



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative

TITLE-SERIES: 61-11B

RULE NAME: Auctioneers

CITE AUTHORITY: §19-2C-1

The above proposed Legislative rules, 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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE

SERIES 11B
AUCTIONEERS

§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-3a, §19-2C-5.

1.3. Filing Date. -- ~~April 30, 2020~~

1.4. Effective Date. -- ~~April 30, 2020~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, April 30, 2030 ten years from its effective date.

§61-11B-2. Definitions.

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

2.2. "Apprentice auctioneer" means an auctioneer who is in training and is operating under the supervision of a licensed auctioneer.

2.3. "Auction house" or "auction firm" means and includes any person or entity that contracts with one or more individuals or entities to provide for the auctioning of goods, but does not auction the goods itself, and must retain the services of a licensed auctioneer to perform the auction.

2.4. "Auctioneer" means a person who sells goods or real estate at public auction for another on commission or for other compensation.

2.5. "Bid rigging" means any action in which two or more people conspire to restrain trade by artificially "fixing" or influencing bids in an auction. This can occur when bidders agree not to bid against one another so as to depress selling prices, or when an auctioneer and one or more others agree to try and artificially increase selling prices.

2.6. "Commissioner" means the Commissioner of Agriculture of West Virginia.

2.7. "Department" means the West Virginia Department of Agriculture.

2.8. "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

2.9. "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person's estate.

2.10. "In this state" means a that an auction satisfies one of the following criteria:

2.10.a. The auctioneer performed the auction within the borders of the State of West Virginia;

2.10.b. The auctioneer is selling items for a person located in the State of West Virginia;

2.10.c. The auctioneer is auctioning is real or personal property located in the State of West Virginia;

2.10.d. The auctioneer delivers purchased property to a location in the State of West Virginia;
or

2.10.e. The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

2.11. "License year" means the twelve-month period for which an auctioneer or apprentice auctioneer's license is valid. For purposes of licenses issued in 2019, "license year" means the eighteen-month period for which that license is valid.

2.12. "Public auction" or "auction" means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchaser and the property is sold to the highest bidder.

2.13. "Reserve" means the minimum bid a seller has indicated he or she will accept at the auction.

§61-11B-3. Application.

3.1. An individual wishing to apply to be an auctioneer or an apprentice auctioneer shall submit an application to the Commissioner, on a form provided by the Commissioner.

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.

3.5. Each applicant for an auctioneer or apprentice auctioneer license shall comply with the following background check requirements:

3.5.a. Each first-time applicant shall file a set of the applicant's fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the Criminal Investigation Bureau of the Department of Justice for state processing and with the Federal Bureau of Investigation for federal processing.

3.5.b. The applicant shall pay all costs associated with the criminal history checks.

3.5.c. Criminal history records provided to the Department are confidential.

3.6. The Commissioner shall, within thirty (30) days after receipt of an application, notify the applicant of his or her eligibility to be examined.

3.6.a. The thirty (30)-day period for action by the Commissioner shall not commence until all necessary information has been submitted by the applicant.

3.6.b. The thirty (30)-day period for action by the Commissioner may be extended if the Commissioner has not yet received the required background checks.

3.7. All auctioneers licensed by the Department are required to maintain up-to-date contact information with the Department, including mailing address, telephone number, and email address.

§61-11B-4. Bond Requirements.

4.1 The amount of bond required is no less than five thousand dollars (\$5,000) for an apprentice auctioneer and no less than twenty-five thousand dollars (\$25,000) for an auctioneer or auction house. Corporate surety bonds shall be on forms provided by the Commissioner. A bond in an amount higher than these minimums may be imposed by the Commissioner upon recommendation of the Board of Review, as set forth in section 15.2.

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. 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-5. License.

5.1. The license numbers issued under W. Va. Code §19-2C-1 et seq. are permanent, subject to annual renewal. A license number issued to an individual cannot be reissued to another auctioneer if that license lapses or is otherwise revoked.

5.2. All licenses issued under W. Va. Code §19-2C-1 et seq. expire on June 30 of each year, unless revoked or suspended.

5.2.a. An auctioneer who has submitted all the necessary paperwork to renew his or her license may continue to operate under his or her license for up to thirty (30) days after June 30.

