

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 424

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[Originating in the Committee on Agriculture and
Rural Development; reported on February 24, 2022]

1 A BILL to repeal §19-1-10, §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-4, §19-2C-5, §19-2C-6, §19-
2 2C-7, §19-2C-8, §19-2C-9, §19-2C-10, and §19-15-11 of the Code of West Virginia, 1931,
3 as amended; to amend and reenact §11-13DD-3 of said code; to amend and reenact §19-
4 1-4a and §19-1-11 of said code; to amend said code by adding thereto one new section,
5 designated §19-1-13; to amend and reenact §19-9-7a of said code; to amend and reenact
6 §19-12E-4 and §19-12E-5 of said code; to amend and reenact §19-15A-4 of said code; to
7 amend and reenact §19-16-6 of said code; to amend and reenact §19-16A-21 of said
8 code; to amend and reenact §19-20C-3 of said code; to amend and reenact §19-36-5 of
9 said code, and to amend said code by adding thereto a new article, designated §30-43-1,
10 §30-43-2, §30-43-3, §30-43-4, §30-43-5, §30-43-6, §30-43-7, §30-43-8, §30-43-9, §30-
11 43-10, §30-43-11, and §30-43-12 of said code, all relating generally to the 2022 Farm Bill;
12 increasing the West Virginia Farm-to-Food bank tax credit; allowing for retroactive
13 application of the tax credit; allowing the Commissioner of Agriculture to accept certain
14 funds and property from federal agencies, individuals, and certain businesses; repealing
15 requirement for Social Security numbers on applications; removing requirement that
16 commissioner file annual report on rural rehabilitation loan program with Joint Committee;
17 requiring commissioner to file annual report detailing department activities with President
18 of the Senate, Speaker of the House, and Joint Committee on Government and Finance
19 and sending copy to archives and history; requiring license from state to produce industrial
20 hemp; repealing auctioneers article and transferring regulation of auctioneers from
21 Department of Agriculture to Secretary of State effective July 1, 2023; changing the
22 National Animal Identification System to the Animal Disease Traceability Program;
23 requiring license from state to produce industrial hemp; allowing commissioner to
24 recognize hemp license issued by the USDA; repealing publication requirement for
25 fertilizer law; removing requirement that commissioner publish annual report on the liming
26 material law; removing requirement that commissioner publish and distribute annual report

27 on the law; allowing commissioner to deny, suspend, modify, or revoke license or
28 application for license for violation, conviction, or penalty assessment under a certain
29 federal act; removing requirement that commissioner file annual spay and neuter report;
30 providing that agritourism on land classified as agricultural does not change use of land
31 for zoning purposes; providing that agritourism business may use certain facilities for
32 certain events without complying with fire codes; creating article transferring regulation of
33 auctioneers from the Department of Agriculture to the Secretary of State effective July 1,
34 2023, providing for definitions, license requirement; exceptions; defining license
35 application procedure; rulemaking; special revenue fund; bond requirement; requirements
36 for auctioneer and apprentice auctioneer license; examination and background check of
37 applicants; investigation of complaints; duties of auctioneers; procedure for reciprocal or
38 nonresident licenses; orders, hearings, and review by secretary; penalties; suspension,
39 denial, or revocation of licenses; auctioneer contracts; escrow accounts; advertising;
40 effective date of article; and honoring prior licenses and pending applications.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13DD. WEST VIRGINIA FARM-TO-FOOD BANK TAX CREDIT.

§11-13DD-3. Amount of credit; limitation of credit.

1 (a) There is allowed to farming taxpayers who make donations of edible agricultural
2 products to one or more nonprofit food programs in this state, a credit against taxes imposed by
3 §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code in the amount set forth in this section.

4 (b) The amount of the credit is equal to 30 percent of the value of the donated edible
5 agricultural products, but not to exceed ~~\$2,500~~ \$5,000 during a taxable year or the total amount
6 of tax imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is less, in the year
7 of donations.

8 (c) If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the
9 amount which exceeds the tax liability may be carried over and applied as a credit against the tax
10 liability of the taxpayer pursuant to §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code to each of
11 the next four taxable years unless sooner used.

12 (d) No more than \$200,000 of tax credits may be allocated by the department in any fiscal
13 year. The department shall allocate the tax credits in the order the donation forms are received.

