

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2982**

BY DELEGATES HOWELL, HOTT, PACK, CADLE,

C. MARTIN AND HAMRICK

[Originating in the Committee on Government

Organization, February 15, 2019.]



1 A BILL to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6,  
2 §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, and §19-2C-9 of the Code of West Virginia,  
3 1931, as amended; and to amend said code by adding thereto a new section, designated  
4 §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by  
5 providing for definitions; providing for exemptions to license requirements; providing for  
6 June 30 as the date all licenses expire; establishing certain conditions for auctioneers to  
7 continue working after license expiration; providing for record retention requirements;  
8 providing for exams held twice a year; providing for auctioneers to submit to background  
9 checks; providing for authorization to conduct and use information relating to background  
10 checks; providing for confidentiality of background checks; providing for penalties for an  
11 unlicensed auctioneer; providing for additional circumstances to revoke a license;  
12 providing for written contracts with auctioneers and owners of property; and providing for  
13 auction houses and business entities to enter into contracts with auctioneers.

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

## **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 estate at public auction for  
3 another on commission or for other compensation. ~~The term "auctioneer" does not include:~~

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

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

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

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

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

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

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

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

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

26 (e) "In this state" means that an auction satisfies one of the following criteria:

27 (1) The auctioneer performed the auction within the borders of the State of West Virginia;

28 (2) The auctioneer is selling items for a person located in the State of West Virginia;

29 (3) The auctioneer is auctioning real or personal property located in the State of West  
30 Virginia;

31 (4) The auctioneer delivers purchased property to a location in the State of West Virginia;

32 or

33 (5) The auctioneer is otherwise subject to the laws, including taxation authority, of the  
34 State of West Virginia.

35           ~~(e)~~ (f) “Public auction” or “auction” means any public sale of real or personal property in  
36 any manner, whether in-person, via written offers or bids, or online, when offers or bids are made  
37 by prospective purchasers and the property sold to the highest bidder.

**§19-2C-2. License required; exceptions.**

1           ~~(a) After June 30, 1974, no~~ Except as provided in subsection (b) of this section, no person  
2 shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained  
3 from the commissioner a license therefor.

4           (b) The provisions of this section do not apply to:

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

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

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

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

13           (5) Persons conducting sales without compensation on behalf of charitable, religious,  
14 fraternal, or other nonprofit organizations;

15           (6) Persons properly licensed pursuant to the provisions in §30-40-1 et seq. of this code  
16 when conducting an auction, any portion of which contains any leasehold or any estate in land  
17 whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct  
18 an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed  
19 of trust or will, or a fiduciary of a decedent’s estate: *Provided*, That nothing contained in this article  
20 exempts persons conducting sales at public markets from the provisions of §19-2A-1 et seq. of  
21 this code, where the sale is confined solely to livestock, poultry, and other agriculture and  
22 horticulture products; and

23           (7) Persons listing items for sale via any fixed price or timed listings that allow bidding on  
24 an Internet website but that do not constitute a simulcast of a live auction.

**§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, upon successful completion  
4 of the application process, a license fee; and

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

6           (b) The commissioner shall, within 30 days after the receipt of an application, notify the  
7 applicant of his or her eligibility to be examined at the next regularly scheduled examination, as  
8 well as the date of the examination.

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

11           (d) All licenses expire on ~~December 31~~ June 30 of each year: Provided, That an auctioneer  
12 may continue to perform auctions for up to 30 days after June 30, so long as he or she has  
13 submitted the required paperwork to renew his or her auctioneer license: *Provided, however, That*  
14 licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be  
15 renewed upon the payment of the annual renewal fee within 60 days of the expiration date.  
16 Renewals received more than 60 days after the expiration date are subject to a late renewal fee  
17 in addition to the annual renewal fee.

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

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

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

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

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

- 3 (1) Has successfully completed the written and oral examinations required by this article;
- 4 (2) Has a good reputation;
- 5 ~~He or she~~ (3) Is of trustworthy character;
- 6 (4) Has met the apprenticeship requirements set forth in this article, if applicable;
- 7 (5) Is a citizen of the United States; and

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

10 (b) A licensee shall:

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

13 (2) Keep complete and accurate records of all transactions engaged in for a period of three  
14 years from the date on which the sale was completed.

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

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

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

19 (3) Final settlement papers.

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

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

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

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

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

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

29 (d) The auctioneer's examination shall consist of both a written and oral examination. The  
30 passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral  
31 portion will be scored by the commissioner or his or her authorized representative.

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

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

37 ~~(g)~~(f) Only one notice of the examination will be mailed or emailed to the applicant at the  
38 address given on the application. If the applicant fails to appear for an examination, except as  
39 provided in this subsection, a new application and a new fee shall be required. No fee will be  
40 returned, except when the applicant fails to take the examination because of illness evidenced by  
41 a doctor's certificate sent to the commissioner. If excused because of illness, the applicant shall  
42 be admitted to the next scheduled examination without paying an additional fee. No applicant may  
43 be excused from taking the scheduled examination for any reason other than illness, unless in

44 the judgment of the commissioner the applicant would suffer undue hardship by not being  
45 excused.

