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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2014

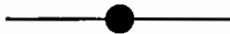


ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4410

(By Delegate Hartman)



Passed March 8, 2014

In effect ninety days from passage.

HB 4410

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E N R O L L E D

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FOR

H. B. 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.

1 For the purposes of this article:

2 (a) "Auctioneer" means a person who sells goods or real
3 estate at public auction for another on commission or for other
4 compensation. The term "auctioneer" does not include:

5 (1) Persons conducting sales at auctions conducted by or
6 under the direction of any public authority or pursuant to any
7 judicial order or direction or to any sale required by law to be at
8 auction;

9 (2) The owner of any real or personal property when
10 personally sold at auction by the owner and the owner has not
11 personally conducted an auction within the previous
12 twelve-month period;

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

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

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

18 (6) Persons properly licensed pursuant to the provisions of
19 article forty, chapter thirty of this code when conducting an
20 auction, any portion of which contains any leasehold or any

21 estate in land whether corporeal or incorporeal, freehold or
22 nonfreehold, when the person is retained to conduct an auction
23 by a receiver or trustee in bankruptcy, a fiduciary acting under
24 the authority of a deed of trust or will, or a fiduciary of a
25 decedent's estate: *Provided*, That nothing contained in this
26 article exempts persons conducting sales at public markets from
27 the provisions of article two-a of this chapter, where the sale is
28 confined solely to livestock, poultry and other agriculture and
29 horticulture products.

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

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

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

36 (e) "Public auction" means any public sale of real or personal
37 property when offers or bids are made by prospective purchasers
38 and the property sold to the highest bidder.

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

1 (a) An applicant for an auctioneer license shall:

2 (1) Apply on forms prescribed by the commissioner;

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

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

5 (b) The commissioner shall, within thirty days after the
6 receipt of an application, notify the applicant of his or her
7 eligibility to be examined at the next regularly scheduled
8 examination, as well as the date of the examination.

9 (c) If the license is denied, the commissioner shall refund the
10 license fee submitted with the application to the applicant.

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

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

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

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

§19-2C-3a. Rulemaking.

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

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

6 (2) Set a fee schedule;

7 (3) Establish the renewal and expiration requirements for
8 licenses;

9 (4) Establish the continuing education requirements for
10 licensees;

11 (5) Establish waiver of examination requirements for
12 apprentice auctioneers;

13 (6) Permit consent agreements or negotiated settlements for
14 the civil penalties; and

15 (7) Implement the provisions of this article.

16 (b) The fees in effect on January 1, 2014, shall remain in
17 effect until modified by legislative rule.

§19-2C-3b. Special revenue fund.

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

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

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

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

6 (2) Has a good reputation;

7 (3) Is of trustworthy character;

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

10 (5) Is a citizen of the United States; and

11 (6) Has a general knowledge of the auctioneering profession
12 and the principles involved in conducting an auction.

13 (b) A licensee shall:

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

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

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

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

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

25 (3) Final settlement papers.

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

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

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

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

7 (c) The apprentice auctioneer's examination shall consist of
8 a written examination.

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

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

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

20 (g) Only one notice of the examination will be mailed or
21 emailed to the applicant at the address given on the application.
22 If the applicant fails to appear for an examination, except as
23 provided in this subsection, a new application and a new fee
24 shall be required. No fee will be returned, except when the
25 applicant fails to take the examination because of illness
26 evidenced by a doctor's certificate sent to the commissioner. If
27 excused because of illness, the applicant shall be admitted to the
28 next scheduled examination without paying an additional fee. No
29 applicant may be excused from taking the scheduled
30 examination for any reason other than illness, unless in the
31 judgment of the commissioner the applicant would suffer undue
32 hardship by not being excused.

33 (h) An examination fee and any other fees required by this
34 article, shall be collected from each person taking an
35 examination. If the applicant has previously paid the
36 examination fee and successfully completed the apprentice
37 auctioneer's examination, no additional examination fee will be
38 required to take the auctioneer's examination.

39 (i) If the commissioner determines that an applicant does not
40 qualify for a license, he or she shall notify the applicant by
41 certified mail. The notice shall state:

- 42 (1) The reason for the refusal to grant a license; and
- 43 (2) The applicant's right to appeal the commissioner's
44 decision within twenty days of receipt of the notice.
- 45 (j) An examination is not required for the renewal of a
46 license, unless the license has been revoked or suspended, or has
47 expired. If the license was revoked or suspended, then the
48 commissioner may require a person to take and pass a written or
49 oral examination. If a license has been expired for more than two
50 years and was not revoked or suspended, then the applicant is
51 required to take and pass any written and oral examinations
52 required by the commissioner.

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

- 1 (a) A person seeking an apprentice auctioneer license shall
2 furnish to the commissioner, on forms provided by the
3 commissioner, satisfactory proof that he or she:
- 4 (1) Has a good reputation;
- 5 (2) Is a trustworthy character;
- 6 (3) Is a citizen of the United States; and
- 7 (4) Has taken and passed a written examination relating to
8 the skills and knowledge of the statutes and rules governing
9 auctioneers.
- 10 (b) An apprentice auctioneer may take the examination to
11 become an auctioneer after completing one of the following:
- 12 (1) Serving a two-year apprenticeship under a licensed
13 auctioneer; or
- 14 (2) Attending a nationally accredited graduate school of
15 auctioneering, approved by the commissioner, and serving an
16 apprenticeship of six months.