14 (e) It is the intent of the Legislature in enacting the amendments to this section during the
15 regular session of the Legislature, 2022, that the amendments be applied retroactively to apply to
16 any donations of qualifying edible agricultural products to one or more nonprofit food programs in
17 this state made on or after January 1, 2022.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

1 Notwithstanding any provision of this code to the contrary, The the Commissioner of
2 Agriculture is hereby empowered and he or she shall have authority to accept and receive
3 donations, gifts, contributions, grants, and appropriations of money, services, materials, real
4 estate, or other things of value from the United States Department of Agriculture, the United States
5 Food and Drug Administration, the United States Environmental Protection Agency, any other
6 agency of the United States government, or any of its their divisions or bureaus, and he or she
7 shall have authority to use, utilize, develop, or expend such money, services, material, or other
8 contributions in conformity with the conditions and provisions set forth in such grants,
9 appropriations, or donations.

10 ~~By and with the approval of the Governor, the~~ The commissioner may accept and receive
11 donations, gifts, contributions, and grants of money, services, materials, real estate, and other

12 things of value from individuals, partnerships, associations, or corporations, and he or she shall
13 have authority to utilize such contributions to encourage, promote, and develop the agricultural
14 interests or industries of the state.

15 The commissioner is hereby empowered, and he or she shall have authority to enter into
16 agreements with any department of state government for the purpose of carrying out any
17 regulatory laws where or when any related functions or duties exist. He or she shall also have
18 authority to enter into agreements with any city council or county ~~court~~ commission of the State
19 of West Virginia, for carrying out the provisions of the agricultural laws over which he or she has
20 enforcement authority.

§19-1-10. Requirement for social security number on applications.

1 [Repealed.]

§19-1-11. Rural Rehabilitation Loan Program.

1 (a) The Rural Rehabilitation Loan Program is an important tool for the Department of
2 Agriculture to promote investment in the agricultural industry in the state. Rules are needed for
3 the loan program to remain viable.

4 (b) The commissioner shall propose emergency and legislative rules for approval in
5 accordance with §29A-3-1 *et seq.* of this code. The rules shall, at a minimum:

6 (1) Establish minimum requirements and qualifications for the loan committee, including
7 the addition of public members who have agricultural or business loan experience;

8 (2) Prohibit department employees and loan committee members, and their immediate
9 family members, from receiving program loans;

10 (3) Establish minimum financial requirements for receiving a program loan;

11 (4) Require loans to be used for agricultural or related purposes;

12 (5) Require collateral sufficient to secure the loan;

13 (6) Establish policies for the application, applicable interest rates, delinquencies,
14 refinancing, collection proceedings, collateral requirements, and other aspects of the loan

15 program;

16 (7) Require the department to advertise the loan program to the public, including
17 information on the department's website and in the department's market bulletin; and

18 (8) Transfer the servicing of the program loans to a financial institution via competitive bid
19 or to the State Treasurer's office or other governmental entity.

20 ~~(c) The commissioner shall file an annual report to the Joint Committee on Government
21 and Finance regarding the loan program, including information about the loans awarded, loans
22 repaid, loans outstanding, interest rates, delinquency and collections, and other pertinent data~~

23 ~~(d) The commissioner shall not be required to utilize the services of the state agency for
24 surplus property for the disposition of items purchased by participants in the loan program and
25 subsequently repossessed by the committee to be sold in order to satisfy the balance of an
26 outstanding loan.~~

§19-1-13. Annual reporting to the Legislature.

1 On or before January 31 of each year, the commissioner shall file a report with the
2 President of the State Senate, the Speaker of the House, and the Joint Committee on Government
3 and Finance detailing the activities of the department, including all boards and commissions under
4 the commissioner's authority, during the preceding fiscal year. The report shall include all
5 donations, gifts, contributions, grants, and appropriations of money, services, materials, real
6 estate, or other things of value accepted and received by the department. A copy of the
7 commissioner's annual report shall also be provided to the Division of Archives and History to be
8 kept as a permanent record of the state. nonmotorized

ARTICLE 2C. AUCTIONEERS.

§1. Repeal of article creating auctioneers.

1 That §19-2C-1 through §19-2C-10 of the Code of West Virginia are repealed effective July
2 1, 2023.

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-7a. ~~National Animal Identification System~~ Animal disease traceability; rulemaking; exemption.

1 West Virginia shall be a participating state in the United States Department of Agriculture's
2 ~~National Animal Identification System~~ Animal Disease Traceability program. The commissioner
3 may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*
4 of this code governing the collection of farm premises and animal identification data.

5 The premises and animal identification data collected by the commissioner in accordance
6 with the requirements of the ~~National Animal Identification System~~ Animal Disease Traceability
7 program are specifically exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this
8 code.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

1 (a) Industrial hemp is considered an agricultural crop in this state if grown for the purposes
2 authorized by the provisions of this article. Upon meeting the requirements of §19-12E-5 of this
3 code, an individual in this state may plant, grow, harvest, possess, process, sell, or buy industrial
4 hemp.

