

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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2007 APR 26 AM 10:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative CITE AUTHORITY: WV Code Chapter 19, Article 2-C

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11 B

TITLE OF RULE BEING AMENDED: Auctioneers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 31, 2007 AT 3:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:


Janet L. Fisher, Deputy Commissioner

WV Department of Agriculture

1900 Kanawha Boulevard, East

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.80



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

Summary of Rule Changes
Title 61
Legislative Rule
State Department of Agriculture
Series 11B
Auctioneers

- Technical clean-up
- Increasing amount of bond for auctioneers and apprentice auctioneers
- Increasing Continuing Education requirements to maintain reciprocal status with participating states.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Auctioneers

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Agriculture

Address: 1900 Kanawha Boulevard, East
Charleston, WV 25305

Phone Number: 304/558-3550 Email: smarinacci@ag.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

N/A - The rule changes, as listed below, will have no financial impact on the Department. Changes include the following:

1. Technical clean-up
2. Increasing amount of bond for auctioneers and apprentice auctioneers
3. Increasing Continuing Education requirements to maintain reciprocal status with reciprocal states

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

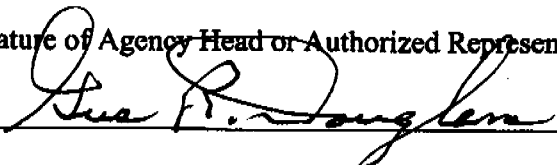
Rule Title: Auctioneers

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: April 26, 2007

Signature of Agency Head or Authorized Representative


FILED

TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

2007 APR 26 AM 10:48

SERIES 11B
AUCTIONEERS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§61-11B-1. General.

- 1.1. Scope. -- This legislative rule establishes general procedures for the licensing of auctioneers.
- 1.2. Authority. -- W. Va. Code '19-2C-5.
- 1.3. Filing Date. -- ~~April 13, 1994.~~
- 1.4. Effective Date. -- ~~April 15, 1994.~~

§61-11B-2. Declaration Of Policy.

2.1. This rule is for the purpose of implementing W. Va. Code '19-2C-1 et seq. pertaining to the licensing of auctioneers.

§61-11B-3. Application.

3.1. The Commissioner shall, within thirty (30) days ~~after~~ after receipt of an application, notify the applicant of his/her eligibility to be examined. The thirty (30)-day period for action by the commissioner shall not commence until all necessary information has been submitted by the applicant.

3.2. The application shall contain sufficient information to allow the commissioner to determine the applicant's eligibility for an auctioneer or apprentice auctioneers license and shall include a statement by two (2) individuals testifying to the applicant's character.

3.3. Applicants for an apprentice license or auctioneer license must be a minimum of 18 years of age.

3.4. Applicants for auctioneer or apprentice auctioneer license must present a photo I.D. before participating in examinations.

§61-11B-4 Bond Requirements.

4.1. The amount of bond required under ~~W. Va. Code '19-2C-4~~ is ~~five~~ ten thousand dollars (~~\$5,000~~) (\$10,000) for an apprentice auctioneer and ~~ten~~ twenty thousand dollars (~~\$10,000~~) (\$20,000) for an auctioneer. Corporate surety bonds shall be on forms provided by the commissioner.

4.2. All corporate surety bonds shall be executed by a company authorized to do business in the State of West Virginia as determined by the Secretary of State

4.3. Apprentice auctioneer applicants are not required to have a bond in place prior to testing; however, a properly executed bond must be submitted to West Virginia Department of Agriculture before the license will be issued.

§61-11B-5. License.

5.1. The license numbers issued ~~tinder~~ under W. Va. Code ' 19-2C-1 et seq. are permanent, subject to annual renewal.

5.2. All licenses issued under W. Va. Code ' 19-2C-1 et seq. expire on December 31 of each year unless revoked or suspended.

5.3. Licenses issued at the successful completion of the examination held in October shall be considered as licensure for the upcoming calendar year and no additional fee shall be collected for that year.

