

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 1088

(By Mr. Mr. Cutchew)
Mr. Colombo



PASSED April 13, 1973

In Effect ninty days from Passage



C 641

1088 /

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 1088
(By MR. McCUTCHEON and MR. COLOMBO)

(Originating in the House Committee on the Judiciary.)

[Passed April 13, 1973; in effect ninety days from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to the licensing of auctioneers; definition of terms; requirements for license; duties of auctioneer; license fees; service of process on auditor; bond; revocation or suspension of license; trainees permit; display of licenses and permits; records; orders of commissioner; hearing; review; penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-c, to read as follows:

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

- 1 For the purpose of this article the following definitions
- 2 shall prevail:
- 3 (a) The term "auctioneer" means and includes a person

4 who sells goods or real estate at public auction for another on
5 commission or for other compensation. The term "auctioneer"
6 shall not include (1) persons conducting sales at auctions con-
7 ducted by or under the direction of any public authority or
8 pursuant to any judicial order or direction or to any sale re-
9 quired by law to be at auction, (2) the owner of any real or
10 personal property when personally sold at auction by such
11 owner and such owner has not personally conducted an auction
12 within the previous twelve-month period, (3) persons con-
13 ducting sales pursuant to a deed of trust or other security agree-
14 ment, (4) attorneys at law licensed to practice in this state, (5)
15 fiduciaries of estates when selling real or personal property of
16 such estate and (6) persons conducting sales on behalf of
17 charitable, religious, fraternal or other nonprofit organizations:
18 *Provided*, That nothing contained in this article shall exempt
19 persons conducting sales at public markets from the provisions
20 of article two-a, chapter nineteen where the sale is confined
21 solely to livestock, poultry and other agriculture and horti-
22 culture products.

23 (b) The term "public auction" means any public sale of
24 real or personal property when offers or bids are made by
25 prospective purchasers and the property sold to the highest
26 bidder.

27 (c) The term "commissioner" means the commissioner of
28 agriculture of West Virginia.

§19-2C-2. License for auctioneer required.

1 After the thirtieth day of June, one thousand nine hundred
2 seventy-four, no person shall conduct an auction as an auc-
3 tioneer in this state unless he shall have first obtained from
4 the commissioner a license therefor.

§19-2C-3. Procedure for license; auditor as statutory agent for licensees.

1 Any person who wishes to conduct an auction as an auc-
2 tioneer may apply therefor on forms prescribed by the com-
3 missioner and containing such information as the commissioner
4 may by rule or regulation require. A nonreturnable applica-
5 tion fee of fifteen dollars shall accompany each application
6 as well as an annual license fee of fifteen dollars. Such

7 applicant shall in addition file with his application a bond as
8 required in section four of this article.

9 The commissioner shall, within thirty days of the receipt
10 of an application, enter an order either granting or denying the
11 license. In the event the license is denied, the applicant shall
12 be refunded any annual license fee submitted with the appli-
13 cation.

14 Licenses issued shall expire on the thirtieth day of June
15 of each year but shall be renewable upon the payment of the
16 annual license fee of fifteen dollars, so long as other re-
17 quirements of this article are complied with.

18 The state auditor shall be deemed to be agent for the purpose
19 of service of process on any licensed auctioneer for any action
20 occasioned by the performance of the duties of such auctioneer.
21 Every licensed auctioneer, by virtue of his application for
22 license, shall be deemed to have consented to such statutory
23 agency.

§19-2C-4. Bond required.

1 Every person applying for a license as an auctioneer or
2 continuing to act as a licensed auctioneer shall file with the
3 commissioner and maintain in full effect a bond with corporate
4 surety satisfactory to the commissioner and in the form as
5 prescribed by the commissioner, in the penalty of five thousand
6 dollars. Such bond shall be conditioned upon the faithful
7 compliance by the auctioneer with the provisions of this article
8 and the payment of all required taxes, fees and penalties
9 imposed by this state and its political subdivision as well as
10 the payment by any auctioneer of any final judgment obtained
11 for damages arising out of his conduct or duties as an auc-
12 tioneer. Such bond shall be open to public inspection.

**§19-2C-5. Requirements for license; rules and regulations; duties
of licensee; revocation or suspension of license.**

1 Each person seeking a license hereunder shall submit satis-
2 factory evidence to the commissioner showing:

3 (a) Either that

4 (1) Such applicant has been the principal auctioneer
5 or has actually assisted an auctioneer in at least five auctions
6 during the twelve-month period immediately prior to the
7 filing of such application;

8 (2) Such applicant is a graduate of a recognized
9 school for auctioneers;

10 (3) Such applicant is a licensed auctioneer in another
11 state; or

12 (4) Such applicant has submitted evidence from at
13 least two auctioneers licensed in this state that he is qualified
14 to conduct an auction;

15 (b) That such applicant is of good moral character, is over
16 eighteen years of age and has not been convicted of a crime
17 involving moral turpitude; and

18 (c) Such other information as the commissioner by reason-
19 able rule and regulation may prescribe.

20 The commissioner shall promulgate such reasonable rules
21 and regulations as he shall deem necessary to carry out the
22 intent and the administration and enforcement of this article,
23 which said rules and regulations shall be promulgated in ac-
24 cordance with the applicable provisions of chapter twenty-
25 nine-a of this code as if the same were set forth herein in ex-
26 tenso.

27 Each licensee shall prominently display such license at all
28 sales conducted by or participated in by such licensee and shall
29 keep complete and accurate records of all transactions engaged
30 in, which records shall be open to inspection by the commis-
31 sioner or his authorized representative.

32 The commissioner may, by order, suspend or revoke any
33 license granted hereunder for any violation of this article or
34 the rules and regulations promulgated hereunder.

§19-2C-6. Trainee permit.

1 Any person may apply for and receive from the commis-
2 sioner a trainee permit upon the payment of a permit fee of
3 ten dollars and upon supplying such information as the com-
4 missioner may require. Such permits shall expire on the thir-
5 tieth day of June of each year but shall be renewable upon the
6 payment of the annual fee of ten dollars. A trainee permit shall
7 entitle the holder thereof to assist in or conduct a public auc-
8 tion under the immediate supervision of a licensed auctioneer.

§19-2C-7. Orders of the commissioner; hearing; review.

1 Any order of the commissioner shall be served by him upon

2 all persons affected thereby by registered mail. Within ten days
3 of the receipt of such order any party adversely affected there-
4 by may, in writing, request a hearing before the commissioner.
5 Such hearing and any judicial review thereof shall be conducted
6 in accordance with the applicable provisions of articles five
7 and six, chapter twenty-nine-a of this code as if the same were
8 set forth herein in extenso. The effect of any order shall be
9 suspended during the course of any hearing or subsequent ap-
10 peals.

§19-2C-8. Penalties for violation of article or rules and regulations.

1 Any person, firm, association or corporation violating any
2 of the provisions of this article, or of the rules and regulations
3 adopted pursuant to the provisions thereof, shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be fined not
5 less than fifty dollars nor more than two hundred dollars for
6 the first offense, and not less than four hundred dollars nor
7 more than one thousand dollars for the second and subsequent
8 offenses.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

N. Darrel Darby
Chairman Senate Committee

Lawrence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Lewis R. McManus
Speaker House of Delegates

The within approved this the 25th
day of April, 1973.

Arthur Shouse Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/25/73
Time 3:35pm

RECEIVED

APR 25 3 35 PM '73
OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA