

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2013 JUL 24 PM 2:26

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: Chapter 19

AMENDMENT TO AN EXISTING RULE: YES  NO

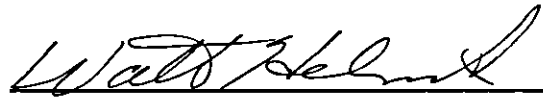
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11B

TITLE OF RULE BEING AMENDED: Auctioneers

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

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature



- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 24, 2013

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Chris Ferro, Chief of Staff

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1900 Kanawha Blvd. East, Charleston, WV 25305

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cferro@wvda.us; o: (304) 558-3200; f: (304) 558-2203

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A/

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b. Date of hearing or comment period:

June 18 - July 18, 2013

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 24, 2013

d. Attach findings and determinations and reasons:

Attached   x



## **West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305  
304-558-3550

**Walt Helmick**  
Commissioner

### **Brief Summary of Agency Approved Rule Auctioneer Title 61 – Series 11B**

Title 61-Series 11B establishes general procedures for the licensing of auctioneers. This rule includes the application, bond requirements, licensing, continuing education requirements, receipt retention, examination requirements, accredited auctioneering schools, suspension/revocation/expiration/termination of license, reciprocity, apprenticeship, advertising, contracts, and Board of Review.

The proposed changes will affect only apprentice auctioneer bond requirements, receipt requirements and retention, and apprenticeship requirements.



## **West Virginia Department of Agriculture**

1900 Kanawha Blvd. E., Charleston, WV 25305

304-558-3550

**Walt Helmick**

Commissioner

### **Statement of Circumstances**

#### **Auctioneer**

#### **Title 61 – Series 11B**

The West Virginia Department of Agriculture (WVDA) proposes to increase accountability to auctioneers and their customers by making several changes to the Auctioneer rule.

The current rule requires five thousand dollars (\$5,000) for an apprentice auctioneer. WVDA proposes that be changed to ten thousand dollars (\$10,000) to help protect consumers. In addition, WVDA proposes the auctioneer provide name, license number and permanent address of auctioneer to each buyer or purchaser for each item purchased, rather than only once and auctioneer is to retain a copy of issued receipts for his or her records for a minimum of three (3) years instead of six (6) months.

The current rule also does not address sponsoring auctioneers. Therefore, WVDA proposes for an auctioneer to sponsor an apprentice, the auctioneer must have held an auctioneer's license for at least five (5) consecutive years and can sponsor no more than two (2) apprentices at any time.

Proposed changes to Title 61, Series 11B have no financial effect on state government.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Auctioneers Title 61 Series 11B

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East  
Charleston, WV 25305

Chris Ferro, Chief of Staff

Phone Number: 304-558-3200 Email: cferro@wvda.us

**Fiscal Note Summary**

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

There will be no additional costs or revenues to the state.

**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)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

Rule Title: Auctioneers Title 61 Series 11B

Rule Title:

Auctioneers Title 61 Series 11B

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

N/A

### 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.

The proposed changes include change of bond requirements for apprentice auctioneers, changes in receipt information and retention of receipts, and requirements to be a sponsoring auctioneer.

Date: July 24, 2013

Signature of Agency Head or Authorized Representative

Walt Helms

TITLE 61  
LEGISLATIVE RULE  
STATE DEPARTMENT OF AGRICULTURE

FILED

2013 JUL 24 PM 2:27

SERIES 11B  
AUCTIONEERS

OFFICE OF THE CLERK  
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. --

1.4. Effective Date. --

4.1. The amount of bond required is ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) for an apprentice auctioneer and ten thousand dollars (\$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.

**§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.

4.3. An apprentice auctioneer applicant is not required to have a bond in place prior to testing; however, they shall submit a properly executed bond to West Virginia Department of Agriculture before the Department will issue the license.

**§61-11B-3. Application.**

3.1. The Commissioner shall, within thirty (30) days after receipt of an application, notify the applicant of his or 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.

**§61-11B-5. License.**

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

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

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.

3.3. An applicant for an apprentice license or auctioneer license shall be at least 18 years of age.

5.3. The Department shall consider licenses issued at the successful completion of the examination held in October as licensure for the upcoming calendar year and shall not collect an additional fee for that year.

3.4. An applicant for an auctioneer or apprentice auctioneer license shall present a photo I.D. before participating in examinations.

**§61-11B-6. License Renewal.**

6.1. An applicant shall submit all materials required by the Commissioner to the Department of Agriculture before the Commissioner may renew a license. Requests which do not contain all necessary information shall result in delays in the issuance of the license.

**§61-11B-4. Bond Requirements.**

6.2. An auctioneer shall provide the Commissioner with proof of completion of at least six (6) hours of continuing education within the previous year. An auctioneer shall complete six (6) hours of continuing education each subsequent year in order to qualify for license renewal. The Commissioner or his or her designee must approve all continuing education programs as to subject matter before credit will be granted. Requests for approval shall include the name of course, the course provider, the date of instruction, an outline of the course, the instructor or sponsor and his or her 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 shall provide a certified list of those persons 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 shall 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 or her designee qualify for credit

6.3.2. At least three (3) hours of the required six (6) hours of class shall 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. An auctioneer who has not conducted any auctions in the previous twelve (12) months is exempt from the continuing education provisions for renewal of license for the following year. The auctioneer shall submit a notarized statement in a form prescribed by the Commissioner with the request for exemption. When an auctioneer resumes conducting auctions, he or she shall then comply with the provisions of this section and provide proof of continuing education to the Commissioner.

6.5. An apprentice auctioneer is not required to complete a continuing education program for renewal of an apprentice license, but is encouraged to do so for his or her own benefit.

#### **§61-11B-7. Receipts.**

7.1. Each auctioneer shall provide a buyer or purchaser with a receipt that includes:

7.1.1. The date 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 buyer or purchaser ~~only once~~ for each item purchased.

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of ~~six (6) months~~ five (5) years ~~three (3) years~~.

**§61-11B-8. Examination 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 under the law and other fundamentals of the auctioneering profession.

8.2. The oral examination shall test the auctioneer's competency in conducting an auction, and his or her 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 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, an apprentice auctioneer may retain an apprentice licenses by transferring to the sponsorship of another licensed auctioneer; Provided, 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 or her designee.

**§61-11B-11. Reciprocity.**

11.1. Any out-of-state resident who holds a valid auctioneer's license in a reciprocal state may be granted a West Virginia license. Provided, that the 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 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 Board of Review, grant a wavier of the apprenticeship requirements. For an applicant to be granted a wavier, he or she shall 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 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, and any other information to assist the Commissioner in making a ruling. The Commissioner may grant a waiver only under exceptional circumstances, after receiving concurrence from the Auctioneer Board of Review, and shall 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.

12.2. To be a sponsoring auctioneer of an apprentice, the auctioneer must have held an auctioneer's license for at least five (5) consecutive years and can sponsor no more than two (2) apprentice auctioneers at any time.

**§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, 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;

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

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

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

14.2. An apprentice auctioneer may not contract directly with a client.

**§61-11B-15. Board of Review.**

15.1. The Board of Review shall meet at the call of the Commissioner or his or her 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 considered appropriate by the Commissioner, or his or her designee, the Board may meet via telephone conference call, but shall only provide a recommendation after receiving and reviewing 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.

**Keaton, Jennifer**

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**From:** Ferro, Chris  
**Sent:** Monday, June 24, 2013 9:36 AM  
**To:** Adkins, Ron; Carpenter, Lisa  
**Cc:** Keaton, Jennifer  
**Subject:** FW: Proposed Rule Change

For file

**From:** Jim Frio & Associates [<mailto:frioauc@aol.com>]  
**Sent:** Monday, June 24, 2013 9:28 AM  
**To:** Ferro, Chris  
**Subject:** Proposed Rule Change

Chris,

Thanks for sending me the proposed rule changes. I totally agree that the bond should be increased from 5 to 10, also, I am in agreement with name, license # and permanent address of the auctioneer should be attached to any of the final settlements. The only thing I am in question with is keeping receipts for 5 years. My opinion 6 months is inadequate but 5 years is an over kill. I think something like 2 years would be efficient seems like most legal problems and disagreements happen within a year.