§61-11B-6. License Renewal.

6.1. All materials required by the commissioner shall be submitted to the Department of Agriculture before the commissioner shall renew a license. Requests which do not contain all ~~of the~~ necessary information shall ~~be considered to have been submitted on the date when the first application for renewal is received~~ result in delays in the issuance of the license.

6.2. ~~On the January 1, 1996~~ All auctioneers must provide the commissioner with proof of completion of at least ~~three six (3) (6)~~ six (6) hours of continuing education within the previous year. All auctioneers shall complete ~~three six (3) (6)~~ six (6) hours of continuing education each subsequent year in order to qualify for license renewal. All continuing education programs must be approved as to subject matter by the commissioner or his designee before credit will be granted. Requests for approval must include the name of course, the course provider, the date of instruction, an outline of the course, the instructor or sponsor and their qualifications for teaching the class, the instructor or sponsor's address and the number of hours of instruction. Curricula should be approved in advance, and in the case of group instruction, the instructor or course provider may shall provide a certified list of those completing the course. Continuing education may include, but is not limited to, seminars, correspondence courses, certified home study and formal course work offered through vocational programs, extension programs, colleges and universities, or certified auction schools.

6.3. An auctioneer must complete six (6) hours of continuing education each calendar year in order to qualify to renew his or her license for the next year.

6.3.1. Only classes taught by course providers approved by the commissioner or his designee qualify for credit

6.3.2. At least three (3) hours of the required six (6) hours of class must be from core subjects. Core subjects are:

- a. West Virginia statutes and rules governing auctioneering;
- b. Federal statutes and rules governing auctioneering;
- c. Auctioneering ethics;
- d. Escrow, trust and custodial accounts;
- e. Advertising;
- f. Contracts; and
- g. Other subjects approved by the commissioner.

6.3.3 At least three (3) hours of the required six (6) hours of class may be from elective subjects.

Elective subjects are:

- a. Real estate law;
- b. Auction management;
- c. Bid calling;
- d. Public speaking;
- e. Business law; and
- f. Other subjects approved by the commissioner.

6.4. Auctioneers who have not conducted any auctions in the previous twelve (12) months are exempt from the continuing education provisions for renewal of license for the following year. A notarized statement in a form prescribed by the commissioner must be submitted with the request for exemption. When an auctioneer resumes conducting auctions, he or she must then comply with the provisions of this section and provide proof of continuing education to the commissioner.

6.5. Apprentice auctioneers are not required to complete a continuing education program for license renewal of an apprentice license, but are encouraged to do so for their own benefit.

§61-11B-7. Receipts.

7.1. ~~Upon demand,~~ Each auctioneer shall provide a buyer or purchaser with a receipt that includes:

- 7.1.1. ~~The date on which the purchase was made~~ of the sale;
- 7.1.2. A description of the item or lot;
- 7.1.3. The price paid for the item or lot purchased; and

7.1.4. The name, license number and permanent address of the auctioneer. This information shall be provided to each ~~customer~~ buyer or purchaser only once. ~~upon demand.~~

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of six (6) months.

§61-11B-8. Examination ~~or~~ of Applicants.

8.1. The written examination shall test the applicant's knowledge of the West Virginia Auctioneer Law, W. Va. Code '19-2C-1 et seq., rules promulgated thereunder, and other fundamentals of the auctioneering profession.

8.2. The oral examination shall test the auctioneer's competency in conducting an auction, and their knowledge of all applicable laws, state and federal.

§61-11B-9. Accredited Auctioneering Schools.

9.1. The commissioner shall annually issue a list of accredited auctioneering schools.

9.2. Any school wishing to be included on the list of accredited auctioneering schools shall submit to the commissioner a complete curriculum, a course schedule, a list of the instructors, credentials of the instructors,

the location of the school, the cost and any other information considered necessary by the commissioner for a decision on the qualifications of the school to be accredited in West Virginia.

