

1 **COMMITTEE SUBSTITUTE**

2 **for**

3 **H. B. 2497**

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

6  
7 (Originating in the Committee on the Judiciary)

8 [March 11, 2013]

9  
10 A BILL 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 ensure that the  
22 criminal history record check is completed within ninety days  
23 of licensure application; requiring the applicant to pay the  
24 actual costs of the criminal history record check; requiring  
25 the commission to promulgate a legislative rule to make the  
26 procedures and requirements consistent with federal standards  
27 before implementing the requirement for criminal history

1 record checks; and requiring the commission to issue a license  
2 to an attorney in good standing.

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

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

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

7 **§30-40-11. Application for license.**

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

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

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

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

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

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

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

19 (D) Are not related to the applicant;

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

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

25 (G) Believe the applicant is competent to transact the  
26 business of a real estate broker, associate broker or salesperson,

1 as the case may be, in a manner that would protect the interest of  
2 the public.

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

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

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

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

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

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

16 (f) Has submitted to a state and national criminal history  
17 record check, as set forth in this subsection.

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

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

23 (3) The applicant shall meet all requirements necessary to  
24 accomplish the state and national criminal history record check,  
25 including:

26 (A) Submitting fingerprints for the purposes set forth in this

1 subsection; and

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

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

8 (A) To the individual who is the subject of the criminal  
9 history record check;

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

12 (C) Pursuant to a court order.

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

16 (6) The applicant shall ensure that the criminal history  
17 record check is completed within ninety days of the date of the  
18 original licensure application. If the commission does not receive  
19 the criminal history record check within the required timeframe,  
20 the commission shall return the application to the applicant.

21 (7) The applicant shall pay the actual costs of the  
22 fingerprinting and criminal history record check.

23 (8) Before implementing the provisions of this subsection, the  
24 commission shall propose rules for legislative approval in  
25 accordance with article three, chapter twenty-nine-a of this code.  
26 The rules shall set forth the requirements and procedures for the

1 criminal history check and must be consistent with standards  
2 established by the Federal Bureau of Investigation and the National  
3 Crime Prevention and Privacy Compact as authorized by 42 U.S.C.A.  
4 §14611, et seq.

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