5 (b) A person shall not cultivate, handle, or process industrial hemp in this state unless the
6 person holds an industrial hemp license issued ~~by the department~~ by this state.

§19-12E-5. Industrial hemp; licensing.

1 (a) A person growing industrial hemp shall apply to the commissioner for a license on a
2 form prescribed by the commissioner.

3 (b) The application for a license must include the name and address of the applicant and
4 the legal description and global positioning coordinates of the land area to be used to produce
5 industrial hemp.

6 (c) The commissioner shall require each first-time applicant and may establish
7 requirements for other persons involved with the industrial hemp program, to submit to a state

8 and national criminal history record check. The criminal history record check shall be based on
9 fingerprints submitted to the State Police or its assigned agent for forwarding to the Federal
10 Bureau of Investigation.

11 (1) The applicant shall meet all requirements necessary to accomplish the state and
12 national criminal history record check, including:

13 (A) Submitting fingerprints; and

14 (B) Authorizing the board, the State Police, and the Federal Bureau of Investigation to use
15 all records submitted and produced for the purpose of screening the applicant for a license.

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

18 (A) To the individual who is the subject of the criminal history record check;

19 (B) With the written authorization of the individual who is the subject of the criminal history
20 record check; or

21 (C) Pursuant to a court order.

22 (3) The criminal history record check and related records are not public records for the
23 purposes of §29B-1-1 *et seq.* of this code.

24 (4) The applicant shall pay the actual costs of the fingerprinting and criminal history record
25 check.

26 (d) If the applicant has completed the application process to the satisfaction of the
27 commissioner, the commissioner shall issue the license, which is valid until December 31 of the
28 year of application: *Provided*, That an individual applying to renew a current license may continue
29 to operate under an existing license, as long as his or her completed renewal application has
30 been submitted to the department on or before the deadline established by the department.

31 (e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the
32 department prior written consent allowing the department, State Police, and other state and local
33 law-enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated,

34 processed, or stored to conduct physical inspections or otherwise ensure compliance with the
35 requirements of this code and the legislative rules promulgated pursuant to this code.

36 (f) In the alternative, the commissioner may choose to recognize industrial hemp grower
37 licenses issued by the United States Department of Agriculture.

38 ~~(f)~~(g) Sale of industrial hemp products —

39 (1) Notwithstanding any provision of the code to the contrary, a person need not obtain a
40 license to possess, handle, transport, or sell hemp products or extracts, including those containing
41 one or more hemp-derived cannabinoids, including CBD.

42 (2) Hemp-derived cannabinoids, including CBD, are not controlled substances or
43 adulterants.

44 (3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended
45 for ingestion are to be considered foods, not controlled substances or adulterated products.

46 (4) Applicable state agencies shall make available any and all customary registrations to
47 the processors and manufacturers of hemp products.

48 (5) Retail sales of hemp products may be conducted when the products and the hemp
49 used in the products were grown and cultivated legally in another state or jurisdiction and meet
50 the same or substantially the same requirements for processing hemp products or growing hemp
51 under this article and rules promulgated under §19-2E-7 of this code.

52 (6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp,
53 including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and
54 products intended for animal or human consumption, and the addition is not considered an
55 adulteration of the products.

56 (7) Hemp and hemp products may be legally transported across state lines, and exported
57 to foreign nations, consistent with U.S. federal law and laws of respective foreign nations.

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-11. Publications.

1 [Repealed.]

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

§19-15A-4. Inspection fee; report of tonnage; annual report.

1 (a) Each sales invoice prepared in normal course of business by either a registrant or
2 distributor shall reflect the amount of the inspection fee and the name of the payor.

3 (b) Within 30 days following June 30 and December 31, of each year, each registrant and
4 distributor shall submit on a form furnished by the commissioner a summary of tons of each
5 agricultural liming material sold or distributed by each registrant and distributor in the state during
6 the previous six months' period. The report of tonnage shall be accompanied by payment of an
7 inspection fee as established by legislative rule. If the tonnage, or portion thereof, has been paid
8 by another person, documentation by invoice must accompany such report. The semiannual
9 payment and late fee shall be established by legislative rule.

10 ~~(c) The commissioner shall publish annually on the Department of Agriculture's website a~~
11 ~~composite report showing the net tons of agricultural liming material sold in this state during the~~
12 ~~preceding period. This report may not divulge information that can be related to the business of~~
13 ~~any individual registrant~~

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-6. Duties and authority of Commissioner of Agriculture.

