

By: Representatives Wallace, Clarke, Eads,
Frierson, Livingston, McBride, Thomas

To: Judiciary B

HOUSE BILL NO. 1603
(As Passed the House)

1 AN ACT TO AMEND SECTION 73-35-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF REAL ESTATE BROKER; TO AMEND SECTION
3 73-35-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DISTRICTS OF THE
4 MISSISSIPPI REAL ESTATE COMMISSION; TO CODIFY SECTION 73-35-6,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LICENSES FOR BUSINESS
6 ENTITIES; TO AMEND SECTION 73-35-7, MISSISSIPPI CODE OF 1972, TO
7 REVISE LICENSE QUALIFICATIONS; TO AMEND SECTION 73-35-8,
8 MISSISSIPPI CODE OF 1972, TO CLARIFY NONRESIDENT LICENSE
9 REQUIREMENTS; TO AMEND SECTION 73-35-13, MISSISSIPPI CODE OF 1972,
10 TO REVISE EXAMINATION REQUIREMENTS; TO CODIFY SECTION 73-35-14,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REAL ESTATE SCHOOLS AND
12 PLACE THE REGULATION OF SUCH SCHOOLS UNDER THE COMMISSION; TO
13 CODIFY SECTION 73-35-14.1, MISSISSIPPI CODE OF 1972, TO PROVIDE
14 STANDARDS FOR REAL ESTATE SCHOOLS; TO CODIFY SECTION 73-35-14.2,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE STANDARDS FOR INSTRUCTORS; TO
16 CODIFY SECTION 73-35-14.3, MISSISSIPPI CODE OF 1972, TO PROVIDE
17 STANDARDS FOR COURSE CONTENT; TO CODIFY SECTION 73-35-14.4,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DISTANCE LEARNING
19 COURSES; TO AMEND SECTION 73-35-15, MISSISSIPPI CODE OF 1972, TO
20 REVISE NOTICE REQUIREMENTS REGARDING BROKER LOCATION; TO AMEND
21 SECTION 73-35-16, MISSISSIPPI CODE OF 1972, TO REVISE THE PREMIUM
22 AMOUNT FOR ERRORS AND OMISSIONS INSURANCE; TO AMEND SECTION
23 73-35-18, MISSISSIPPI CODE OF 1972, TO CLARIFY CONTINUING
24 EDUCATION REQUIREMENTS; TO AMEND SECTION 73-35-23, MISSISSIPPI
25 CODE OF 1972, TO REVISE THE VENUE OF HEARINGS; TO AMEND SECTION
26 89-1-503, MISSISSIPPI CODE OF 1972, TO CLARIFY WRITTEN STATEMENTS
27 IN CONVEYANCES; TO REPEAL SECTION 73-35-20, MISSISSIPPI CODE OF
28 1972, WHICH PROVIDES FOR A TEMPORARY REAL ESTATE SALESPERSON
29 LICENSE; TO AMEND SECTION 7 OF CHAPTER 588, GENERAL LAWS OF 1999,
30 TO DELETE THE REPEALER ON CERTAIN SECTIONS OF THE REAL ESTATE
31 BROKERS LICENSE LAW; AND FOR RELATED PURPOSES.

32 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

33 **SECTION 1.** Section 73-35-3, Mississippi Code of 1972, is
34 amended as follows:

35 73-35-3. (1) The term "real estate broker" within the
36 meaning of this chapter shall include all persons, partnerships,
37 associations and corporations, foreign and domestic, who for a
38 fee, commission or other valuable consideration, or who with the
39 intention or expectation of receiving or collecting the same,
40 list, sell, purchase, exchange, rent, lease, manage or auction any
41 real estate, or the improvements thereon, including options; or



42 who negotiate or attempt to negotiate any such activity; or who
43 advertise or hold themselves out as engaged in such activities; or
44 who direct or assist in the procuring of a purchaser or prospect
45 calculated or intended to result in a real estate
46 transaction * * *. The term "real estate broker" shall also
47 include any person, partnership, association or corporation
48 employed by or on behalf of the owner or owners of lots or other
49 parcels of real estate, at a stated salary or upon fee, commission
50 or otherwise, to sell such real estate, or parts thereof, in lots
51 or other parcels, including timesharing and condominiums, and who
52 shall sell, exchange or lease, or offer or attempt or agree to
53 negotiate the sale, exchange or lease of, any such lot or parcel
54 of real estate.

