WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

Com. Sub. for
HOUSE BILL No. 1575

(By Mr. Dal. J. Martin & Dal. Storch)

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.

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

§47-11E-2. General definitions.

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

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

(b) “Person” means any individual, corporation, partnership, association or entity.

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

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

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

§47-11E-3. Application; exemptions.

The provisions of this article shall not apply to:
(1) Sales at wholesale to retail merchants by commercial
travelers or selling agents in the usual course of business;
(2) Wholesale trade shows or conventions;
(3) Sales of goods, wares or merchandise by sample
catalogue or brochure for future delivery;
(4) State and local fairs and conventions;
(5) Any general sale, fair, auction or bazaar sponsored by
any church, religious or nonprofit organization;
(6) Garage sales held on premises devoted to residential use;
(7) Sales of crafts or items made by hand and sold or
offered for sale by the person making such crafts or handmade
items;
(8) Sales of agricultural products, except nursery products
and foliage plants;
(9) Sales made by a seller at residential premises pursuant
to an invitation issued by the owner or legal occupant of such
premises; or
(10) A person who operates a permanent business in this
state and in connection with the permanent business, operates
a temporary business location and prominently displays the
business name and permanent address while conducting
business from the temporary business location.

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

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

It is unlawful for any transient merchant to transact business
in this state unless such merchant and the owners of any
goods, wares or merchandise to be offered for sale or sold,
if such are not owned by the merchant, shall have first secured
a license and shall have otherwise complied with the
requirements of this article.
§47-11E-5. Applications for transient merchant licenses.

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

1. The name and permanent address of the transient merchant making the application and if the applicant is a firm or corporation the name and address of the members of the firm or the officers of the corporation, as the case may be;

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

3. A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business and the location of such proposed place of business;

4. The name and permanent address of the transient merchant’s registered agents or offices;

5. A statement that the applicant has acquired all other required city, county and state permits and licenses;

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

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

8. Counties in which the transient merchant intends to conduct business.

(b) The commissioner shall design and cause to be printed
appropriate forms for applications for licenses and for the 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 accompanied by a license fee of two hundred fifty dollars and by a cash bond or a surety bond issued by a corporate surety authorized to do business in the state in the amount of two thousand dollars or five percent of the wholesale value of any goods, wares, merchandise or services to be offered for sale whichever sum is lesser. The surety bond shall be in favor of the state of West Virginia and shall assure the payment by the applicant of all taxes that may be due from the applicant to the state or any political subdivision of the state, the payment of any fines that may be assessed against the applicant or its agents or employees for violation of the provisions of this article and for the satisfaction of all judgments that may be rendered against the transient merchant or its agents or employees in any cause of action commenced by any purchaser of goods, wares, merchandise or services within one year from the date of the sale by such transient merchant. The bonds shall be maintained so long as the transient merchant conducts business in the state of West Virginia and for a period of one year after the termination of such business and shall be released only when the transient merchant furnishes satisfactory proof to the commissioner that it has satisfied all claims of purchasers of goods, wares, merchandise or services from such merchant and that all state and local sales taxes and other taxes have been paid.

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

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

9 A license may be renewed for an additional period of ninety 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.

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

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

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

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

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

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

After receipt of a transient vendor license from the commissioner, a transient vendor shall pay a five dollar registration fee and shall register in the office of the sheriff in each county in which the transient vendor intends to do business. The sheriff's office shall maintain and make available to police agencies and the public, upon request, a current listing of such registrations including date and time of registration. Upon registration with the sheriff and offering
proof of licensing as required by section four of this article, the vendor shall be authorized to conduct business in that county for the seventy-two hour period immediately following registration, except that nothing herein shall be deemed to permit the conduct of business in those counties wherein the same is prohibited on Sunday pursuant to the provisions of article ten, chapter sixty-one of this code, and except that nothing herein shall be deemed to permit the conduct of business on public rights-of-way or other areas where the conduct of business is otherwise prohibited, and except that nothing herein shall be deemed to authorize the conduct of business prior to registration with the state tax department pursuant to the provisions of article twelve, chapter eleven of this code.

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

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

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

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

Notwithstanding the enforcement powers of the commissioner of labor and the state department of labor, violators
of this article shall be subject to investigation and arrest by state, county and local law-enforcement officers.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1985.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 13th day of April, 1985.

Governor