

Senate Bill No. 501

(By Senators Barnes, Yost and Blair)

[Introduced February 6, 2014; referred to the Committee on
Agriculture and Rural Development; and then to the Committee on
Government Organization.]

A BILL 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 a new section, designated §19-2C-9a,
all relating to auctioneers and apprentice auctioneers
generally; redefining auctioneer exceptions; adding
definitions; amending license renewal for expired licenses;
allowing certain fees to be set by legislative rule;
increasing length of record retention; clarifying qualifying
test scores; restricting length of apprenticeship; adding
duties of sponsoring auctioneer; increasing criminal
penalties; requiring contracts to have certain provisions; and
requiring escrow accounts.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §19-2C-1, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6,
3 §19-2C-6b, §19-2C-8 and §19-2C-9 of the Code of West Virginia,
4 1931, as amended, be amended and reenacted; and that said code be
5 amended by adding thereto a new section, designated §19-2C-9a, all
6 to read as follows:

7 **ARTICLE 2C. AUCTIONEERS.**

8 **§19-2C-1. Definitions.**

9 For the purposes of this article:

10 (a) The term "auctioneer" means and includes a person who
11 sells goods or real estate at public auction for another on
12 commission or for other compensation. The term "auctioneer" does
13 not include: (1) Persons conducting sales at auctions conducted by
14 or under the direction of any public authority or pursuant to any
15 judicial order or direction or to any sale required by law to be at
16 auction; (2) the owner of any real or personal property when
17 personally sold at auction by ~~such the~~ owner and ~~such the~~ owner has
18 not personally conducted an auction within the previous
19 twelve-month period; (3) persons conducting sales pursuant to a
20 deed of trust ~~or other security agreement;~~ (4) fiduciaries of
21 estates when selling real or personal property of ~~such the~~ estate;
22 (5) persons conducting sales on behalf of charitable, religious,
23 fraternal or other nonprofit organizations; and (6) persons

1 properly licensed pursuant to the provisions of article twelve,
2 chapter forty-seven of this code when conducting an auction, any
3 portion of which contains any leasehold or any estate in land
4 whether corporeal or incorporeal, freehold or nonfreehold, when
5 ~~such~~ the person is retained to conduct an auction by a receiver or
6 trustee in bankruptcy, a fiduciary acting under the authority of a
7 deed of trust or will, or a fiduciary of a decedent's estate:
8 *Provided*, That nothing contained in this article exempts persons
9 conducting sales at public markets from the provisions of article
10 two-a of this chapter, where the sale is confined solely to
11 livestock, poultry and other agriculture and horticulture products.

12 (b) The term "public auction" means any public sale of real or
13 personal property when offers or bids are made by prospective
14 purchasers and the property sold to the highest bidder.

15 (c) The term "commissioner" means the Commissioner of
16 Agriculture of West Virginia.

17 (d) The term "department" means the West Virginia Department
18 of Agriculture.

19 (e) The term "escrow account" means a separate custodial or
20 trust fund account maintained by the auctioneer until the
21 transaction involved is terminated, at which time the auctioneer
22 shall account for the full amount received from the sale of the
23 property.

1 (f) The term "estate auction" means the auction of real or
2 personal property of a deceased person.

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

5 Any person who wishes to conduct an auction as an auctioneer
6 may apply for a license on forms prescribed by the commissioner and
7 containing such information as the commissioner may require by a
8 legislative rule promulgated in accordance with article three,
9 chapter twenty-nine-a of this code. A nonreturnable application
10 fee of \$50 shall accompany each application as well as a license
11 fee of \$50. All fees collected under this article shall be paid
12 into a special revenue fund in the State Treasury to be used by the
13 Department of Agriculture for the expressed purpose of
14 administering and enforcing this article and for providing
15 continuing education for auctioneers: *Provided*, That for the
16 fiscal year ending June 30, 1997, fees collected under this article
17 shall be paid into the state fund, general revenue.