55 (2) The term "real estate" as used in this chapter shall
56 include leaseholds as well as any and every interest or estate in
57 land, including timesharing and condominiums, whether corporeal or
58 incorporeal, freehold or nonfreehold, and whether said property is
59 situated in this state or elsewhere; provided, however, that the
60 term "real estate" as used in this chapter shall not include oil,
61 gas or mineral leases, nor shall it include any other mineral
62 leasehold, mineral estate or mineral interest of any nature
63 whatsoever.

64 (3) One (1) act in consideration of or with the expectation
65 or intention of, or upon the promise of, receiving compensation,
66 by fee, commission or otherwise, in the performance of any act or
67 activity contained in subsection (1) of this section, shall
68 constitute such person, partnership, association or corporation a
69 real estate broker and make him, them or it subject to the
70 provisions and requirements of this chapter.

71 (4) The term "real estate salesperson" shall mean and
72 include any person employed or engaged by or on behalf of a
73 licensed real estate broker to do or deal in any activity as
74 included or comprehended by the definitions of a real estate



75 broker in subsection (1) of this section, for compensation or
76 otherwise.

77 (5) Exempt from the licensing requirements of this chapter
78 shall be any person, partnership, association or corporation, who,
79 as a bona fide owner, shall perform any aforesaid act with
80 reference to property owned by them, or to the regular employees
81 thereof who are on a stated salary, where such acts are performed
82 in the regular course of business.

83 (6) The provisions of this chapter shall not apply to:

84 (a) Attorneys-at-law in the performance of primary or
85 incidental duties as such attorneys-at-law.

86 (b) Any person holding in good faith a duly executed
87 power of attorney from the owner, authorizing the final
88 consummation and execution for the sale, purchase, leasing or
89 exchange of real estate.

90 (c) The acts of any person while acting as a receiver,
91 trustee, administrator, executor, guardian or under court order,
92 or while acting under authority of a deed of trust or will.

93 (d) Public officers while performing their duties as
94 such.

95 (e) Anyone dealing exclusively in oil and gas leases
96 and mineral rights.

97 (7) Nothing in this chapter shall be construed to prohibit
98 life insurance companies and their representatives from
99 negotiating or attempting to negotiate loans secured by mortgages
100 on real estate, nor shall these companies or their representatives
101 be required to qualify as real estate brokers or agents under this
102 chapter.

103 (8) The provisions of this chapter shall not apply to the
104 activities of mortgagees approved by the Federal Housing
105 Administration or the United States Department of Veterans
106 Affairs, banks chartered under the laws of the State of
107 Mississippi or the United States, savings and loan associations



108 chartered under the laws of the State of Mississippi or the United
109 States, licensees under the Small Loan Regulatory Law, being
110 Sections 75-67-101 through 75-67-135, and under the Small Loan
111 Privilege Tax Law, being Sections 75-67-201 through 75-67-243,
112 small business investment companies licensed by the Small Business
113 Administration and chartered under the laws of the State of
114 Mississippi, or any of their affiliates and subsidiaries, related
115 to the making of a loan secured by a lien on real estate or to the
116 disposing of real estate acquired by foreclosure or in lieu of
117 foreclosure or otherwise held as security. No director, officer
118 or employee of any such financial institution shall be required to
119 qualify as a real estate broker or agent under this chapter when
120 engaged in the aforesaid activities for and on behalf of such
121 financial institution.