17 (c) Before an apprentice auctioneer may take the
18 auctioneer's examination, the apprentice auctioneer shall
19 conduct at least six auction sales under the direct supervision of
20 the sponsoring auctioneer. The commissioner may waive the
21 requirements of this section, on an individual basis, upon the
22 presentation of written evidence that the applicant has
23 educational training or exceptional experience in the
24 auctioneering profession and that the applicant has been unable
25 to obtain sponsorship by a licensed auctioneer: *Provided*, That
26 the commissioner may not waive apprenticeship requirements
27 for an applicant without the concurrence of the board of review.

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

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

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

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

1 (a) A licensed apprentice auctioneer shall only conduct or
2 assist in auctions under the direct supervision of his or her

3 sponsoring auctioneer. A licensed apprentice auctioneer may not
4 enter into a contract to conduct an auction, unless the contract is
5 cosigned by his or her sponsoring auctioneer.

6 (b) The sponsoring auctioneer is responsible for:

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

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

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

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

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

§19-2C-8. Penalties.

1 (a) *Criminal penalties.* — Any person, firm, association or
2 corporation violating a provision of this article or the rules, is

3 guilty of a misdemeanor, and upon conviction, shall be fined not
4 less than \$250 nor more than \$500 for the first offense, and not
5 less than \$500 nor more than \$1,000 for the second and
6 subsequent offenses. Magistrates have concurrent jurisdiction
7 with circuit courts to enforce the provisions of this article.

8 (b) *Civil penalties.* — Any person violating a provision of
9 this article or the rules, may be assessed a civil penalty by the
10 commissioner. In determining the amount of the civil penalty,
11 the commissioner shall give due consideration to the history of
12 previous violations by the person, the seriousness of the
13 violation, and the demonstrated good faith of the person charged
14 in attempting to achieve compliance with this article before and
15 after written notification of the violation. The commissioner may
16 assess a penalty of not more than \$200 for each first offense, and
17 not more than \$1,000 for a second and subsequent offense. The
18 civil penalty is payable to the State of West Virginia and is
19 collectible in any manner provided for collection of debt. If any
20 person liable to pay the civil penalty neglects or refuses to pay
21 the penalty, the amount of the civil penalty, together with
22 interest at ten percent, is a lien in favor of the State of West
23 Virginia upon the property, both real and personal, of the person
24 after the same has been entered and docketed to record in the
25 county where the property is situated. The clerk of the county,
26 upon receipt of the certified copy of the lien, shall enter it to
27 record without requiring the payment of costs as a condition
28 precedent to recording.

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

§19-2C-9. Written contracts.

1 (a) No person may act as an 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 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.

9 (b) The written contract shall:

10 (1) State the terms and conditions upon which the auctioneer
11 receives or accepts the property for sale at auction;

12 (2) Be between the auctioneer and the seller;

13 (3) Be made in duplicate;

14 (4) Be retained by the auctioneer for a period of three years
15 from the date of final settlement;

16 (5) Be furnished to each person that entered into the
17 contract;

18 (6) State that an apprentice auctioneer may not contract
19 directly with a client but only through his or her sponsoring
20 auctioneer;

21 (7) State that an apprentice auctioneer may not engage in a
22 sale with an auctioneer by whom he or she is not sponsored
23 without first obtaining the written consent of his or her
24 sponsoring auctioneer;

25 (8) Have a prominent statement indicating that the
26 auctioneer is licensed by the Department of Agriculture and is
27 bonded in favor of the State of West Virginia; and

28 (9) Include the following information:

29 (A) The name, address and phone number of the owner of
30 the property to be sold or the consignor;

31 (B) The date of the auction or a termination date of the
32 contract;

33 (C) The terms and conditions of the auction;

34 (D) The location of the auction;

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

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

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

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

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

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

§19-2C-9a. Escrow accounts.

1 Each auctioneer shall maintain an escrow account and
2 deposit all moneys from each sale from an auction in the escrow
3 account within twenty-four hours of the completion of the sale
4 or on the first business day following the sale, unless the owner
5 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.



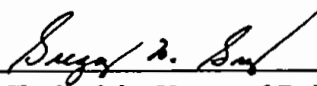
Chairman, House Committee



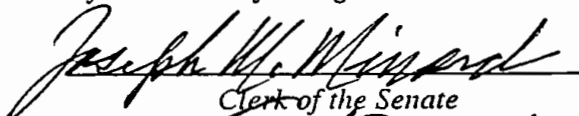
~~Member~~ Chairman, Senate Committee

Originating in the House.

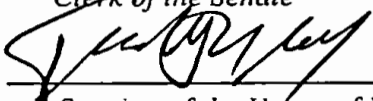
In effect ninety days from passage.



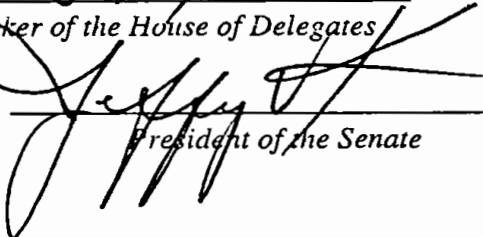
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 3/5th
day of March, 2014.



Governor

PRESENTED TO THE GOVERNOR

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Time 10:45 AM