CHAPTER VII

AUTOMOBILE AUCTIONS

A. DEFINITION

"Automobile Auction or Auctions" shall mean an auction or other sale where twenty or more used motor vehicles are offered for sale by auction within a license year. This does not apply to a sale or auction of surplus vehicles by an agency of the state, a municipality of the state or of the federal government or a sale or auction of repossessed vehicles by a financial institution or a sale or auction by a licensed motor vehicle dealer of vehicles owned by said dealer. For purposes of this definition, a used motor vehicle does not mean a vehicle for which a salvage certificate has been issued.

B. APPLICATION

A person, partnership or corporation may not engage in, represent or advertise that he, she or it is in the business of conducting automobile auctions without first obtaining a license certificate from the office of the commissioner. The commissioner shall provide an application form for applicants seeking a license certificate. The applicant shall provide full information required by the commissioner on the application form. The applicant, if a person, shall verify the information on the form by oath or affirmation. If the applicant is a partnership or corporation, the oath or affirmation shall be made by a partner or an officer of the corporation.

C. SURETY BOND

An application for a license certificate must be accompanied by a bond, issued by a surety corporation authorized to issue bonds in this state, in the penal sum of twenty-five thousand dollars, to ensure that the licensee will not make fraudulent representations to the detriment of any purchaser, seller, financial institution or the state of West Virginia. The bond shall be effective on the date the license certificate is issued. A licensee shall keep the bond in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety of the bond shall have the right to cancel upon giving thirty days notice to the commissioner and shall be relieved of liability for any breach of condition occurring after the effect date of the cancellation.

D. INSURANCE

An application for a license certificate must be accompanied by a certificate of insurance certifying that the applicant has in force an insurance policy, issued by an insurance company authorized to do business in the state, insuring the applicant any other person using any vehicle or vehicles owned by, or in the possession of, the applicant with the expressed or implied permission of the applicant, against loss from the liability imposed by law for damages arising out of the ownership, possession, operation, maintenance or use of such vehicles, subject to minimum limits, exclusive of interest and cost, with respect opt each vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident and ten thousand dollars because of injury to or destruction of property of others in any one accident. The liability insurance policy shall run concurrently with the license year and shall remain in full force and effect at all times.

E. **LOCATION AND FACILITY REQUIREMENTS**

Every automobile auction is required to comply with the following "Place of Business" requirements as set forth in §17A-6C-3 of the code:

1. Be located at a permanent site which is owned or leased by the licensee;

2. Have no other class of dealership operating from the automobile auction location;

3. Have office space of at least one hundred forty-five square feet, with necessary office furniture, heating and lighting facilities, restroom facilities and a telephone listed in the name of the automobile auction.

4. Maintain parking space for at least one hundred vehicles.

5. Display at least one permanent sign that is clearly visible from the nearest street or highway. The sign shall state that automobile auctions are conducted at that site.

F. **FEE REQUIRED**

NITIAL	**ENEWAL**
250.00	$100.00

The fee entitles the licensee to one special plate known as the Class AA special plate.

The licensee is also entitled to additional Class AA special plates for a fee of twenty-five dollars each based on the following formula:

ANNUAL VEHICLE SALES	**ADDITIONAL AA PLATES**
0 - 239	2
240 - 499	4 [Additional]
500 - 999	4 [Additional]
1000 - More	4 Plates per 500 vehicles sold

G. **INVESTIGATION PRIOR TO ISSUANCE OF LICENSE**

Upon receipt of a completed application, the required bond, certificate of insurance and the application fee, the commissioner may investigate to determine the accuracy of the application and any facts relevant to the application. The commissioner may withhold issuance or refusal of a license for up to twenty day after an application is received.

An application for a license certificate and any information submitted are confidential. No person may divulge any information contained in any application or any information submitted except in response to a valid subpoena or subpoena duces tecum.

H. **REFUSAL OF LICENSE CERTIFICATE**

The commissioner shall deny an application if he or she finds that the applicant:

1. Has failed to furnish the required bond;

2. Has failed to furnish the required certificate of insurance;

3. Has knowingly made a false statement of a material fact in the application;

4. Has habitually defaulted on financial obligations;

5. Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;

6. Has been refused, or has had revoked, an automobile auction license in any other state or jurisdiction within five years immediately preceding receipt of the application by the commissioner;

7. So far as can by ascertained, has not complied with and will not comply with the registration and title laws of this state;

8. Has been convicted of any fraudulent act in connection with the business of an automobile auction; or

9. Has committed any act or has failed or refused to perform any duty for which the license certificate, if issued, could be suspended or revoked.

I. **LICENSING PERIOD**

All automobile auction licenses are issued for a maximum period of one [1] year and run concurrent with the fiscal year. Even if a license is issued during the license year it will expire on the last day of the fiscal year. A LICENSE CERTIFICATE IS NOT TRANSFERABLE.

J. **DISPLAY OF LICENSE CERTIFICATE**

A licensee shall keep his or her license certificate posted at their place of business. When a licensee conducts business at more than one location, he or she shall obtain from the commissioner one certified copy of the license certificate for each place of business for a fee of one dollar each.

