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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Committee Substitute for
SENATE BILL NO. 99

(By Mr. Jucker, et al)



PASSED March 12, 1983

In Effect ninety days from Passage



66:02
770:99

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 99

(BY MR. TUCKER, MR. COLOMBO AND MRS. SPEARS)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four, five and six, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article two-c by adding thereto five new sections, designated sections five-a, six-a, nine, ten and eleven, relating to auctioneers; procedures and requirements for license; examinations; providing fees and bond amounts to be established; creating a special fees account; providing for rules and regulations; procedures for obtaining nonresident auctioneer's license; providing for written contracts and exceptions; providing for advertising; and making provisions for persons currently licensed.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five and six, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two-c be amended by adding thereto five new sections, designated sections five-a, six-a, nine, ten and eleven 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
5 on commission or for other compensation. The term
6 "auctioneer" shall not include (1) persons conducting sales
7 at auctions conducted by or under the direction of any
8 public authority or pursuant to any judicial order or
9 direction or to any sale required by law to be at auction, (2)
10 the owner of any real or personal property when personally
11 sold at auction by such owner and such owner has not
12 personally conducted an auction within the previous
13 twelve-month period, (3) persons conducting sales
14 pursuant to a deed of trust or other security agreement, (4)
15 fiduciaries of estates when selling real or personal property
16 of such estate, and (5) persons conducting sales on behalf of
17 charitable, religious, fraternal or other nonprofit
18 organizations: *Provided*, That nothing contained in this
19 article shall exempt persons conducting sales at public
20 markets from the provisions of article two-a, chapter
21 nineteen where the sale is confined solely to livestock,
22 poultry and other agriculture and horticulture 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.

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

**§19-2C-3. Procedure for license; department of agriculture as
statutory agent for licensees; fee.**

1 Any person who wishes to conduct an auction as an
2 auctioneer may apply therefor on forms prescribed by the
3 commissioner and containing such information as the
4 commissioner may by rule or regulation require. A
5 nonreturnable application fee of fifty dollars shall
6 accompany each application as well as an annual license fee
7 of fifty dollars. All such fees collected shall be paid into the
8 general revenue fund in the state treasury.

9 In addition to the payment of fees, an applicant shall file

10 with his application, a bond as required in section four of
11 this article.

12 The commissioner shall, within thirty days after the
13 receipt of an application, notify, by certified mail, the
14 applicant of his eligibility to be tested at the next regularly
15 scheduled test, as well as the date of such test.

16 In the event the license is denied, the applicant shall be
17 refunded any annual license fee submitted with the
18 application.

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

23 The state department of agriculture shall be deemed to be
24 agent for the purpose of service ^{of process} on any licensed auctioneer
25 for any action occasioned by the performance of the duties
26 of such auctioneer. Every licensed auctioneer, by virtue of
27 his application for license, shall be deemed to have
28 consented to such statutory agency.

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§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 property or
4 corporate surety bond satisfactory to the commissioner and
5 in form and amount as prescribed by the commissioner
6 pursuant to the rules and regulations promulgated in
7 accordance with this article: *Provided*, That in no event
8 shall the amount of such bond be less than ten thousand
9 dollars. Such bond shall be conditioned upon the faithful
10 compliance by the auctioneer with the provisions of this
11 article and the payment of all required taxes, fees and
12 penalties imposed by this state and its political subdivisions
13 as well as the payment by any auctioneer of any final
14 judgment obtained for damages arising out of his conduct
15 or duties as an auctioneer. Such bond shall be open to public
16 inspection.

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

1 Each person seeking a license hereunder after the
2 effective date of this section shall submit satisfactory
3 evidence to the commissioner showing:

- 4 (a) That he has successfully completed the written and
- 5 oral examinations provided for in this article;
- 6 (b) That he has a good reputation;
- 7 (c) That he is of trustworthy character;
- 8 (d) That he has met the apprenticeship requirements set
- 9 forth in this article, if applicable;
- 10 (e) That he is a citizen of the United States; and
- 11 (f) That he has a general knowledge of the auctioneering
- 12 profession and the principles involved in conducting an
- 13 auction.

14 The commissioner shall promulgate such reasonable
15 rules and regulations as he shall deem necessary to carry out
16 the intent and the administration and enforcement of this
17 article, which said rules and regulations shall be
18 promulgated in accordance with the applicable provisions
19 of chapter twenty-nine-a of this code as if the same were set
20 forth herein in extenso.

21 Each licensee shall promptly produce for inspection such
22 license at all sales conducted by or participated in by such
23 licensee when requested to do so by any person and shall
24 keep complete and accurate records of all transactions
25 engaged in for a period of six months which records shall be
26 open to inspection by the commissioner or his authorized
27 representative.