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

21 The commissioner shall, within thirty days after the receipt
22 of an application, notify the applicant of his or her eligibility
23 to be examined at the next regularly scheduled examination, as well

1 as the date of the examination.

2 ~~In the event~~ If the license is denied, the commissioner shall
3 refund the license fee submitted with the application to the
4 applicant.

5 Licenses issued expire on December 31, of each year but are
6 renewable upon the payment of the annual license fee within sixty
7 days of the expiration date. Renewals received more than sixty
8 days after the expiration date are subject to a late renewal fee of
9 \$25 in addition to the annual renewal fee. Renewals received more
10 than one hundred-twenty days after the expiration date are subject
11 to a late renewal fee of \$50 in addition to the annual renewal fee;
12 and renewals received more than one hundred-eighty days after the
13 expiration date are subject to a late renewal fee of \$75 in
14 addition to the annual renewal fee. The commissioner ~~shall~~ may not
15 renew licenses which have been expired for more than two years and
16 the auctioneer or apprentice auctioneer shall take the written and
17 oral examination and pay the examination fee in order to renew his
18 or her license. The commissioner ~~shall~~ may not renew a license
19 unless the applicant complies with the other requirements of this
20 article.

21 Where an auctioneer or apprentice auctioneer requires a
22 duplicate or replacement license or a license reflecting a change
23 in information, the auctioneer or apprentice auctioneer shall

1 submit a fee of \$5 with the request.

2 The fees set forth in this subsection remain in effect until
3 modified by legislative rule.

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

10 **§19-2C-5. Requirements for license; rules and regulations; duties**
11 **of licensee.**

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

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

17 (b) That he or she has a good reputation;

18 (c) That he or she is of trustworthy character;

19 (d) That he or she has met the apprenticeship requirements set
20 forth in this article, if applicable;

21 (e) That he or she is a citizen of the United States; and

22 (f) That he or she has a general knowledge of the
23 auctioneering profession and the principles involved in conducting

1 an auction.

2 (2) The commissioner shall ~~promulgate~~ propose such reasonable
3 rules ~~and regulations~~ as he or she considers necessary to carry out
4 the intent and the administration and enforcement of this article,
5 which said rules ~~and regulations~~ shall be ~~promulgated~~ proposed for
6 legislative approval in accordance with the applicable provisions
7 of chapter twenty-nine-a of this code.

8 (3) Each licensee shall promptly produce for inspection ~~such~~
9 the license at all sales conducted by or participated in by ~~such~~
10 the licensee when requested to do so by any person and shall keep
11 complete and accurate records of all transactions engaged in for a
12 period of ~~six months, which~~ three years. For the purposes of this
13 section the term "record" includes, but is not limited to, copies
14 of signed contracts; the names of buyers and their addresses; clerk
15 sheets showing items sold, including buyers numbers or names and
16 the selling prices; and final settlement papers. The records shall
17 be open to inspection by the commissioner or his or her authorized
18 representative.

19 **§19-2C-5a. Examinations of applicants; excuse for illness; fee**
20 **renewal.**

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

1 Any individual auctioneer applicant may take the examination
2 for auctioneer or apprentice auctioneer at the regularly scheduled
3 time and place. The apprentice auctioneer's examination shall
4 consist of a written examination. The auctioneer's examination
5 will consist of both a written and oral examination. The passing
6 grade for any written examination shall be seventy percent out of
7 one hundred percent. The passing grade for any oral examination
8 shall be seventy percent out of one hundred percent. The oral
9 portion will be scored by the commissioner or his or her authorized
10 representative. If the applicant fails either the written or oral
11 portion of the examination, no license will be issued and he or she
12 ~~shall~~ may not be administered the examination again until the next
13 regularly scheduled examination date. A person who is qualified
14 for a auctioneer's license as provided ~~for~~ in this article is
15 considered to be a professional in his or her trade.

