

West Virginia Division of Labor
Weights and Measures Section

570 MacCorkle Avenue, West
St. Albans, West Virginia
25177

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 consecutive calendar days under the original license and may be continued for an addition thirty 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 \$50.00 with a \$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 conduct an investigation of all the facts contained in the application, 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.

Original License Application Instructions

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NOTICE: *No application for a license to conduct a regulated sale will be accepted unless all of 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 of 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 " *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 of 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:

- a. Five per cent (5%) of the first one hundred thousand dollars (\$100,000.00) of the retail value of all goods, wares, and merchandise to be offered at such sale,

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- b. Two percent (2%) of the next four hundred thousand dollars (\$400,000.00)
- c. One per cent (1%) of the balance

The attached bond form contains all of 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 of 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 good, 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 *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.

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

West Virginia Division of Labor
Weights and Measures Section

Weights and Measure section
570 MacCorkle Avenue, West
St. Albans, WV 25177

Addition 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.

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APPLICATION DATE

Office Use Only

CLOSING-OUT SALE, DAMAGED GOODS SALE OR DEFUNCT BUSINESS SALE LICENSE APPLICATION

BUSINESS/SALE

(1) Original Application Renewal of License No. _____

(2) Specific business name and location where sale is to be conducted: _____

(3) Nature of Occupancy:
(4) (Rent, lease, etc.)
(5) _____
(6) _____

Occupancy Termination:
_____ mo _____ day _____ yr

In business at this location:
_____ Yrs _____ Mos

Applicant has owned business:
_____ Yrs _____ Mos _____ dys

(7) Business is to be: Permanently terminated. Reopened as:
Name and address: _____

(8) The sale shall begin: _____ (mo) _____ (day) _____ (year)

(9) Name and address of person responsible for sale: _____

(10) Descriptive name of sale: _____ (11) Reason why name is truthfully descriptive of sale: _____

(12) Detailed reason for urgent and expeditious disposal of goods to be sold: _____

APPLICANT

(13) SOLE PROPRIETOR: Name and address of true owner of goods to be sold: _____

(14) PARTNERSHIP: Names and addresses of all true owners of goods to be sold, (Use additional sheet if necessary)

(15) CORPORATION/ASSOCIATION: Name, date, and place of Organization: _____

(16) Name and address of principal office in the Sate of West Virginia: _____

(17) Names and addresses of all officers of Corporation/Association: (Use additional sheet if necessary) _____

ATTACHMENTS

(18) **A. INVENTORY**

- A full, complete, detailed and itemized inventory including quantity, make, brand name, model and manufacturer's number, if any, which clearly identifies the goods for sale
- A separate detailed listing of goods for sale purchased and received during the ninety (90) day period immediately prior to the application date.
- Based upon the applicant's most recent federal tax return adjusted for sales and purchases, the total retail value of the inventory of goods for sale.

(19) **B. IF THE APPLICANT WAS NOT THE OWNER AT THE TIME OF OCCURANCE:** (For sale of goods damaged by fire, smoke or water, or defunct business):

- Certified copies of the bill of sale
- All other documents connected with such transfer obtained by applicant from the previous owner of such sale of goods.
- Official appraisal made by the trustee, receiver, assignee for benefit or creditor, referee in bankruptcy or the personal representative of a decedent.

(20) **C. SURETY BOND;**

- A completed, signed, sealed and notarized surety bond approved as to form and sufficiency by the prosecuting attorney of the county in which the sale is to be conducted.

CERTIFICATION

By my (our) signature(s) on this application, I (we) certify the following to be true:

1. NO goods will be added to the inventory after this application is made,
2. ALL goods included in the inventory have been purchased by the applicant for resale on bona fide orders without cancellation privileges and that the inventory comprises no goods purchased on consignment, except as provided by law,
3. NO merchandise listed in the inventory has been the subject of a licensed sale conducted within one year prior to the date of the application unless such merchandise was damaged by fire, smoke, or water while in the possession of the applicant,
4. THAT I (we) am (are) the person(s) who will be in charge and responsible for the conduct of such purposed sale,
5. IT is further certified that the applicant(s) is (are) familiar with Article 11B, of Chapter 47 of the Code of West Virginia as amended, and
6. THIS application contains true and descriptive statements.

