

H. B. 2173

(By Delegates Longstreth, Guthrie and Mahan)
[Introduced January 12, 2011; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §30-40-7, §30-40-11, §30-40-12 and §30-40-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-40-29, all relating to requiring applicants for, and holders of, licenses under the West Virginia Real Estate License Act to successfully pass criminal history record checks; granting the West Virginia Real Estate Commission with the authority to perform the criminal history record checks; requiring the applicants and licensees to cover the costs of performing the criminal history record checks; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-40-7, §30-40-11, §30-40-12 and §30-40-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section,

1 designated §30-40-29, all to read as follows:

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

3 **§30-40-7. General powers and duties.**

4 The commission has all the powers set forth in article one of
5 this chapter and in addition:

6 (a) May sue and be sued in its official name as an agency of
7 this state;

8 (b) Shall employ an executive director and shall fix his or
9 her compensation subject to the general laws of this state. The
10 commission shall determine the duties of the executive director as
11 it shall consider necessary and appropriate to discharge the duties
12 imposed by the provisions of this code;

13 (c) Shall employ or contract with such other investigators,
14 hearing examiners, attorneys, consultants, clerks and assistants as
15 the commission considers necessary and determine the duties and fix
16 the compensation of such investigators, clerks and assistants
17 subject to the general laws of this state;

18 (d) Shall have the authority to issue subpoenas and subpoenas
19 duces tecum through any member, its executive director or any duly
20 authorized representative;

21 (e) Shall prescribe, examine and determine the qualifications
22 of any applicant for a license;

23 (f) Shall provide for an appropriate examination of any
24 applicant for a license;

1 (g) May enter into agreements with other jurisdictions whereby
2 the license issued by another jurisdiction may be recognized as
3 successfully qualifying a nonresident for a license in this state;

4 (h) Shall issue, renew, deny, suspend, revoke or reinstate
5 licenses and take disciplinary action against any licensee;

6 (i) May investigate or cause to be investigated alleged
7 violations of the provisions of this article, the rules promulgated
8 hereunder and the orders or final decisions of the commission;

9 (j) Shall conduct hearings or cause hearings to be conducted
10 upon charges calling for the discipline of a licensee or for the
11 suspension or revocation of a license;

12 (k) May examine the books and records relating to the real
13 estate business of a licensee if the licensee is charged in a
14 complaint of any violation of this article, commission rule or any
15 order or final decision issued by the commission: *Provided*, That
16 such examination shall not extend beyond the specific violation
17 charged in the complaint;

18 (l) May impose one or more sanctions as considered appropriate
19 in the circumstances for the discipline of a licensee. Available
20 sanctions include, but are not limited to, denial of a license or
21 renewal thereof, administrative fine not to exceed one thousand
22 dollars per day per violation, probation, revocation, suspension,
23 restitution, require additional education, censure, denial of
24 future license, downgrade of license, reprimand or order the return

1 of compensation collected from an injured consumer;

2 (m) Shall meet at least once each calendar year at such place
3 and time as the commission shall designate and at such other times
4 and places as it considers necessary to conduct commission
5 business;

6 (n) Shall publish an annual directory of licensees in
7 compliance with the provisions of section thirteen, article one,
8 chapter thirty of this code;

9 (o) May sponsor real estate-related educational seminars,
10 courses, workshops or institutes, may incur and pay the necessary
11 expenses and may charge a fee for attendance;

12 (p) May assist libraries, institutions and foundations with
13 financial aid or otherwise in providing texts, sponsoring studies,
14 surveys and programs;

15 (q) May perform compliance audits on real estate brokerage
16 offices, education providers or any other person regulated by the
17 commission;

18 (r) May provide distance education courses for applicants for
19 a license sufficient to meet the educational requirements contained
20 in subsections (a) and (b), section fourteen of this article; and

21 (s) Perform criminal history record checks in accordance with
22 section twenty-nine of this article on all applicants and
23 licensees; and

24 ~~(s)~~ (t) Shall take all other actions necessary and proper to

1 effectuate the purposes of this article.

2 **§30-40-11. Application for license.**

3 The commission shall only issue an original license to an
4 applicant if he or she:

5 (a) Submits an application, in writing, in a form prescribed
6 by the commission which must contain, but is not limited to:

7 (1) The applicant's social security number;

8 (2) The recommendation of at least two persons who:

9 (A) Are property owners at the time of signing the
10 application;

11 (B) Have been property owners for at least twelve months
12 preceding the signing of the application;

13 (C) Have known the applicant for at least two years;

14 (D) Are not related to the applicant;

15 (E) Are not affiliated with the applicant as an employer,
16 partner or associate or with the broker that will employ the
17 applicant;

18 (F) Believe the applicant bears a good reputation for honesty,
19 trustworthiness and fair dealing; and

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

24 (3) A clear record indicating all jurisdictions where the

1 applicant holds or has held any professional license.

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

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

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

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

11 (e) Submit to and successfully pass criminal history record
12 checks in accordance with section twenty-nine of this article.

13 ~~(e)~~ (f) Has paid the appropriate fee, if any, which must
14 accompany all applications for original license or renewal.

