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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

Com. Sub. Per
HOUSE BILL No. 2305

(By Mr. Del. D. Miller)

— ● —

Passed March 9, 1991

In Effect July 1, 1991 ~~Passage~~

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ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2305
(By DELEGATE D. MILLER)

[Passed March 9, 1991; in effect July 1, 1991.]

AN ACT to amend and reenact sections two, four, six, seven and ten, article ten-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to livestock dealers; definitions; changing bonding requirements; investigation of complaints; establishing a board of review; commissioner's powers and duties; increasing criminal penalties; adding civil penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six, seven and ten, article ten-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10B. LIVESTOCK DEALER'S LICENSING ACT.

§19-10B-2. Definitions.

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

3 (a) "Bond" means a written instrument guaranteeing
4 that the person bonded shall faithfully fulfill the terms
5 of the contract of purchase and guarantee payment of
6 the purchase price of all livestock purchased by

7 him/her, and made payable to the commissioner for the
8 benefit of persons sustaining loss resulting from the
9 nonpayment of the purchase price or the failure to fulfill
10 the terms of the contract of purchase.

11 (b) "Commissioner" means the commissioner of
12 agriculture of the state of West Virginia and duly
13 authorized representatives.

14 (c) "Department" means the department of agricul-
15 ture of the state of West Virginia.

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

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

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

27 (g) "Person" means an individual, partnership, corpo-
28 ration, association or other legal entity.

§19-10B-4. Applicant to furnish bond.

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

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

8 (2) A fully executed bond in an amount prescribed by
9 the commissioner by regulation, but not less than ten
10 thousand dollars, for the benefit of the sellers of
11 livestock who have been wronged or damaged by any
12 fraud or fraudulent practices of the livestock dealer and
13 so adjudged by a court of competent jurisdiction, and
14 who shall have the rights of action for damage for

15 compensation against such bonds. The bond may
 16 include, at the option of the applicant, corporate surety
 17 bonding, collateral bonding (including costs and securi-
 18 ties), establishment of an escrow account, an irrevoca-
 19 ble letter of credit or a combination of these methods.
 20 If collateral bonding is used, the livestock dealer may
 21 elect to deposit cash, or collateral securities or certifi-
 22 cates as follows: Bonds of the United States or its
 23 possessions, of the federal land bank, or of the ho-
 24 meowners' loan corporation; full faith and credit general
 25 obligation bonds of the state of West Virginia, or other
 26 states, and of any county, district, or municipality of the
 27 state of West Virginia or other states; the certificates of
 28 deposit in a bank in this state which certificates shall
 29 be in favor of the department.

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

34 (3) The commissioner shall, upon receipt of any such
 35 deposits of cash, securities or certificates, promptly
 36 place the same with the treasurer of the state of West
 37 Virginia whose duty it shall be to receive and hold the
 38 same in the name of the state in trust for the purpose
 39 for which the deposit is made when the license is issued.
 40 The applicant making the deposit shall be entitled from
 41 time to time to receive from the state treasurer, upon
 42 written approval of the commissioner, the whole or any
 43 portion of any cash, securities or certificates so depos-
 44 ited, upon depositing with the treasurer in lieu thereof,
 45 cash or other securities or certificates of the classes
 46 herein specified having value equal to or greater than
 47 the sum of the bond. Such bond shall be open to public
 48 inspection.

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

1 (a) The commissioner of agriculture is hereby in-
 2 vested with the authority to, and shall upon the verified
 3 written complaint of any person or by his/her own

4 initiative, investigate the actions of any livestock dealer,
5 or any person who assumes to act in that capacity. Upon
6 verification of the complaint that there is probable
7 cause, the commissioner shall present the complaint and
8 evidence to the board of review. The board of review
9 shall consider all of the facts and recommend a course
10 of action to the commissioner. The commissioner shall
11 then issue an order.

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

23 (c) The board of review shall be appointed by the
24 commissioner and shall include three persons who are
25 residents of West Virginia and citizens of the United
26 States. One member shall be a licensed livestock dealer,
27 one member shall be a verified livestock producer, and
28 one member shall represent the livestock public market
29 industry. The members shall be appointed for terms of
30 three years and may serve successive terms: *Provided,*
31 That at the inception of the board, one member shall be
32 appointed for a three year term, one member for a two
33 year term and one member for a one year term. The
34 first year term shall expire on the first day of January,
35 one thousand nine hundred ninety-two, and subse-
36 quently thereafter the terms shall expire on the first day
37 of January of each year. There shall be no limit to the
38 number of consecutive terms a member may serve on
39 the board. Board members shall receive no compensa-
40 tion for their service on the board, but shall be entitled
41 to receive reimbursement for expenses in accordance
42 with the department of agriculture's travel regulations.

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

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

6 (a) Where the applicant or licensee has violated the
7 laws of the state or official regulations governing the
8 interstate or intrastate movement, shipment or trans-
9 portation of livestock.

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

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

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

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

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

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

§19-10B-10. Penalties.

1 (a) *Criminal penalties*—Any person who shall violate
2 any of the provisions of this article or rule adopted
3 hereunder is guilty of a misdemeanor, and upon
4 conviction thereof, shall be fined not less than one
5 hundred dollars nor more than one thousand dollars for
6 the first offense, and upon conviction of each subsequent
7 offense, shall be fined not less than five hundred dollars
8 nor more than five thousand dollars. Magistrates have
9 concurrent jurisdiction with circuit courts to enforce the
10 provisions of this article.

11 (b) *Civil penalties.*

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

21 (2) The commissioner may assess a penalty of not
22 more than five hundred dollars for the first offense, and
23 not less than five hundred dollars nor more than five
24 thousand dollars for the second and subsequent offenses.

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

36 (c) Notwithstanding any other provision of law to the
37 contrary, the commissioner may promulgate and adopt
38 rules in accordance with the provisions of chapter
39 twenty-nine-a of this code, which permit consent

40 agreements or negotiated settlements for the civil
41 penalties assessed as a result of violation of the
42 provisions of this article, and which deal with the civil
43 penalties and procedures thereunder.

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

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

Homer Hech

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Harrell E. Almon

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Kittie Busette

President of the Senate

Bob C. Chalk

Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *April* 1991.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 4:40 pm