122 **SECTION 2.** Section 73-35-5, Mississippi Code of 1972, is
123 amended as follows:

124 73-35-5. (1) There is hereby created the Mississippi Real
125 Estate Commission. The commission shall consist of five (5)
126 persons, to be appointed by the Governor with the advice and
127 consent of the Senate. Each appointee shall have been a resident
128 and citizen of this state for at least six (6) years prior to his
129 appointment, and his vocation for at least five (5) years shall
130 have been that of a real estate broker. One (1) member shall be
131 appointed for the term of one (1) year; two (2) members for terms
132 of two (2) years; two (2) members for terms of four (4) years;
133 thereafter, the term of the members of said commission shall be
134 for four (4) years and until their successors are appointed and
135 qualify. There shall be at least one (1) commissioner from each
136 congressional district * * *, as such districts are constituted as
137 of July 1, 2002. The commissioners appointed from each of the
138 congressional districts shall be bona fide residents of the
139 district from which each is appointed. One (1) additional
140 commissioner shall be appointed without regard to residence in any



141 particular congressional district. Members to fill vacancies
142 shall be appointed by the Governor for the unexpired term. The
143 Governor may remove any commissioner for cause. The State of
144 Mississippi shall not be required to furnish office space for such
145 commissioners. The provisions of this section shall not affect
146 persons who are members of the Real Estate Commission as of
147 January 1, 2002. Such members shall serve out their respective
148 terms, upon the expiration of which the provisions of this section
149 shall take effect. Nothing provided herein shall be construed as
150 prohibiting the reappointment of any member of the said
151 commission.

152 (2) The commission shall organize by selecting from its
153 members a chairman, and may do all things necessary and convenient
154 for carrying into effect the provisions of this chapter, and may
155 from time to time promulgate rules and regulations. Each member
156 of the commission shall receive per diem as authorized in Section
157 25-3-69, Mississippi Code of 1972, and his actual and necessary
158 expenses incurred in the performance of duties pertaining to his
159 office as authorized in Section 25-3-41, Mississippi Code of 1972.

160 (3) The commission shall adopt a seal by which it shall
161 authenticate its proceedings. Copies of all records and papers in
162 the office of the commission, duly certified and authenticated by
163 the seal of said commission, shall be received in evidence in all
164 courts equally and with like effect as the original. All records
165 kept in the office of the commission under authority of this
166 chapter shall be open to public inspection except pending
167 investigative files.

168 **SECTION 3.** The following shall be codified as Section
169 73-35-6, Mississippi Code of 1972:

170 73-35-6. A corporation, partnership, company or association
171 shall be granted a license when individual broker's licenses have
172 been issued to every member, owner, partner or officer of such
173 partnership, company, association or corporation who actively



174 participates in its brokerage business and when any required fee
175 is paid.

176 **SECTION 4.** Section 73-35-7, Mississippi Code of 1972, is
177 amended as follows:

178 73-35-7. Licenses shall be granted only to persons who
179 present, and to corporations, partnerships, companies or
180 associations whose officers, associates or partners present
181 satisfactory proof to the commission that they are trustworthy and
182 competent to transact the business of a real estate broker or real
183 estate salesperson in such manner as to safeguard the interests of
184 the public. Every person who applies for a resident license as a
185 real estate broker: (a) shall be age twenty-one (21) years or
186 over, * * * and have his legal domicile in the State of
187 Mississippi at the time he applies; (b) shall be subject to the
188 jurisdiction of this state, subject to the income tax laws and
189 other excise laws thereof, subject to the road and bridge
190 privilege tax laws thereof; (c) shall not be an elector in any
191 other state; (d) shall have held a license as an active real
192 estate salesperson for twelve (12) months immediately prior to
193 making application for the broker's examination hereafter
194 specified; (e) shall have successfully completed a minimum of one
195 hundred twenty (120) * * * hours of courses in real estate as
196 hereafter specified; and (f) shall have successfully completed the
197 real estate broker's examination as hereafter specified.

