WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1618.....

(By Delegates Givens and Hoblitzell)

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Passed March 8, 1986

In Effect July 1, 1986
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-
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.

There shall be a commission known as the "West Virginia Real Estate Commission," which commission shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesman and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee while acting as such commissioner. In case any commissioner be a candidate for or hold any other public office or be a member of any political committee, his office as such commissioner shall ipso facto be vacated. Members to fill vacancies shall be appointed by the governor for
the unexpired term. No member may be removed from
office by the governor except for official misconduct,
incompetency, neglect of duty, gross immorality or other
good cause shown and then only in the manner pres-
cribed by law for the removal by the governor of state
elective officers. The governor shall designate one
member of the commission as the chairman thereof and
the members shall choose one of the members thereof
as secretary. Two members of the commission shall
constitute a quorum for the conduct of official business.

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

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

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

(d) The commission shall be terminated pursuant to
the provisions of article ten, chapter four of this code
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66 on the first day of July, one thousand nine hundred eighty-eight, unless sooner terminated or unless con-
67 tinued or reestablished pursuant to this article and chapter.

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

1 In addition to proof of honesty, trustworthiness, good character and good reputation of any applicant for a license, the applicant shall submit to a written examination to be conducted by the commission which shall include reading, writing, spelling, elementary arithmetic, a general knowledge of the statutes of this state relating to real property, deeds, mortgages, agreements of sale, agency contract, leases, ethics, appraisals and the provisions of this article: Provided, That any person who has been actively engaged in the real estate business as a real estate broker or real estate salesman within the year preceding the effective date of this article and is thus engaged in this state at the time this article goes into effect, may secure a license as a real estate broker or a salesman without an examination: Provided, however, That such person shall make application to the commission for registration within ninety days after the effective date of this article. The examination for a broker's license shall differ from the examination for a salesman's license in that it shall be of a more exacting nature and require higher standards of knowledge of real estate. The commission shall conduct examinations at such times and places as it shall determine.

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

(b) No person shall be permitted or authorized to act as a real estate broker until he has qualified by
examination, except as hereinbefore provided. Any individual who fails to pass the examination upon two occasions shall be ineligible for a similar examination until after the expiration of three months from the time such individual took the last examination and then only upon making application as in the first instance.

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

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

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

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

(a) Examination fee—twenty-five dollars, with no additional fee for second examination.
(b) Investigation fee—ten dollars.
(c) Broker's license—fifty dollars.
(d) Salesperson's license—twenty-five dollars.
(e) Broker's renewal fee—fifty dollars, payable by the thirtieth day of June of each year.
(f) Salesperson's renewal fee—twenty-five dollars,
payable by the thirtieth day of June of each year.

(g) Branch office fee—fifty dollars.

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

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

(j) Duplicate license or certification—five dollars.

(k) Change of name—five dollars.

(l) Change of office—ten dollars.

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

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

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

§47-12-13. Appeals.

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

(a) Notice of appeal shall be filed in the office of the clerk of the circuit court wherein the hearing was held, who shall issue a writ of certiorari directed to the commission, commanding it, within ten days after service thereof, to certify to such court, its entire record in the matter in which the appeal has been taken. The
appeal shall thereupon be heard, in due course, by said
court, which shall review the record and make its
determination of the cause between the parties.

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

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

(d) Appeal may be taken from the circuit court to the
supreme court of appeals by manner prescribed by law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

Date 3/20/36
Time 2:53 p.m.