WEST VIRGINIA CODE CHAPTER 19 ARTICLE 10B

WV Legislature

§19-10B-1. Short title.

This article shall be known and may be cited as "The West Virginia Livestock Dealer's Licensing Act."

WV Legislature

§19-10B-2. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Bond" means a written instrument guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him/her, and made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase.

(b) "Commissioner" means the commissioner of agriculture of the State of West Virginia and duly authorized representatives.

(c) "Department" means the Department of Agriculture of the State of West Virginia.

(d) "Livestock" means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie, and domestic poultry.

(e) "Livestock dealer" means a person other than a livestock producer who buys, receives or assembles livestock for resale, either for his/her own account or that of another person.

(f) "Livestock producer" means a person selling livestock which he/she has raised or livestock which he/she has additionally purchased and summered or wintered.

(g) "Person" means an individual, partnership, corporation, association or other legal entity.

WV Legislature

§19-10B-3. License required; fee.

It shall be unlawful for any person except a livestock producer to engage in the business of buying, receiving or assembling livestock for resale, or selling livestock in this state without being licensed as a livestock dealer by the commissioner. All applications for a livestock dealer's license or renewal of such license shall be made on forms provided by the commissioner and shall be filed on or before June thirtieth of each year with the commissioner. A fee of $30 shall be remitted with each such application. Any license not renewed by July 1, of any year shall expire.

WV Legislature

§19-10B-4. Applicant to furnish bond.

Before issuing any livestock dealer's license, the commissioner shall require the applicant to file either:

(1) A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The United States Department of Agriculture Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended; or

(2) A fully executed bond in an amount prescribed by the commissioner by regulation, but not less than $10,000, for the benefit of the sellers of livestock who have been wronged or damaged by any fraud or fraudulent practices of the livestock dealer and so adjudged by a court of competent jurisdiction, and who shall have the rights of action for damage for compensation against such bonds. The bond may include, at the option of the applicant, corporate surety bonding, collateral bonding (including costs and securities), establishment of an escrow account, an irrevocable letter of credit or a combination of these methods. If collateral bonding is used, the livestock dealer may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia, or other states, and of any county, district, or municipality of the State of West Virginia or other states; the certificates of deposit in a bank in this state which certificates shall be in favor of the department.

The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. It shall be the duty of the applicant to insure that the market value of such bonds is sufficient.

(3) The commissioner shall, upon receipt of any such deposits of cash, securities or certificates, promptly place the same with the treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the license is issued. The applicant making the deposit shall be entitled from time to time to receive from the state Treasurer, upon written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. Such bond shall be open to public inspection.

WV Legislature

§19-10B-5. Records of transactions; inspection by commissioner.

Every licensed livestock dealer shall make and retain for at least two years written livestock sales records in the form and manner prescribed by the commissioner, including, but not limited to, records indicating the identification numbers or letters, sex, brand and approximate weight of all livestock bought, sold, received, exchanged or otherwise transferred, and the names and addresses of all owners, sellers, consignors or buyers with whom he has in any manner exchanged livestock, with the date of such exchanges.

If the commissioner has reasonable cause to believe any livestock in this state are diseased in a manner such as to constitute a health hazard to other livestock, wherever located, he may request in writing the livestock sales records of any livestock dealer in the state for the purpose of tracing or discovering the diseased livestock, the source of the disease, and all other livestock which may be affected by the disease. A livestock dealer shall comply with such request within twenty-four hours.

The commissioner shall have the authority to enter premises and buildings occupied by a livestock dealer at any reasonable time in order to examine books and records maintained by the livestock dealer.

The commissioner may require livestock dealers to file in such form as he may prescribe, regular or special reports, or answers in regard to specific questions, for the purpose of providing information concerning livestock movement and animal disease control.

WV Legislature

§19-10B-6. Investigation of complaints; board of review; orders of the commissioner; hearing; review.