198 * * *

199 Every applicant for a resident license as a real estate
200 salesperson shall be age eighteen (18) years or over, shall
201 be * * * a bona fide resident of the State of Mississippi prior to
202 filing his application, and shall have successfully completed a
203 minimum of sixty (60) * * * hours in courses in real estate as
204 hereafter specified; and shall have successfully completed the
205 real estate salesperson's examination as hereafter specified.

206 * * *



207 The residency requirements set forth in this section shall
208 not apply to those licensees of other states who qualify and
209 obtain nonresident licenses in this state.

210 The commission is authorized to exempt from such prelicensing
211 educational requirements, in whole or in part, a real estate
212 licensee of another state who desires to obtain a license under
213 this chapter; provided, however, that the prelicensing educational
214 requirements in the other state are determined by the commission
215 to be equivalent to prelicensing educational requirements in this
216 state and provided that such state extends this same privilege or
217 exemption to Mississippi real estate licensees.

218 **SECTION 5.** Section 73-35-8, Mississippi Code of 1972, is
219 amended as follows:

220 73-35-8. (1) A nonresident may apply for a nonresident's
221 license in Mississippi provided the individual is (i) a licensed
222 broker in another state or (ii) is a broker/salesperson or
223 salesperson affiliated with a resident or nonresident Mississippi
224 broker or (iii) is a nonresident who applies for a broker's
225 license and who will maintain an office in Mississippi. The
226 nonresident broker need not maintain a place of business within
227 Mississippi provided he is regularly actively engaged in the real
228 estate business and maintains a place of business in the other
229 state. The nonresident licensee or applicant shall be subject to
230 all the provisions of this chapter except for the residency
231 requirement and approved equivalent prelicensing education.

232 (2) Every nonresident applicant shall file a statement of
233 irrevocable consent with the Real Estate Commission that legal
234 actions may be commenced against him in the proper court of any
235 county of this state in which a cause of action may arise or in
236 which the plaintiff may reside by service of process or pleading
237 authorized by the laws of this state, by the Secretary of State of
238 Mississippi, or by any member of the commission or chief executive
239 officer thereof, the consent stipulating that the service of



240 process or pleading shall be taken in all courts to be valid and
241 binding as if personal service had been made upon the nonresident
242 licensee in this state. The consent shall be duly acknowledged.
243 Every nonresident licensee shall consent to have any hearings
244 conducted by the commission pursuant to Section 73-35-23,
245 Mississippi Code of 1972, at a place designated by the commission.

246 (3) Any service of process or pleading shall be served on
247 the executive officer of the commission by filing duplicate
248 copies, one (1) of which shall be filed in the office of the
249 commission and the other forwarded by certified mail to the last
250 known principal address of the nonresident licensee against whom
251 such process or pleading is directed. No default in any such
252 action shall be taken except upon an affidavit of certification of
253 the commission or the executive officer thereof that a copy of the
254 process or pleading was mailed to the defendant as herein
255 provided, and no default judgment shall be taken in any such
256 action or proceeding until thirty (30) days after the mailing of
257 process or pleading to the defendant.

258 (4) An applicant shall sign an agreement to cooperate with
259 any investigation of the applicant's real estate brokerage
260 activities which the commission may undertake.

261 (5) Each applicant for a nonresident license must qualify in
262 all respects, including education, examination and fees, as an
263 applicant who is a resident of Mississippi with the exception of
264 the residency requirement and approved equivalent prelicensing
265 education.

266 (6) A certification from the Executive Officer of the Real
267 Estate Commission in the state in which the nonresident maintains
268 his principal place of business shall be required. An applicant
269 shall disclose all states in which he has held a real estate
270 license and furnish a certification of licensure from that state
271 or states.



272 (7) The applicant/broker shall obtain an appropriate
273 Mississippi license for the firm through which he intends to
274 operate as a broker.

