

No. 1575

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

Com. Sub. for
HOUSE BILL No. 1575

(By Mr. Del. J. Martin & Del. Starcher)



Passed April 3, 1985

In Effect July 1, 1985 Passage



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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 1575

(By DELEGATE J. MARTIN and DELEGATE STARCHER)

[Passed April 3, 1985; in effect July 1, 1985.]

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-e, relating to licensing of transient merchants; definitions relating thereto; providing certain exemptions from licensing; prohibiting a transient merchant from transacting business in this state without a license; requiring certain information to be contained in applications for such licenses; requiring the commissioner of labor to prepare application forms and license certificates; establishing license fees and bonding requirements; providing for the issuance, nontransferability, validity and renewal of such license; requiring registered agents of transient merchants to be residents of this state; requiring the commissioner of labor to maintain a list of licensed transient merchants and their registered agents; providing for the secretary of state to accept service of process on behalf of transient merchants without registered agents; requiring registration of transient vendors with the sheriff of each county in which business will be transacted; registration fees; requiring sheriffs to maintain a list of registered transient merchants; authorizing conduct of business in counties and certain exceptions relating thereto; requiring display of license, registration receipt and business franchise certificates; criminal

penalties for violations; and enforcement against violators.

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-e, to read as follows:

ARTICLE 11E. TRANSIENT MERCHANT LICENSING ACT.

§47-11E-1. Short title.

1 This article shall be known and may be cited as the “West
2 Virginia Transient Merchant Licensing Act.”

§47-11E-2. General definitions.

1 As used in this article, the following words and phrases shall
2 have the meanings respectively ascribed to them in this section:

3 (a) “Commissioner” means the commissioner of labor or his
4 duly authorized representative.

5 (b) “Person” means any individual, corporation, partner-
6 ship, association or entity.

7 (c) “Temporary or transient business” means any business
8 conducted for the sale or offer for sale of goods, wares or
9 merchandise which is carried on in any building, structure,
10 motor vehicle, railroad car or real estate for a period of less
11 than six months in each year.

12 (d) “Merchandise, goods or wares” means any consumer
13 item that is, or is represented to be, new or not previously
14 owned by a consumer.

15 (e) “Transient merchant” means any person, firm, corpora-
16 tion, partnership or other entity which engages in, does or
17 transacts any temporary or transient business in the state,
18 either in one locality or in traveling from place to place in
19 the state, offering for sale or selling goods, wares, merchandise
20 or services and includes those merchants who, for the purpose
21 of carrying on such business, hire, lease, use or occupy any
22 building, structure, motor vehicle, railroad car or real estate.

§47-11E-3. Application; exemptions.

1 The provisions of this article shall not apply to:

- 2 (1) Sales at wholesale to retail merchants by commercial
3 travelers or selling agents in the usual course of business;
- 4 (2) Wholesale trade shows or conventions;
- 5 (3) Sales of goods, wares or merchandise by sample
6 catalogue or brochure for future delivery;
- 7 (4) State and local fairs and conventions;
- 8 (5) Any general sale, fair, auction or bazaar sponsored by
9 any church, religious or nonprofit organization;
- 10 (6) Garage sales held on premises devoted to residential use;
- 11 (7) Sales of crafts or items made by hand and sold or
12 offered for sale by the person making such crafts or handmade
13 items;
- 14 (8) Sales of agricultural products, except nursery products
15 and foliage plants;
- 16 (9) Sales made by a seller at residential premises pursuant
17 to an invitation issued by the owner or legal occupant of such
18 premises; or
- 19 (10) A person who operates a permanent business in this
20 state and in connection with the permanent business, operates
21 a temporary business location and prominently displays the
22 business name and permanent address while conducting
23 business from the temporary business location.

24 A transient merchant not otherwise exempted from the
25 provisions of this article shall not be relieved or exempted
26 from the provisions of this article by reason of associating
27 himself temporarily with any local dealer, auctioneer, trader,
28 contractor or merchant or by conducting such temporary or
29 transient business in connection with or in the name of any
30 local dealer, auctioneer, trader, contractor or merchant.