28 The commissioner may, by order, suspend or revoke any
29 license granted hereunder for any violation of this article or
30 the rules and regulations promulgated hereunder or for any
31 of the following reasons:

- 32 (a) Obtaining a license through false or fraudulent
- 33 representation;
- 34 (b) Making any substantial misrepresentation in any
- 35 application for an auctioneer's or apprentice auctioneer's
- 36 license;
- 37 (c) Engaging in a continued and flagrant course of
- 38 misrepresentation or for making false promises through an
- 39 agent, advertisement or otherwise;
- 40 (d) Failing to account for or remit within a reasonable
- 41 time any money belonging to others that comes into his
- 42 possession;
- 43 (e) Being convicted in any court of competent
- 44 jurisdiction of this state or any other state of a criminal
- 45 offense involving moral turpitude or a felony; or for failing

46 to notify the department of any such conviction within
47 fifteen days of conviction;

48 (f) Engaging in any conduct of an auctioneer which
49 demonstrates dishonesty or incompetency;

50 (g) Engaging in any other conduct that constitutes
51 fraudulent or dishonest dealing; and

52 (h) Acting as an attorney for a client.

53 Any auctioneer or apprentice auctioneer who has had his
54 license revoked shall not be issued another such license
55 until a period of two years has elapsed from the date of
56 revocation and then only upon successful completion of the
57 examinations required for an auctioneer's license or an
58 apprentice auctioneer's license.

**§19-2C-5a. Examinations of applicants; excuse for illness; fee
renewal.**

1 Examinations shall be held in April and October of each
2 year, at a time and place to be designated by the
3 commissioner or his authorized representative.

4 Any individual auctioneer applicant may take the
5 examination for auctioneer and apprentice at the regularly
6 scheduled time and place. The examination shall consist of
7 a written and an oral portion. The apprentice will be
8 excused from the oral portion of the examination. The
9 passing grade shall be seventy out of one hundred. The oral
10 portion will be scored by the commissioner or his
11 authorized representative. If the applicant fails either the
12 written or oral portion of the examination no license will be
13 issued and he or she shall not be administered the
14 examination again until the next regularly scheduled
15 examination date.

16 One notice only of the examination shall be sent to the
17 applicant by certified mail, return receipt requested. If the
18 applicant fails to appear for such examination, except as
19 provided herein, a new application and a new fee shall be
20 required. No fee shall be returned except when the
21 applicant fails to take the examination because of illness
22 evidenced by a doctor's certificate sent to the commissioner
23 by certified mail, return receipt requested. If excused
24 because of illness the applicant shall be admitted to the next
25 scheduled examination without additional fee. No
26 applicant shall be excused from taking the scheduled
27 examination for any reason other than illness unless in the

28 judgment of the commissioner, the applicant would suffer
29 undue hardship thereby.

30 A fee, of fifty dollars in addition to any other fees required
31 by this article, shall be collected from each person taking
32 such examination.

33 If the commissioner determines that an applicant does
34 not qualify for a license, he shall so notify the applicant by
35 certified mail. The notice shall state the reason for refusal to
36 grant a license and the applicant's right of appeal.

37 An examination shall not be required for the renewal of
38 any license unless such license has been revoked or
39 suspended, in which case the applicant shall take and pass
40 any written examination offered by the department.

§19-2C-6. Apprentice licenses; fees.

1 The department of agriculture may grant apprentice
2 auctioneers' licenses to those persons deemed qualified by
3 the commissioner. Every applicant for an apprentice
4 auctioneer's license must take and pass an examination
5 relating to the skills and knowledge, and statutes and
6 regulations governing auctioneers. Every applicant shall
7 furnish to the commissioner on forms provided by the
8 department, satisfactory proof of the following:

- 9 (a) That he has a good reputation;
- 10 (b) That he is a trustworthy character; and
- 11 (c) That he is a citizen of the United States.

12 Any apprentice auctioneer may take the examination to
13 become an auctioneer after serving a two-year
14 apprenticeship under a licensed auctioneer: *Provided*, That
15 if the apprentice has attended a nationally accredited
16 graduate school of auctioneering, approved by the
17 commissioner, he shall serve an apprenticeship of only six
18 months. Before an apprentice may take the auctioneer's
19 examination, the apprentice shall conduct at least six
20 auction sales under the direct supervision of the sponsoring
21 auctioneer.

22 When any apprentice is discharged or terminates his
23 employment with an auctioneer for any reason, the
24 auctioneer shall immediately deliver or mail, by certified
25 mail, to the commissioner the license of such apprentice
26 auctioneer. No apprentice auctioneer shall thereafter
27 perform any acts under the authority of his license until
28 such apprentice auctioneer receives a new license bearing

29 the name and address of his new employer. No more than
30 one license shall be issued to any apprentice auctioneer for
31 the same period of time. The fee for the transfer of the
32 license of an apprentice auctioneer to a new employer
33 auctioneer shall be fifteen dollars.