In the event of the loss or destruction of a license certificate or a certified copy, the licensee shall immediately make application for a certified copy of the lost license certificate. The fee for a replacement copy is three dollars.

K. **CHANGES IN BUSINESS**

Every automobile auction business shall notify the commissioner immediately when any of the following changes in the business occur:

1. A change of the location of any place of business:

2. A change of the name or trade name under which the licensee engages or will engage in the business;

3. The death of the licensee or any partner or partners thereof;

4. A change in any partners, officers or directors;

5. A change in ownership of the business;

6. A change in the type of legal entity by and through which the licensee engages or will engage in the business; or

7. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivision [a], [b], [c], [d], [e] or [f] occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision [c] change is involved, an application for a new license certificate need not be filed during the balance of the license year if a member of the family of the deceased person succeeds to the interest in the business.

Upon receipt and review of the application, a new license certificate shall be issued incorporating the changes. No additional fee for the balance of the license year shall be required for the issuance of any new license certificate issued as a result of any change specified in subdivision [a], [b], [c], [d], [e] or [f].

No new license certificate is required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who takes charge of or operates such business for the purpose of winding up the affairs of such business or protecting the interest of the creditors of such business.

L. **REVOCATION OF LICENSE**

The commissioner may suspend or revoke a license certificate if the commissioner finds that the licensee:

1. Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and requiring notices of transfers; or

2. Has failed or refused to comply with the provisions of §17A-6C of the code and the promulgated rules and regulations authorized in §17A-2-9 of the code.

The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

1. Has knowingly made a false statement of a material fact in his or her application for the license certificate then issued and outstanding;

2. Has habitually defaulted on financial obligations;

3. Has been guilty of any fraudulent act in connection with the automobile auction business;

4. Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

5. Has committed fraud in the registration of a vehicle;

6. Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

7. Has advertised by any means, with intent to defraud, any material misrepresentation or misleading or deceptive statement of fact, relating to the conduct of the licensed business;

8. Has a license certificate to which he is not lawfully entitled; or;

9. Has committed an act for which a certificate could have been refused.

If a licensee fails or refuses to keep in effect the bond or liability insurance required by the code, the license certificate of the licensee shall automatically be suspended unless and until the required bond and certificate of insurance is furnished to the commissioner, in which event the suspension shall be vacated.

If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of a licensee to issue temporary plates or markers under the provisions §17A-6-11 of the code, he or she shall make and enter an order to that effect and shall cause a copy of this order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

Suspensions continue until the cause of suspension is eliminated or corrected. If a license certificate and the right of a licensee to issue temporary registration plates or markers is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the division his or her license certificate and any temporary registration plates or markers in the licensee's possession and issued in conjunction with the issuance of an automobile auction certificate. If a licensee fails or refuses to comply with any order of the commissioner, the commissioner shall proceed as provided in §17A-9-7 of the code.

Any applicant whose request for a license certificate is refused, and any licensee whose license certificate is suspended or revoked, may appeal the suspension or revocation in accordance with the rules promulgated by the commissioner pursuant to §17A-6C of the code.

Revocation of a license certificate shall not preclude application for a new license certificate, which shall be processed in the same manner. The license certificate shall be issued or denied on the same grounds as any other application for a license certificate, except that any previous suspension and revocation may be considered in deciding whether to issue or refuse the license certificate.

M. **ISSUANCE OF TEMPORARY REGISTRATION PLATES**

In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate the commissioner may, subject to the following limitations, deliver temporary vehicle registration plates or markers to persons engaged in the automobile auction business for issuance to applicants for title and registration of vehicles.

An application by an automobile auction business to the commissioner for temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner and shall be accompanied by a fee of three dollars for each temporary registration plate or marker. No refund or credit of fees paid by automobile auction businesses to the commissioner for temporary registration plates or markers is allowed, except in the event the commissioner discontinues the issuance of temporary plates or markers. Automobile auction businesses returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit.

Every automobile auction business applying for and receiving temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each record shall be kept for a period of at least three years from the date issued. Every automobile auction business issuing a temporary registration plate or marker shall send to the division a copy of the temporary registration plate or marker certificate properly executed by the

automobile auction business and the purchaser within five working days after the issuance of the plate or marker. The temporary registration certificate should be sent to: **Division of Motor Vehicles, 1900 Kanawha Boulevard, East, Charleston, WV. 25317. Attention: Dealer Services/Temporary Plate Clerk.**

No temporary registration plate or markers may be delivered to any automobile auction business until the business has fully accounted to the commissioner for the temporary registration plates or markers last delivered by showing the number issued to purchasers and the number remaining to be issued.

An automobile auction business may not issue, assign or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker may be issued to the same bona fide applicant for the same vehicle. An automobile auction business may not issue a temporary registration or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except an automobile auction business may issue a temporary registration plate or marker to the bona fide applicant who possesses an annual registration plate of a different class and it may make application to the division to exchange the annual registration plate of a different class in accordance with the provisions of Article 4, Section 1, of the code. An automobile auction business may not lend to anyone or use on any vehicle which it may own, a temporary registration plate or marker. It is unlawful for any automobile auction business to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

Every automobile auction business issuing temporary registration plates or markers shall affix or insert clearly and indelibly on the fact of each temporary registration plate or marker the date of issuance, the date of expiration and the make, model and serial number of the vehicle.