(22) Signed: _____
(Title)

(21) Corporate Seal

(23) _____
(Title)

(24) _____
(Corporate President)

(25) _____
(Corporate Vice-President)

(26) Taken, subscribed and sworn before me this _____ day of _____, 19 _____. My

(27) commission expires on _____, 19 _____.

(28) Notary Seal

(29) _____

Notary Public

REGULATED SALE LICENSE APPLICATION INSTRUCTIONS

- (1) Check appropriate box, original or renewal application. If renewal, indicate original license number.
- (2) Indicate exact business name, address and county where sale shall be conducted. Do not use post office box numbers.
- (3) Indicate whether the applicant owns, rents, is buying, etc. the business location having the sale.
- (4) If a discontinuance of business sale, indicate the date that the applicant must vacate the business location having the sale.
- (5) Whether continuously owned by the applicant or not, how long as the business been at this specific location?
- (6) How long has the applicant owned the business where the sale is being conducted?
- (7) If a discontinuance of business sale, check appropriate box. If business is to be reopened elsewhere, indicate under what business name and at what address it is to be reopened.
- (8) The actual date that the applicant intends to open to the public for the purpose of conducting the sale.
- (9) The full name and address of the individual who will be directly responsible for conducting the sale.
- (10) The exact type of sale to be conducted, ex. going-out-of-business sale, fire sale, water damage sale, bankruptcy sale, etc.
- (11) Specify why the term in item 10 is an accurate description of the sale.
- (12) Specify the reason for the sale: ex. business sustained smoke and water damage, had a fire (date), business is being relocated, owner deceased business being closed, etc.
- (13) If you are the sole owner of the goods to be sold, provide your name and address.
- (14) If the business where the sale is to be conducted is jointly owned, but not a corporation, or association, list the names and addresses of all the partners.
- (15) If the business belongs to a corporation or association, provide the name, date, place of organization as filed with the West Virginia Secretary of State.
- (16) If a corporation or association, provide the name and address of the responsible office in West Virginia where the records shall be kept and inquiries concerning the disposition of goods may be directed.
- (17) If a corporation or association, provide the names and addresses of the President, Vice president, Secretary and Treasurer or any other principal officers.
- (18) Inventory: Check the particular attachments which you have included with your application form.
- (19) If applicable: check the particular attachments included with the application if you were not the owner of the goods at the time the goods were damaged or the circumstances which warranted the defunct business sale occurred.
- (20) Check if surety bond is included with the application form
- (21) If applicable, emboss the corporate seal here
- (22)(23) The applicant(s) signature and title(s) if other than President or Vice President of a corporation.
- (24) Signature: Only for President of Corporation
- (25) Signature: Only for Vice President of corporation
- (26)(27) Notary Completes: day, month and year of disposition by the signee(s) and the date their commission expires.
- (28) Embossed Notary Seal
- (29) Signature of Notary Public.

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BOND NUMBER

CLOSING-OUT SALE, DAMAGED GOODS SALE, OR DEFUNCT BUSINESS SALE
APPLICANTS BOND

(1) **KNOW ALL MEN BY THESE PRESENTS:**

That we, _____

(2) _____

(3) As principal, and _____

(4) _____

a corporation authorized to do business in the State of West Virginia, as Surety, are held and firmly bound unto
(5) the State of West Virginia, in the just and full sum of _____
(\$ _____) to the payment whereof we bind ourselves, our personal representatives, successors
and assigns, jointly and severally by these presents.

(6) **WHEREAS**, the above principal is a _____ and shall comply with
all of the provisions of Chapter 47, Article 11B of the West Virginia Code, as amended, administered by the
West Virginia Division of Labor and shall indemnify to any purchaser, at the sale to which this bond is
applicable, who suffers any loss by reason of misrepresentation made in connection with such sale and shall
make payment to the State or any municipality of all taxes due and owing or which may become due.