275 (8) Any nonresident broker, broker-salesperson and
276 salesperson shall meet Mississippi continuing education
277 requirements after becoming licensed just as any resident
278 licensee.

279 (9) A broker or salesperson licensed in this state, on
280 inactive status in good standing and no longer a resident of this
281 state, may, after meeting other requirements for nonresident
282 licensees, make application for a nonresident license without
283 being required to meet current prelicensing educational
284 requirements at the time of application or having to sit for the
285 examination in order to obtain the equivalent nonresident license.

286 (10) A nonresident licensee in good standing who changes his
287 legal domicile to the State of Mississippi may obtain a resident
288 license equivalent to his nonresident license without meeting the
289 current educational requirements or sitting for the examination,
290 provided other requirements set forth for residents of the state
291 are met.

292 (11) A nonresident licensee may utilize the inactive status
293 for his license under the same requirements as a resident
294 licensee, including but not limited to, continuing education
295 requirements and ceasing active status under a licensed
296 nonresident broker.

297 **SECTION 6.** Section 73-35-13, Mississippi Code of 1972, is
298 amended as follows:

299 73-35-13. (1) In addition to proof of his honesty,
300 trustworthiness and good reputation, the applicant shall take a
301 written examination which shall be held at least four (4) times
302 each year at regular intervals and on stated times by the
303 commission and shall test reading, writing, spelling, elementary
304 arithmetic and his general knowledge of the statutes of this state



305 relating to real property, deeds, mortgages, agreements of sale,
306 agency, contract, leases, ethics, appraisals, the provisions of
307 this chapter and such other matters the commission certifies as
308 necessary to the practice of real estate brokerage in the State of
309 Mississippi. The examination for a broker's license shall differ
310 from the examination for a salesperson's license, in that it shall
311 be of a more exacting nature and require higher standards of
312 knowledge of real estate. The commission shall cause examinations
313 to be conducted at such times and places as it shall determine.

314 (2) In event the license of any real estate broker or
315 salesperson is revoked by the commission subsequent to the
316 enactment of this chapter, no new license shall be issued to such
317 person unless he complies with the provisions of this chapter.

318 (3) No person shall be permitted or authorized to act as a
319 real estate broker or salesperson until he has qualified by
320 examination, except as hereinbefore provided. Any individual who
321 fails to pass the examination for salesperson upon two (2)
322 occasions, shall be ineligible for a similar examination, until
323 after the expiration of three (3) months from the time such
324 individual last took the examination. Any individual who fails to
325 pass the broker's examination upon two (2) occasions, shall be
326 ineligible for a similar examination until after the expiration of
327 six (6) months from the time such individual last took the
328 examination, and then only upon making application as in the first
329 instance.

330 (4) If the applicant is a partnership, association or
331 corporation, said examination shall be taken on behalf of said
332 partnership, association or corporation by the member or officer
333 thereof who is designated in the application as the person to
334 receive a license by virtue of the issuing of a license to such
335 partnership, association or corporation.

336 (5) Upon satisfactorily passing such examination and upon
337 complying with all other provisions of law and conditions of this



338 chapter, a license shall thereupon be issued to the successful
339 applicant who, upon receiving such license, is authorized to
340 conduct the business of a real estate broker or real estate
341 salesperson in this state.

342 (6) The commission is authorized to exempt from such
343 examination, in whole or in part, a real estate licensee of
344 another state who desires to obtain a license under this chapter;
345 provided, however, that the examination administered in the other
346 state is determined by the commission to be equivalent to such
347 examination given in this state and provided that such other state
348 extends this same privilege or exemption to Mississippi real
349 estate licensees.

