

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

Form #2

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2014 JUL -1 P 1:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative 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: _____

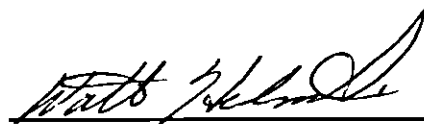
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2014 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Chris Ferro, Chief of Staff

West Virginia 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

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Auctioneers, Title 61, Series 11B

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Agriculture

Address: Attn: Chris Ferro
1900 Kanawha Blvd. East
Charleston, WV 25305

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.

The proposed change to late fees will have minimal impact on program cost in state government. However, the proposed fee increase will bring in additional monies for the state. Currently auctioneers are subject to \$25 late fee if license is not renewed within 60 days of expiration date. Proposed changes include renewals received more than 60 days after expiration date are subject to late renewal fee of \$25; renewals received more than 120 days after the expiration date are subject to a late renewal fee of \$50; and renewals received more than 180 days after the expiration date are subject to a late renewal fee of \$75. With the addition of members of the military being exempt from late fees, there is the potential for minimal loss of monies during the year (less than \$100).

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	850.00	1,300.00	1,500.00

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

FY2012 (2013 fees) showed 34 individuals paid late fees at \$25 pp. Based on those figures, had the proposed fees been in effect, 21 individuals would have paid \$25 each, 8 individuals would have paid \$50 each and 5 individuals would have paid \$75 each, totaling \$1,300.00. Maximum projected revenues once late fees are implemented are \$1,500.00, which is an approximate amount.

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.

NA

Date: 7-1-14

Signature of Agency Head or Authorized Representative

 _____



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 maintain accountability to auctioneers and their customers by making several changes to the Auctioneer rule as reflected in recent law changes.

The current rule requires the auctioneer to retain a copy of issued receipts for his or her records for a minimum of five (5) years and retain the original contracts for a period of six (6) months. Effective June 8, 2014, Chapter 19, Article 2C changed record keeping retention to three (3) years. WVDA proposes to change the current rule requirements to three (3) years to reflect the change in the law.

The current rule lists specific core and elective subjects auctioneers are required to take continuing education in. Current rule states "An apprentice auctioneer shall complete three (3) hours of continuing education each calendar year..." We propose adding the phrase "from core and elective subjects" to specify what subjects the apprentice auctioneer shall take classes in.

Recent law changes moved fees to the rule; therefore, all fees are now listed under a new Licensing and Fees section. Licenses must be renewed within sixty days of the expiration date (December 31) for late fees not to apply. The current rule only allows for a late renewal fee of twenty-five dollars (\$25), regardless of renewal date after the sixty days. Proposed changes include renewals received more than sixty days after expiration date are subject to late renewal fee of twenty-five dollars (\$25); renewals received more than one hundred and twenty days after the expiration date are subject to a late renewal fee of fifty dollars (\$50); and renewals received more than one hundred and eighty days after the expiration date are subject to a late renewal fee of seventy-five dollars (\$75).

In addition, WVDA proposes adding the clause "Members of the military on active duty orders are exempt from renewal late fees with proof of service. All other license requirements still apply."

A handwritten signature in black ink, appearing to read "Walt Helmick", written over a horizontal line.



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 reflect recent law changes regarding record retention for licensed auctioneers and incorporate licensing and fees into the rule, in addition to increasing late fees and exemption notice for members of the military.

TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

SERIES 11B
AUCTIONEERS

FILED
2014 JUL -1 P 1:34
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 23, 2014~~

1.4. Effective Date. -- ~~May 23, 2014~~

4.1. The amount of bond required is five thousand dollars (\$5,000) 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.

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.

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

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

§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.

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. 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.

§61-11B-4. Bond Requirements.

§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~~ may result in delays in the issuance of the license.

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 shall complete three (3) hours of continuing education from core or elective subjects each calendar year in order to qualify to renew his or her license for the next year.

§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.

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of ~~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 waiver of the apprenticeship requirements. For an applicant to be granted a waiver, 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 waiver 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 two (2) 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~~ three (3) years;

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.

§61-11B-16. Licensing and Fees.

16.1. Any person who wishes to conduct an auction as an auctioneer may apply for a license on forms prescribed by the commissioner. A nonreturnable fifty dollar (\$50) application fee and fifty dollar (\$50) license fee shall accompany each application.

16.2. The approved applicant must take an examination to become a licensed auctioneer or apprentice auctioneer at the regularly scheduled time and place designated. An examination fee of fifty dollars (\$50), in addition to any other required fees, shall be collected from each person taking such examination.

16.2.1. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination.

16.3. All licenses expire December 31 of each year. A license may be renewed upon the

payment of the annual renewal fee within sixty (60) days of the expiration date. The fee for the annual renewal of the auctioneer or apprentice auctioneer's license is fifty dollars (\$50).

16.3.1. Renewals received more than sixty (60) days after the expiration date are subject to a late renewal fee of twenty-five dollars (\$25), in addition to the annual renewal fee.

16.3.2. Renewals received more than one hundred and twenty (120) days after the expiration date are subject to a late renewal fee of fifty dollars (\$50), in addition to the annual renewal fee.

16.3.3. Renewals received more than one hundred and eighty (180) days after the expiration date are subject to a late renewal fee of seventy-five dollars (\$75), in addition to the annual renewal fee.

16.3.4. Members of the military on active duty orders are exempt from renewal late fees with proof of service. All other license requirements still apply.

16.4. Should a duplicate or replacement license or license reflecting a change in information be required, the auctioneer or apprentice auctioneer must submit with such request a fee of five dollars (\$5).

16.5. The fee for the transfer of the license of an apprentice auctioneer to a new employer auctioneer is fifteen dollars (\$15).

16.6. To obtain a nonresident auctioneer license by reciprocity, the applicant must meet the licensing requirements as required by regulation and a nonreturnable fifty dollar (\$50) application fee and fifty dollar (\$50) license fee shall accompany each application.