NOW THEREFORE, if the said principal shall truly and faithfully indemnify to any purchaser at said
sale and pay all taxes due and owing or which may become due and comply with all the provisions of said
Chapter 47, Article 11B. as amended, the one year after the effective date of this bond, the obligation shall be
void; otherwise, it shall remain in full virtue and effect.

(7) This bond shall be effective from the _____ day of _____, 19 ____.

(8) **IN WITNESS WHEREOF**, the said principal has hereunder set his, or its hand and affixed his or its
seal, and said surety has caused its corporate name to be signed hereto and its corporate seal to be hereunto
affixed by its duly authorized officer or agent and executed this instrument this _____ day of
_____, 19 ____.

(9) _____ (seal)
(Principal)

(11) Corporate Seal
Seal (10) By: _____ (seal)

(14) Surety Corporate Seal
Title: _____
(Must be President or Vice-president)

(12) _____
(Surety)

(15) Countersigned: _____

(Resident West Virginia Agent) (13) _____
(Attorney in Fact)

(16) STATE OF _____

(17) County of _____, to wit:

(18) I, _____ a Notary Public in and for the county and state aforesaid,

(19) do hereby certify that _____ whose name is signed to the foregoing

(20)(21) writing, bearing date the _____ day of _____, 19 _____ has acknowledged the same before me in my said county.

(22) Given under my hand this _____ day of _____, 19 _____.

(23) Notary Seal (24) _____ Notary Public

(25) My commission expires on the _____ day of _____, 19 _____.

ACKNOWLEDGEMENT BY PRINCIPAL IF CORPORATION

(26) STATE OF _____

(27) County of _____, to wit:

(28) I, _____ a Notary Public in and for the county and state

(29)(30) aforesaid, do hereby certify that _____ who as _____

(31) signed the foregoing writing for _____ a corporation, bearing date the

(32) _____ day of _____, 19 _____, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.

(33) Given under my hand this _____ day of _____, 19 _____.

(34) Notary Seal (35) _____ Notary Public

(36) My commission expires on the _____ day of _____, 19 _____.

ACKNOWLEDGMENT FOR SURETY

(37) STATE OF _____

(38) County of _____, to wit:

(39) I, _____ a Notary Public in and for the county and state aforesaid, do

(40)(41) hereby certify that _____ who, as _____,

(42) signed the foregoing writing for _____ a corporation, bearing date the

(43) _____ day of _____, 19 _____, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.

(44) Given under my hand this the _____ day of _____, 19 _____.

(45) Notary Seal (46) _____ Notary Public

(47) My commission expires on the _____ day of _____, 19 _____.

SUFFICIENCY IN FORM AND MANNER OF EXECUTION APPROVED:

(48) County _____

(49) Dated this _____ day of _____, 19 _____. By _____

BOND PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP:

- a. Complete the bond, lines (1) thru (15);
- b. Have Notary complete the application section of acknowledgment titled "*Acknowledgment by Principal if Individual or Partnership*", on the back of the bond.

2. IF PRINCIPAL IS A CORPORATION

- a. Complete the bond, lines (1) thru (15);
- b. Have Notary complete the application section acknowledgment titled "*Acknowledgment by Principal If Corporation*", on the back of the bond.
- c. Affix corporate seal as requested on face of bond.

3. SURETY;

- a. Complete application portion of bond;
- b. Have Notary complete applicable section of acknowledgment titled "Acknowledgment for Surety", on back of bond
- c. Attach Power of Attorney to bond if surety signatory is an attorney in fact;
- d. Affix raised Surety Seal as requested on face of bond.

4. LINE NUMBER INSTRUCTIONS:

- (1-2) Enter name and address of Principal (specify individual), partnership, or corporation) to be covered by the bond.
- (3-4) Enter name and address of Surety Company issuing bond.
- (5) Enter amount of bond
- (6) Enter type of business (e.g. Furniture Store, Department Store).
- (7) Enter effective date of the bond.
- (8) Enter bearing date of bond (also known as the execution date of the bond).
- (9) Enter name of the Principal (individual, partnership, or corporation covered by the bond).
- (10) If Principal is an individual, affix signature. If Principal is a corporation, President or Vice-president must sign bond and indicate current title.
- (11) If principal is a corporation, be sure to affix corporate seal.
- (12) Enter name of Surety
- (13) Affix signature and title of person having Power of Attorney to bind Surety.
- (14) Affix corporate seal of Surety.
- (15) If Surety's Agent is a nonresident, bond must be countersigned by a West Virginia resident agent.