350 **SECTION 7.** The following shall be codified as Section
351 73-35-14, Mississippi Code of 1972:

352 73-35-14. (1) An institution or organization desiring to
353 conduct a school or offer a course of instruction to prepare
354 persons to be licensed under this chapter, or to offer
355 post-licensure courses, shall apply to the commission for
356 accreditation, and shall submit evidence that it is prepared to
357 carry out a prescribed minimum curriculum in real estate
358 principles and practices as set forth in this chapter and can meet
359 other standards established by the commission. An investigation
360 of the school and of the institution or organization with which
361 such school is affiliated shall be made by the commission. If, in
362 the opinion of the commission, the requirements for an accredited
363 school for instruction in real estate principles and practices are
364 met, the commission shall approve the school as an accredited real
365 estate school upon payment of the fees set forth in this chapter
366 and such other fees as established by the commission. All schools
367 so accredited shall register at required intervals on a form
368 provided and pay the required registration fees specified in this
369 chapter and such other fees as established by the commission.



370 (2) The commission shall have the authority to revoke,
371 suspend or otherwise discipline the accreditation of any real
372 estate school, prelicense education provider or post-license
373 education provider if the commission determines that the school or
374 education provider is not meeting or has not met the standards
375 required for such accreditation. If the commission determines
376 that any accredited real estate school or education provider is
377 not maintaining the standards required by the commission, notices
378 thereof in writing specifying the defect or defects shall be given
379 promptly to the school or provider. If such defect or defects are
380 not remedied in the time specified by the commission, the
381 commission shall hold a hearing to determine the disciplinary
382 action, if any, to be taken. Such hearing will be noticed to the
383 school or provider, who will be allowed to attend the hearing and
384 present to the commission its reasons why it should not be
385 disciplined.

386 (3) A college or university in the State of Mississippi
387 accredited by the Southern Association of Colleges and Schools or
388 the comparable regional accrediting authority shall be an approved
389 education provider for prelicense courses for both the broker's
390 and salesperson's license by virtue of such accreditation. Such
391 colleges and universities are not required to meet any other
392 standards provided herein.

393 **SECTION 8.** The following shall be codified as Section
394 73-35-14.1, Mississippi Code of 1972:

395 73-35-14.1. (1) Minimum standards for initial and
396 continuing accreditation as a real estate school or prelicense
397 education provider shall include:

398 (a) Payment of any fees established by the commission.
399 If the school or provider is accredited as a prelicense school or
400 prelicense education provider, fees shall include a biennial fee
401 of Two Thousand Five Hundred Dollars (\$2,500.00).



402 (b) The school or prelicense education provider must
403 maintain an annual average pass rate of at least sixty-five
404 percent (65%) on each of the real estate broker's license
405 examination and the real estate salesperson's license examination.
406 The term "annual average pass rate" shall be as defined by the
407 commission. If a school or prelicense education provider does not
408 meet the minimum annual average pass rate, the commission shall
409 allow the school or prelicense education provider a minimum of a
410 three-month time period in which to attain the minimum annual
411 average pass rate.

412 (c) Schools and prelicense education providers must use
413 a method for instructor evaluation by students attending
414 prelicense education classes. The commission may establish
415 minimum standards for instructor evaluation. In the event the
416 provider does not meet those minimum standards, the commission may
417 revoke a provider's authority to offer prelicense education
418 courses. Schools and prelicense education providers must provide
419 the results of such instructor evaluations to the commission in
420 the manner the commission directs.

421 (2) The commission may establish by rule such other
422 standards for schools, prelicense education providers and
423 post-license education providers as the commission may deem
424 necessary.

425 **SECTION 9.** The following shall be codified as Section
426 73-35-14.2, Mississippi Code of 1972:

427 73-35-14.2. (1) Minimum standards for instructors for
428 prelicense and post-license education courses required for
429 licensure as a real estate broker or a real estate salesperson
430 shall include:

431 (a) Licensure as a Mississippi real estate broker or
432 real estate salesperson for the immediate past five (5) years
433 prior to application; or



434 (b) Current certification as a Certified Public
435 Accountant; or

436 (c) Attainment of a Juris Doctor (J.D.) or Bachelor of
437 Laws (L.L.B.) degree from a law school whose accreditation is
438 recognized by the Mississippi Supreme Court; or

439 (d) Demonstration of significant expertise in a
440 particular real estate related subject area, as determined and
441 approved by the commission.

