

1 ENROLLED

2 Committee Substitute

3 for

4 **H. B. 4410**

5
6 (By Delegate Hartman)

7 [Passed March 8, 2014; in effect ninety days from passage.]

8
9
10 AN ACT to amend and reenact §19-2C-1, §19-2C-3, §19-2C-5,
11 §19-2C-5a, §19-2C-6, §19-2C-6b, §19-2C-8 and §19-2C-9 of the
12 Code of West Virginia, 1931, as amended; and to amend said
13 code by adding thereto three new sections, designated
14 §19-2C-3a, §19-2C-3b and §19-2C-9a, all relating to
15 auctioneers and apprentice auctioneers; clarifying
16 definitions; updating license requirements; updating duties of
17 licensees; updating requirements for license renewals and
18 expired licenses; authorizing rulemaking for the Commissioner
19 of the Department of Agriculture; allowing fees to be set by
20 legislative rule; clarifying the special fund; increasing
21 length of record retention; clarifying examination
22 requirements and excuses; clarifying qualifying test scores;
23 restricting length of apprenticeship; updating duties of

1 sponsoring auctioneer; increasing criminal penalties;
2 requiring contracts to have certain provisions; and requiring
3 escrow accounts.

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

5 That §19-2C-1, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6,
6 §19-2C-6b, §19-2C-8 and §19-2C-9 of the Code of West Virginia,
7 1931, as amended, be amended and reenacted; and that said code be
8 amended by adding thereto three new sections, designated §19-2C-3a,
9 §19-2C-3b and §19-2C-9a, all to read as follows:

10 **ARTICLE 2C. AUCTIONEERS.**

11 **§19-2C-1. Definitions.**

12 For the purposes of this article:

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

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

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

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

23 (4) Fiduciaries of estates when selling real or personal

1 property of the estate;

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

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

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

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

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

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

1 **§19-2C-3. Procedure for license; Department of Agriculture as**
2 **statutory agent for licensees.**

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

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

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

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

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

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

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

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

22 (f) Where an auctioneer or apprentice auctioneer requires a
23 duplicate or replacement license or a license reflecting a change

1 in information, the auctioneer or apprentice auctioneer shall
2 submit the fee with the request.

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

9 **§19-2C-3a. Rulemaking.**

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

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

15 (2) Set a fee schedule;

16 (3) Establish the renewal and expiration requirements for
17 licenses;

18 (4) Establish the continuing education requirements for
19 licensees;

20 (5) Establish waiver of examination requirements for
21 apprentice auctioneers;

22 (6) Permit consent agreements or negotiated settlements for
23 the civil penalties; and

1 (7) Implement the provisions of this article.

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

4 **§19-2C-3b. Special revenue fund.**

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

10 **§19-2C-5. Requirements for auctioneer license; duties of licensee.**

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

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

15 (2) Has a good reputation;

16 He or she (3) Is of trustworthy character;

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

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

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

22 (b) A licensee shall:

23 (1) Promptly produce for inspection his or her license at all

1 sales conducted by or participated in by the licensee when
2 requested to do so by any person; and

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

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

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

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

11 (3) Final settlement papers.

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

14 **§19-2C-5a. Examinations of applicants; excuse for illness.**

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

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

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

23 (d) The auctioneer's examination shall consist of both a

1 written and oral examination. The passing grade for any written or
2 oral examination shall be seventy percent out of one hundred
3 percent. The oral portion will be scored by the commissioner or
4 his or her authorized representative.

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

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

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

23 (h) An examination fee and any other fees required by this

1 article, shall be collected from each person taking an examination.
2 If the applicant has previously paid the examination fee and
3 successfully completed the apprentice auctioneer's examination, no
4 additional examination fee will be required to take the
5 auctioneer's examination.

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

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

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

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

20 **§19-2C-6. Requirements for apprentice auctioneer license.**

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

1 (1) Has a good reputation;
2 (2) Is a trustworthy character;
3 (3) Is a citizen of the United States; and
4 (4) Has taken and passed a written examination relating to the
5 skills and knowledge of the statutes and rules governing
6 auctioneers.

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

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

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

14 (c) Before an apprentice auctioneer may take the auctioneer's
15 examination, the apprentice auctioneer shall conduct at least six
16 auction sales under the direct supervision of the sponsoring
17 auctioneer. The commissioner may waive the requirements of this
18 section, on an individual basis, upon the presentation of written
19 evidence that the applicant has educational training or exceptional
20 experience in the auctioneering profession and that the applicant
21 has been unable to obtain sponsorship by a licensed auctioneer:

22 *Provided*, That the commissioner may not waive apprenticeship
23 requirements for an applicant without the concurrence of the board

1 of review.

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

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

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

21 **§19-2C-6b. Duties and responsibilities of an apprentice**
22 **auctioneer and a sponsoring auctioneer.**

23 (a) A licensed apprentice auctioneer shall only conduct or

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

5 (b) The sponsoring auctioneer is responsible for:

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

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

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

18 (d) A sponsoring auctioneer relieved of his or her sponsorship
19 will not be considered for another sponsorship unless he or she
20 provides a written affidavit to the commissioner that he or she
21 fully understands the responsibilities of a sponsoring auctioneer
22 and gives the details as to what additional training will be
23 provided to a new apprentice auctioneer. If the commissioner or

1 his or her representative approves the presented plan, then an
2 auctioneer may be permitted to sponsor a new apprentice auctioneer.

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

7 **§19-2C-8. Penalties.**

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

15 (b) *Civil penalties.* -- Any person violating a provision of
16 this article or the rules, may be assessed a civil penalty by the
17 commissioner. In determining the amount of the civil penalty, the
18 commissioner shall give due consideration to the history of
19 previous violations by the person, the seriousness of the
20 violation, and the demonstrated good faith of the person charged in
21 attempting to achieve compliance with this article before and after
22 written notification of the violation. The commissioner may assess
23 a penalty of not more than \$200 for each first offense, and not

1 more than \$1,000 for a second and subsequent offense. The civil
2 penalty is payable to the State of West Virginia and is collectible
3 in any manner provided for collection of debt. If any person
4 liable to pay the civil penalty neglects or refuses to pay the
5 penalty, the amount of the civil penalty, together with interest at
6 ten percent, is a lien in favor of the State of West Virginia upon
7 the property, both real and personal, of the person after the same
8 has been entered and docketed to record in the county where the
9 property is situated. The clerk of the county, upon receipt of the
10 certified copy of the lien, shall enter it to record without
11 requiring the payment of costs as a condition precedent to
12 recording.

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

16 **§19-2C-9. Written contracts.**

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

1 on behalf of the sponsoring auctioneer.

2 (b) The written contract shall:

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

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

6 (3) Be made in duplicate;

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

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

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

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

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

21 (9) Include the following information:

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

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

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

4 (D) The location of the auction;

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

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

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

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

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

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

17 **§19-2C-9a. Escrow accounts.**

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