WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4410

(By Delegate Hartman)

Passed March 8, 2014

In effect ninety days from passage.
AN ACT to amend and reenact §19-2C-1, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6b, §19-2C-8 and §19-2C-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §19-2C-3a, §19-2C-3b and §19-2C-9a, all relating to auctioneers and apprentice auctioneers; clarifying definitions; updating license requirements; updating duties of licensees; updating requirements for license renewals and expired licenses; authorizing rulemaking for the Commissioner of the Department of Agriculture; allowing fees to be set by legislative rule; clarifying the special fund; increasing length of record retention; clarifying examination requirements and excuses; clarifying qualifying test scores; restricting length of apprenticeship; updating duties of sponsoring auctioneer; increasing criminal penalties; requiring contracts to have certain provisions; and requiring escrow accounts.
Be it enacted by the Legislature of West Virginia:

That §19-2C-1, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6b, §19-2C-8 and §19-2C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §19-2C-3a, §19-2C-3b and §19-2C-9a, all to read as follows:

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

For the purposes of this article:

(a) "Auctioneer" means 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 the owner and the owner has not personally conducted an auction within the previous twelve-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and

(6) Persons properly licensed pursuant to the provisions of article forty, chapter thirty of this code when conducting an auction, any portion of which contains any leasehold or any
estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent’s estate: Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

(b) "Commissioner" means the Commissioner of Agriculture of West Virginia.

(c) "Department" means the West Virginia Department of Agriculture.

(d) "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

(e) "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.

§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

(2) Pay a nonreturnable application fee and a license fee; and

(3) File a bond as required by this article.

(b) The commissioner shall, within thirty days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.
(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on December 31 of each year. A license may be renewed upon the payment of the annual renewal fee within sixty days of the expiration date. Renewals received more than sixty days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.

(g) The state Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

§19-2C-3a. Rulemaking.

(a) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Establish the license requirements for auctioneers and apprentice auctioneers, including the bond requirements;

(2) Set a fee schedule;

(3) Establish the renewal and expiration requirements for licenses;
§19-2C-3b. Special revenue fund.

All fees collected under this article shall be paid into a special revenue fund in the State Treasury to be used by the Department of Agriculture for the purpose of administering and enforcing this article, and providing continuing education for auctioneers.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

(1) Has successfully completed the written and oral examinations required by this article;

(2) Has a good reputation;

(3) Is of trustworthy character;

(4) Has met the apprenticeship requirements set forth in this article, if applicable;

(5) Is a citizen of the United States; and
(6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

(1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and

(2) Keep complete and accurate records of all transactions engaged in for a period of three years.

(c) For the purposes of this section, the term "record" includes, but is not limited to:

(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

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

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

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer's examination shall consist of a written examination.
(d) The auctioneer’s examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be seventy percent out of one hundred percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

(f) A person who has an auctioneer license is considered to be a professional in his or her trade.

(g) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor’s certificate 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 may 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.

(h) An examination fee and any other fees required by this article, shall be collected from each person taking an 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.

(i) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:
(1) The reason for the refusal to grant a license; and

(2) The applicant’s right to appeal the commissioner’s decision within twenty days of receipt of the notice.

(j) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

§19-2C-6. Requirements for apprentice auctioneer license.

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

(1) Has a good reputation;

(2) Is a trustworthy character;

(3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

(1) Serving a two-year apprenticeship under a licensed auctioneer; or

(2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.
(c) 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, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

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

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on December 31 of each year, but are renewable upon the payment of the annual fee.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

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

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

(b) The sponsoring auctioneer is responsible for:

(1) The actions of an apprentice auctioneer to ensure adherence to state law; and

(2) Training the apprentice auctioneer in all aspects of practical business functions and duties related to the auctioneering profession.

(c) Should an apprentice auctioneer fail to pass both the written and oral examinations to become a fully licensed auctioneer in two consecutive testing sessions, the sponsorship will be terminated. The apprentice auctioneer will be permitted one additional opportunity to pass the oral and written auctioneer examinations only after serving another six month apprenticeship under a different sponsoring auctioneer.

(d) A sponsoring auctioneer relieved of his or her sponsorship will not be considered for another sponsorship unless he or she provides a written affidavit to the commissioner that he or she fully understands the responsibilities of a sponsoring auctioneer and gives the details as to what additional training will be provided to a new apprentice auctioneer. If the commissioner or his or her representative approves the presented plan, then an auctioneer may be permitted to sponsor a new apprentice auctioneer.

(e) If an apprentice auctioneer conducts an auction without the consent of his or her sponsoring auctioneer, then only the apprentice auctioneer is subject to the penalties set forth in this article.


(a) Criminal penalties. — Any person, firm, association or corporation violating a provision of this article or the rules, is
guilty of a misdemeanor, and upon conviction, shall be fined not less than $250 nor more than $500 for the first offense, and not less than $500 nor more than $1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner. In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by 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. The commissioner may assess a penalty of not more than $200 for each first offense, and not more than $1,000 for a second and subsequent offense. The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, 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 the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

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

§19-2C-9. Written contracts.

(a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a
4 written contract in duplicate with the owner or consignor of the
5 property to be sold. No apprentice auctioneer may be authorized
6 to enter into a contract without the written consent of his or her
7 sponsoring auctioneer. All contracts shall be in the name of and
8 on behalf of the sponsoring auctioneer.
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10 (b) The written contract shall:
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12 (1) State the terms and conditions upon which the auctioneer
13 receives or accepts the property for sale at auction;
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15 (2) Be between the auctioneer and the seller;
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17 (3) Be made in duplicate;
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19 (4) Be retained by the auctioneer for a period of three years
20 from the date of final settlement;
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22 (5) Be furnished to each person that entered into the
23 contract;
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25 (6) State that an apprentice auctioneer may not contract
26 directly with a client but only through his or her sponsoring
27 auctioneer;
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29 (7) State that an apprentice auctioneer may not engage in a
30 sale with an auctioneer by whom he or she is not sponsored
31 without first obtaining the written consent of his or her
32 sponsoring auctioneer;
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34 (8) Have a prominent statement indicating that the
35 auctioneer is licensed by the Department of Agriculture and is
36 bonded in favor of the State of West Virginia; and
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38 (9) Include the following information:
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40 (A) The name, address and phone number of the owner of
41 the property to be sold or the consignor;
(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer's policy regarding absentee bidding;

(I) A statement above the owner's signature line: "I have read and accept the terms of the contract"; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

§19-2C-9a. Escrow accounts.

Each auctioneer shall maintain an escrow account and deposit all moneys from each sale from an auction in the escrow account within twenty-four hours of the completion of the sale or on the first business day following the sale, unless the owner or consignor was paid in cash directly at the end of the sale.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Original in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 31st day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

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Time 10:45 AM