§47-11E-4. Licenses to operate as transient merchants.

1 It is unlawful for any transient merchant to transact business
2 in this state unless such merchant and the owners of any
3 goods, wares or merchandise to be offered for sale or sold,
4 if such are not owned by the merchant, shall have first secured
5 a license and shall have otherwise complied with the
6 requirements of this article.

§47-11E-5. Applications for transient merchant licenses.

1 (a) Any transient merchant desiring to transact business
2 shall make application for and obtain a license from the
3 commissioner. The application for license shall be filed with
4 the commissioner and shall include the following information:

5 (1) The name and permanent address of the transient
6 merchant making the application and if the applicant is a firm
7 or corporation the name and address of the members of the
8 firm or the officers of the corporation, as the case may be;

9 (2) If the applicant is a corporation, there shall be stated
10 on the application form the date of incorporation, the state
11 of incorporation, and if the applicant is a corporation formed
12 in a state other than the state of West Virginia, the date on
13 which such corporation qualified to transact business as a
14 foreign corporation in the state of West Virginia;

15 (3) A statement showing the kind of business proposed to
16 be conducted, the length of time for which the applicant
17 desires to transact such business and the location of such
18 proposed place of business;

19 (4) The name and permanent address of the transient
20 merchant's registered agents or offices;

21 (5) A statement that the applicant has acquired all other
22 required city, county and state permits and licenses;

23 (6) A receipt or statement showing that any personal
24 property taxes due on goods, wares or merchandise to be
25 offered for sale have been paid, including any taxes due under
26 the provisions of section eight, article five, chapter eleven of
27 this code;

28 (7) A written statement by each registered agent designated
29 in the application for a license that the agent is a resident of
30 the state of West Virginia and shall be agent of the transient
31 merchant upon whom any process, notice or demand required
32 or permitted by law to be served upon the transient merchant
33 may be served; and

34 (8) Counties in which the transient merchant intends to
35 conduct business.

36 (b) The commissioner shall design and cause to be printed

37 appropriate forms for applications for licenses and for the
38 license certificates to be issued to applicants under this article.

§47-11E-6. License fee; bond required.

1 Each application for a transient merchant license shall be
2 accompanied by a license fee of two hundred fifty dollars and
3 by a cash bond or a surety bond issued by a corporate surety
4 authorized to do business in the state in the amount of two
5 thousand dollars or five percent of the wholesale value of any
6 goods, wares, merchandise or services to be offered for sale
7 whichever sum is lesser. The surety bond shall be in favor of
8 the state of West Virginia and shall assure the payment by the
9 applicant of all taxes that may be due from the applicant to
10 the state or any political subdivision of the state, the payment
11 of any fines that may be assessed against the applicant or its
12 agents or employees for violation of the provisions of this
13 article and for the satisfaction of all judgments that may be
14 rendered against the transient merchant or its agents or
15 employees in any cause of action commenced by any purchaser
16 of goods, wares, merchandise or services within one year from
17 the date of the sale by such transient merchant. The bonds
18 shall be maintained so long as the transient merchant conducts
19 business in the state of West Virginia and for a period of one
20 year after the termination of such business and shall be
21 released only when the transient merchant furnishes satisfac-
22 tory proof to the commissioner that it has satisfied all claims
23 of purchasers of goods, wares, merchandise or services from
24 such merchant and that all state and local sales taxes and other
25 taxes have been paid.

**§47-11E-7. Issuance of licenses; nontransferability; conditions of
validity.**

1 A transient business license shall be issued hereunder only
2 when all requirements of this article have been met, such
3 license shall not be transferable, shall be valid only for a period
4 of ninety days and shall be valid only for the business stated
5 in the application. A license so issued shall be valid for only
6 one person unless such person shall be a member of a
7 partnership or employee of a firm or corporation obtaining
8 such license.

9 A license may be renewed for an additional period of ninety
10 days upon payment of an additional license fee of ten dollars.

§47-11E-8. Registered agents; state residency requirements; service of process, notice, etc., upon registered agents.

