WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED
Com. Sub. For
HOUSE BILL No. 2308

(By Mr. Del. 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 in this article:

3 (a) "Bond" means a written instrument guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by
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him/her, and made payable to the commissioner for the
benefit of persons sustaining loss resulting from the
nonpayment of the purchase price or the failure to fulfill
the terms of the contract of purchase.

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

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

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

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

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

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

§19-10B-4. Applicant to furnish bond.

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

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

(2) A fully executed bond in an amount prescribed by
the commissioner by regulation, but not less than ten
thousand dollars, for the benefit of the sellers of
livestock who have been wronged or damaged by any
fraud or fraudulent practices of the livestock dealer and
so adjudged by a court of competent jurisdiction, and
who shall have the rights of action for damage for
compensation against such bonds. The bond may include, at the option of the applicant, corporate surety bonding, collateral bonding (including costs and securities), establishment of an escrow account, an irrevocable letter of credit or a combination of these methods. If collateral bonding is used, the livestock dealer 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; the 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 insure that the market value of such bonds is sufficient.

(3) The commissioner shall, upon receipt of any such deposits 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 license is issued. The applicant making the deposit shall be entitled from time to time to receive from the state treasurer, upon written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer 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. Such bond shall be open to public inspection.

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

(a) The commissioner of agriculture is hereby invested with the authority to, and shall upon the verified written complaint of any person or by his/her own
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initiative, investigate the actions of any livestock dealer, or any person who assumes to act in that capacity. Upon verification of the complaint that there is probable cause, the commissioner shall present the complaint and evidence to the board of review. The board of review shall consider all of the facts and recommend a course of action to the commissioner. The commissioner shall then issue an order.

(b) The order by the commissioner shall be served upon all persons affected thereby by registered mail. Within ten days of receipt of such order, any party adversely affected thereby 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 appeals.

(c) The board of review shall be appointed by the commissioner and shall include three persons who are residents of West Virginia and citizens of the United States. One member shall be a licensed livestock dealer, one member shall be a verified livestock producer, and one member shall represent the livestock public market industry. The members shall be appointed for terms of three years and may serve successive terms: Provided, That at the inception of the board, one member shall be appointed for a three year term, one member for a two year term and one member for a one year term. The first year term shall expire on the first day of January, one thousand nine hundred ninety-two, and subsequently thereafter the terms shall expire on the first day of January of each year. There shall be no limit to the number of consecutive terms a member may serve on the board. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the department of agriculture's travel regulations.

§19-10B-7. Refusals, suspensions or revocation of licenses.
The commissioner may refuse to grant or may suspend or revoke a livestock dealer’s license when it is determined from the evidence that there is reasonable cause to believe that any of the following situations exists:

(a) Where the applicant or licensee has violated the laws of the state or official regulations governing the interstate or intrastate movement, shipment or transportation of livestock.

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

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

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

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

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

(g) Where the licensee has been suspended by order of the secretary of agriculture of the United States department of agriculture under provisions of The United States Department of Agriculture Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended.
§19-10B-10. Penalties.

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

(b) **Civil penalties.**

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

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

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

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules in accordance with the provisions of chapter twenty-nine-a of this code, which permit consent
agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article, and which deal with the civil penalties and procedures thereunder.

(d) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was a probable cause for such action.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

President of the Senate

Speaker of the House of Delegates

The within is approved this the __ day of __________, 1991.

Governor