16 One notice only of the examination shall be mailed to the
17 applicant at the address given on the application. If the
18 applicant fails to appear for such examination, except as provided
19 herein, a new application and a new fee shall be required. No fee
20 ~~shall~~ may be returned except when the applicant fails to take the
21 examination because of illness evidenced by a doctor's certificate
22 sent to the commissioner. If excused because of illness the
23 applicant shall be admitted to the next scheduled examination

1 without paying an additional fee. No applicant ~~shall~~ may be
2 excused from taking the scheduled examination for any reason other
3 than illness unless in the judgment of the commissioner the
4 applicant would suffer undue hardship by not being excused.

5 An examination fee of \$50, in addition to any other fees
6 required by this article, shall be collected from each person
7 taking such examination. If the applicant has previously paid the
8 examination fee and successfully completed the apprentice
9 auctioneer's examination, no additional examination fee will be
10 required to take the auctioneer's examination as provided ~~for~~ in
11 this article.

12 The fees set forth in this subsection remain in effect until
13 modified by legislative rule.

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

20 An examination ~~shall~~ may not be required for the renewal of
21 any license unless such license has been revoked or suspended, in
22 which case the applicant may be required, by the commissioner, to
23 take and pass any written or oral examination required by the

1 department. In cases where a license has been expired for more
2 than two years and not been revoked or suspended, the applicant is
3 required to take and pass any written and oral examinations
4 required by the department. The commissioner ~~is hereby authorized~~
5 ~~to promulgate~~ may propose rules for legislative approval
6 promulgated in accordance with article three, chapter twenty-nine-a
7 of this code as he or she considers necessary for the renewal of
8 auctioneer licenses, including, but not limited to, requirements
9 for continuing education of auctioneers and apprentice auctioneers.

10 **§19-2C-6. Apprentice licenses; fees.**

11 The Department of Agriculture may grant apprentice
12 auctioneer's licenses to those persons considered qualified by the
13 commissioner. Every applicant for an apprentice auctioneer's
14 license must take and pass a written examination relating to the
15 skills and knowledge and statutes and regulations governing
16 auctioneers. Every applicant shall furnish to the commissioner on
17 forms provided by the department satisfactory proof of the
18 following:

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

22 Any apprentice auctioneer may take the examination to become
23 an auctioneer after serving a two-year apprenticeship under a

1 licensed auctioneer: *Provided*, That if the apprentice auctioneer
2 has attended a nationally accredited graduate school of
3 auctioneering, approved by the commissioner, he or she shall serve
4 an apprenticeship of only six months. Before an apprentice
5 auctioneer may take the auctioneer's examination, the apprentice
6 auctioneer shall conduct at least six auction sales under the
7 direct supervision of the sponsoring auctioneer. The commissioner
8 may waive the requirements of this section, on an individual basis,
9 upon the presentation of written evidence that the applicant has
10 educational training or exceptional experience in the auctioneering
11 profession and that the applicant has been unable to obtain
12 sponsorship by a licensed auctioneer: *Provided, however*, That the
13 commissioner shall ~~promulgate~~ propose rules and regulations
14 promulgated in accordance with article three, chapter twenty-nine-a
15 of this code setting forth educational and experience
16 qualifications which would entitle an individual to a waiver of the
17 provisions of this section: *Provided further*, That the
18 commissioner ~~shall~~ may not waive apprenticeship requirements for
19 any applicant without the concurrence of the board of review.

20 When any apprentice auctioneer is discharged or terminates his
21 or her employment with an auctioneer for any reason, the auctioneer
22 shall immediately provide written notification to the commissioner.
23 No discharged or terminated apprentice auctioneer ~~shall~~ may

1 thereafter perform any acts under the authority of his or her
2 license until ~~such~~ the apprentice auctioneer receives a new license
3 bearing the name and address of his or her new employer. No more
4 than one license ~~shall~~ may be issued to any apprentice auctioneer
5 for the same period of time. The fee for the transfer of the
6 license of an apprentice auctioneer to a new employer auctioneer is
7 \$15.