46 ~~(h)~~(g) An examination fee and any other fees required by this article, shall be collected  
47 from each person taking an examination. If the applicant has previously paid the examination fee  
48 and successfully completed the apprentice auctioneer's examination, no additional examination  
49 fee will be required to take the auctioneer's examination.

50 ~~(+)~~(h) If the commissioner determines that an applicant does not qualify for a license, he  
51 or she shall notify the applicant by certified mail. The notice shall state:

52 (1) The reason for the refusal to grant a license; and

53 (2) The applicant's right to appeal the commissioner's decision within 20 days of receipt  
54 of the notice.

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

**§19-2C-5b. Background checks required.**

1 (a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this  
2 code may be required to submit to a state and national criminal history record check. The criminal  
3 history record check shall be based on fingerprints submitted to the West Virginia State Police or  
4 its assigned agent for forwarding to the Federal Bureau of Investigation.

5 (b) The applicant shall meet all requirements necessary to accomplish the state and  
6 national criminal history record check, including:

7 (1) Submitting fingerprints for the purposes set forth in this subsection; and

8           (2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of  
9 Investigation to use all records submitted and produced for the purpose of screening the applicant  
10 for a license.

11           (c) The results of the state and national criminal history record check may not be released  
12 to or by a private entity except:

13           (1) To the individual who is the subject of the criminal history record check;

14           (2) With the written authorization of the individual who is the subject of the criminal history  
15 record check; or

16           (3) Pursuant to a court order.

17           (d) The criminal history record check and related records are not public records for the  
18 purposes of chapter 29B of this code.

19           (e) The applicant shall pay the actual costs of the fingerprinting and criminal history record  
20 check.

21           (f) The commissioner may not disqualify an applicant for initial licensure, certification or  
22 registration because of a prior criminal conviction that has not been reversed unless that  
23 conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

24           (g) The commissioner may not use crimes involving moral turpitude in making licensure,  
25 certification or registration determinations.

26           (h) If an applicant is disqualified for licensure, certification or registration because of a  
27 criminal conviction that has not been reversed, the commissioner shall afford the applicant the  
28 opportunity to reapply for licensure, certification or registration after the expiration of five years  
29 from the date of conviction or date of release from the penalty that was imposed, whichever is  
30 later, if the individual has not been convicted of any other crime during that period of time:  
31 Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to  
32 a longer period of disqualification, to be determined by the individual board or licensing authority.

33 (i) An individual with a criminal record who has not previously applied for licensure,  
34 certification or registration may petition the commissioner at any time for a determination of  
35 whether the individual's criminal record will disqualify the individual from obtaining a license or  
36 other authorization. This petition shall include sufficient details about the individual's criminal  
37 record to enable the commissioner to identify the jurisdiction where the conviction occurred, the  
38 date of the conviction and the specific nature of the conviction. The commissioner shall inform the  
39 individual of his or her standing within 60 days of receiving the petition from the applicant. The  
40 licensing authority may charge a fee to recoup its costs for each petition.

41 (j) Nothing in this section alters the standards and procedures the commissioner uses for  
42 evaluating licensure, certification or registration renewals.

43 (k) The commissioner shall propose rules or amendments to existing rules for legislative  
44 approval to comply with the provisions of this section. These rules or amendments to rules shall  
45 be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time  
46 limit to be considered by the Legislature during its regular session in the year 2020.

47 (l) The provisions of this section, enacted during the 2019 Regular Session of the  
48 Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to  
49 individuals currently holding an apprentice auctioneer license who are applying for an auctioneer  
50 license, or to any current license holder whose license lapses and who is required to reapply.

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

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

3 (1) Has a good reputation;

4 (2) Is a trustworthy character;

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

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

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

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

11 (2) Attending a nationally accredited graduate school of auctioneering, approved by the  
12 commissioner, and serving an apprenticeship of six months.

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

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

26 (e) The commissioner may not issue an apprentice auctioneer license until bond has been  
27 filed. All apprentice auctioneer licenses expire on ~~December 31~~ June 30 of each year, but are  
28 renewable upon the payment of the annual fee: *Provided*, That an apprentice auctioneer may  
29 continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted  
30 the required paperwork to renew his or her apprentice auctioneer license: *Provided, however,*  
31 That licenses issued in 2019 shall continue to be active through June 30, 2020.

32 (f) A person cannot be licensed as an apprentice auctioneer for more than three years  
33 without applying for an auctioneer license. Should an apprentice auctioneer allow the three year

34 limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination  
35 and meet all the requirements of this article.

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

1           (a) The Department of Agriculture may, upon its own action, and shall upon the verified  
2 written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer,  
3 any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes  
4 to act in that capacity, if the complaint, together with other evidence presented in connection with  
5 it, establishes probable cause. Upon verification of the complaint, the department shall present  
6 the complaint to the board of review. The board of review shall consider all of the facts of the  
7 complaint and recommend a course of action to the commissioner.