15 **§30-40-12. Qualifications for broker's license.**

16 (a) An applicant for a broker's license shall:

17 (1) Have served an apprenticeship as a licensed salesperson
18 for two years or shall produce evidence satisfactory to the
19 commission, in its sole discretion, of real estate experience
20 equivalent to two years full-time experience as a licensed
21 salesperson;

22 (2) Submit satisfactory evidence of having completed the
23 required education course as provided for in section fourteen of
24 this article;

1 (3) Successfully pass the examination or examinations provided
2 by the commission; and

3 (4) Submit to and successfully pass criminal history record
4 checks in accordance with section twenty-nine of this article.

5 (b) No broker's license shall be issued in the name of a
6 corporation, association or partnership except through one of its
7 members or officers.

8 (c) No broker's license shall be issued in the name of a
9 corporation, association or partnership unless each member or
10 officer, who will engage in the real estate business, obtains a
11 license as a real estate salesperson or associate broker.

12 **§30-40-13. Qualifications for salesperson's license.**

13 An applicant for a salesperson's license shall:

14 (1) Submit satisfactory evidence of having completed the
15 required education course as provided in section fourteen of this
16 article.

17 (2) Successfully pass the examination or examinations provided
18 by the commission.

19 (3) Submit to and successfully pass criminal history record
20 checks in accordance with section twenty-nine of this article.

21 **§30-40-29. Authorization for criminal history record check; fees;**
22 **rules.**

23 (a) This section sets forth the requirements to obtain access
24 to the Federal Bureau of Investigation National Criminal

1 Investigation Center and the Criminal Justice Information Services
2 Division criminal history record information and to secure
3 information or reports from the Federal Bureau of Investigation
4 Criminal Justice Information Services Division and the National
5 Criminal Investigation Center. The scope of this section is to set
6 forth the applicability of the criminal history record check to all
7 applicants for and all holders of any license permitted by this
8 article.

9 (b) As used in this section, the following terms have the
10 meanings ascribed in this subsection, unless a different meaning is
11 clearly required by the context:

12 (1) "Applicant" means a natural person:

13 (A) Applying for an initial license under this article; or

14 (B) Applying for a renewal or continuation of a license under
15 this article.

16 (2) "Licensee" means a natural person who currently has a
17 license under this article.

18 (3) "Fingerprint" means an impression of the lines on the
19 finger taken for the purpose of identification. The impression may
20 be obtained electronically or in ink converted to an electronic
21 format.

22 (c) In order to make a determination of license eligibility,
23 the commission is authorized to require fingerprints of applicants
24 and licensees and to submit those fingerprints and the fee required

1 to perform the criminal history record checks to the West Virginia
2 State Police and to the Federal Bureau of Investigation for the
3 state and national criminal history record checks.

4 (d) The commission shall require a criminal history record
5 check on each applicant and each licensee in accordance with this
6 section. The commission shall require each applicant and each
7 licensee to submit a full set of fingerprints, including a scanned
8 file from a hard copy fingerprint, in order for the commission to
9 obtain and receive national criminal history records from the
10 Federal Bureau of Investigation National Criminal Investigation
11 Center and Criminal Justice Information Services Division.

12 (e) The commission shall collect a fee from each applicant and
13 each licensee in an amount established by rule. The amount of the
14 fee must be sufficient to cover:

15 (1) The cost of the collection and transmittal of fingerprints
16 by persons, including local law-enforcement agencies that are
17 approved by the commission to capture fingerprints, to the West
18 Virginia State Police and the Federal Bureau of Investigation; and

19 (2) The cost of any amounts charged by the State Police and
20 the Federal Bureau of Investigation to perform the criminal history
21 record checks.

22 (f) The commission may contract for the collection and
23 transmission of fingerprints authorized under this section and may
24 order that the fee for collecting and transmitting fingerprints be

1 payable directly by the applicant or licensee to the contractor.

2 (g) The commission is authorized to receive criminal history
3 record information directly from the Federal Bureau of
4 Investigation, in lieu of via transmission of the information from
5 the Federal Bureau of Investigation to the West Virginia State
6 Police.

7 (h) The commission shall treat and maintain an applicant's and
8 a licensee's fingerprints and any criminal history record
9 information obtained under this section as confidential and shall
10 apply security measures consistent with the Federal Bureau of
11 Investigation Criminal Justice Information Services Division
12 standards for the electronic storage of fingerprints and necessary
13 identifying information. The commission shall limit the use of
14 records solely to the purposes authorized in this section. The
15 fingerprints and the criminal history record information in the
16 custody of the commission are not subject to subpoena, other than
17 one issued in a criminal action or investigation; are confidential
18 by law and privileged; and are not subject to discovery or
19 admissible in evidence in any private civil action.

20 (i) The commission shall promulgate emergency rules pursuant
21 to the provisions of section fifteen, article three, chapter
22 twenty-nine-a of this code as are necessary for the administration
23 of this section, including rules governing applicants for and
24 current holders of licenses permitted by this article and the

1 frequency of criminal history record checks for those holding such
2 licenses. However, criminal history record checks for those
3 holding licenses permitted by this article shall be performed over
4 the next three years with checks being performed on one-third of
5 all licensees per year.

NOTE: The purpose of this bill is to require applicants for, and holders of, licenses under the West Virginia Real Estate License Act to successfully pass criminal history record checks. The bill grants the West Virginia Real Estate Commission with the authority to perform the criminal history record checks and requires the applicants and licensees to cover the costs of performing the criminal history record checks. The bill also provides rule-making authority.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§30-40-29 is new; therefore it has been completely underscored.