
8 benefit the movie-going public by holding down admis-
9 sion prices to motion picture theatres, expanding the
10 choice of motion pictures available to the public, and

11 preventing exposure of the public to objectionable or
12 unsuitable motion pictures by ensuring that exhibitors
13 have the opportunity to view a picture before committing
14 themselves to exhibiting it.

§47-11D-2. Definitions.

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

3 (1) "Person" includes one or more individuals, partner-
4 ships, associations, societies, trusts, or corporations.

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

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

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

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

15 (6) "Invitation to bid" means a written or oral solici-
16 tation or invitation by a distributor to one or more ex-
17 hibitors to bid or negotiate for the right to exhibit a
18 motion picture.

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

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

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

31 (10) "Blind bidding" means the bidding for, negotiat-
32 ing for, or offering or agreeing to terms for the licensing
33 or exhibition of a motion picture before that motion

34 picture has been trade screened for this state's exhib-
35 itors.

36 (11) "Run" means the continuous exhibition of a
37 motion picture in a defined geographic area for a speci-
38 fied period of time. A "first run" is the first exhibition
39 of a picture in the designated area, a "second run" is
40 the second exhibition and "subsequent runs" are all
41 exhibitions after the second run.

§47-11D-3. Blind biddings.

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

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

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

22 (d) The provisions of this article are waived with
23 respect to West Virginia exhibitors whose theatres are
24 located within twenty miles of a state line of a state
25 where a provision for prior trade screening before bidding
26 has not been adopted, so long as theatres exist within
27 the other state within twenty miles of the state line
28 between that state and West Virginia and no farther
29 than twenty miles from at least one West Virginia ex-
30 hibitor's theatre in the same competitive market. Any

31 other purported waiver of the requirements of this article
32 shall be void and unenforceable.

§47-11D-4. Bidding procedures.

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

3 (1) The invitation to bid shall specify (i) the num-
4 ber and length of runs for which the bid is being
5 solicited, whether it is a first, second or subsequent run,
6 and the geographic area for each run; (ii) the earliest
7 availability date of the motion picture; (iii) the names
8 of all exhibitors who are being solicited; (iv) the date
9 and hour the invitation to bid expires; and (v) the loca-
10 tion, including the address, where the bids will be opened,
11 which shall be within the state, or at the local exchange
12 serving the geographic area for which the bids have been
13 requested.

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

18 (3) After being opened, bids shall be subject to exam-
19 ination by any exhibitors, or their agents, who submitted
20 bids. Within seven business days after a bid is accepted,
21 the distributor shall notify in writing each exhibitor who
22 submitted a bid of the terms of the accepted bid and the
23 name of the winning bidder. Bids shall be kept on file at
24 the local exchange for a period of sixty days after ac-
25 ceptance, and may be examined by any competitive exhib-
26 itor during that period during the regular business
27 hours of the local exchange.

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

500 [Enr. Com. Sub] for S. B. No. 251

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

James L. Davis
Chairman Senate Committee

Barney B. Christian
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Gillen Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

H. C. Butler
President of the Senate

Cliff M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *27*
day of *March* 1979.

John D. Roper
Governor

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