

West Virginia Division of Labor

Weights and Measures Section

**1900 Kanawha Boulevard East
State Capitol Complex - Building 3, Room 200
Charleston, WV 25305**

Guidelines for Obtaining a License for a Regulated Sale

In 1967 the West Virginia Legislature passed Article 11B of Chapter 47 of the State Code to require the licensing and regulation of certain types of sales to prevent misrepresentation and fraud, and to protect and promote the public welfare.

Before you advertise or conduct any sale which falls under any of the following definitions, you must obtain a license to carry on such a sale from the Commissioner of the West Virginia Division of Labor.

- A. ***“Closing-Out Sale”*** shall include any advertising or designation by any expression or characterization giving notice to the public that the sale will precede the abandonment of a business location.
- B. ***“Sale of Goods Damaged by Fire, Smoke or Water”*** shall include any advertising or characterization giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.
- C. ***“Defunct Business Sale”*** shall include any advertising or designation by any expression or characterization giving notice to the public of a sale resulting from death, business failure or other adversity.

The law provides exceptions for certain court ordered sales, sales conducted by government officials, or sales conducted by and on behalf of licensed insurers. However, exemptions must be requested in writing and may only be allowed upon written approval by the Commissioner after review of the circumstances surrounding the sale.

LICENSING GUIDELINES

A sale will be licensed for thirty (30) consecutive calendar days under the original license and may be continued for an additional thirty (30) calendar days under a renewal license which must be obtained by reapplying to the Commissioner before the expiration of the original license.

The fee for an original license is fifty dollars (\$50.00) with a one hundred dollar (\$100.00) fee required for a renewal license. The licensing fees are nonrefundable if the application is refused or denied, or the license is revoked.

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Upon receipt of the application, the Division may investigate all the facts therein, and if no circumstances are found that warrant denial or refusal of the application, a license will be issued.

If the license is denied, refused, or revoked the applicant will be notified in writing of the action. The notice will contain the reasons for the action and the applicant will be entitled to a judicial review of such action in the circuit court in the county in which the sale is to be conducted.

Other Requirements and Limitations

Any license that is issued will apply solely to the location specified on the application. No other store or warehouse connected with the applying location may advertise in any way that it is participating in the licensed sale, nor may the applying location advertise or represent any other location as cooperating with or participating in the licensed sale. No goods, wares or merchandise may be brought from other stores or warehouses and placed on sale at the applying location.

No merchandise may be added or exchanged from the inventory after the date of the application. Any merchandise or goods not included in a licensed sale shall be so marked and may not be commingled with the goods or merchandise listed on the licensee's inventory.

A licensee is prohibited from opening a business similar to the one for which a closing-out sale or defunct business sale license was issued on the same premises where the sale was conducted within one year of the termination of the sale.

Posting and Advertising

A copy of the application form, inventory and license shall be posted in a conspicuous place in public view in the sales room or the place where the sale is being conducted.

Any advertisement, window display, brochure, television or radio announcement, etc., must include a statement that gives the firm's license number, the date of the license expiration, and if applicable, the location where the business is to be resumed.

Violations and Penalties

Any person who violates the provisions of the law is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days.

Each day that a sale is conducted constitutes a separate violation of the law.

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Original License Application Instructions

NOTICE: *No application for a license to conduct a regulated sale will be accepted unless all the required information, documents, and bond are properly completed and submitted to the Division.*

Application Form

Attached are the application form and instructions for an original license to conduct a sale regulated by the Division under Article 11B. Properly complete the application in order that the license may be issued without unnecessary delays. Read all the statements of certification prior to signing the application.

Fee

A fee of fifty dollars (\$50.00) must accompany the application form for an original license. Make check payable to the "State of West Virginia".

Attachments

In addition to the completed application form and fee, the applicant must submit the following attachments:

- A. **Inventory** – The applicant must submit a full, complete, detailed and itemized inventory of the goods, wares or merchandise to be offered at such sale;
 - a. That includes make, brand name, model and manufacturer's number, if any, and quantity, along with,
 - b. A separate list of any goods that were purchased and received during the ninety (90) day period immediately prior to the date of the application, and
 - c. The total retail value of the inventory which is a true and accurate statement of the total value of the goods to be offered for sale based on the applicant's most recent federal income tax return adjusted for sales and purchases.

- B. **Bond with Corporate Surety** – Applicant must submit a corporate surety bond made payable to the "State of West Virginia" that is conditioned upon the applicant's faithful observance with all the provisions of the law. The amount of the bond is based upon the total retail value of the inventory and shall be determined as follows:

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- a. Five percent (5%) of the first one hundred thousand dollars (\$100,000.00) of retail value of all goods, wares and merchandise to be offered at such sale,
- b. Two percent (2%) of the next four hundred thousand dollars (\$400,000.00) and,
- c. One percent (1%) of the balance.

The attached bond form contains all the appropriate information and instructions. The bond will be in full force and effective for at least one year from the date that it goes into effect.

The completed bond form must be approved by the Prosecuting Attorney's Office in the county where the sale is to be conducted. ***It is the applicant's responsibility to obtain the county prosecutor's written approval prior to submitting the application to the Division.***

- C. If not the owner at time of occurrence where goods were damaged by fire, smoke or water or when the circumstances warranted a defunct business sale, the applicant shall file any or all the following:
 - a. Certified copies of the bills of sale,
 - b. All other documents connected with such transfer obtained by the applicant from the previous owner of such goods, and
 - c. Official appraisal made by the trustee, receiver, assignee for benefit of creditor, referee in bankruptcy or the personal representative of a decedent.

Renewal License

The applicant may obtain a license for an additional thirty (30) consecutive calendar days by submitting the attached application of renewal which must include the following:

- A. A completed application form,
- B. A one hundred dollar (\$100.00) fee; make check payable to the "State of West Virginia", and
- C. An updated inventory as detailed as that submitted with the application for an original license.

Sale's Final Disposition Report and Records

Within thirty (30) days of the termination of any licensed sale, the licensee shall submit in writing to the Commissioner a statement detailing the total retail value of goods, wares or merchandise that were not disposed of during the sale and the ultimate disposition of the goods, including the name and address of the transferee, if any.

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The licensee shall maintain suitable books and records concerning a regulated sale for at least one (1) full year. Books and records shall be available for inspection by the Division.

Where and When to File

All license application information should be submitted in person or by certified mail to:

West Virginia Division of Labor
1900 Kanawha Boulevard East
State Capitol Complex
Building 3, Room 200
Charleston, WV 25305

Additional information and assistance may be obtained by calling the Weights and Measures Office at (304) 722-0602.

An application form, attachments, bond and fee for an original license shall be submitted to the Division at least ten (10) days prior to the proposed starting date of the sale, and application form, attachments and fee for a renewal license shall be submitted to the Division not more than ten (10) days prior to the expiration date of the original license.

Exception: An application for an original license for the sale of goods damaged by fire, water or smoke may be made at any time prior to the start of the sale.

Attachments:

- A. Application forms with instructions for an original or renewal license.
- B. A regulated sale bond form and instructions.