

No: 1618

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



# ENROLLED

*Committee Substitute for*

HOUSE BILL No. *1618*

(By ~~the~~ *Delegate Given + Delegate Hoblitzell*)



Passed *March 8,* 1986

In Effect *July 1, 1986* ~~1986~~

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1618**

(By DELEGATE GIVEN and DELEGATE HOBLITZELL)

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[Passed March 8, 1986; in effect July 1, 1986.]

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AN ACT to amend and reenact sections three, seven, nine, twelve and thirteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the real estate commission; commission created; setting forth the duties, composition, powers and qualifications for membership of said commission; setting forth termination under sunset law; requiring the board to promulgate rules and regulations in accordance with legislative rule-making review authority; establishing licensing requirements for real estate brokers and salesmen; providing that individuals who fail examination on two occasions may be eligible to take the examination in three months; providing that persons so licensed are considered professionals in their trade; setting forth fees; removing prohibition that the commission may not revoke or refuse to issue or renew a license when a check is returned unpaid; providing for an administrative hearing; requiring such hearing to be conducted in accordance with the administrative procedures act; providing for appeal from an administrative ruling order or decision; removing automatic stay of order pending appeal; and providing that any stay from enforcement or supersedeas of such order is discretion-

ary with the circuit court.

*Be it enacted by the Legislature of West Virginia:*

That sections three, seven, nine, twelve and thirteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

**ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.**

**§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive secretary and assistants; seal; admissibility of and inspection of records; termination of commission.**

1     There shall be a commission known as the "West  
2     Virginia Real Estate Commission," which commission  
3     shall be a corporation and as such may sue and be sued,  
4     may contract and be contracted with and shall have a  
5     common seal. The commission shall consist of three  
6     persons to be appointed by the governor by and with the  
7     advice and consent of the Senate. Two of such appointees  
8     each shall have been a resident and a citizen of this state  
9     for at least six years prior to his or her appointment and  
10    whose vocation for at least ten years shall have been that  
11    of a real estate broker or real estate salesman and the  
12    third shall be a representative of the public generally.  
13    Members in office on the date this section becomes  
14    effective shall continue in office until their respective  
15    terms expire. The term of the members of said commis-  
16    sion shall be for four years and until their successors are  
17    appointed and qualify. No more than two members of  
18    such commission shall belong to the same political party.  
19    No member shall be a candidate for or hold any other  
20    public office or be a member of any political committee  
21    while acting as such commissioner. In case any commis-  
22    sioner be a candidate for or hold any other public office  
23    or be a member of any political committee, his office as  
24    such commissioner shall ipso facto be vacated. Members  
25    to fill vacancies shall be appointed by the governor for

26 the unexpired term. No member may be removed from  
27 office by the governor except for official misconduct,  
28 incompetency, neglect of duty, gross immorality or other  
29 good cause shown and then only in the manner pres-  
30 cribed by law for the removal by the governor of state  
31 elective officers. The governor shall designate one  
32 member of the commission as the chairman thereof and  
33 the members shall choose one of the members thereof  
34 as secretary. Two members of the commission shall  
35 constitute a quorum for the conduct of official business.

36 (a) The commission shall do all things necessary and  
37 convenient for carrying into effect the provisions of this  
38 article and may from time to time promulgate reasona-  
39 ble, fair and impartial rules and regulations in accor-  
40 dance with the provisions of article three, chapter  
41 twenty-nine-a of this code. Each member of the commis-  
42 sion shall receive as full compensation for his services  
43 the sum of one hundred dollars per day for each full day  
44 actually spent on the work of the commission and his  
45 actual and necessary expenses incurred in the perfor-  
46 mance of duties pertaining to his office.

47 (b) The commission shall employ an executive secre-  
48 tary and such clerks, investigators and assistants as it  
49 shall deem necessary to discharge the duties imposed by  
50 the provisions of this article and to effect its purposes,  
51 and the commission shall determine the duties and fix  
52 the compensation of such executive secretary, clerks,  
53 investigators and assistants, subject to the general laws  
54 of the state.

55 (c) The commission shall adopt a seal by which it shall  
56 authenticate its proceedings. Copies of all records and  
57 papers in the office of the commission, duly certified and  
58 authenticated by the seal of said commission, shall be  
59 received in evidence in all courts equally and with like  
60 effect as the original. All records kept in the office of  
61 the commission under authority of this article shall be  
62 open to public inspection under reasonable rules and  
63 regulations as shall be prescribed by the commission.

64 (d) The commission shall be terminated pursuant to  
65 the provisions of article ten, chapter four of this code

66 on the first day of July, one thousand nine hundred  
67 eighty-eight, unless sooner terminated or unless con-  
68 tinued or reestablished pursuant to this article and  
69 chapter.

**§47-12-7. Written examinations required; exceptions;  
requirements for reissuance of revoked  
license; reexamination after failure; exami-  
nation where applicant a partnership, etc.;  
issuance of license.**

1 In addition to proof of honesty, trustworthiness, good  
2 character and good reputation of any applicant for a  
3 license, the applicant shall submit to a written exam-  
4 ination to be conducted by the commission which shall  
5 include reading, writing, spelling, elementary arith-  
6 metic, a general knowledge of the statutes of this state  
7 relating to real property, deeds, mortgages, agreements  
8 of sale, agency contract, leases, ethics, appraisals and  
9 the provisions of this article: *Provided*, That any person  
10 who has been actively engaged in the real estate  
11 business as a real estate broker or real estate salesman  
12 within the year preceding the effective date of this  
13 article and is thus engaged in this state at the time this  
14 article goes into effect, may secure a license as a real  
15 estate broker or a salesman without an examination:  
16 *Provided, however*, That such person shall make appli-  
17 cation to the commission for registration within ninety  
18 days after the effective date of this article. The  
19 examination for a broker's license shall differ from the  
20 examination for a salesman's license in that it shall be  
21 of a more exacting nature and require higher standards  
22 of knowledge of real estate. The commission shall  
23 conduct examinations at such times and places as it  
24 shall determine.

