WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Com. Sub. for Com. Sub. for
SENATE BILL NO. 135

(By Senator Hawse)

PASSED March 7, 1991
In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR
Senate Bill No. 135
(By Senator Hawse, original sponsor)

[Passed March 7, 1991; in effect ninety days from passage.]

AN ACT to repeal section eleven, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, five-a, six, six-a, eight, nine and ten of said article; and to further amend said article by adding thereto three new sections, designated sections six-b, six-c and eight-a, all relating to auctioneers and apprentice auctioneers; definitions; procedure and fees for obtaining a license; department of agriculture as statutory agent for licensees, fees; requiring bonds and specifying approved methods of bonding; requirements for license; promulgation of rules and regulations; duties of licensee; examination of applicants; examination fee; excuse for illness; renewal fees; apprentice licenses; waiver of apprenticeship requirement; investigation of complaints; board of review; duties and responsibilities of apprentice auctioneers and sponsoring auctioneer; procedure for nonres-
ident auctioneer's and apprentice auctioneer's license; civil and criminal penalties for violation of article or rules and regulations; suspension, revocation or denial of licenses; written contracts for auctions and exception; and advertising of auction sales.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, four, five, five-a, six, six-a, eight, nine and ten of said article be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections six-b, six-c and eight-a, to read as follows:

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

1 For the purposes of this article:

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" does 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) fiduciaries of estates when selling real or personal property of such estate; and (5) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a, chapter nineteen of this code, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

24 (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 commis-
sioner of agriculture of West Virginia.

(d) The term “department” means the West Virginia
department of agriculture.

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

Any person who wishes to conduct an auction as an
auctioneer may apply for a license on forms prescribed
by the commissioner and containing such information
as the commissioner may by rule or regulation
require. A nonreturnable application fee of fifty
dollars shall accompany each application as well as
license fee of fifty dollars. All fees collected under this
article shall be paid into the general revenue fund in
the state treasury.

In addition to the payment of fees, an applicant shall
file with his application, a bond as required in section
four of this article.

The commissioner shall, within thirty days after the
receipt of an application, notify the applicant of his
eligibility to be examined at the next regularly
scheduled examination, as well as the date of such
examination.

In the event the license is denied, the applicant shall
be refunded the license fee submitted with the
application.

Licenses issued shall expire on the thirty-first day of
December of each year but shall be renewable upon
the payment of the annual license fee within sixty
days of the expiration date: Provided, That licenses
issued for fiscal year one thousand nine hundred
ninety-one will be extended, at no additional fee,
through the thirty-first day of December, one thou-
sand nine hundred ninety-one. Renewals received
more than sixty days after the expiration date are
subject to a late renewal fee of twenty-five dollars in
addition to the annual renewal fee. Licenses which
have been expired for more than two years will not be
renewed and the auctioneer or apprentice auctioneer
will be required to take the written and oral examina-
tion and to pay the examination fee. No renewal will
be made unless the other requirements of this article
are complied with.

Should a duplicate or replacement license or a
license reflecting a change in information be required,
the auctioneer or apprentice auctioneer must submit
with such request a fee of five dollars.

The state department of agriculture is the agent for
the purpose of service of process on any licensed
auctioneer for any action occasioned by the perfor-
mance of the duties of such auctioneer. Every licensed
auctioneer, by virtue of his application for license,
shall be considered to have consented to such statutory
agency.

§19-2C-4. Bond required.

Every person applying for a license as an auctioneer,
apprentice auctioneer or continuing to act as a licensed
auctioneer or apprentice auctioneer, shall file with the
commissioner and maintain in full effect a bond
satisfactory to the commissioner and in form and
amount as prescribed by the commissioner pursuant to
the rules and regulations promulgated in accordance
with this article: Provided, That in no event shall the
amount of such bond be less than ten thousand dollars
for an auctioneer and in no event less than five
thousand for an apprentice auctioneer. The bond may
include, at the option of the applicant, corporate surety
bonding, collateral bonding (including costs and secur-
ities), establishment of an escrow account, an irrevoca-
able letter of credit or a combination of these methods.
If collateral bonding is used, the auctioneer may elect
to deposit cash, or any of the following collateral
securities or certificates: 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: or certificates of deposit in a bank in this state which certificates shall be in the name 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 the market value of such bonds is sufficient. 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 him 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 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 subdivisions 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.

