

No. 1980-14

AN ACT

SB 702

Regulating the practices of feature motion picture exhibitors and distributors or licensors and providing remedies for violations and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Feature Motion Picture Fair Business Practices Law."

Section 2. Legislative findings and purposes.

The General Assembly of the Commonwealth of Pennsylvania finds and declares that the licensing and distribution of feature motion pictures to theatres in this Commonwealth, including the rights and obligations of distributors and exhibitors, vitally affects the general economy as well as the access of the public to works of artistic expression and opinion. In order to promote the public interest and public welfare of this Commonwealth to:

- (1) insure unabridged access for the public to artistic expression and opinion in feature motion pictures at reasonable prices and at many different locations;
- (2) avoid undue control of the exhibitors by the distributors;
- (3) foster vigorous and healthy competition in offering feature motion pictures for the benefit of the public by prohibiting practices through which fair and honest competition is restrained, destroyed or inhibited;
- (4) promote the wide geographical dissemination at reasonable prices to the public of ideas, opinions and artistic expression in feature motion pictures;
- (5) prevent delay in the exhibition of feature motion pictures to the public in theatres playing subsequent to the first run showing;
- (6) prevent theatres from unnecessarily going out of business, thereby resulting in reducing the number of small independent businesses and unemployment with loss of tax revenues and other undesirable consequences;
- (7) prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of distribution and exhibition of feature motion pictures within the Commonwealth;
- (8) promote fair and effective competition in that business;
- (9) benefit the movie going public by limiting the long and extensive first runs so that additional theatres, in a given area, may also exhibit the same feature motion picture and at possibly a lower admission price; and

(10) prohibit blind bidding by insuring that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibit it in their communities; it is necessary to legislate regulations and standards pursuant to the exercise of the police power of this Commonwealth governing the relationship between feature motion picture distributors or licensors and exhibitors serving the public by establishing fair business practice procedures for the licensing and distribution of feature motion pictures within the Commonwealth and to provide remedies for the violation of this act, including damages and attorneys' fees.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bid." A written or oral proposal by an exhibitor to a distributor, which proposal is in response to an invitation to bid or negotiate and states the terms under which the exhibitor will agree to exhibit a feature motion picture.

"Blind bidding." Bidding, negotiating, offering terms, accepting a bid or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the feature motion picture that is the subject to the agreement.

"Distributor." Any person engaged in the business of renting, selling or licensing feature motion pictures to exhibitors.

"Exhibit or exhibition." Showing feature motion pictures to the public for a charge.

"Exhibitor." Any person engaged in the business of operating one or more theatres in this Commonwealth.

"Invitation to bid." A written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a feature motion picture.

"License agreement." Any contract, agreement, understanding or condition between a distributor and an exhibitor for the exhibition of a feature motion picture by the exhibitor.

"Person." One or more individuals, partnerships, associations, societies, trusts or corporations.

"Run." The continuous exhibition of a feature motion picture in a defined geographical area for a specified period of time. A "first run" is the first exhibition of a feature motion picture in the designated area; a "second run" is the second exhibition and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is any run limited to a single theatre in a defined geographical area and a "nonexclusive" or "multiple run" is any run in more than one theatre in a defined geographical area.

"Theatre." Any establishment in which feature motion pictures are exhibited regularly to the public for a charge.

“Trade screening.” The showing of a feature motion picture by a distributor in recognized exchange cities within the Commonwealth which is open to any exhibitor.

Section 4. Blind bidding.

Blind bidding is hereby prohibited within the Commonwealth. No negotiations between exhibitors and distributors for the licensing or exhibition of a feature motion picture shall take place and no license agreement or any of its terms shall be agreed to for the exhibition of any feature motion picture within the Commonwealth before the feature motion picture has been trade screened within the Commonwealth.

Section 5. Guarantees.

(a) **Minimum payment to distributor.**—It shall be unlawful for any license agreement which provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theatre within the Commonwealth to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(b) **Prohibited guarantees void.**—Any provision, agreement or understanding which provides for such a guarantee shall be void and purported waiver of the prohibition in subsection (a) shall be void and unenforceable.

Section 6. Advances.

(a) **Advances prohibited.**—It shall be unlawful for any license agreement for the exhibition of a feature motion picture at a theatre within the Commonwealth to contain or be conditioned upon a provision, agreement or understanding that the exhibitor shall advance any funds prior to the exhibition of the picture as security for the performance of the license agreement or to be applied to payments under such an agreement.

(b) **Prohibited advances void.**—Any provision, agreement or understanding which provides for such an advance shall be void and any purported waiver of the prohibition in subsection (a) shall be void and unenforceable.

Section 7. Length of run.

No license agreement shall be entered into between distributor and exhibitor to grant an exclusive first run or an exclusive multiple first run for more than 42 days without provision to expand the run to second run or subsequent run theatres within the geographical area and license agreements and prints of said feature motion picture shall be made available by the distributor to those subsequent run theatres that would normally be served on subsequent run availability.

Section 8. Bidding procedures.

(a) **Invitation to bid contents.**—If bids are solicited from exhibitors for the licensing of a feature motion picture within the Commonwealth, then the invitation to bid shall specify the following:

(1) Whether the run for which the bid is being solicited is a first, second or subsequent run; whether the run is an exclusive or nonexclusive run; and the geographical area for the run.

(2) The names of all exhibitors who are being solicited.

(3) The date and hour the invitation to bid expires.

(4) The time, date, name and address of the location where the bids will be opened, which location shall be in the exchange centers of this Commonwealth.

(b) Trade screening.—If the motion picture that is the subject of a bid has not already been trade screened within the exchange centers in this Commonwealth, the distributor soliciting the bid shall include in the invitation to bid, the date, time and location of the trade screening for such picture.

(c) Bid submission and opening.—All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and are present at such time.

(d) Examination of bids.—Any exhibitor, or the agent of an exhibitor, who submits a bid for a particular run of a feature motion picture may, at reasonable times within 60 days after a bid is opened, examine any bid that is made for the same run of the motion picture by another exhibitor. The exhibitor may examine the bids even if the distributor rejects all bids that are submitted. Within seven business days after a bid for a particular run of a feature motion picture is accepted, the distributor shall notify in writing each exhibitor who submitted a bid for that run, the terms of the accepted bid and the identity of the successful bidder.

(e) Rejection of all bids.—If a distributor issues invitations to bid for a feature motion picture and rejects all bids received, he shall not enter into a license agreement for the exhibition of the picture except by means of the bidding process specified in this section. If the distributor rejects all bids submitted pursuant to the invitation to bid, he shall notify all exhibitors who submitted bids that he rejected all bids and shall issue a new invitation to bid.

Section 9. Application of act to prior agreements.

This act shall not apply to any license agreement entered into prior to the effective date of this act, except that a renewal of such license agreement shall not be excluded from the application of this act.

Section 10. Actions against distributors and exhibitors.

Any exhibitor may bring an action against a distributor or exhibitor or both in the respective court of common pleas wherein the exhibitor's business is located to recover damages sustained by reason of a willful and intentional violation of this act and, where appropriate, shall be entitled to injunctive relief. Such exhibitor, if successful, shall also be awarded the costs of the action including, but not limited to, reasonable attorneys' fees.

Section 11. Liability of exhibitor for furnishing information.

No liability on the part of and no cause of action of any nature shall arise against any exhibitor, its officers, agents or employees furnishing information as to violations of this act, or for statements made or evidence submitted at any hearing or trial conducted in connection therewith.

Section 12. Effective date.

This act shall take effect in 60 days.

APPROVED—The 29th day of February, A. D. 1980.

DICK THORNBURGH