WEST VIRGINIA CODE CHAPTER 19 ARTICLE 2A

WV Legislature

§19-2A-1. Public market defined.

A public market is (1) any place of business where livestock, poultry, and other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold, or offered for sale, by any method including, but not limited to, public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times: Provided, That sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity, shall not be included in this definition. Annual sales held by nonprofit associations or nonprofit corporations devoted to improving the quality of beef cattle raised in this state where the net proceeds from such sales are used exclusively for the association or corporation conducting such sale, or purebred livestock sales conducted by generally recognized breed associations, shall not be subject to the provisions of sections eight and sixteen-a of this article: Provided, however, That only members in good standing in such nonprofit association or nonprofit corporation or such breed association shall offer cattle for sale at such annual sale and the bylaws of such association or corporation or such breed association shall provide either for a surety bond to be given as provided in this article or that each member offering stock at such sale shall bear any loss in proportion to the value of each member's stock to the total value of all such stock being sold at such sale.

WV Legislature

§19-2A-2. Public markets subject to state regulation.

All public markets, as defined in section one, are hereby declared to be affected with a public interest and subject to regulation by the state for the general welfare as in this article provided.

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§19-2A-3. Operation of public markets.

No public market shall hereafter be operated in this state by any person, partnership, firm, association, or corporation except in accordance with the provisions of this article.

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§19-2A-4. Permits to operate; application and hearing.

It shall be unlawful for any public market to be operated in this state without first having obtained from the commissioner of agriculture of West Virginia a permit therefor. Upon the filing of an application for such permit, the commissioner shall fix a time and place for hearing thereon and, after hearing, if it appear that the public interest require the same and that there is sufficient need for such market in the locality in which it is proposed to be established, shall grant such permit, or deny the same if the contrary appear: Provided, That the commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

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§19-2A-5. Permits for existing markets.

[Repealed]

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§19-2A-6. Fee for permits.

All permittees shall pay to the commissioner a fee of $10 on or before July 1 of each year.

WV Legislature

§19-2A-7. Revocation or suspension of permits.

The commissioner may at any time, for violations of this article, upon not less than fifteen days' notice to the grantee of such permit and an opportunity to be heard, revoke or suspend any permit theretofore granted.

WV Legislature

§19-2A-8. Applicant for permit to furnish surety bond for benefit of consignors; form of surety bond.

Before the granting of any such permit, the applicant shall execute and deliver to the commissioner a surety bond conditioned as the commissioner may require and acceptable to him payable to the State of West Virginia, for the benefit of the consignors at said market of livestock, poultry, and other agricultural and horticultural products, who have been wronged or damaged by any fraud or fraudulent practices of the market and so adjudged by a court of competent jurisdiction and who shall have the right of action for damage for compensation against such bond. A holder of a permit, who shall have been in operation not less than twelve months, shall maintain and deliver such bond to said commissioner as aforesaid in an amount not to exceed one hundred twenty percent of the average of its sales during the preceding calendar year. A holder of a permit, who shall have been in operation less than twelve months, shall maintain and deliver such bond to said commissioner as aforesaid in an amount established by the commissioner, but in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

The form of the bond shall be approved by the commissioner and may include, at the option of the applicant, surety bonding, collateral bonding (including costs and securities), establishment of an escrow account or a combination of these methods. If collateral bonding is used, the operator 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; or 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 ensure the market value of such bonds are sufficient. The commissioner shall, upon receipt of any such deposit 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 permit is issued. The applicant making the deposit shall be entitled from time to time to receive from the state Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him 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.

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§19-2A-9. Appeal from order of commissioner.

Any party feeling aggrieved by the entry of a final order by the commissioner, affecting him or it, may present a petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The applicant shall deliver a copy of such petition to the commissioner before presenting the same to the court or the judge. The court or judge shall fix a time for the hearing on the application, but such hearing, unless by agreement of the parties, shall not be held, sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the commissioner, so that the commissioner may be represented at such hearing. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. For such hearing the commissioner shall file with the clerk of said court all papers, documents, evidence, and records or certified copies thereof as were before the commissioner at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The commissioner shall file with the court before the day fixed for the final hearing a written statement of his reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right.

WV Legislature

§19-2A-10. Licensing of weighmen and auctioneers; application and fee; sale of livestock by weight.

It shall be unlawful for any person to serve in the capacity of weighman, or auctioneer at any public market without first having secured a license. Applications for such licenses shall be made on forms furnished by the commissioner and shall be accompanied by a fee of $2.50 for either weighman or auctioneer and shall contain such information as may be required.

All livestock sold by weight at any public market shall be sold subject to weight at place of sale on day sold by auctioneer.

WV Legislature

§19-2A-11. Approval of grading, classifying or standardizing by licensed person; application for license; fee.

It shall be unlawful for any public market to represent that livestock, poultry, and other agricultural and horticultural products are being sold at such market on grades, classifications, or standards adaptable to such products unless such grading, classifying, or standardizing has been made or approved by a person licensed by the commissioner. Applications for such a license shall be made on forms furnished by the commissioner and shall be accompanied by a fee of $2.50 and shall contain such information as may be required.

WV Legislature

§19-2A-12. Duration of licenses; renewals; refusal, revocation or suspension.