Thanks so much,  
Jim Frio

Jim Frio & Associates  
2 North Broadway St.  
Wheeling WV 26003  
(304) 233-3168  
(304) 232-1120 fax



**West Virginia Department of Agriculture**  
1900 Kanawha Blvd. E., Charleston, WV 25305-0170  
304-558-3550

**Walt Helmick**  
Commissioner

July 23, 2013

Mr. Jim Frio  
Jim Frio & Associates  
2 North Broadway St.  
Wheeling, WV 26003

Dear Mr. Frio:

Thank you for forwarding me your comments on the proposed changes to the Auctioneer rule. Staff has considered your suggestion for changing receipt retention from five (5) years to two (2) years. After careful consideration, however, we have decided to change the final rule to three (3) years to allot for any extreme cases that could arise.

Again, I appreciate your feedback. If you have any additional suggestions, please contact me at (304) 558-3200.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ferro".

Chris Ferro  
Chief of Staff

## Keaton, Jennifer

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**From:** Keaton, Jennifer  
**Sent:** Tuesday, June 25, 2013 3:45 PM  
**To:** Ferro, Chris  
**Cc:** Carpenter, Lisa; Adkins, Ron  
**Subject:** FW: message

I s/w Madison.

He had comments on the receipts portion of the proposed rule changes. He believes non-auctioneers that run auction houses should retain receipts as well. He stated we need an auction house license and wanted to know what you think about it.

He also spoke to Randy Clark about proposed rules and Randy was very happy with them.

I told him I would relay his comments to you, but asked that he send them in writing so we'll have for documentation.

He was appreciative of everything we're doing.

Jennifer Keaton  
Executive Assistant  
WV Department of Agriculture  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
(304) 558-3200 office  
(304) 558-2203 fax  
[www.wvagriculture.org](http://www.wvagriculture.org)

**From:** Ferro, Chris  
**Sent:** Monday, June 24, 2013 11:17 AM  
**To:** Keaton, Jennifer  
**Subject:** FW: message

**From:** Rhodes, Kirsten  
**Sent:** Monday, June 24, 2013 11:16 AM  
**To:** Ferro, Chris  
**Subject:** message

Madison Williams called for you, he has a question regarding a law dealing with auctioneers. 304-482-3944



**West Virginia Department of Agriculture**  
1900 Kanawha Blvd. E., Charleston, WV 25305-0170  
304-558-3550

**Walt Helmick**  
Commissioner

July 23, 2013

Mr. Madison Williams  
Madison Williams Auctioneering and Appraisals  
2311 Vaughan Avenue  
Parkersburg, WV 26101

Dear Mr. Williams:

Thank you for contacting my office in support of the proposed changes to the Auctioneer rule. Regarding your comments pertaining to non-auctioneers running auction houses, as well as auction house licenses in general, a code change would be necessary to address such issues. This is certainly something we will consider in January.

Again, I appreciate your feedback. If you have any additional comments or suggestions, please contact me at (304) 558-3200.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ferro".

Chris Ferro  
Chief of Staff



## West Virginia Department of Agriculture

1900 Kanawha Blvd. E., Charleston, WV 25305  
304-558-3550

Walt Helmick  
Commissioner

### Amendments to Proposed Rule Auctioneer Title 61 – Series 11B

#### Original Proposed Rule –

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of ~~six (6) months~~ five (5) years.

One comment received suggested instead of five (5) years, obtain for two (2) years, since most legal problems and/or disagreements occur during that timeframe. However, to allow for any extreme cases that could arise, it was decided to change receipt retention to a minimum of three (3) years).

#### Current Proposed Rule –

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of ~~six (6) months~~ ~~five (5) years~~ three (3) years.