§61-11B-10. Suspension, Revocation, Expiration or ~~Reirmination~~ Termination of Supervising Auctioneer's License.

10.1. The suspension, revocation, expiration or termination of a supervising auctioneer's license shall automatically suspend the license of any apprentice auctioneer sponsored or employed by the suspended auctioneer. However, apprentice auctioneers may retain apprentice licenses by transferring to the ~~employment~~ employment or sponsorship of another licensed auctioneer: Provided, ~~That~~ that the request for the transfer is made in writing and according to the procedures outlined in W. Va. Code ' 19-2C-6, and approved by the commissioner or his designee.

§61-11B-11. Reciprocity.

11.1. Any out-of-state resident who holds a valid auctioneer's license in ~~another~~ a reciprocal state may be granted a West Virginia license: Provided, ~~That the~~ their resident state in which he or she is licensed provides similar recognition to a licensee of this State, and that the licensing requirements of ~~the other~~ their resident state are at least equal to those of the State of West Virginia. The commissioner shall annually issue a list of states with whom reciprocity has been formally approved.

§61-11B-12. Waiver of Apprenticeship.

12.1. The commissioner may, with the concurrence of the Auctioneer's Board of Review, grant a wavier of the apprenticeship requirements. For an applicant for ~~licensure~~ to be granted a wavier, he or she must petition the commissioner for a waiver and provide certified documentation as to the qualifications of the candidate to be an auctioneer without serving an apprenticeship. This documentation ~~should~~ shall include formal training in the profession, exceptional practical training such as verification of conducting charity or other types of auctions which are exempt from the licensing requirements, ~~a description of the candidate's efforts to secure sponsorship~~ and any other information to assist the commissioner in making a ruling. The commissioner ~~will~~ may grant a waiver only under exceptional circumstances, after receiving concurrence from the Auctioneer Board of Review, and will not consider them a routine matter. Under no circumstances shall the commissioner grant a wavier if it is determined that experience in the profession has been gained as a result of auctioneering which was not in compliance with the laws and rules of the State of West Virginia or the State where the experience was gained.

§61-11B-13. Advertising.

13.1. Any circular or other printed material advertising a sale shall contain the name and license number of the auctioneer conducting the sale, ~~and the name and license number of~~ any apprentice auctioneer assisting with the sale, and the date, place and exact time of the auction.

§61-11B-14. Contracts.

14.1. All contracts between an auctioneer and a seller shall meet, at a minimum, the following guidelines:

14.1.1. The contract shall be executed in duplicate; and

14.1.2. The original contract shall be retained by the auctioneer for a period of six (6) months; ~~and~~

14.1.3. One copy of the contract must be furnished to each person entering into the contract; and

14.1.4. The contract shall state the amount of time to settle the account with the consignors, which is within fourteen (14) calendar days of the sale.

14.2. An apprentice auctioneer may not contract directly with a client, ~~but only through his or her sponsoring auctioneer~~

§61-11B-15. Board of Review.

15.1. The board of review shall meet at the call of the commissioner, or his designee, to review the findings of an investigation resulting from a verified complaint received by the department or an investigation initiated by the department's own actions.

15.2. The board of review shall review these findings, all of the material related to the investigation, and any other material considered by the board to be appropriate. The Board of review shall make a recommendation, in writing, to the commissioner as to the course of action for the commissioner on the complaint. Board decisions shall be majority decisions of those members present. A quorum of two (2) members is required for board action.

15.3. ~~when~~ When considered appropriate by the commissioner, or his designee, the board may meet via telephone conference call, but shall only provide a recommendation after receiving and reviewing ~~all~~ hard copies of the material pertinent to the complaint.

15.4. A member of the staff of the department, appointed by the commissioner, shall serve as staff for the board and shall be responsible for the presentation of each complaint. The staff member shall not participate in the discussions beyond the reasonable explanation of the facts of the complaint.