25 (a) In event the license of any real estate broker or  
26 salesman shall be revoked by the commission, subse-  
27 quent to the enactment of this article, no new license  
28 shall be issued to such person unless he complies with  
29 the provisions of this article.

30 (b) No person shall be permitted or authorized to act  
31 as a real estate broker until he has qualified by

32 examinator, except as hereinbefore provided. Any  
33 individual who fails to pass the examination upon two  
34 occasions shall be ineligible for a similar examination  
35 until after the expiration of three months from the time  
36 such individual took the last examination and then only  
37 upon making application as in the first instance.

38 (c) If the applicant is a partnership, association or  
39 corporation said examination shall be submitted to on  
40 behalf of said partnership, association or corporation by  
41 the member or officer thereof who is designated in the  
42 application as the person to receive a license by virtue  
43 of the issuing of a license to the partnership, association  
44 or corporation.

45 (d) Upon satisfactorily passing such examination and  
46 upon complying with all other provisions of law and  
47 conditions of this article a license shall thereupon be  
48 issued to the successful applicant and upon receiving  
49 such license is authorized to conduct the business of a  
50 real estate broker or real estate salesman in this state.  
51 A person who has qualified for a real estate license as  
52 provided above is considered to be a professional in his  
53 trade.

**§47-12-9. License fees; annual registration; fees for  
additional offices, charge for change of  
location and for duplicate or transfer of  
licenses.**

1 To pay for the maintenance and operation of the office  
2 of the commission and the enforcement of this article,  
3 the commission shall charge the following fees:

4 (a) Examination fee—twenty-five dollars, with no  
5 additional fee for second examination.

6 (b) Investigation fee—ten dollars.

7 (c) Broker's license—fifty dollars.

8 (d) Salesperson's license—twenty-five dollars.

9 (e) Broker's renewal fee—fifty dollars, payable by the  
10 thirtieth day of June of each year.

11 (f) Salesperson's renewal fee—twenty-five dollars,

12 payable by the thirtieth day of June of each year.

13 (g) Branch office fee—fifty dollars.

14 (h) Renewal of branch office license—five dollars.

15 (i) Transfer of salesperson's license—ten dollars.

16 (j) Duplicate license or certification—five dollars.

17 (k) Change of name—five dollars.

18 (l) Change of office—ten dollars.

19 Willful failure to pay any of the fees required under  
20 this article is just cause for revocation of or refusal to  
21 issue or renew a license.

**§47-12-12. Notice of hearing on complaint; conduct of hearing.**

1 Upon complaint initiated by the commission or filed  
2 with it, the licensee shall be given ten days' written  
3 notice of hearing upon the charges filed, together with  
4 a copy of the complaint. This applicant or licensee shall  
5 have an opportunity to be heard thereon in person, to  
6 offer testimony in his behalf and to examine the  
7 witnesses appearing in connection with the complaint.  
8 The hearing shall be conducted in accordance with the  
9 provisions of article five, chapter twenty-nine-a of this  
10 code, and all rights, procedures and duties contained  
11 therein shall be observed.

**§47-12-13. Appeals.**

1 Any applicant or licensee, or person aggrieved, shall  
2 have the right of appeal from any adverse ruling, order,  
3 or decision of the commission to the circuit court of the  
4 county where the hearing was held, within thirty days  
5 from the service of notice of the action of the commission  
6 upon the parties in interest.

7 (a) Notice of appeal shall be filed in the office of the  
8 clerk of the circuit court wherein the hearing was held,  
9 who shall issue a writ of certiorari directed to the  
10 commission, commanding it, within ten days after  
11 service thereof, to certify to such court, its entire record  
12 in the matter in which the appeal has been taken. The

13 appeal shall thereupon be heard, in due course, by said  
14 court, which shall review the record and make its  
15 determination of the cause between the parties.

16 (b) In the event an appeal is taken by a licensee or  
17 applicant, such an appeal shall not stay enforcement of  
18 the commission's order or decision or act as a superse-  
19 deas thereof unless otherwise ordered by the circuit  
20 court.

21 (c) Any person taking an appeal shall post a satisfac-  
22 tory bond in the amount of two hundred dollars for the  
23 payment of any costs which may be adjudged against  
24 him.

25 (d) Appeal may be taken from the circuit court to the  
26 supreme court of appeals by manner prescribed by law.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce O. Williams*

Chairman Senate Committee

*Floyd Fuller*

Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

*Gold C. Veltch*

Clerk of the Senate

*Donald L. Zeff*

Clerk of the House of Delegates

*Sam Toorham*

President of the Senate

*Joseph P. Allright*

Speaker of the House of Delegates

The within *approved* this the *25th*  
day of *March*, 1986.

*Arch A. Moore, Jr.*

Governor

PRESENTED TO THE  
GOVERNOR

Date 3/20/86

Time 2:55 p.m.

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/86

RECORDED  
1986 MAR 26 PM 4: 25  
OFFICE OF THE SECRETARY OF STATE  
STATEMENT OF STATE