

2013 APR 29 PM 6:00

SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2497

(By Delegate(s) Skaff, Stowers, E. Nelson, D. Campbell,
Sobonya, White, Ferns, Craig, Morgan, Poore and Marcum)



Passed April 12, 2013

In effect ninety days from passage.

HB 2497

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ENROLLED DELEGATE(S)

COMMITTEE SUBSTITUTE

for

H. B. 2497

(BY DELEGATE(S) SKAFF, STOWERS, E. NELSON, D. CAMPBELL,
SOBONYA, WHITE, FERNS, CRAIG, MORGAN, POORE AND MARCUM)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §30-40-11 of the Code of West Virginia, 1931, as amended, relating to application for a real estate license; requiring applicants for real estate licensure to undergo criminal history record checks; declaring the criminal history record check requirement is not against public policy; requiring applicants to submit fingerprints for the criminal history record check; requiring applicants to authorize the use of fingerprints to conduct the criminal history record check; prohibiting the release of criminal history records except in certain limited circumstances; declaring that criminal history records are not subject to the Freedom of Information Act; requiring the applicant to pay the actual costs of the criminal history record check; requiring the commission to promulgate a legislative rule to make the procedures and requirements consistent with federal standards before

implementing the requirement for criminal history record checks; and requiring the commission to issue a license without requiring a criminal history record check to an attorney in good standing.

Be it enacted by the Legislature of West Virginia:

That §30-40-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

1 **ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**

§30-40-11. Application for license.

- 1 The commission shall only issue an original license to an
2 applicant if he or she:
- 3 (a) Submits an application, in writing, in a form prescribed
4 by the commission which must contain, but is not limited to:
- 5 (1) The applicant's social security number;
- 6 (2) The recommendation of at least two persons who:
- 7 (A) Are property owners at the time of signing the applica-
8 tion;
- 9 (B) Have been property owners for at least twelve months
10 preceding the signing of the application;
- 11 (C) Have known the applicant for at least two years;
- 12 (D) Are not related to the applicant;
- 13 (E) Are not affiliated with the applicant as an employer,
14 partner or associate or with the broker that will employ the
15 applicant;
- 16 (F) Believe the applicant bears a good reputation for
17 honesty, trustworthiness and fair dealing; and

18 (G) Believe the applicant is competent to transact the
19 business of a real estate broker, associate broker or salesperson,
20 as the case may be, in a manner that would protect the interest of
21 the public.

22 (3) A clear record indicating all jurisdictions where the
23 applicant holds or has held any professional license.

24 (4) A clear record indicating if the applicant has been
25 convicted of any criminal offense or if there is any criminal
26 charge pending against the applicant, or a member or officer of
27 the brokerage business, at the time of application.

28 (b) Is at least eighteen years of age.

29 (c) Is a high school graduate or the holder of an equivalency
30 diploma.

31 (d) Is trustworthy, of good moral character and competent to
32 transact the business of a broker, associate broker or salesperson.

33 (e) Has paid the appropriate fee, if any, which must accom-
34 pany all applications for original license or renewal.

35 (f) Has submitted to a state and national criminal history
36 record check, as set forth in this subsection: *Provided*, That an
37 applicant for a license who is an attorney at law may submit a
38 letter of good standing from the Clerk of the Supreme Court of
39 Appeals of West Virginia in lieu of submitting to a state and
40 national criminal history record check.

41 (1) This requirement is found not to be against public policy.

42 (2) The criminal history record check shall be based on
43 fingerprints submitted to the West Virginia State Police or its
44 assigned agent for forwarding to the Federal Bureau of Investi-
45 gation.

46 (3) The applicant shall meet all requirements necessary to
47 accomplish the state and national criminal history record check,
48 including:

49 (A) Submitting fingerprints for the purposes set forth in this
50 subsection; and

51 (B) Authorizing the commission, the West Virginia State
52 Police and the Federal Bureau of Investigation to use all records
53 submitted and produced for the purpose of screening the
54 applicant for a license.

55 (4) The results of the state and national criminal history
56 record check may not be released to or by a private entity except:

57 (A) To the individual who is the subject of the criminal
58 history record check;

59 (B) With the written authorization of the individual who is
60 the subject of the criminal history record check; or

61 (C) Pursuant to a court order.

62 (5) The criminal history record check and related records are
63 not public records for the purposes of chapter twenty-nine-b of
64 this code.

65 (6) The applicant shall pay the actual costs of the fingerprint-
66 ing and criminal history record check.

67 (7) Before implementing the provisions of this subsection,
68 the commission shall propose rules for legislative approval in
69 accordance with article three, chapter twenty-nine-a of this code.
70 The rules shall set forth the requirements and procedures for the
71 criminal history check and must be consistent with standards
72 established by the Federal Bureau of Investigation and the
73 National Crime Prevention and Privacy Compact as authorized
74 by 42 U. S. C. A. §14611, *et seq.*

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

Tommy Wells
Chairman, House Committee

Member Rocky Filizman
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregg M. Bell
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

Rocky
Speaker of the House of Delegates

Jeffery V. ...
President of the Senate

2013 APR 29 PM 6:00

The within is approved this the 29th
day of April, 2013.

Carl Kay Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 25 2013

Time 11:40 am