1 The commissioner may:

2 (a) Establish by legislative rule germination standards for agricultural, vegetable, tree and
3 shrub, or flower seeds;

4 (b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable,
5 tree and shrub, or flower seeds, or seed potatoes for sowing purposes are manufactured,
6 distributed, transported, or used, and where records relating to the manufacture, distribution,
7 shipment, labeling, or sale of seed are kept. This inspection shall include, but is not limited to,

8 examining, photographing, verifying, copying, and auditing records as is necessary to determine
9 compliance with this article, labels, consumer complaints, and papers relating to the
10 manufacturing, distribution, sampling, testing, and sale of agricultural, vegetable, tree and shrub
11 seeds, or seed potatoes;

12 (c) Open, examine, sample, and test agricultural, vegetable, tree and shrub, or flower
13 seed, or seed potatoes, equipment, containers, transport containers, and packages used or
14 intended to be used in the manufacture and distribution of seeds used for sowing purposes;

15 (d) Issue certificates of registration pursuant to this article;

16 (e) Refuse applications for registration, or suspend or revoke registrations as provided in
17 this article;

18 (f) Issue “stop sale or embargo” orders as provided in this article;

19 (g) Condemn and confiscate any agricultural, vegetable, tree and shrub, or flower seed,
20 or seed potato that is not brought into compliance with this article;

21 (h) Collect fees and penalties and expend moneys under the terms of this article;

22 (i) Conduct sampling in accordance with the official methods as established by the
23 Association of American Seed Control Officials, the United States Department of Agriculture, or
24 the Association of Official Seed Analysts;

25 (j) Conduct hearings as provided by this article;

26 (k) Assess civil penalties and refer violations to a court of competent jurisdiction;

27 (l) Obtain court orders directing any person refusing to submit to inspection, sampling, and
28 auditing to submit;

29 (m) Establish and maintain seed testing facilities, establish reasonable fees for the tests,
30 incur expenses, and conduct tests in accordance with the Association of Official Seed Analysts;

31 (n) Be guided by the analytical results of the official sample when determining whether the
32 agricultural, vegetable, tree and shrub, or flower seed is deficient in any component;

33 (o) Report the analytical results on all official deficient samples to the registrant, dealer,

34 purchaser if known, and or the distributor;

35 (p) Upon request made within 30 days from the date the official sample results are
36 reported, furnish a portion of the official sample to the registrant;

37 ~~(q) Publish and distribute annually a composite report containing: (1) The sales of~~
38 ~~agricultural, vegetable, tree and shrub, or flower seed, and seed potatoes during the preceding~~
39 ~~period; (2) the results of analysis of official samples as compared with the guarantee on the label;~~
40 ~~(3) the firms responsible for the product; and (4) such other data the commissioner considers~~
41 ~~necessary: Provided, That the information on production and use provided does not disclose the~~
42 ~~operations of any person~~

43 ~~(r)~~ Cooperate with and enter into agreements with governmental agencies of this state
44 and other states, agencies of the federal government and foreign governments, and private
45 associations in order to carry out the purpose and provisions of this article;

46 ~~(s)~~(r) Establish fees by legislative rule;

47 ~~(t)~~(s) Propose rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code;

48 ~~(u)~~(t) Promulgate emergency rules within 90 days of the passage of this bill into law; and

49 ~~(v)~~(u) Inspect and approve seed conditioning facilities in the state, issue permits, and
50 establish fees.

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-21. Violations.

1 It is unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer to
2 use:

3 (1) Product registration. — (A) Any pesticide which is not registered pursuant to the
4 provisions of this article, or any pesticide if any of the claims made for it or any of the directions
5 for its use differ in substance from the representation made in connection with its registration, or
6 if the composition of a pesticide differs from its composition as represented in connection with its
7 registration, in the discretion of the commissioner, a change in the labeling or formula of a

8 pesticide may be made, within a registration period, without requiring registration of the product,
9 however, changes are not permissible if they lower the efficiency of the product.

10 (B) Any pesticide sold, offered for sale, or offered for use which is not in the registrant's or
11 the manufacturer's unbroken container and to which there is not affixed a label, visible to the
12 public, bearing the following information:

13 (i) The name and address of the manufacturer, registrant, or person for whom
14 manufactured;

15 (ii) The name, brand, or trademark under which the pesticide is sold; and

16 (iii) The net weight or measure of the content, subject to such reasonable variation as the
17 commissioner may permit.

18 (C) Any pesticide which contains any substance or substances in quantities highly toxic to
19 ~~man~~ humans, unless the label bears, in addition to any other matter required by this article:

20 (i) A skull and crossbones;

21 (ii) The word "poison" prominently in red, on a background of distinctly contrasting color;

22 and

23 (iii) A statement of an antidote for the pesticide.