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

4 (a) That he or she has successfully completed the written and oral examinations provided for in this article;

7 (b) That he or she has a good reputation;
8. (c) That he or she is of trustworthy character;
9. (d) That he or she has met the apprenticeship
10. requirements set forth in this article, if applicable;
11. (e) That he or she is a citizen of the United States;
12. and
13. (f) That he or she has a general knowledge of the
14. auctioneering profession and the principles involved in
15. conducting an auction.
16. (2) The commissioner shall promulgate such reason-
17. able rules and regulations as he or she considers
18. necessary to carry out the intent and the administra-
19. tion and enforcement of this article, which said rules
20. and regulations shall be promulgated in accordance
21. with the applicable provisions of chapter twenty-nine-
22. a of this code.
23. (3) Each licensee shall promptly produce for inspec-
24. tion such license at all sales conducted by or partici-
25. pated in by such licensee when requested to do so by
26. any person and shall keep complete and accurate
27. records of all transactions engaged in for a period of
28. six months which records shall be open to inspection
29. by the commissioner or his authorized representative.

§19-2C-5a. Examinations of applicants; excuse for illness; fee
renewal.
1. Examinations shall be held in April and October of
2. each 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 or apprentice auctioneer at
6. the regularly scheduled time and place. The appren-
7. tice auctioneer's examination shall consist of a written
8. examination. The auctioneer's examination will con-
9. sist of both a written and oral examination. The
10. passing grade for any written examination shall be
11. seventy percent out of one hundred percent. The oral
12. portion will be scored by the commissioner or his
13. authorized representative. If the applicant fails either
14. the written or oral portion of the examination no
license will be issued and he or she shall not be
administered the examination again until the next
regularly scheduled examination date. A person who is
qualified for a auctioneer's license as provided for in
this article is considered to be a professional in his
trade.

One notice only of the examination shall be mailed
to the applicant at the address given on the applica-
tion. If the applicant fails to appear for such examina-
tion, except as provided herein, a new application and
a new fee shall be required. No fee shall be returned
except when the applicant fails to take the examina-
tion because of illness evidenced by a doctor's certif-
icate sent to the commissioner. If excused because of
illness the applicant shall be admitted to the next
scheduled examination without paying an additional
fee. No applicant shall be excused from taking the
scheduled examination for any reason other than
illness unless in the judgment of the commissioner,
the applicant would suffer undue hardship by not
being excused.

An examination fee, of fifty dollars in addition to
any other fees required by this article, shall be
collected from each person taking such examination. If
the applicant has previously paid the examination fee
and successfully completed the apprentice auctioneer's
examination, no additional examination fee will be
required to take the auctioneer's examination as
provided for in this article.

If the commissioner determines that an applicant
does not qualify for a license, he or she shall so notify
the applicant by certified mail. The notice shall state
the reason for refusal to grant a license and the
applicant's right to appeal the commissioner's decision
within twenty days of receipt of the notice.

An examination shall not be required for the
renewal of any license unless such license has been
revoked or suspended, in which case, the applicant
may be required, by the commissioner to, take and
pass any written or oral examination required by the
department. In cases where a license has been expired for more than two years, and not been revoked or suspended the applicant is required to take and pass any written and oral examinations required by the department. The commissioner is hereby authorized to promulgate rules as he or she considers necessary for the renewal of auctioneer licenses, including, but not limited to, requirements for continuing education of auctioneers.

§19-2C-6. Apprentice licenses; fees.

The department of agriculture may grant apprentice auctioneer's licenses to those persons considered qualified by the commissioner. Every applicant for an apprentice auctioneer's license must take and pass a written examination relating to the skills and knowledge, and statutes and regulations governing auctioneers. Every applicant shall furnish to the commissioner on forms provided by the department, satisfactory proof of the following:

(a) That he or she has a good reputation;
(b) That he or she is a trustworthy character; and
(c) That he or she is a citizen of the United States.

Any apprentice auctioneer may take the examination to become an auctioneer after serving a two-year apprenticeship under a licensed auctioneer: Provided, that if the apprentice auctioneer has attended a nationally accredited graduate school of auctioneering, approved by the commissioner, he or she shall serve an apprenticeship of only six months. Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: Provided, however, That
the commissioner shall promulgate rules and regulations setting forth educational and experience qualifications which would entitle an individual to a waiver of the provisions of this section: Provided further, That the commissioner shall not waive apprenticeship requirements for any applicant without the concurrence of the board of review.

When any apprentice auctioneer is discharged or terminates his employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer shall thereafter perform any acts under the authority of his license until such apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time. The fee for the transfer of the license of an apprentice auctioneer to a new employer auctioneer is fifteen dollars.

