

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

# A Bill

HOUSE BILL 1753

5 By: Representative Maloch  
6 By: Senator Wilkinson  
7

## For An Act To Be Entitled

10 AN ACT TO CHANGE THE CRIMINAL BACKGROUND CHECK  
11 REQUIREMENTS FOR THE ARKANSAS REAL ESTATE  
12 COMMISSION; AND FOR OTHER PURPOSES.  
13

## Subtitle

14 TO CHANGE CRIMINAL BACKGROUND CHECK  
15 REQUIREMENTS FOR THE ARKANSAS REAL  
16 ESTATE COMISSION.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 17-42-302 is amended to read as follows:

24 (a) The Arkansas Real Estate Commission shall issue a license to any  
25 applicant who meets the following requirements:

- 26 (1) Attainment of the age of majority;  
27 (2) Successful completion of educational requirements prescribed  
28 by this chapter;  
29 (3) Successful completion of experience requirements prescribed  
30 by this chapter;  
31 (4) Successful completion of an examination administered or  
32 approved by the commission;  
33 (5) Demonstrates no record of unprofessional conduct; ~~and~~  
34 (6) Evidence of good reputation for honesty, trustworthiness,  
35 and integrity sufficient to safeguard the interests of the public; and  
36 (7) Completion of a criminal history background check through



1 the Department of Arkansas State Police and the Federal Bureau of  
2 Investigation as set out in § 17-42-315.

3 (b) The commission shall determine what constitutes adequate proof of  
4 meeting the requirements of subsection (a) of this section and shall deny a  
5 license to any applicant who fails to meet such requirements or who fails to  
6 pay the appropriate fees.

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8 SECTION 2. Arkansas Code § 17-42-304 is amended to read as follows:  
9 17-42-304. Fees.

10 The Arkansas Real Estate Commission shall have authority to establish,  
11 charge, and collect the following fees:

12 (1) An application fee not to exceed fifty dollars (\$50.00);

13 (2) An original broker's license fee not to exceed eighty  
14 dollars (\$80.00);

15 (3) A broker's license annual renewal fee not to exceed eighty  
16 dollars (\$80.00);

17 (4) An original salesperson's license fee not to exceed sixty  
18 dollars (\$60.00);

19 (5) A salesperson's license annual renewal fee not to exceed  
20 sixty dollars (\$60.00);

21 (6) A broker's expired license fee not to exceed one hundred ten  
22 dollars (\$110) per year or fraction thereof;

23 (7) A salesperson's expired license fee not to exceed eighty  
24 dollars (\$80.00) per year or fraction thereof;

25 (8) A license reissuance fee not to exceed thirty dollars  
26 (\$30.00);

27 (9) An initial duplicate license fee not to exceed thirty  
28 dollars (\$30.00);

29 (10) A duplicate license annual renewal fee not to exceed thirty  
30 dollars (\$30.00);

31 (11) A transfer fee not to exceed thirty dollars (\$30.00);

32 (12)(A) An examination fee not to exceed seventy-five dollars  
33 (\$75.00).

34 (B) However, the commission at its discretion may direct  
35 each applicant to pay the actual costs of the examination fee directly to a  
36 testing service engaged by the commission to administer the examination;

1 (13) Pursuant to § 17-42-313, an appeal filing fee not to exceed  
2 one hundred dollars (\$100); ~~and~~

3 (14) A Real Estate Recovery Fund fee not to exceed twenty-five  
4 dollars (\$25.00); ~~and~~

5 (15) The actual cost of a state and federal criminal history  
6 background check.

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8 SECTION 3. Arkansas Code § 17-42-311 is amended to read as follows:  
9 17-42-311. Violations.

10 (a) The following acts, conduct, or practices are prohibited, and any  
11 licensee found guilty shall be subject to disciplinary action as provided in  
12 § 17-42-312:

13 (1) Obtaining a license by means of fraud, misrepresentation, or  
14 concealment;

15 (2) Violating any of the provisions of this chapter or any rules  
16 or regulations adopted pursuant thereto or any order issued thereunder;

17 (3) Being convicted of any crime ~~involving moral turpitude,~~  
18 ~~fraud, dishonesty, untruthfulness, or untrustworthiness. Provided, that for~~  
19 ~~the purposes of this section, being convicted shall include all instances in~~  
20 ~~which a plea of guilty or nolo contendere is the basis for the conviction and~~  
21 ~~all proceedings in which the sentence has been deferred or suspended, and a~~  
22 ~~certified copy of the final judgment of any court of competent jurisdiction~~  
23 ~~in such matters shall be conclusive evidence in any hearing under this~~  
24 ~~chapter~~ specified in § 17-42-315;

25 (4) Making any substantial misrepresentation;