(a) The commissioner of agriculture is hereby invested with the authority to, and shall upon the verified written complaint of any person or by his/her own initiative, investigate the actions of any livestock dealer, or any person who assumes to act in that capacity. Upon verification of the complaint that there is probable cause, the commissioner shall present the complaint and evidence to the board of review. The board of review shall consider all of the facts and recommend a course of action to the commissioner. The commissioner shall then issue an order.

(b) The order by the commissioner shall be served upon all persons affected thereby by registered mail. Within ten days of receipt of such order, any party adversely affected thereby may, in writing, request a hearing before the commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of articles five and six, chapter twenty-nine-a of this code, as if the same were set forth herein in extenso. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.

(c) The board of review shall be appointed by the commissioner and shall include three persons who are residents of West Virginia and citizens of the United States. One member shall be a licensed livestock dealer, one member shall be a verified livestock producer, and one member shall represent the livestock public market industry. The members shall be appointed for terms of three years and may serve successive terms: Provided, That at the inception of the board, one member shall be appointed for a three year term, one member for a two year term and one member for a one year term. The first year term shall expire on January 1, 1992, and subsequently thereafter the terms shall expire on January 1, of each year. There shall be no limit to the number of consecutive terms a member may serve on the board. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture's travel regulations.

WV Legislature

§19-10B-7. Refusals, suspensions or revocation of licenses.

The commissioner may refuse to grant or may suspend or revoke a livestock dealer's license when it is determined from the evidence that there is reasonable cause to believe that any of the following situations exists:

(a) Where the applicant or licensee has violated the laws of the state or official regulations governing the interstate or intrastate movement, shipment or transportation of livestock.

(b) Where there have been false or misleading statements as to the health or physical condition of the animals with regard to the official tests or quality of the animals, or the practice of fraud or misrepresentation in connection therewith; in the buying or receiving of animals; or in the receiving, selling, exchanging, soliciting or negotiation of the sale, resale, exchange, weighing or shipment of animals.

(c) Where the applicant or licensee acts as a dealer for a person attempting to conduct business in violation of this article, after the notice of such violation has been given the licensee by the commissioner.

(d) Where the applicant or licensee fails to practice measures of sanitation, disinfection and inspection of premises or vehicles used for the yarding, holding or transportation of livestock.

(e) Where there has been a failure to keep records required by the commissioner, or where there is a refusal on the part of the applicant or licensee to produce records of transactions in the carrying on of the business for which such license is granted.

(f) Where the licensee fails to maintain a bond or to adjust a bond upon thirty days notice, or refuses or neglects to pay the fees or inspection charges required to be paid.

(g) Where the licensee has been suspended by order of the secretary of agriculture of the United States Department of Agriculture under provisions of The United States Department of Agriculture Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended.

WV Legislature

§19-10B-8. Fees paid into special fund in State Treasury.

All funds collected under this article shall be paid into the state Treasury and credited to a special fund to be appropriated by order of the commissioner for the enforcement of this article.

WV Legislature

§19-10B-9. Commissioner to enforce article; rules and regulations.

The commissioner shall administer and enforce the provisions of this article and shall have authority to issue regulations, after a public hearing, following due notice in conformance with the provisions of the state administrative procedures as set forth in chapter twenty-nine-a of this code, to carry out the provisions of this article.

WV Legislature

§19-10B-10. Penalties.

(a) Criminal penalties - Any person who shall violate any of the provisions of this article or rule adopted hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 for the first offense, and upon conviction of each subsequent offense, shall be fined not less than $500 nor more than $5,000. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties.

(1) Any person violating a provision of this article or rule adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.

(2) The commissioner may assess a penalty of not more than $500 for the first offense, and not less than $500 nor more than $5,000 for the second and subsequent offenses.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the same, shall be assessed interest at ten percent from the date the penalty was assessed. Such penalty and interest constitute a lien in favor of the State of West Virginia and shall attach on the person's property when such lien is properly recorded in the county where the property is situated. There shall be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules in accordance with the provisions of chapter twenty-nine-a of this code, which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article, and which deal with the civil penalties and procedures thereunder.

(d) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was a probable cause for such action.

WV Legislature

§19-10B-11. Construction.

The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in the various sections of the article.

WV Legislature