

2022 Regular Session

HOUSE BILL NO. 586

BY REPRESENTATIVES THOMAS AND BOYD

REAL ESTATE: Provides limited authority to the Louisiana Real Estate Commission to access certain criminal history record information of licensees and applicants

1 AN ACT

2 To enact R.S. 37:1435.1, relative to the authority of the Louisiana Real Estate Commission;
3 to authorize access to certain criminal history record information; to provide for
4 definitions; to provide for legislative intent; to establish minimum standards and
5 procedure; to provide for limitations to the access and use of certain criminal history
6 record information; to provide for effectiveness; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:1435.1 is hereby enacted to read as follows:

9 §1435.1. Authority to obtain criminal history record information

10 A. As used in this Section, the following terms have the following meanings:

11 (1) "Applicant" means an individual who applies to the commission to
12 request the initial issuance or reinstatement of any form of licensure the commission
13 is authorized to issue according to this Chapter.

14 (2) "Bureau" means the Louisiana Bureau of Criminal Identification and
15 Information of the office of state police within the Department of Public Safety and
16 Corrections.

17 (3) "Commission" means the Louisiana Real Estate Commission.

18 (4) "Criminal history record information" means all state records of arrest,
19 prosecution, conviction, including those which have been expunged or dismissed
20 pursuant to Code of Criminal Procedure Articles 893 or 894, and national records

1 which shall include fingerprints of the applicant, biometrics, and other identifying
2 information, if so requested by the department.

3 (5) "FBI" means the Federal Bureau of Investigation of the United States
4 Department of Justice.

5 (6) "Licensure" means any form of licensure the commission is authorized
6 to issue in accordance with this Chapter.

7 B.(1) The legislature hereby finds and declares it is vitally important to the
8 public health, interest, and welfare to protect Louisiana citizens, their residences, and
9 other property by reasonably regulating the licensure of persons performing real
10 estate activity in the state.

11 (2)(a) Accordingly, pursuant to this Section, the commission is hereby
12 authorized to request and obtain state and national criminal history record
13 information from the bureau and the FBI regarding each applicant.

14 (b) Notwithstanding Subparagraph (a) of this Paragraph, the commission's
15 use of fingerprints shall be for the limited purposes of determining the initial
16 licensure or reinstatement eligibility of each applicant and conducting directly
17 related matters in accordance with the Administrative Procedure Act, R.S. 49:950 et
18 seq, or other applicable law.

19 (3) The commission shall be entitled to the criminal history record and
20 identification files of the Louisiana Bureau of Criminal Identification and
21 Information, located within the Department of Public Safety and Corrections, of any
22 person who is licensed or is applying to be licensed as a real estate broker. Finger
23 prints, biometrics, and other identifying information of the applicant shall be
24 submitted to the Louisiana Bureau of Criminal Identification and Information for
25 qualification and registry, and the Louisiana Bureau of Criminal Identification and
26 Information shall, upon request of the bureau and after receipt of such finger print
27 card and other identifying information from the applicant, make available to the
28 bureau all arrest and conviction information contained in the Louisiana Bureau of
29 Criminal Identification and Information's criminal history record and identification

1 files which pertain to the applicant for licensure. In addition, the fingerprints shall
2 be forwarded by the Louisiana Bureau of Criminal Identification and Information to
3 the Federal Bureau of Investigation for a national criminal history record check.

4 (4) In accordance with the authority provided for in this Chapter, the costs
5 of providing the information required in accordance with this Section shall be
6 charged by the Louisiana Bureau of Criminal Identification and Information, as
7 specified in R.S. 15:587(B) to the bureau for furnishing information contained in the
8 Louisiana Bureau of Criminal Identification and Information's criminal history
9 records and identification files, including any additional cost of providing the
10 national criminal history records check, which pertains to the applicant. The bureau
11 may impose any or all such fees or costs on the applicant.

12 C. Notwithstanding any other provision of this Chapter, the commission may
13 require an applicant to do any of the following to determine the initial licensure or
14 reinstatement eligibility of an applicant:

15 (1) Submit a complete set of fingerprints in the form and manner required
16 by the bureau.

17 (2) Authorize the commission to request and obtain state and national
18 criminal history record information relating to the applicant.