1 Each registered agent designated by a transient merchant in
2 the application for a license shall be a resident of the state
3 of West Virginia and shall be agent of the transient merchant
4 upon whom any process, notice or demand required or
5 permitted by law to be served upon the transient merchant
6 may be served. The registered agent shall agree in writing to
7 act as such agent and a copy of the agreement to so act shall
8 be filed by the applicant with the application for license
9 required by section five of this article.

§47-11E-9. Listings of transient merchants and registered agents to be maintained by commissioner.

1 The commissioner shall maintain an alphabetical list of all
2 transient merchants for each county and the names and
3 addresses of their registered agents.

§47-11E-10. Service of process, notices, etc., upon secretary of state.

1 If any transient merchant doing business or having done
2 business in this state shall fail to have or maintain a registered
3 agent in this state or if such registered agent cannot be found
4 at a permanent address in this state, the secretary of state shall
5 be an agent of such transient merchant for service of all
6 process, notices or demands. Service on the secretary of state
7 shall be made in the manner provided by section thirty-three,
8 article three, chapter fifty-six of this code, as amended. The
9 provisions of this section shall not limit or otherwise affect the
10 right of any person to serve any process, notice or demand
11 in any other manner now or hereafter authorized by law.

§47-11E-11. Local registration with county sheriff; fee; display of license.

1 After receipt of a transient vendor license from the
2 commissioner, a transient vendor shall pay a five dollar
3 registration fee and shall register in the office of the sheriff
4 in each county in which the transient vendor intends to do
5 business. The sheriff's office shall maintain and make available
6 to police agencies and the public, upon request, a current
7 listing of such registrations including date and time of
8 registration. Upon registration with the sheriff and offering

9 proof of licensing as required by section four of this article,
10 the vendor shall be authorized to conduct business in that
11 county for the seventy-two hour period immediately following
12 registration, except that nothing herein shall be deemed to
13 permit the conduct of business in those counties wherein the
14 same is prohibited on Sunday pursuant to the provisions of
15 article ten, chapter sixty-one of this code, and except that
16 nothing herein shall be deemed to permit the conduct of
17 business on public rights-of-way or other areas where the
18 conduct of business is otherwise prohibited, and except that
19 nothing herein shall be deemed to authorize the conduct of
20 business prior to registration with the state tax department
21 pursuant to the provisions of article twelve, chapter eleven of
22 this code.

23 A transient vendor conducting any business pursuant to this
24 article shall prominently display at the business site the license
25 issued by the commissioner of labor, the receipt from the
26 sheriff of the county wherein the business is being conducted,
27 and the business franchise certificate issued by the state tax
28 department.

§47-11E-12. Activities prohibited; criminal penalties; enforcement.

1 No person or entity shall transact a transient business as
2 defined in this article without having first obtained a license
3 therefor from the commissioner and without having then
4 registered with the sheriff in the county in which the transient
5 vendor transacts any business, nor shall any person or entity
6 knowingly advertise, offer for sale or sell any good, ware,
7 merchandise or service in violations of the provisions of this
8 article.

9 Any person or entity violating any provision of this article
10 is guilty of a misdemeanor, and, upon conviction thereof, shall
11 be fined not less than two hundred nor more than one
12 thousand dollars or imprisoned in the county jail not less than
13 ten days nor more than one year, or both fined and
14 imprisoned. The penalties prescribed herein shall be in
15 addition to any other penalties prescribed by law for violation
16 of any other criminal offense committed by any such person
17 or entity.

18 Notwithstanding the enforcement powers of the commis-
19 sioner of labor and the state department of labor, violators

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20 of this article shall be subject to investigation and arrest by
21 state, county and local law-enforcement officers.

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

Bruce D. Williams

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect July 1, 1985.

Jodd C. With

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Sam Tombarino

President of the Senate

Joseph P. Albright

Speaker of the House of Delegates

The within *approved* this the *17th*
April day of _____, 1985.

Arch A. Moore Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 4/10/85

Time 9:30 A.M.