8 The fee for the annual renewal of the apprentice auctioneer's
9 license is \$50. Bond requirements for an apprentice auctioneer
10 shall be established by reasonable rules ~~and regulations~~
11 ~~promulgated~~ by the commissioner, and both the annual renewal fee
12 and the bond must be filed with the Department of Agriculture:
13 *Provided*, That the bond required by this section ~~shall~~ may not be
14 less than ~~\$5,000~~ \$10,000. The department ~~shall~~ may not issue an
15 apprentice auctioneer's license until bond has been filed in
16 accordance with this article. All apprentice auctioneer licenses
17 expire on December 31, of each year but are renewable upon the
18 payment of the annual fee.

19 The fees set forth in this subsection remain in effect until
20 modified by legislative rule.

21 An apprentice auctioneer may not serve a term to exceed three
22 years without the apprentice applying for an auctioneer license.
23 Should an apprentice auctioneer allow the three year limit to

1 lapse, that apprentice shall be required to take the apprentice
2 exam and meet all requirements stated in this article. An
3 individual may only serve as an apprentice auctioneer a maximum of
4 six years.

5 **§19-2C-6b. Duties and responsibilities of an apprentice**
6 **auctioneer and a sponsoring auctioneer.**

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

12 The sponsoring auctioneer is responsible for the actions of an
13 apprentice auctioneer. It is his or her responsibility to ~~insure~~
14 ensure adherence to this and all applicable sections of state law.
15 The sponsoring auctioneer is responsible for training the
16 apprentice auctioneer in all aspects of practical business
17 functions and duties related to the auctioneering profession.
18 Should an apprentice auctioneer fail to pass both the written and
19 oral examinations to become a fully licensed auctioneer in two
20 consecutive testing sessions, the sponsorship will be terminated.
21 The apprentice auctioneer will be permitted one additional
22 opportunity to pass the oral and written auctioneer examinations
23 only after serving another six month apprenticeship under a

1 different sponsoring auctioneer. A sponsoring auctioneer relieved
2 of his or her sponsorship will not be considered for another
3 sponsorship unless he or she provides a written affidavit to the
4 commissioner that he or she fully understands the responsibilities
5 of a sponsoring auctioneer and gives the details as to what
6 additional training will be provided to a new apprentice
7 auctioneer. Should the commissioner or his or her representative
8 approve of the presented plan an auctioneer may be permitted to
9 sponsor a new apprentice auctioneer: *Provided,* That if the
10 apprentice auctioneer conducts auctions without the consent of his
11 or her sponsor, only the apprentice auctioneer is subject to the
12 penalties in section eight of this article.

13 **§19-2C-8. Penalties for violation of article or rules and**
14 **regulations.**

15 (a) *Criminal penalties.* -- Any person, firm, association or
16 corporation violating any of the provisions of this article, or of
17 the rules ~~and regulations~~ adopted pursuant to the provisions
18 thereof, ~~shall be~~ is guilty of a misdemeanor and, upon conviction
19 thereof, shall be fined not less than ~~\$50~~ \$250 nor more than ~~\$200~~
20 \$500 for the first offense, and not less than ~~\$400~~ \$500 nor more
21 than \$1,000 for the second and subsequent offenses. Magistrates
22 have concurrent jurisdiction with circuit courts to enforce the
23 provisions of this article.