8           (b) The board of review shall be appointed by the Governor, by and with the advice and  
9 consent of the Senate, and shall consist of three members, each appointed for a staggered three-  
10 year term. Two members of the board of review shall be licensed auctioneers in West Virginia  
11 and residents of this state and shall have been licensed and been practicing the profession of  
12 auctioneering for five years immediately preceding their appointment. The third member shall be  
13 a lay person from the commercial or agricultural community who has utilized services of  
14 auctioneers for at least three years. No more than ~~one~~ two board ~~member~~ members shall be from  
15 any one congressional district and no more than two members shall be from the same political  
16 party. Board members shall receive no compensation for their service on the board, but shall be  
17 entitled to receive reimbursement for expenses in accordance with the Department of Agriculture  
18 travel regulations. ~~During the establishment of the board one member shall be appointed for a~~  
19 ~~three-year term, one member for a two-year term and one member for a one-year term. The first~~  
20 ~~year of each term expires on January 1, 1992, and subsequently on January 1, of each year~~ There  
21 shall be no limit on the number of consecutive terms a member may serve on the board. The  
22 Governor is authorized to fill a vacancy when it occurs on the board for any reason. An  
23 appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

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

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

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

**§19-2C-8. Penalties.**

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

6           (b) *Civil penalties.* — Any person violating a provision of this article or the rules, may be  
7 assessed a civil penalty by the commissioner.

8           (1) In determining the amount of the civil penalty, the commissioner shall give due  
9 consideration to the history of previous violations by the person, the seriousness of the violation,  
10 and the demonstrated good faith of the person charged in attempting to achieve compliance with  
11 this article before and after written notification of the violation. The commissioner may assess a  
12 penalty of not more than ~~\$200~~ \$500 for each a first offense, and not more than \$1,000 for a each  
13 second and subsequent offense. ~~The civil penalty is payable to the State of West Virginia and is~~  
14 ~~collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty~~  
15 ~~neglects or refuses to pay the penalty, 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 property, both real and personal,~~  
17 ~~of the person after the same has been entered and docketed to record in the county where the~~  
18 ~~property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall~~  
19 ~~enter it to record without requiring the payment of costs as a condition precedent to recording~~

20           (2) In addition to a penalty assessed against an unlicensed auctioneer for practicing  
21 without the required license, the commissioner may assess penalties against an unlicensed  
22 auctioneer for violations of the provisions of this article that would have applied to the individual's  
23 conduct had he or she held the required license.

24           (3) The civil penalty is payable to the State of West Virginia and is collectible in any manner  
25 provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to  
26 pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in  
27 favor of the State of West Virginia upon the property, both real and personal, of the person after  
28 the same has been entered and docketed to record in the county where the property is situated.  
29 The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without  
30 requiring the payment of costs as a condition precedent to recording.

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

**§19-2C-8a. Revocation.**

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

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

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

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

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

11           (e) Being convicted in any court of competent jurisdiction of this state or any other state of  
12 a criminal offense involving moral turpitude or a felony; or for failing to notify the department of  
13 any such conviction within 15 days of conviction;

14           (f) Violating any other laws related to the conduct of auctions or auctioneering;

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

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

18           (i) Engaging in any other unethical conduct in the contexts of his or her work as an  
19 auctioneer; and

20           ~~(h)~~(j) Acting as an attorney for a client.

21           Any auctioneer or apprentice auctioneer who has had his or her license suspended or  
22 revoked shall not be issued another such license until a period not to exceed two years has  
23 elapsed from the date of revocation. The commissioner may also require the successful  
24 completion of the examinations required for an auctioneer's license or an apprentice auctioneer's  
25 license.

**§19-2C-9. Written contracts.**

1 (a) No person may act as an auctioneer on the sale at public auction of any goods, wares,  
2 merchandise or of any other property, real or personal, until he or she has entered into a written  
3 contract in duplicate with the owner or consignor of the property to be sold. No apprentice  
4 auctioneer may be authorized to enter into a contract without the written consent of his or her  
5 sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring  
6 auctioneer.

7 (b) The written contract shall:

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

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

11 (3) Be made in duplicate;

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

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

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

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

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

22 (9) Include the following information:

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

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

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

27 (D) The location of the auction;

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

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

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

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

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

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

38 (c) As a condition of entering into a contract, the auctioneer shall be provided with proof  
39 or certificate of ownership for all titled property, or assurances of ownership for all other property.  
40 The auctioneer shall have such proof or certificate or ownership with him or her at the time the  
41 auction is held.

42 (d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may  
43 conduct an auction on behalf of an auction house or other business entity without having entered  
44 into a contract directly with the seller of the auctioned goods, so long as the following conditions  
45 are satisfied:

46 (1) The auction house or business must have a written contract with both the seller of the  
47 goods and the auctioneer;

48 (2) The contract between the auction house or business entity must satisfy all the  
49 requirements set forth in subsection (b) of this section; and

50 (3) The auction house or business entity must file with the commissioner a bond satisfying  
51 the requirements of §19-2C-4 of this code.

52           (e) By entering into contracts with sellers of property pursuant to this section, the owners  
53 and partners of any auction house or business entity agree to submit to the jurisdiction of the  
54 commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of  
55 this code.

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