

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY Chapter 19-2C

AMENDMENT TO AN EXISTING RULE: YES  NO

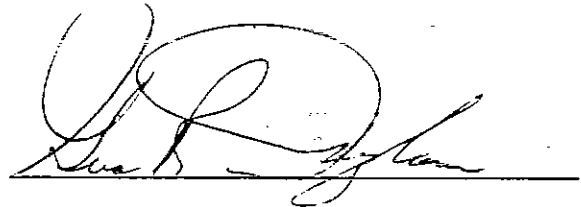
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11B

TITLE OF RULE BEING AMENDED: Auctioneers

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



WEST VIRGINIA LEGISLATIVE RULE  
STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2C

SERIES 11B

TITLE: ~~Regulations Governing~~ Auctioneers

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Section 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 -

1.4 Effective Date -

Section 2. Declaration Of Policy.

2.1 ~~These regulations are~~ This rule is for the purpose of implementing article two e, chapter nineteen of the State Code of West Virginia West Virginia Code §19-2C-1 et seq pertaining to the licensing of auctioneers.

Section 3. ~~Regulations.~~ Application.

3.1 ~~Applications~~ The Commissioner shall, within thirty (30) days 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 ~~Bond requirements~~ All property bonds shall be accompanied by a justification of surety showing that said real estate has an unencumbered assessed value of at least ten thousand dollars (\$10,000) for an auctioneer's license and five thousand dollars (\$5,000) for an apprentice auctioneer's license. Said property shall be located within the State of West Virginia and said bond shall be recorded in the office of the Clerk of the County Commission of the county wherein the property is located. All corporate surety bonds shall be executed by a company authorized to do business in West Virginia.

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

#### Section 4 Bond requirements.

4.1 The amount of bond required under West Virginia Code § 19-2C-4 is \$5,000 for an apprentice auctioneer and \$10,000 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.

#### Section 5 License.

~~3.3 License~~ 5.1 The license numbers issued under West Virginia Code §19-2C-1 et seq. this Act shall be are permanent, subject to annual renewal.

5.2 All licenses issued under West Virginia 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.

#### Section 6 License renewal.

6.1 All materials required by the commissioner shall be submitted to the Department 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.

6.2 On the January 1, 1996 all auctioneers must provide the commissioner with proof of completion of at least three (3) hours of continuing education within the previous year. All auctioneers shall complete three (3) 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 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, 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 may 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 Auctioneers who have not conducted any auctions in the previous twelve (12) months are exempt from the continuing education provisions for renewal. When an auctioneer resumes conducting auctions he or she must then comply with the provisions of this section.

6.43 Apprentice auctioneers are not required to complete a continuing education program for license renewal.

### Section 7 Receipts.

~~3.4 Receipts~~ 7.1 Upon demand, each auctioneer shall provide a buyer or purchaser with a receipt that includes:

~~3.4.1 7.1.1~~ The date on which the purchase was made;

~~3.4.2 7.1.2~~ A description of the item or lot;

~~3.4.3 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 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 months.

~~3.4.4~~ The name, license number and permanent address of the auctioneer. The auctioneer shall retain a copy of receipts so issued for his records.

### Section 8 Examination of applicants.

~~3.5 Examination of applicants~~ 8.1 The written examination shall test the applicant's knowledge of the West Virginia Auctioneer Law, West Virginia Code §19-2C-1 et seq, rules and regulations promulgated thereunder and other fundamentals of the auctioneering profession. ~~The oral examination shall test the auctioneer's competency in conducting an auction.~~

8.2 The oral examination shall test the auctioneer's competency in conducting an auction.

### Section 9 Accredited auctioneering schools.

~~3.6 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 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.

**Section 10 Suspension, revocation, expiration or termination of supervising auctioneer's license.**

~~3.7 Suspension, revocation, expiration or 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 or sponsorship of another licensed auctioneer: Provided, That the request for the transfer is made in writing and according to the procedures outlined in West Virginia Code §19-2c-6.

**Section 11 Reciprocity.**

~~3.8 Reciprocity~~— 11.1 Any out-of-state resident who holds a valid auctioneer's license in another state may be granted a West Virginia license: Provided, That the 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 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.

**Section 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 include formal training in the profession, exceptional practical training such as verification of conducting charity or other types of auction 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 grant a waiver only under exceptional circumstances and will not considered 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.

### Section 13 Advertising.

~~3.9 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 any apprentice auctioneer assisting with the sale, and the date, place and exact time of the auction.

### Section 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 months; and

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

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

### Section 15 Board of review.

15.1 The board of review shall meet at the call of the commissioner, to review the findings of an investigation resulting from a verified complaint received by the department or an investigation initiated by the departments 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 members is required for board action.

15.3 When considered appropriate by the commissioner, the board may meet via telephone conference call, but shall only provide a recommendation after receiving and reviewing all 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.



FILED

WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

September 28, 1993

TO: Ken Hechler, Secretary of State, State Register  
TO: Gus R. Douglass, Commissioner  
Department of Agriculture  
State Capitol  
Charleston, WV 25305  
FROM: Legislative Rule-Making Review Committee  
PROPOSED RULE: Regulations Governing Auctioneers

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency     X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Robert L. Williams, Director  
Marketing & Development Division