5.2.b. An apprentice auctioneer who has all the necessary paperwork to renew his or her license may continue to operate under his or her license for up to twenty (20) days after June 30.

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

§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 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 license year.

6.2.a. An auctioneer shall complete six (6) hours of continuing education each subsequent year in order to qualify for license renewal.

6.2.b. The Commissioner or his or her designee must approve all continuing education programs as to subject matter before credit will be granted.

6.2.c. 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.

6.2.d. Curricula ~~should~~ must 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. Failure of the provider to seek and be given approval in advance may result in the denial of continuing education credit.

6.2.e. 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 year in order to qualify to renew his or her license for the next year.

6.3.a. Only classes taught by course providers approved by the Commissioner or his or her designee qualify for credit.

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

6.3.b.1. West Virginia statutes and rules governing auctioneering;

6.3.b.2. Federal statutes and rules governing auctioneering;

6.3.b.3. Auctioneering ethics;

6.3.b.4. Escrow, trust and custodial accounts;

6.3.b.5. Advertising;

6.3.b.6. Contracts; and

6.3.b.7. 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.~~ 6.4. An apprentice auctioneer shall complete three (3) hours of continuing education set forth in section 6.3 each licensed year in order to qualify to renew his or her license for the next year.

~~6.6.~~ 6.5. An auctioneer who wishes to place his or her license on inactive status may do so, provided that he or she satisfy the following requirements:

~~6.6.a.~~ 6.5.a. The auctioneer notifies the Commissioner, on a form provided for that purpose, prior to the conclusion of the license year.

~~6.6.b.~~ 6.5.b. The auctioneer pays the annual license fee of fifty dollars.

~~6.6.c.~~ 6.5.c. The auctioneer does not conduct any auctions during the period of inactivity.

~~6.7.~~ 6.6. If the auctioneer does wish to reactivate his license, he or she must provide notice, on a form provided by the Commissioner, to the Commissioner at least thirty (30) days before the auctioneer wishes to perform auctions.

~~6.7.a.~~ 6.6.a. The notice must contain sufficient information to satisfy the Commissioner that the auctioneer has complied with all annual requirements, including continuing education requirements, for active licensure for the year for which the license will be active.

~~6.7.b.~~ 6.6.b. The notice must include a required reactivation fee of fifty dollars.

§61-11B-7. Receipts.

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

7.1.a. The date of the sale;

7.1.b. A description of the item or lot;

7.1.c. The price paid for the item or lot purchased; and

7.1.d. 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 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, both 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.

10.2. An apprentice auctioneer may retain an apprentice 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 holder of a valid auctioneer's license from 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 reciprocal 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.

11.2. Any auctioneer who has practiced in a state that has no licensing law for auctioneers and wishes to obtain a West Virginia license shall submit all information required for the Commissioner to determine that he or she has been a practicing auctioneer for a period of two years preceding the date of the application.

11.3. Once an individual has received a West Virginia auctioneer's license pursuant to the provisions of this section, he or she becomes subject to all other licensure requirements of this rule, including those relating to expired, revoked, or lapsed license. An individual who has once obtained a license through reciprocity may not obtain another license in the same manner.

§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 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.

12.3. If an applicant seeks a waiver of apprenticeship based on his or her inability to find a sponsoring auctioneer, the Commissioner may assign an auctioneer in good standing with the Department to serve as sponsoring auctioneer for the applicant.

§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.

13.1.a. An advertisement for an auction for which the auctioneer has not yet been selected, such as an auction advertised by a firm with multiple auctioneers, shall contain the name and license number of the auctioneer in charge.

13.1.b. An auctioneer performing an auction shall announce his or her name and license number at the beginning of his or her sale, or otherwise display that information when he or she is performing an auction.

13.2. Absolute and estate auctions must satisfy the advertising requirements set forth in W. Va. Code §19-2C-10.

§61-11B-14. Contracts.

14.1. All contracts between an auctioneer and a seller shall meet, at a minimum, the requirements set forth in W. Va. Code §19-2C-9, including the following guidelines:

14.1.a. The contract shall be executed in duplicate;

14.1.b. 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.

14.3. All auction house contracts for the sale of property must comply with the requirements set forth in W. Va. Code §19-2C-9 and this rule. All auction house contracts with auctioneers must be in writing.