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS;

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (16) thru (25).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (26 THRU (36).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (37 thru (47).
4. PRINCIPAL MUST HAVE THE OFFICE OF THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE SALE IS TO BE CONDUCTED COMPLETE LINE (48).

LINE NUMBER INSTRUCTIONS (Notaries must)

A. ACKNOWLEDGMENT BY PRINCIPAL IF INDIVIDUAL OR PARTNERSHIP:

- (16) Enter name of state.
- (17) Enter name of county.
- (18) Enter name of Notary Public witnessing transaction.
- (19) Enter name of principal covered by bond if individual or partnership.

- (20-21) Enter bearing date of bond (same as "Line 8" of the bond)
- (22) Notary enters date bond was witnessed.
- (23) Affix Notary Seal.
- (24) Notary affixes his/her signature here.
- (25) Notary enters commission expiration date.

B. ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

- (26) Enter name of state.
- (27) Enter name of county.
- (28) Enter name of Notary Public witnessing transaction.
- (29-30) Enter name of Corporate Officer signing bond. (Must be President or Vice-president).
Enter designate Title of Corporate Officer signing bond.
- (31) Enter name of Company or Corporation.
- (32) Enter bearing date of bond. (Same as "Line 8" of the bond).
- (33) Notary enters date bond was witnessed.
- (34-35) Affix notary seal.
Notary affixes his signature here.
- (36) Notary enters commission expiration date.

C. ACKNOWLEDGMENT BY SURETY

- (37) Enter name of state.
- (38) Enter name of county.
- (39) Enter name of Notary Public witnessing transaction.
- (40-41) Enter name of person having Power of Attorney to bind Surety Company.
Designate title of person binding Surety Company.
- (42) Enter name of Insurance Company (Surety).
- (43) Enter bearing date of bond ((same as "Line 8" of bond).
- (44) Notary enters date bond was witnessed.
- (45) Affix Notary Seal.
- (46) Notary affixes his signature here.
- (47) Notary enters commission expiration date.

LINE NUMBER INSTRUCTIONS: (Prosecuting Attorney must):

- (48) Enter name of county.
- (49) Enter Approval date, and Signature.

POWER OF ATTORNEY INSTRUCTIONS

Power of Attorney for Surety must be attached and it must show that it was in full force and effect on bearing date (execution) indicated on the face of the bond, also the corporate seal must be affixed to the Power of Attorney.

- a. Name of attorney in fact must be listed (If attorney is a nonresident, bond must be countersigned by West Virginia Resident Agent.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, preferably the bearing date of the bond, but no later that the bearing date, must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be a facsimile)
- e. Raised seal must be affixed.

- (20-21) Enter bearing date of bond (same as "Line 8" of the bond)
- (22) Notary enters date bond was witnessed.
- (23) Affix Notary Seal.
- (24) Notary affixes his/her signature here.
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- (27) Enter name of county.
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- (29-30) Enter name of Corporate Officer signing bond. (Must be President or Vice-president).
Enter designate Title of Corporate Officer signing bond.
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- (32) Enter bearing date of bond. (Same as "Line 8" of the bond).
- (33) Notary enters date bond was witnessed.
- (34-35) Affix notary seal.
Notary affixes his signature here.
- (36) Notary enters commission expiration date.

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- d. Signature of authorizing official must be affixed. (Signature may be a facsimile)
- e. Raised seal must be affixed.

The Division of Labor processes your personal information for appropriate and customary business purposes. Your personal information may be disclosed to other State agencies or third parties in the normal course of business as needed to comply with State or Federal laws. If you have any questions about the Division of Labor's use of your personal information or would like a copy of the Division's complete privacy notice, please contact the Webmaster, Robert Bryant at Robert.L.Bryant@wv.gov or the Division's Privacy Officer, John Junkins at John.R.Junkins@wv.gov.