24 (D) The pesticides commonly known as lead arsenate, basic lead arsenate, calcium
25 arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium fluosilicate, and barium
26 fluosilicate unless they have been distinctly colored or discolored as provided by rules issued in
27 accordance with this article, or any other white powder pesticide which the commissioner, after
28 investigation of and after public hearing on the necessity for such action for the protection of the
29 public health and the feasibility of coloration or discoloration, by rules, requires to be distinctly
30 colored or discolored, unless it has been so colored or discolored. The commissioner may exempt
31 any pesticide to the extent that it is intended for a particular use or uses from the coloring or
32 discoloring required or authorized by this subsection if he or she determines that such coloring or
33 discoloring for such use or uses is not necessary for the protection of the public health.

34 (E) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

35 (F) Any pesticide that is subject of a stop sale, use, or removal order provided for
36 hereinafter in this article until such time as the provisions of that section hereafter have been met.

37 (2) Business/applicator violations. — In addition to imposing civil penalties or referring
38 certain violations for criminal prosecution the commissioner may, after providing an opportunity
39 for a hearing, deny, suspend, modify, or revoke a license issued under this article, if he or she
40 finds that the applicant, or licensee, or his or her employee has committed any of the following
41 acts, each of which is declared to be a violation:

42 (A) Made false or fraudulent claims through any media, misrepresenting the effect of
43 materials or methods to be utilized or sold;

44 (B) Used or caused to be used any pesticide in a manner inconsistent with its labeling or
45 rules of the commissioner: *Provided*, That such deviation may include provisions set forth in
46 section 2(ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.),
47 as the same is in effect on the effective date of this article, disposed of containers or unused
48 portions of pesticide inconsistent with label directions or the rules of the commissioner in the
49 absence of label directions if those rules further restrict such disposal;

50 (C) Acted in a manner to exhibit negligence, incompetence, or misconduct in acting as a
51 pesticide business;

52 (D) Made false or fraudulent records, invoices, or reports;

53 (E) Failed or refused to submit records required by the commissioner;

54 (F) Used fraud or misrepresentation, or presented false information in making application
55 for a license or renewal of a license, or in selling or offering to sell pesticides;

56 (G) Stored or disposed of containers or pesticides by means other than those prescribed
57 on the label or adopted rules;

58 (H) Provided or made available any restricted use pesticide to any person not certified
59 under the provisions of this article or rules issued hereunder;

60 (I) Made application of any pesticide in a negligent manner;

61 (J) Neglected or, after notice, refused to comply with the provisions of this article, the rules
62 adopted hereunder or of any lawful order of the commissioner;

63 (K) Refused or neglected to keep and maintain records or reports required under the
64 provisions of this article or required pursuant to rules adopted under the provisions of this article
65 or refused to furnish or permit access for copying by the commissioner any such records or
66 reports;

67 (L) Used or caused to be used any pesticide classified for restricted use on any property
68 unless by or under the direct supervision of a certified applicator;

69 (M) Made false or misleading statements during or after an inspection concerning any
70 infestation of pests found on land;

71 (N) Refused or neglected to comply with any limitations or restrictions on or in a duly
72 issued certification;

73 (O) Aided, abetted, or conspired with any person to violate the provisions of this article, or
74 permitted one's certification or registration to be used by another person;

75 (P) Impersonated any federal, state, county, or city inspector or official;

76 (Q) Made any statement, declaration, or representation through any media implying that
77 any person certified or registered under the provisions of this article is recommended or endorsed
78 by any agency of this state;

79 (R) Disposed of containers or unused portions of pesticide inconsistent with label
80 directions or the rules of the commissioner in the absence of label directions if those rules further
81 restrict such disposal;

82 (S) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for
83 in this article or the rules promulgated under the provisions of this article; ~~or~~

84 (T) Refuse, upon a request in writing specifying the nature or kind of pesticide or device
85 to which such request relates, to furnish to or permit any person designated by the commissioner

86 to have access to and to copy such records of business transactions as may be essential in
87 carrying out the purposes of this article; or

88 (U) Violated or been convicted or is subject to a final order assessing a penalty pursuant
89 to §14(a) or (b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.).

ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.

§19-20C-3. Rulemaking; annual report.

1 (a) The commissioner shall propose rules for legislative approval in accordance with §29A-
2 3-1 *et seq.* of this code to implement the provisions of this article.

3 (b) Rules promulgated under this section shall, at a minimum:

4 (1) Identify the types of nonprofit organizations and programs that qualify for spay neuter
5 grants;

6 (2) Establish parameters for spay neuter grants;

7 (3) Establish procedures and requirements for grant applications; and

8 (4) Establish administration, recordkeeping, and reporting requirements for nonprofit
9 organizations and programs that receive spay neuter grants.