14.4. All contracts must be retained by the auctioneer and/or auction house for a period of three years following the date on which the sale was completed, and are subject to inspection by the Commissioner upon request.

§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. Such recommendation may include a recommendation for the Commissioner to impose an increased bond amount, pursuant to section 4.1. 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)~~ two hundred dollar (\$200) license fee shall accompany each application.

16.2. The approved applicant shall take an examination to become a licensed auctioneer or apprentice auctioneer at the regularly scheduled time and place designated. The examination fee is fifty dollars (\$50), in addition to any other required fees.

16.2.a. An applicant, who has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, is not required to pay an additional fee for the auctioneer exam.

16.3. A license expires June 30 of each year, ~~and must be renewed within sixty (60) days of its expiration.~~ The fee for the annual renewal of the auctioneer or apprentice auctioneer's license is ~~fifty dollars (\$50)~~ two hundred dollars (\$200).

16.3.a. Renewals received more than ~~sixty (60)~~ thirty (30) 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.b. Renewals received more than ~~one hundred and twenty (120)~~ sixty (60) 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.c. Renewals received more than ~~one hundred and eighty (180)~~ ninety (90) 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.d. Renewals received more than one hundred and twenty (120) days after the expiration date are subject to a late renewal fee of one hundred dollars (\$100), in addition to the annual renewal fee.

16.3.e. For purposes of the assessment of late fees, a renewal application must be complete and contain all necessary information and documentation to process the renewal before it is considered received by the Department.

16.3.d. A member of the military on active duty is exempt from renewal late fees upon submission of proof of service with the renewal application. The member shall meet all other license requirements.

16.4. If a duplicate or replacement license or license reflecting a change in information is required, the auctioneer or apprentice auctioneer shall submit with the 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 an auctioneer license by reciprocity, the applicant must meet the qualifications required in W.Va. Code 19-2C and submit a nonreturnable fifty dollar (\$50) application fee and ~~fifty dollar (\$50)~~ two hundred dollars (\$200) license fee with each application.

16.7. The fee for an auction house to register with the Department is ~~fifty dollars (\$50)~~ two hundred dollars (\$200) annually.

§61-11B-17. Auctioneering Exemptions.

17.1. A person who does not have a West Virginia auctioneer license may conduct an auction on behalf of a charitable organization, provided the person conducting the auction:

17.1.a. Receives no monetary compensation for his or her services, or for any services associated with the charitable event.

17.1.b. Does not engage in any activities related to the sale, such as soliciting items, setting minimum bids, or other traditional auctioneering activities, other than volunteer auction services; and

17.1.c. Records charitable auctions on forms prescribed by the commissioner.

17.1.d. An unlicensed auctioneer may only conduct four (4) charitable auctions in a 12-month period. Special requests to allow for more than four (4) charitable auctions per licensed year may be submitted to the Commissioner in writing, detailing specific reasons to exceed the charitable auction limit and justification for not acquiring West Virginia auctioneer license.

17.2. Any person listing goods for sale at public auction or auction on the Internet which includes live, real-time, extended, or any similar such event as may be devised with the development of technology or any combination of such and increases in bid increments, is subject to the rules and regulations set forth therein and W.Va. Code 19-2C.

17.2.a. The provisions of this section do not apply to e-commerce corporations or marketplaces that facilitate or provide consumer-to-consumer or business-to-consumer sales through its website and provide internal buyer and seller protections to its participants, e.g., eBay or similar auction-based websites.

17.2.b. Auctions that are held utilizing a platform owned or operated by the person offering the items for sale at public auction or auction are not subject to this exemption, and the individual operating such a website or software must hold a license to conduct those auctions.

§61-11B-18. Auction Houses.

18.1. Any individual or business entity operating as an auction house is required to register with the Commissioner, on a form to be prescribed by the Commissioner.

18.1.a. Each auction house shall be required to pay the registration fee set forth in section sixteen of this rule.

18.1.b. The registration shall also include a verification stating that, by engaging in auction house activities, it is subject to the oversight of the Commissioner, the Board of Review, and the requirements of §19-2C-1 *et seq.*

18.2. An auction house or auction firm shall, at the time it submits its registration, file the surety bond required by section four of this rule.

18.3. Auction house registrations shall expire on June 30 of each year. Each auction house must annually renew its registration.