

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Little Rock, Arkansas 72201-1094
(501) 682-5070
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Hearing Room
and via livestream
612 South Summit Street
Little Rock, AR 72201
April 11, 2022
9:00 A.M.

NOTICE OF PROPOSED RULES AND RULE AMENDMENTS

The Arkansas Real Estate Commission will hold a Public Hearing at 9:00 a.m. on Monday, April 11, 2022, in the Meeting Room of the Arkansas Real Estate Commission building, 612 South Summit Street, Little Rock, Arkansas and/or via a livestream platform for the purpose of receiving public or written comment on the adoption of amended Rules 4.5, 6.1, 11.1; proposed Rule 3.4; amended Rule 13.1; amended Rule 4.6; and proposed Rule 4.7.

Rules 4.5, 6.1 and 11.1 amend rules regarding automatic licensure for uniformed service members, veterans and their spouses. Subjects and issues involved are as follows:

Act 135 of 2021 repeals Act 820 of 2019 and other prior law dealing with occupational licensing of active duty servicemen, returning military veterans and their spouses. The Act requires occupational licensing agencies to provide for automatic licensure for uniformed service members, veterans, and their spouses to engage in their chosen professions. The Act also requires a licensing entity to extend certain expiration dates for licenses and allow a full exemption from certain education requirements for a deployed uniformed service member or spouse during deployment and up to 180 days after return. The purpose of amended Rules 4.5, 6.1 and 11.1 is to bring current licensing Rules into conformity with the Act.

Rule 3.4 establishes a waiver of the initial application fees for certain individuals and outlines the waiver's qualifying criteria. Subjects and issues involved are as follows:

Act 725 of 2021 requires licensing entities to waive the initial license fee for applicants who: (1) are receiving assistance through the Arkansas Medicaid Program; the Supplemental Nutrition Program; the Special Supplemental Nutrition Program for Women, Infants and Children; the Temporary Assistance for Needy Families Program; or the Lifeline Assistance Program; or (2) were approved for unemployment within the last twelve (12) months; or (3) have an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines. The purpose of new Rule 3.4 is to establish the waiver's qualifying criteria for real estate license applicants.

Rule 13.1 amends rules regarding license fees to establish a time-share interest transfer service provider registration and renewal fee and bond amount. Subjects and issues involved are as follows:

Act 733 of 2021 establishes a registration requirement for time-share interest transfer services providers who operate in the state. The Act also establishes parameters for the operations of time-share interest transfer services providers and enforcement mechanisms when those providers fail to register as prescribed by law. The proposed amended rule will establish the registration and renewal fee and bond requirement amounts as set forth in the Act.

Rule 4.6 amends rules regarding pre-licensure criminal background checks and waiver requests. Subjects and issues involved are as follows:

Act 748 of 2021 amends the law regarding professional and occupational licensing restrictions based on criminal records to remove the permanent disqualification provision. The list of permanent disqualifications is now subject to the same provision as the list of disqualifying offenses for which a waiver must be obtained.

Rule 4.6 is amended to reflect that offenses previously considered permanently disqualifying are now considered disqualifying offenses for which an applicant must obtain a waiver in order to hold an occupational or professional license.

Rule 4.7 establishes that the Commission will grant a license to an applicant who fulfills the requirements for licensure and who holds a Federal Form I-766 USCIS Employment Authorization Document or “work permit”. Subjects and issues involved are as follows:

Act 746 of 2021 establishes that individuals who otherwise meet the requirements for holding an occupational or professional license in Arkansas and who hold a Federal Form I-766 USCIS-issued Employment Authorization Document (“work permit”) shall be issued a license. The proposed new rule 4.7 will establish that individuals holding a Federal Form I-766 USCIS EAD or “work permit” and who otherwise fulfill licensure requirements shall be issued a license by the Arkansas Real Estate Commission.

Copies of the proposed Rules may be obtained at www.arec.arkansas.gov or by writing the Arkansas Real Estate Commission at 612 South Summit Street, Little Rock, Arkansas 72201-4740. Written data used for arguments to proposed rules and rule amendments should be submitted to the above address at or prior to the time of the Public Hearing. The Commission may also permit oral testimony or argument at the Public Hearing. All appropriate COVID-19 screening and social distancing protocols in place at the time of the hearing will be observed, potentially limiting the number of participants admitted to the AREC building; therefore, the meeting will also be made available to participants via livestream. Individuals who wish to attend via livestream can obtain a link by which they may join the meeting on the April Commission Meeting agenda page at www.arec.arkansas.gov.

PROPOSED RULE AMENDMENT

Markup Copy

For the purposes of promulgating rules pursuant to Act 748 of the 2021 Regular Session of the General Assembly

4.6 Pre-Licensure Criminal Background Check and Waiver Request

(a)(1) Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

(2) The individual must obtain the pre-licensure criminal background check petition form from the Commission.

(3) The Commission will respond with a decision in writing to a completed petition within thirty (30) days of receipt.

(4) The Commission's response will state the reason(s) for the decision.

(5) All decisions of the Commission in response to the petition will be determined by the information provided by the individual.

(6) Any decision made by the Commission in response to a pre-licensure criminal background check petition is not subject to appeal.

(7) The Commission will retain a copy of the petition and response and it will be reviewed during the formal application process.

(b)(1) If an individual has been convicted of an offense listed in A.C.A. §17-3-102(a) or (e), ~~except those permanently disqualifying offenses found in subsection (e)~~, the Commission may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

(i) An affected applicant for a license; or

(ii) An individual holding a license subject to revocation.

(2) The Commission may grant a waiver upon consideration of the following, without limitation:

(i) The age at which the offense was committed;

(ii) The circumstances surrounding the offense;

(iii) The length of time since the offense was committed;

(iv) Subsequent work history since the offense was committed;

(v) Employment references since the offense was committed;

(vi) Character references since the offense was committed;

(viii) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

(c) A request for a waiver, if made by an applicant for original licensure as a broker or salesperson, must be in writing and accompany the completed application and fees.

(d) The Commission will respond with a decision in writing and will state the reasons for the decision.

(e) An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

PROPOSED RULE AMENDMENT

Clean Copy

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QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure

Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Asa Hutchinson
Governor

Daryl Bassett
Secretary

Andrea S. Alford
Executive Director

Melissa L. Goff
Deputy Director



Arkansas Real Estate Commission

Commissioners
Doyle Yates, Chair
Suzett Sparks, Vice Chair
Tony Moore
Jessica "Dee" Holcomb
Eugene Post

612 South Summit Street
Little Rock, AR 72201
501.683.8010

Proposed New Rule 4.6 Pursuant to Act 748 of 2021

PURPOSE

The Real Estate Commission is seeking review of proposed new Commission Rule 4.6, pursuant to Act 748 of 2021.

BACKGROUND

Act 990 of 2019 created waiver provisions for disqualifying criminal offenses, created a 5-year "lookback" provision for certain offenses and specified that other certain offenses would be considered permanently disqualifying for the purposes of occupational licensure. Act 748 of 2021 amends A.C.A. § 17-42-102 to reflect that previously permanently disqualifying offenses would now be considered disqualifying offenses that require a waiver without a "lookback" provision.

KEY POINTS

The proposed amendment will streamline our waiver rule to clarify that all offenses require a waiver and are based upon certain criteria.

DISCUSSION

The proposed new rule is consistent with Act 748 of 2021. This rule has no fiscal impact.

The proposed amended rule was approved by the Commission on September 13, 2021.