10 ~~(c) Beginning the year following the program's inception, the commissioner shall file an~~
11 ~~annual report with the Joint Committee on Government and Finance regarding the program, funds~~
12 ~~received and grants awarded, the number of dogs and cats sterilized and other pertinent data~~

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

§19-36-5. Maintenance of property status for certain purposes; exceptions.

1 (a) Notwithstanding any provision of this code to the contrary, the occurrence of
2 agritourism does not change the nature or use of property that otherwise qualifies as agricultural
3 for building code, zoning, and or property tax classification purposes.

4 (b) An agritourism business may use certain of its facilities for occasional events without
5 complying with building and fire codes applicable to structures used for such purposes on a full-

6 time basis ~~as long as~~ if such facilities are deemed structurally sound and otherwise safe for the
7 intended use.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 43. AUCTIONEERS.

§30-43-1. DEFINITIONS.

1 For the purposes of this article:

2 (a) "Absolute auction" means the sale of real or personal property at auction whereby
3 every item offered from the block is sold to the highest bidder without reserve and without the
4 requirements of a minimum bid or other conditions which limit the sale other than to the highest
5 bidder.

6 (b) "Auctioneer" means a person who sells goods or real estate at public auction for
7 another on commission or for other compensation.

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

10 (d) "Estate auction" means the sale at auction of property of a specified deceased person
11 or the property of a specified living person's estate. Estate auctions may contain property other
12 than that of the specified living or deceased person. However, the inclusion of additional property
13 must be included in all advertising and auction announcements.

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

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

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

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

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

20 or

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

23 (f) "Public auction" or "auction" means any public sale of real or personal property in any
24 manner, whether in-person, via written offers or bids, or online, when offers or bids are made by
25 prospective purchasers and the property sold to the highest bidder.

26 (g) "Secretary" means the Secretary of State.

§30-43-2. License required; exceptions.

1 (a) Except as provided in subsection (b) of this section and §30-43-12 of this code, no
2 person shall conduct an auction as an auctioneer in this state unless he or she shall have first
3 obtained from the secretary 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: *Provided*, That the secretary shall promulgate rules to
15 limit the number of charitable auctions an exempt person may perform in a 12-month period;

16 (6) Persons properly licensed pursuant to the provisions in §30-40-1 *et seq.* of this code
17 when conducting an auction, any portion of which contains any leasehold or any estate in land
18 whether corporeal or incorporeal, freehold or non-freehold, when the person is retained to conduct
19 an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed

20 of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article
21 exempts persons conducting sales at public markets from the provisions of §19-2A-1 *et seq.* of
22 this code, where the sale is confined solely to livestock, poultry, and other agriculture and
23 horticulture products; and

24 (7) Persons listing items online for sale via a platform that establishes a fixed time for the
25 conclusion of the sale without extension: *Provided*, That the secretary may further define this
26 exemption in legislative rules.

§30-43-3. Procedure for license; Secretary of State as statutory agent for licensees.

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

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

3 (2) Pay a non-returnable application fee and a license fee, and, upon successful
4 completion of the application process, a license fee; and

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

6 (b) The secretary 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 secretary shall refund the license fee submitted with the
10 application to the applicant.

11 (d) All licenses expire on June 30 of each year: *Provided*, That an auctioneer may continue
12 to perform auctions for up to 30 days after June 30, so long as he or she has submitted the
13 required paperwork to renew his or her auctioneer license: *Provided, however*, That licenses
14 issued in 2019, shall continue to be active through June 30, 2020. A license may be renewed
15 upon the payment of the annual renewal fee within 60 days of the expiration date. Renewals
16 received more than 60 days after the expiration date are subject to a late renewal fee in addition
17 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 secretary is the agent for the purpose of service of process on a licensed
25 auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every
26 licensed auctioneer, by virtue of his or her application for a license, shall be considered to have
27 consented to the statutory agency.

§30-43-3a. Rulemaking.

1 (a) The secretary shall propose rules for legislative approval pursuant to §29A-3-1 et seq.
2 of this code to:

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

5 (2) Set a fee schedule;

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

7 (4) Establish the continuing education requirements for licensees;

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

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

10 (7) Implement the provisions of this article.

11 (b) The fees in effect on the effective date of this article shall remain in effect until modified
12 by legislative rule.

§30-43-3b. Special revenue fund.

1 All fees collected under this article shall be paid into a special revenue fund in the State
2 Treasury to be used by the secretary for the purpose of administering and enforcing this article

3 and providing continuing education for auctioneers.

§30-43-4. Bond required.