The fee for the annual renewal of the apprentice auctioneer's license is fifty dollars. Bond requirements for an apprentice auctioneer shall be established by reasonable rules and regulations promulgated by the commissioner, and both the annual renewal fee and the bond must be filed with the department of agriculture: Provided, That the bond required by this section shall not be less than five thousand dollars. The department shall not issue an apprentice auctioneer's license until bond has been filed in accordance with this article. All apprentice auctioneer licenses expire on the thirty-first day of December of each year but are renewable upon the payment of the annual fee.

§19-2C-6a. Investigation of complaints; board of review.

The department of agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the
7 complaint, together with other evidence presented in
8 connection with it, establishes probable cause.
9 Upon verification of the complaint, the department
10 shall present the complaint to the board of review.
11 The board of review shall consider all of the facts of
12 the complaint and recommend a course of action to
13 the commissioner.
14 The board of review shall be appointed by the
15 governor, by and with the advice and consent of the
16 Senate and shall consist of three members each
17 appointed for a staggered three year term. Two
18 members of the board of review shall be licensed
19 auctioneers in West Virginia and residents of this state
20 and shall have been licensed and been practicing the
21 profession of auctioneering for five years immediately
22 preceding their appointment. The third member shall
23 be a lay person from the commercial or agricultural
24 community who has utilized services of auctioneers
25 for at least three years. No more than one board
26 member shall be from any one congressional district
27 and no more than two members shall be from the
28 same political party. Board members shall receive no
29 compensation for their service on the board, but shall
30 be entitled to receive reimbursement for expenses in
31 accordance with the department of agriculture travel
32 regulations.
33 During the establishment of the board one member
34 shall be appointed for a three year term, one member
35 for a two year term and one member for a one year
36 term. The first year of each term expires on the first
37 day of January, one thousand nine hundred ninety-
38 two and subsequently on the first day of January of
39 each year. There shall be no limit on the number of
40 consecutive terms a member may serve on the board.
41 The governor is authorized to fill a vacancy when it
42 occurs on the board for any reason. An appointment to
43 fill a vacancy shall be for the remainder of the existing
44 term of the vacant position.

§19-2C-6b. Duties and responsibilities of an apprentice
auctioneer and a sponsoring auctioneer.

1 An apprentice auctioneer shall only conduct or assist
in auctions under the direct supervision of his sponsoring auctioneer. A licensed apprentice auctioneer may not enter into a contract to conduct an auction unless the contract is cosigned by his sponsoring auctioneer.

The sponsoring auctioneer is responsible for the actions of an apprentice auctioneer. It is his responsibility to insure adherence to this and all applicable sections of state law: Provided, That if the apprentice auctioneer conducts auctions without the consent of his sponsor, only the apprentice auctioneer is subject to the penalties in section eight of this article.

§19-2C-6c. Procedure for obtaining nonresident auctioneer's and apprentice auctioneer's license.

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

When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements the department of agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

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

(a) Criminal penalties. — Any person, firm, associa-
tion 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. 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 any rule or regulation 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 the person, the seriousness of the violation, and the demonstrated good faith of the 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 two hundred dollars for each first offense, and not more than one thousand dollars for a second and subsequent offenses; and (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 debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed
§19-2C-8a. Revocation.

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer’s or apprentice auctioneer’s license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within fifteen days of conviction;

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

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

(h) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his license suspended or revoked shall not be issued another such license until a period not to
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31 exceed two years has elapsed from the date of revoca-
32 tion. The commissioner may also require the success-
33 ful completion of the examinations required for an
34 auctioneer’s license or an apprentice auctioneer’s
35 license.

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

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

13 The commissioner may require by rule the following:
14 (a) That written contracts between the auctioneer
15 and the seller be made in duplicate;
16 (b) That the original contract is to be retained by the
17 auctioneer for a period of six months;
18 (c) That one copy of the contract is to be furnished
19 to each person that entered into the contract;
20 (d) That an apprentice auctioneer may not contract
21 directly with a client, but only through his or her
22 sponsoring auctioneer;
23 (e) That an apprentice auctioneer may not engage in
24 a sale with an auctioneer by whom he or she is not
25 sponsored without first obtaining the written consent
26 of his or her sponsoring auctioneer; and
27 (f) That on all contracts between an auctioneer and
28 a seller there shall be a prominent statement indicat-
29 ing that the auctioneer is licensed by the department
30 of agriculture and bonded in favor of the state of West
31 Virginia.
§19-2C-10. Advertising.

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

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

13 The auctioneer’s name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

17 Nothing in the provisions of this article, shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]

Clerk of the Senate

Clerk of the House of Delegates

[Signature]

President of the Senate

Speaker House of Delegates

The within is approved this the 15th day of __________, 1991.

[Signature]

Governor