1 (b) *Civil penalties.* -- (1) Any person violating a provision
2 of this article or any rule ~~or regulation~~ adopted hereunder may be
3 assessed a civil penalty by the commissioner. In determining the
4 amount of any civil penalty, the commissioner shall give due
5 consideration to the history of previous violations of the person,
6 the seriousness of the violation, and the demonstrated good faith
7 of the person charged in attempting to achieve compliance with this
8 article before and after written notification of the violation; (2)
9 the commissioner may assess a penalty of not more than \$200 for
10 each first offense, and not more than \$1,000 for a second and
11 subsequent offense; and (3) the civil penalty is payable to the
12 State of West Virginia and is collectible in any manner now or
13 hereafter provided for collection of debt. If any person liable to
14 pay the civil penalty neglects or refuses to pay the ~~same~~ penalty,
15 the amount of the civil penalty, together with interest at ten
16 percent, is a lien in favor of the State of West Virginia upon the
17 property, both real and personal, of such a person after the same
18 has been entered and docketed to record in the county where such
19 property is situated. The clerk of the county, upon receipt of the
20 certified copy of ~~such~~ the lien, shall enter ~~same~~ it to record
21 without requiring the payment of costs as a condition precedent to
22 recording.

23 (c) Notwithstanding any other provision of law to the

1 contrary, the commissioner may ~~promulgate and adopt~~ propose rules
2 for legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code which permit
4 consent agreements or negotiated settlements for the civil
5 penalties assessed as a result of violation of the provisions of
6 this article.

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

10 **§19-2C-9. Written contracts; exception.**

11 No person ~~shall~~ may act as auctioneer on the sale at public
12 auction of any goods, wares, merchandise or of any other property,
13 real or personal, until he or she has entered into a written
14 contract in duplicate with the owner or consignor of the property
15 to be sold, containing the terms and conditions upon which the
16 licensee receives or accepts the property for sale at auction. No
17 apprentice auctioneer ~~shall~~ may be authorized to enter into a
18 contract without the written consent of his or her sponsoring
19 auctioneer. All contracts shall be in the name of and on behalf of
20 the sponsoring auctioneer.

21 The commissioner may require by rule the following:

22 (a) That written contracts between the auctioneer and the
23 seller be made in duplicate;

1 (b) That the original contract is to be retained by the
2 auctioneer for a period of ~~six months~~ three years from date of
3 final settlement;

4 (c) That one copy of the contract is to be furnished to each
5 person that entered into the contract;

6 (d) That an apprentice auctioneer may not contract directly
7 with a client but only through his or her sponsoring auctioneer;

8 (e) That an apprentice auctioneer may not engage in a sale
9 with an auctioneer by whom he or she is not sponsored without first
10 obtaining the written consent of his or her sponsoring auctioneer;
11 ~~and~~

12 (f) That on all contracts between an auctioneer and a seller
13 there shall be a prominent statement indicating that the auctioneer
14 is licensed by the Department of Agriculture and bonded in favor of
15 the State of West Virginia; and

16 (g) That all contracts shall include the following:

17 (1) The name, address and phone number of owner of the
18 property to be sold or the consignee;

19 (2) The date of the auction or a termination date of the
20 contract;

21 (3) The terms and conditions of the auction;

22 (4) The location of the auction;

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

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

3 (7) A detailed list of all fees to be charged by the
4 auctioneer which shall include commissions, rentals, advertising
5 and labor;

6 (8) A statement of the auctioneer's policy regarding absentee
7 bidding;

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

10 (10) A statement indicating an explanation of settlement of
11 the auction (settlement sheet) will be provided to the owner at the
12 end of each auction.

13 **§19-2C-9a. Escrow Accounts.**

14 Each auctioneer shall maintain an escrow account and deposit
15 all moneys from each sale within twenty-four hours of the
16 completion of the sale or on the first business day following the
17 sale, unless the consignor was paid in cash directly at the end of
18 the sale.

NOTE: The purpose of this bill is to as it relates to auctioneers and apprentice auctioneers is to redefine auctioneer exceptions; add definitions; amend license renewal for expired licenses; allow certain fees to be set by legislative rule; increase length of record retention; clarify qualifying test scores; restrict length of apprenticeship; add duties of sponsoring auctioneer; increase criminal penalties; require contracts to have certain provisions; and require escrow accounts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§19-2C-9a is new; therefore, underscoring and strike-throughs have been omitted.