19 (3) Pay to the bureau an amount equal to the administrative costs imposed
20 by or on behalf of the bureau, relating to submission and processing of applicant
21 fingerprints for review of criminal history record information.

22 D. The commission is required to do all of the following relative to its
23 access, use, and maintenance of criminal history record information:

24 (1) Prescribe a form to be completed by each applicant prior to any
25 fingerprint submission, which shall include all of the following at a minimum:

26 (a) An acknowledgment that fingerprints submitted to the bureau or
27 commission shall be used to check the national criminal history records maintained
28 by the FBI.

1 (b) An inquiry requiring the applicant to specifically identify or state the
2 specific reason he has submitted fingerprints to the bureau or commission.

3 (c) A statement providing the procedure and contact information necessary
4 to challenge the accuracy of information contained in the FBI identification record
5 of the applicant.

6 (d) Any other notice or information required by the bureau to be disclosed
7 to an applicant prior to the submission of fingerprints.

8 E.(1) Notwithstanding any other provision of this Section, this Section shall
9 not apply to any licensee, who is licensed and in good standing with the commission,
10 on or before December 31, 2022.

11 (2) Notwithstanding Paragraph (1) of this Subsection, any real estate
12 salesperson licensed on or before December 31, 2022, who subsequently applies on
13 or after January 1, 2023, either for initial licensure as a real estate broker or for the
14 reinstatement of any suspended or revoked license issued by the commission shall
15 be subject to this Section.

16 (3) Every real estate salesperson or broker who seeks licensure with the
17 Commission shall consent to and pay the costs of a background check pursuant to
18 R.S. 15:587.

19 Section 2. This Act shall become effective January 1, 2023.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 586 Engrossed

2022 Regular Session

Thomas

Abstract: Authorizes the Louisiana Real Estate Commission to access the criminal history record information of licensees and applicants in certain circumstances.

Proposed law defines "applicant", "bureau", "commission", "criminal history record information", "FBI", and "licensure".

Proposed law authorizes the La. Real Estate Commission (LREC) to obtain from the FBI an applicant's state and national criminal history record information.

Proposed law limits LREC's use of fingerprints to only as necessary for determining licensure eligibility of each applicant and matters directly related to same.

Proposed law requires an applicant to submit certain identifying information to the La. Bureau of Criminal Identification and Information for the release of all arrest and conviction information contained in the La. Bureau of Criminal Identification and Information's criminal history files pertaining to the applicant for licensure, and require the fingerprints to be forwarded by the La. Bureau of Criminal Identification and Information to the FBI for a national criminal history check.

Proposed law requires the costs for obtaining the information required by proposed law to be charged to the bureau, including the costs of providing the national criminal history check, and authorize the bureau to impose any or all such costs on the applicant.

Proposed law authorizes LREC to enact the following requirements for an applicant to follow so that LREC may determine licensure eligibility:

- (1) Submit complete fingerprints that comply with FBI requirements.
- (2) Give LREC permission to obtain state and national criminal history record information.
- (3) Pay for the cost imposed by the FBI to process fingerprints for review of an applicants criminal history record information.

Proposed law requires LREC to:

- (1) Comply with all FBI requirements relative to its access of criminal history record information.
- (2) Provide a form for applicants to complete to give them notice of what information will be obtained by providing fingerprints to LREC and the FBI and how the information will be used.

Proposed law does not apply to any licensees who are in good standing with LREC on or before Dec. 31, 2022.

Proposed law provides that proposed law does apply to licensees licensed on or before Dec. 31, 2022 who go on to apply for initial licensure as a real estate broker or to reinstate any suspended or revoked license issued by LREC.

Effective Jan. 1, 2023.

(Adds R.S. 37:1435.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Define "criminal history record information".
2. Authorize the commission to access the criminal history record files of the La. Bureau of Criminal Identification and Information for any licensee or applicant for licensure as a broker.
3. Provide for the process of obtaining state and national criminal history record information of applicants for licensure.

4. Provide for the payment of costs for obtaining criminal history record information of an applicant and recovering such costs from the applicant.
5. Require a real estate broker seeking licensure to consent to and pay for a background check.
6. Make technical changes.