If the commissioner finds that the provisions of this section or his or her directions are not being complied with by an automobile auction business, the commissioner may suspend the right of the automobile auction business to issue temporary registration plates or markers.

A temporary registration plate or marker expires upon the receipt of the annual registration plate from the division, or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, whichever event occurs first.

N. **USE OF SPECIALPLATES; RECORDS TO BE MAINTAINED; OPERATION OF VEHICLES UNDER SPECIAL PLATES; EXPIRATION OF SPECIAL PLATE**

Class AA special plates may be used by the automobile auction business receiving them only for the purpose of transporting or moving consigned or owned motor vehicles to and from the automobile auction in the normal course of business or for purposes of demonstrating vehicles owned by the auction which are offered for sale: Provided, That under no circumstances may a Class AA special plate be used on any work or service vehicle owned by the automobile auction business, on any vehicle being operated for personal reasons or on any vehicle sold by or through it to a purchaser.

Every automobile auction business entitled to and issued a special plate or plates under the provisions of §17A-6C of the code shall keep a written record of the location of each plate. Every record shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer, when acting in an official capacity.

An automobile auction business licensee who holds on consignment a vehicle or vehicles of the type required to be registered under Chapter 17A of the code may operate or move the same upon the streets and highways without registering each vehicle if the vehicle displays a special plate issued as provided in §17A-6C of the code.

Every special plate or plates shall expire at midnight on the thirtieth day of June. A new plate or plates for the ensuing year may be obtained as specified in §17A-6C-4 of the code.

O. **RECORD KEEPING**

In addition to all other records required to be kept and maintained, the licensee shall keep and maintain a record of the following on forms and for the period of time proscribed by the commissioner:

1. Every vehicle which is sold at auction by a licensee or received or accepted by the licensee for sale at auction;

2. The name and address of the person from whom the vehicle was acquired and the date thereof, the name and address of the person to whom the vehicle was sold or auctioned, the date thereof and a description of each vehicle with name and identifying numbers sufficient to identify it; and

3. Records as the commissioner may require by reasonable rules promulgated pursuant to §17A-6C of the code.

All records required to be kept and maintained shall be kept for a period of at least three years from the date of the making and shall be open to inspection by the commissioner, his or her representative or any law-enforcement officer while acting in an official capacity.

P. **NOTICE OF REFUSAL, OR SUSPENSION OR REVOCATION, OF LICENSE CERTIFICATE OR OF SUSPENSION OF RIGHT TO ISSUE TEMPORARY REGISTRATION PLATES OR MARKERS OR OF SUSPENSION OF AN AUTOMOBILE AUCTION SPECIAL PLATE OR PLATES; RELINQUISHING LICENSE CERTIFICATE, DEALER SPECIAL PLATE OR PLATES AND TEMPORARY PLATES OR MARKERS**

If the commissioner refuses to issue a license certificate, or suspends or revokes a license certificate, or suspends the right of an automobile auction business to issue temporary plates or markers under the provisions of §17A-6C-15 of the code, or suspends a Class AA special plate or plates, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, on the applicant or licensee.

If a license certificate is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the department his or her license certificate and any special Class AA plates and temporary registration plates or markers issued in conjunction with the issuance of the license certificate of the business.

If the right of an automobile auction business to issue temporary registration plates or markers is suspended or a Class AA special plate or plates are suspended, the commissioner shall in the order of suspension direct the licensee to return to the department all temporary registration plates or markers issued in conjunction with the business. It is the duty of the licensee to comply with an order. If the licensee fails or refuses to comply with any order, the commissioner shall proceed as provided in §17A-9 of the code.

Q. **INSPECTIONS; PENALTIES**

The commissioner and law-enforcement officers of the state, acting at the commissioner's request, are hereby authorized to inspect the place of business and pertinent records, documents and papers of any person required to be licensed under the provisions of §17A-6C of the code to the extent deemed reasonably necessary to determine compliance with the provisions of §17A-6C.

For the purpose of making an inspection, the commissioner and law-enforcement officers are authorized, at reasonable times, to enter the place of business.

Any person who violates any provision of §17A-6C of the code or any final order of the commissioner is guilty of a misdemeanor and is subject to the provisions of §17A-11 of the code.

R. **INJUNCTIVE RELIEF**

If it appears to the commissioner that any person or licensee has violated any provision of §17A-6C of the code or any final order of the commissioner, the commissioner may petition, in the name of the state, the circuit court of the country which the violation or violations occurred, for an injunction against such person or licensee. A violation or violations resulting in prosecution or conviction under the provisions of §17A-11 of the code shall not prohibit injunctive relief.

The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of §17A-6C of the code and all final orders of the commissioner.

The court may also issue temporary injunctions.

The judgment by the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.