1 Every person applying for a license as an auctioneer, apprentice auctioneer, or continuing
2 to act as a licensed auctioneer or apprentice auctioneer shall file with the secretary and maintain
3 in full effect a bond satisfactory to the secretary and in form and amount as prescribed by the
4 secretary pursuant to the rules and regulations promulgated in accordance with this article:
5 Provided, That in no event shall the amount of such bond be less than \$10,000 for an auctioneer
6 and in no event less than \$5,000 for an apprentice auctioneer. The bond may include, at the
7 option of the applicant, corporate surety bonding, collateral bonding (including costs and
8 securities), establishment of an escrow account, an irrevocable letter of credit, or a combination
9 of these methods. If collateral bonding is used, the auctioneer may elect to deposit cash, or any
10 of the following collateral securities or certificates: Bonds of the United States or its possessions,
11 of the federal land bank, or of the homeowners' loan corporation; full faith and credit general
12 obligation bonds of the State of West Virginia, or other states, and of any county, district, or
13 municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this
14 state, which certificates shall be in the name of the department. The cash deposit or market value
15 of such securities or certificates shall be equal to or greater than the sum of the bond. It shall be
16 the duty of the applicant to ensure the market value of such bonds is sufficient. The secretary
17 shall, upon receipt of any such deposits of cash, securities, or certificates, promptly place the
18 same with the State Treasurer whose duty it shall be to receive and hold the same in the name
19 of the state in trust for the purpose for which the deposit is made when the license is issued. The
20 applicant making the deposit shall be entitled, from time to time, to receive from the State
21 Treasurer, upon written approval of the secretary, the whole or any portion of any cash, securities,
22 or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities
23 or certificates of the classes herein specified having value equal to or greater than the sum of the
24 bond. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the

25 provisions of this article and the payment of all required taxes, fees, and penalties imposed by
26 the State of West Virginia and its political subdivisions, as well as the payment by any auctioneer
27 of any final judgment obtained for damages arising out of his or her conduct or duties as an
28 auctioneer. Such bond shall be open to public inspection.

§30-43-5. Requirements for auctioneer license; duties of licensee.

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

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

4 (2) Is of reputable character;

5 (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 secretary or his or her
21 designee.

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

§30-43-5a. Examinations of applicants.

1 (a) Examinations shall be held a minimum of two times each year, at a time and place to
2 be designated by the secretary or his or her designee.

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

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

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

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

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

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

24 (h) If the secretary determines that an applicant does not qualify for a license, he or she
25 shall notify the applicant by certified mail. The notice shall state:

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

27 (2) The applicant's right to appeal the secretary's decision within 20 days of receipt of the
28 notice.

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

§30-43-5b. Background checks required.

1 (a) A person applying for a license pursuant to §30-43-5, §30-43-6, or §30-43-6c 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 State Police or its assigned
4 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 State Police, and the Federal Bureau of Investigation to use
9 all records submitted and produced for the purpose of screening the applicant for a license.

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

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

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

15 (3) Pursuant to a court order.

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

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

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

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

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

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

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

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

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

§30-43-6. Requirements for apprentice auctioneer license.

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

3 (1) Is of reputable character;

4 (2) Is of 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 secretary may waive the requirements of this section, on an individual basis, upon
16 the presentation of written evidence that the applicant has educational training or exceptional
17 experience in the auctioneering profession and that the applicant has been unable to obtain

18 sponsorship by a licensed auctioneer: *Provided*, That the secretary may not waive apprenticeship
19 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 secretary. No discharged or terminated apprentice auctioneer may thereafter perform any acts
23 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 secretary may not issue an apprentice auctioneer license until bond has been
27 filed. All apprentice auctioneer licenses expire on June 30 of each year but are renewable upon
28 the payment of the annual fee: *Provided*, That an apprentice auctioneer may continue to perform
29 auctions for up to 20 days after June 30, so long as he or she has submitted the required
30 paperwork to renew his or her apprentice auctioneer license: *Provided, however*, That licenses
31 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.

§30-43-6a. Investigation of complaints.

1 (a) The secretary may, upon his or her own action, and shall upon a verified written
2 complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any
3 applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to
4 act in that capacity. If the secretary determines the actions constitute a violation of this article or
5 rule promulgated hereunder, he or she may suspend, deny, or revoke any license as provided in
6 §30-43-8a of this code.

§30-43-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring

auctioneer.

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

5 (b) The sponsoring auctioneer is responsible for:

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

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

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

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

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

§30-43-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice
auctioneer's license.