All licenses issued in accordance with the provisions of this article shall be for a period of one year and shall expire on June thirtieth next following date of issue. All applications for the renewal of any such licenses shall be made in the same manner as for the original license.

The commissioner may refuse to grant a license or may revoke or suspend any license issued under the provisions of this article, for the violation of any of the provisions of this article or of any of the rules and regulations adopted pursuant to the provisions of this article: Provided, That before such suspension or revocation becomes effective the party shall be notified by the commissioner of his intention to refuse, revoke, or suspend and the party shall be given ten days in which to request a hearing before the commissioner, which request shall be made in writing by registered mail. The commissioner is hereby authorized to summon witnesses for and to take testimony at such hearings.

WV Legislature

§19-2A-13. Unlawful for licensed weighman, grader or auctioneer to buy or trade at market in which employed; false weights.

It shall be unlawful for any weighman, grader, or auctioneer, licensed in accordance with the provisions of this article, to buy or trade in any livestock or other agricultural and horticultural products, graded, weighed, or auctioned by him either for himself or partnership at any public market in which he is employed, or to misweigh or falsely report any weights or otherwise fraudulently manipulate the scales to produce a weight other than the true and actual weight of any livestock, poultry, or other agricultural and horticultural products consigned to and sold at any public market.

WV Legislature

§19-2A-14. Testing and inspection of livestock for infectious diseases; fees; records.

For the purpose of preventing the spread of infectious disease among livestock and poultry when and where the same is sold at a public market the commissioner shall have authority and shall establish and define an area surrounding a public market inside of which area, so defined, it shall be unlawful for any person, firm, association, partnership or corporation to buy or sell to, or exchange with, another, unless such person, firm, association, partnership or corporation shall comply with all the provisions of this article and the rules and regulations as provided in this article.

At any public market where livestock is received, sold, offered or exposed for sale for purposes other than slaughter, the same shall be inspected for livestock diseases by a licensed and accredited veterinarian or by a livestock inspector approved by the commissioner and working under the direct supervision of the veterinary director of the animal health division, which veterinarian and livestock inspector shall be employed by the commissioner of agriculture and shall have authority to carry out the provisions of this section and enforce the provisions of article nine, chapter nineteen of the Code of West Virginia, 1931.

The management of such market shall collect a fee of 50¢ per head for cattle when tested for Bang's disease, and 10¢ per head for hogs when treated for the prevention of cholera. In addition thereto they shall collect from the purchaser the actual cost of vaccines or biological products used in the testing of such animals. Such vaccines or biological products shall be approved by the commissioner.

It shall be the duty of each veterinarian or livestock inspector to keep a record of all animals tested by him on forms furnished by the commissioner; such records shall be made in duplicate, the original to be forwarded to the commissioner, and the duplicate to be furnished to the public market at which such testing was done.

On the first day of each month the public market shall forward to the commissioner all moneys due for testing done during the previous month.

WV Legislature

§19-2A-15. Annual meetings to establish uniform standards, grades and market practices.

The commissioner shall annually, on or before July 1, call together in public meeting the president and manager, or other officials, of livestock auction markets within the state for the purpose of establishing uniform standards and grades of livestock and uniform market practices and procedures for the operation of livestock auction markets in this state.

WV Legislature

§19-2A-16. Record of transactions; inspection by commissioner or agents.

It shall be the duty of, and the officers of a public market are hereby required, to keep complete and accurate records of all transactions at a public market. The commissioner or his agents shall have at all reasonable hours, the right to enter the premises of any public market to examine the books and records of such market, and to make any other inspections necessary, for the purpose of carrying out the provisions of this article.

WV Legislature

§19-2A-16a. Separate account required; prompt payment required; penalties.

Every public market, as defined in section one of this article, shall maintain a separate bank account for the deposit of sale proceeds due to shippers and producers of the products and sales subject to the provisions of this article. All payments due to shippers and producers for such products and sales shall be drawn upon the separate account herein required and such payments shall be made within seventy-two hours following the conclusion of the daily activities at such market. Anyone violating the provisions of this section shall be guilty of a misdemeanor and, subject to the penalties prescribed in section nineteen of this article.

WV Legislature

§19-2A-17. Authority of commissioner to enforce article; conflicts with federal authority.

The commissioner shall be charged with the enforcement of this article. He shall have full authority and power to make and enforce rules and regulations necessary to carry out the provisions of this article, and may employ such agents or other assistants as he may deem necessary for the proper enforcement of this article.

In the event any of the provisions or requirements of this article should be a duplication or in conflict with the authority exercised by the secretary of agriculture under the Packers and Stockyard Act of the United States Congress, then the provisions and requirements of this article shall not apply.

WV Legislature

§19-2A-18. Fees paid into special fund in State Treasury.

All fees collected by the commissioner by virtue of this article shall be paid into the state Treasury and credited to a special fund to be appropriated as provided by law for the purpose of paying the salaries and expenses of the commissioner's employees in administering this article.

WV Legislature

§19-2A-19. Penalties for violation of article or rules and regulations.

Any person, firm, association, or corporation violating any of the provisions of this article, or of the rules and regulations adopted pursuant to the provisions thereof, shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $50 nor more than $200 for the first offense, and not less than $400 nor more than $1,000 for the second offense.

WV Legislature