26 (5) Making, printing, publishing, distributing, or causing,  
27 authorizing, or knowingly permitting the making, printing, publication, or  
28 distribution of false statements, descriptions, or promises of such character  
29 as to reasonably induce, persuade, or influence any person to act thereon;

30 (6) Failing within a reasonable time to account for or to remit  
31 any moneys coming into his or her possession which belong to others;

32 (7) Committing any act involving moral turpitude, fraud,  
33 dishonesty, untruthfulness, or untrustworthiness;

34 (8) Acting for more than one (1) party in a transaction without  
35 the knowledge of all parties for whom he or she acts or accepting a  
36 commission or valuable consideration for the performance of any of the acts

1 specified in this chapter from any person except the licensed principal  
2 broker under whom he or she is licensed;

3 (9) Acting as a broker or salesperson while not licensed with a  
4 principal broker, representing or attempting to represent a broker other than  
5 the principal broker with whom he or she is affiliated without the express  
6 knowledge and consent of the principal broker, or representing himself or  
7 herself as a salesperson or having a contractual relationship similar to that  
8 of a salesperson with anyone other than a licensed principal broker;

9 (10) Advertising in a false, misleading, or deceptive manner;

10 (11) Being unworthy or incompetent to act as a real estate  
11 broker or salesperson in such manner as to safeguard the interests of the  
12 public;

13 (12) Paying a commission or valuable consideration to any person  
14 for acts or services performed in violation of this chapter, including paying  
15 a commission or other valuable consideration to an unlicensed person for  
16 participation in a real estate auction; and

17 (13) Any other conduct, whether of the same or a different  
18 character from that hereinbefore specified, which constitutes improper,  
19 fraudulent, or dishonest dealing.

20 (b) Any license obtained through mistake or inadvertence shall be  
21 subject to revocation.

22 (c) A licensee whose license is revoked pursuant to this section shall  
23 be eligible to apply for a new license after the expiration of two (2) years  
24 from the date of revocation.

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26 SECTION 4. Arkansas Code Title 17, Chapter 42, Subchapter 3, is  
27 amended by adding a new section to read as follows:

28 17-42-315. Criminal background check.

29 (a) Beginning January 1, 2006, the Arkansas Real Estate Commission may  
30 require each original applicant for a license issued by the commission to  
31 apply to the Identification Bureau of the Department of Arkansas State Police  
32 for a state and federal criminal background check to be conducted by the  
33 Identification Bureau of the Department of Arkansas State Police and the  
34 Federal Bureau of Investigation.

35 (b) The check shall conform to applicable federal standards and shall  
36 include the taking of fingerprints.

1       (c) The applicant shall sign a release of information to the  
 2 commission and shall be responsible for the payment of any fee associated  
 3 with the criminal background check.

4       (d) Upon completion of the criminal background check, the  
 5 Identification Bureau of the Department of Arkansas State Police shall  
 6 forward to the commission all releasable information obtained concerning the  
 7 applicant.

8       (e) At the conclusion of any background check required by this  
 9 section, the Identification Bureau of the Department of Arkansas State Police  
 10 shall be allowed to retain the fingerprint card of the applicant until  
 11 notified by the commission that the person is no longer licensed.

12       (f) Except as provided in subsection (g) of this section, a person  
 13 shall not receive or hold a license issued by the commission if the person  
 14 has been convicted of a felony or crime involving moral turpitude, fraud,  
 15 dishonesty, untruthfulness, or untrustworthiness.

16       (g)(1) The provisions of subsection (f) of this section may be waived  
 17 by the commission upon the request of:

18               (A) An affected applicant for licensure; or

19               (B) The person holding a license subject to sanctions.

20       (2) Circumstances for which a waiver may be granted shall  
 21 include, but not be limited to, the following:

22               (A) The age at which the crime was committed;

23               (B) The circumstances surrounding the crime;

24               (C) The length of time since the crime;

25               (D) Subsequent work history;

26               (E) Employment references;

27               (F) Character references; and

28               (G) Other evidence demonstrating that the applicant does  
 29 not pose a threat to the public.

30       (h)(1) Any information received by the commission from the  
 31 Identification Bureau of the Department of Arkansas State Police or the  
 32 Federal Bureau of Investigation pursuant to this section shall not be  
 33 available for examination except by the affected applicant for licensure, or  
 34 his or her authorized representative, or the person whose license is subject  
 35 to sanctions, or his or her authorized representative.

36       (2) No record, file, or document shall be removed from the

1 custody of the Department of Arkansas State Police.

2 (i) Any information made available to the affected applicant for  
3 licensure or the person whose license is subject to sanctions shall be  
4 information pertaining to that person only.

5 (j) Rights of privilege and confidentiality established in this  
6 section shall not extend to any document created for purposes other than the  
7 background check.

8 (k) The commission may adopt rules and regulations to fully implement  
9 the provisions of this section.

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