WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

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ENROLLED

HOUSE BILL No. 1088

(By Mr. Cutcher)

Mr. Colombo

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PASSED April 13, 1973

In Effect (By Mr. Colombo) 

C 641

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

1088
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 shall prevail:

2 (a) The term “auctioneer” means and includes a person
who sells goods or real estate at public auction for another on commission or for other compensation. The term "auctioneer" shall not include (1) persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction, (2) the owner of any real or personal property when personally sold at auction by such owner and such owner has not personally conducted an auction within the previous twelve-month period, (3) persons conducting sales pursuant to a deed of trust or other security agreement, (4) attorneys at law licensed to practice in this state, (5) fiduciaries of estates when selling real or personal property of such estate and (6) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations: Provided, That nothing contained in this article shall exempt persons conducting sales at public markets from the provisions of article two-a, chapter nineteen where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

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

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

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

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

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

Any person who wishes to conduct an auction as an auctioneer may apply therefor on forms prescribed by the commissioner and containing such information as the commissioner may by rule or regulation require. A nonreturnable application fee of fifteen dollars shall accompany each application as well as an annual license fee of fifteen dollars. Such
applicant shall in addition file with his application a bond as required in section four of this article.

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

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

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

§19-2C-4. Bond required.

Every person applying for a license as an auctioneer or continuing to act as a licensed auctioneer shall file with the commissioner and maintain in full effect a bond with corporate surety satisfactory to the commissioner and in the form as prescribed by the commissioner, in the penalty of five thousand dollars. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the provisions of this article and the payment of all required taxes, fees and penalties imposed by this state and its political subdivision as well as the payment by any auctioneer of any final judgment obtained for damages arising out of his conduct or duties as an auctioneer. 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.

Each person seeking a license hereunder shall submit satisfactory evidence to the commissioner showing:

(a) Either that

(1) Such applicant has been the principal auctioneer or has actually assisted an auctioneer in at least five auctions during the twelve-month period immediately prior to the filing of such application;
(2) Such applicant is a graduate of a recognized school for auctioneers;
(3) Such applicant is a licensed auctioneer in another state; or
(4) Such applicant has submitted evidence from at least two auctioneers licensed in this state that he is qualified to conduct an auction;
(b) That such applicant is of good moral character, is over eighteen years of age and has not been convicted of a crime involving moral turpitude; and
(c) Such other information as the commissioner by reasonable rule and regulation may prescribe.
The commissioner shall promulgate such reasonable rules and regulations as he shall deem necessary to carry out the intent and the administration and enforcement of this article, which said rules and regulations shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a of this code as if the same were set forth herein in extenso.
Each licensee shall prominently display such license at all sales conducted by or participated in by such licensee and shall keep complete and accurate records of all transactions engaged in, which records shall be open to inspection by the commissioner or his authorized representative.
The commissioner may, by order, suspend or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder.

§19-2C-6. Trainee permit.

Any person may apply for and receive from the commissioner a trainee permit upon the payment of a permit fee of ten dollars and upon supplying such information as the commissioner may require. Such permits shall expire on the thirtieth day of June of each year but shall be renewable upon the payment of the annual fee of ten dollars. A trainee permit shall entitle the holder thereof to assist in or conduct a public auction under the immediate supervision of a licensed auctioneer.

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

Any order of the commissioner shall be served by him upon
all persons affected thereby by registered mail. Within ten days
of the receipt of such order any party adversely affected there-
by 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 ap-
peals.

§19-2C-8. 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 fined not
less than fifty dollars nor more than two hundred dollars for
the first offense, and not less than four hundred dollars nor
more than one thousand dollars for the second and subsequent
offenses.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within [Approved] this the 25th day of [April], 1973.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date 4/25/73
Time 3:35 p.m.