

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2497**

5 (By Delegates Skaff, Stowers, E. Nelson, D. Campbell, White,
6 Ferns, Craig, Morgan, Poore and Marcum)

7
8 [Passed April 12, 2013; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §30-40-11 of the Code of West Virginia,
11 1931, as amended, relating to application for a real estate
12 license; requiring applicants for real estate licensure to
13 undergo criminal history record checks; declaring the criminal
14 history record check requirement is not against public policy;
15 requiring applicants to submit fingerprints for the criminal
16 history record check; requiring applicants to authorize the
17 use of fingerprints to conduct the criminal history record
18 check; prohibiting the release of criminal history records
19 except in certain limited circumstances; declaring that
20 criminal history records are not subject to the Freedom of
21 Information Act; requiring the applicant to pay the actual
22 costs of the criminal history record check; requiring the
23 commission to promulgate a legislative rule to make the
24 procedures and requirements consistent with federal standards
25 before implementing the requirement for criminal history
26 record checks; and requiring the commission to issue a license
27 without requiring a criminal history record check to an

1 attorney in good standing.

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

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

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

6 **§30-40-11. Application for license.**

7 The commission shall only issue an original license to an
8 applicant if he or she:

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

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

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

13 (A) Are property owners at the time of signing the
14 application;

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

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

18 (D) Are not related to the applicant;

19 (E) Are not affiliated with the applicant as an employer,
20 partner or associate or with the broker that will employ the
21 applicant;

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

24 (G) Believe the applicant is competent to transact the
25 business of a real estate broker, associate broker or salesperson,
26 as the case may be, in a manner that would protect the interest of

1 the public.

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

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

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

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

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

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

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

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

22 (2) The criminal history record check shall be based on
23 fingerprints submitted to the West Virginia State Police or its
24 assigned agent for forwarding to the Federal Bureau of
25 Investigation.

26 (3) The applicant shall meet all requirements necessary to

1 accomplish the state and national criminal history record check,
2 including:

3 (A) Submitting fingerprints for the purposes set forth in this
4 subsection; and

5 (B) Authorizing the commission, the West Virginia State Police
6 and the Federal Bureau of Investigation to use all records
7 submitted and produced for the purpose of screening the applicant
8 for a license.

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

11 (A) To the individual who is the subject of the criminal
12 history record check;

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

15 (C) Pursuant to a court order.

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

19 (6) The applicant shall pay the actual costs of the
20 fingerprinting and criminal history record check.

21 (7) Before implementing the provisions of this subsection, the
22 commission shall propose rules for legislative approval in
23 accordance with article three, chapter twenty-nine-a of this code.
24 The rules shall set forth the requirements and procedures for the
25 criminal history check and must be consistent with standards
26 established by the Federal Bureau of Investigation and the National

1 Crime Prevention and Privacy Compact as authorized by 42 U. S. C.

2 A. §14611, *et seq.*