

COMMITTEE SUBSTITUTE

for

H. B. 2497

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

(Originating in the Committee on the Judiciary)

[March 11, 2013]

A BILL 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 ensure that the criminal history record check is completed within ninety days of licensure application; 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 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:

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.

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

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

42 (3) The applicant shall meet all requirements necessary to
43 accomplish the state and national criminal history record check,
44 including:

45 (A) Submitting fingerprints for the purposes set forth in this
46 subsection; and

47 (B) Authorizing the commission, the West Virginia State
48 Police and the Federal Bureau of Investigation to use all records
49 submitted and produced for the purpose of screening the
50 applicant for a license.

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

53 (A) To the individual who is the subject of the criminal
54 history record check;

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

57 (C) Pursuant to a court order.

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

61 (6) The applicant shall ensure that the criminal history
62 record check is completed within ninety days of the date of the
63 original licensure application. If the commission does not
64 receive the criminal history record check within the required
65 timeframe, the commission shall return the application to the
66 applicant.

67 (7) The applicant shall pay the actual costs of the fingerprint-
68 ing and criminal history record check.

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

77 (g) If the applicant is an attorney at law the commission shall
78 issue an original license to an applicant if he or she submits a
79 letter of good standing from the Clerk of the Supreme Court of
80 Appeals of West Virginia.