34 The amounts of the apprentice auctioneer's annual
35 renewal license shall be fifty dollars and bond requirements
36 shall be established by reasonable rules and regulations
37 promulgated by the commissioner, and both must be filed
38 with the department of agriculture: *Provided*, That the
39 bond required by this section shall not be less than five
40 thousand dollars. The department shall not issue an
41 apprentice auctioneer's license until bond has been filed in
42 accordance with this article. Such permits shall expire on
43 the thirtieth day of June of each year but shall be renewable
44 upon the payment of the annual fee. An apprentice license
45 shall entitle the holder thereof to assist in or conduct a
46 public auction under the immediate supervision of a
47 licensed auctioneer.

§19-2C-6a. Procedure for nonresident auctioneer's license.

1 To qualify for a nonresident license by reciprocity the
2 applicant must show evidence of licensing in another state
3 for a period of one year preceding the date of application.
4 The licensing may have been as an apprentice or as an
5 auctioneer. Provided this qualification is met and the
6 applicant meets all the other requirements as required by
7 this article and by regulation, he shall be licensed either as
8 an apprentice or as an auctioneer, based on a nonresident
9 license, as the case may be.

10 When an applicant's resident state has no licensing law
11 for auctioneers or the applicant's resident state has no
12 written or oral examination associated with its licensing
13 requirements the department of agriculture shall require
14 proof that the applicant has been a practicing auctioneer
15 for a period of two years preceding the date of application.
16 Said proof shall be in the form of sale bills, contracts, sale
17 permits and other such evidence acceptable to the
18 commissioner. Provided this qualification is met, and the
19 applicant meets other requirements for licensing as
20 required by the statutes and regulations, the applicant will
21 be seated at the next scheduled written and oral
22 examination for auctioneers without being required to first
23 serve an apprenticeship.

§19-2C-9. Written contracts; exception.

1 No person shall act as auctioneer on the sale at public
2 auction of any goods, wares, merchandise or of any other
3 property, real or personal, until he or she has, at the request
4 of the owner or consignor, first entered into a written
5 contract in duplicate with the owner or consignor of any
6 property to be sold, containing the terms and conditions
7 upon which the licensee receives or accepts the property for
8 sale at auction. No apprentice auctioneer shall be
9 authorized to enter such contract without the written
10 consent of his or her employer auctioneer. All contracts
11 shall be in the name of and on behalf of the employing
12 auctioneer.

13 In instances where contracts are used, the commissioner
14 may require the following:

15 (a) That written contracts between the auctioneer and
16 the seller be made in duplicate;

17 (b) That the original contract is to be retained by the
18 auctioneer for a period of six months;

19 (c) That one copy of the contract is to be furnished to
20 each person that entered into the contract;

21 (d) That an apprentice may not contract directly with a
22 client, but only through the auctioneer under whom he is
23 licensed;

24 (e) That an apprentice may not engage in a sale with an
25 auctioneer under whom he is not licensed without first
26 obtaining the written consent of the auctioneer under
27 whom he is licensed; and

28 (f) That on all contracts between an auctioneer and a
29 seller there shall be a prominent statement indicating that
30 the auctioneer is licensed by the department of agriculture
31 and bonded in favor of the state of West Virginia.

§19-2C-10. Advertising.

1 In advertising an auction sale by any licensed auctioneer
2 or auction house the principal auctioneer or auctioneers
3 who physically conduct the sale shall be listed prominently
4 in such advertising as used by said auctioneer or
5 auctioneers. The individual auctioneer or auctioneers who
6 conduct the sale shall be the person or persons who call for,
7 accept and close bids on the majority of items offered for
8 sale.

9 Any apprentice auctioneer who advertises, as provided in
10 this section, shall indicate in his advertisement the name of
11 the auctioneer under whom he or she is licensed.

12 The auctioneer's name shall be displayed in equal
13 prominence with the name of the apprentice auctioneer in
14 such advertisement.

15 Nothing in the provisions of this article, shall be
16 construed so as to prohibit any other auctioneer, licensed
17 pursuant to this article, from assisting with any auction,
18 notwithstanding the failure to list the name of the other
19 auctioneer in any advertising associated with such auction.

§19-2C-11. Persons currently licensed.

1 Any person who holds a valid auctioneer's license as of
2 the effective date of this section shall not be required to take
3 the examinations required by this article.

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

Carroll A. Johnson
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Nulb
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

Warren S. McHew
.....
President of the Senate

John H. Deard
.....
Speaker House of Delegates

The within... *is approved* ... this the *29* ...
day of *March*, 1983

John D. Rhymer
.....
Governor

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SEGY. OF STATE