1 (a) To qualify for a license by reciprocity, the applicant must show evidence of licensing in
2 another state for a period of one year preceding the date of application. The licensing may have
3 been as an apprentice auctioneer or as an auctioneer: *Provided*, That this qualification is met and
4 the applicant meets all the other requirements as required by this article and by rule, he or she
5 shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident
6 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 secretary shall require proof that the applicant has been a practicing auctioneer
10 for a period of two years preceding the date of application. The proof shall be in the form of sale
11 bills, contracts, sale permits, and other such evidence acceptable to the secretary: *Provided*,
12 *however*, That this qualification is met, and the applicant meets other requirements for licensing
13 as required by the statutes and regulations, the applicant shall be admitted to the next scheduled
14 written and oral examination for auctioneers without being required to first serve an
15 apprenticeship.

§30-43-7. Orders of secretary; hearing; review.

1 Any order of the secretary shall be served by him or her upon all persons affected thereby
2 by registered mail. Within 10 days of the receipt of such order any party adversely affected thereby
3 may, in writing, request a hearing before the secretary. The hearing and any judicial review thereof
4 shall be conducted pursuant to §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code. The effect of
5 any order shall be suspended during any hearing or subsequent appeals.

§30-43-8. Penalties.

1 (a) *Criminal penalties.* — Any person, firm, association, or corporation violating a provision
2 of this article or rules promulgated thereunder, is guilty of a misdemeanor and, upon conviction
3 thereof, shall be fined not less than \$250 nor more than \$500 for the first offense, and not less

4 than \$500 nor more than \$1,000 for the second and subsequent offenses. Magistrates have
5 concurrent jurisdiction with circuit courts to enforce the provisions of this article.

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

8 (1) In determining the amount of the civil penalty, the secretary 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 secretary may assess a penalty
12 of not more than \$500 for a first offense, and not more than \$1,000 for each second and
13 subsequent offense.

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

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

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

§30-43-8a. Suspension, denial, or revocation of license.

1 (a) In addition to the penalties in §30-43-8 of this code, the secretary may, by order,
2 suspend, deny, or revoke any license granted hereunder for any violation of this article or the
3 rules promulgated hereunder or for any of the following reasons:

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

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

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

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

11 (5) 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 secretary of any
13 such conviction within 15 days of conviction;

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

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

17 (8) Engaging in any other conduct that constitutes fraudulent or dishonest dealing;

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

20 (10) Acting as an attorney for a client.

21 (b) 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 secretary may also require the successful completion of
24 the examinations required for an auctioneer's license or an apprentice auctioneer's license.

§30-43-9. 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 secretary
21 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 secretary a bond satisfying the
51 requirements of section four of this article.

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 secretary and are subject to the penalties set forth in §30-43-8 of this code.

§30-43-9a. Escrow accounts.

1 Each auctioneer shall maintain an escrow account and deposit all moneys from each sale
2 from an auction in the escrow account within 24 hours of the completion of the sale or on the first
3 business day following the sale, unless the owner or consignor was paid in cash directly at the
4 end of the sale.

§30-43-10. Advertising.

1 In advertising an auction sale by any licensed auctioneer, the principal auctioneer or
2 auctioneers who physically conduct the sale shall be listed prominently in such advertising as
3 used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the
4 sale shall be the person or persons who call for, accept, and close bids on the majority of items
5 offered for sale.

6 Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his
7 or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

8 The auctioneer's name and license number shall be displayed in equal prominence with
9 the name of the apprentice auctioneer and license number in such advertisement.

10 Nothing in the provisions of this article shall be construed to prohibit any other auctioneer,
11 licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list
12 the name of the other auctioneer in any advertising associated with such auction.

13 It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids
14 are required or other conditions are placed on the sale that limit the sale other than to the highest
15 bidder.

16 No property other than the property of a specified deceased person or the property of a
17 specified living person's estate may be sold at auction if the auction is conducted or advertised

18 only as an estate auction. However, property other than that of the specified estate may be sold
19 at the sale if all advertisements for the sale specify that items will be sold that do not belong to
20 the estate and those items are identified at the sale.

§30-43-11. Rulemaking.

1 The secretary may propose rules pursuant to §29A-3-1 et seq. of this code to carry out
2 and implement the provisions of this article.

§30-43-12. Effective date of article; transferring regulation of auctioneers to Secretary of State; honoring prior licenses and pending applications.

1 Notwithstanding any other provision of the code to the contrary, this article shall take effect
2 July 1, 2023, and the regulation of auctioneers is transferred from the Department of Agriculture
3 to the Secretary of State. The secretary shall honor all auctioneer or apprentice auctioneer
4 licenses issued by the Commissioner of the Department of Agriculture prior to the effective date
5 of this article and shall consider all applications for auctioneer or apprentice auctioneer pending
6 on the effective date of this article.