442 (2) The commission may establish by rule such other
443 standards for instructors of prelicense education and post-license
444 education as the commission may deem necessary.

445 **SECTION 10.** The following shall be codified as Section
446 73-35-14.3, Mississippi Code of 1972:

447 73-35-14.3. (1) Minimum standards for the content for
448 education courses required for licensure as a real estate broker
449 or a real estate salesperson shall include content on:

450 (a) The provisions of this chapter and any rules and
451 regulations promulgated hereunder;

452 (b) Listing property;

453 (c) Property valuation/appraisal;

454 (d) Real estate arithmetic;

455 (e) Characteristics of real property;

456 (f) Agency and nonagency relationships;

457 (g) Real estate sale contracts/agreements of sale;

458 (h) Leasing and property management;

459 (i) Transfer of title/ownership/deeds;

460 (j) Settlement procedures;

461 (k) Financing;

462 (l) Professional responsibilities and ethics;

463 (m) Fair housing;

464 (n) Federal laws affecting real estate.

465 (2) A prelicense course must meet any standards that the
466 Association of Real Estate Licensing Law Officials (ARELLO), or



467 its successor(s), may have for prelicense courses, including,
468 without limitation, standards for content, form, examination,
469 facilities and instructors. If ARELLO or its successor(s) operate
470 a certification program for prelicense courses, a prelicense
471 course must be certified by ARELLO or its successor(s) before the
472 commission may approve the course.

473 (3) The commission may establish by rule such other
474 standards for prelicense education course content as the
475 commission may deem necessary.

476 (4) No more than eight (8) prelicense hours may be earned in
477 a single day.

478 (5) Courses covering the general content of subsection (1)
479 of this section that are acceptable for credit toward a degree at
480 a college or university as approved by the Southern Association of
481 Colleges and Schools or the comparable regional accrediting
482 authority shall qualify for the minimum standards for prelicense
483 education by virtue of said accreditation. A semester-hour credit
484 shall be equal to fifteen (15) classroom hours and a quarter-hour
485 credit shall be equal to ten (10) classroom hours. Courses given
486 under this section by such accredited institutions are not
487 required to meet ARELLO standards or certifications. The
488 commission may establish by rule that specific areas of the
489 general content areas listed in subsection (1) of this section are
490 not required to be met by courses offered by the accredited
491 institutions under this subsection.

492 **SECTION 11.** The following shall be codified as Section
493 73-35-14.4, Mississippi Code of 1972:

494 73-35-14.4. (1) The term "distance learning courses(s)"
495 shall mean any course approved by the commission in which the
496 student is not physically present in a classroom with the
497 instructor, including, without limitation, correspondence courses,
498 video/DVD based courses and online electronic courses.



499 (2) The commission may approve distance learning courses for
500 prelicense education, post-license education and continuing
501 education courses. Any distance learning course must meet any
502 standards that the Association of Real Estate Licensing Law
503 Officials (ARELLO), or its successor(s), may have for such
504 courses, including, without limitation, standards for content,
505 form, examination, facilities and instructors. If no ARELLO
506 standards exist for a distance learning course, the commission
507 shall establish by rule such minimum standards. If ARELLO or its
508 successor(s) operate a certification program for distance learning
509 courses, a distance learning course must be certified by ARELLO or
510 its successor(s) before the commission may approve the course.

511 **SECTION 12.** Section 73-35-15, Mississippi Code of 1972, is
512 amended as follows:

513 73-35-15. (1) Every person, partnership, association or
514 corporation licensed as a real estate broker shall be required to
515 have and maintain a definite place of business, which shall be a
516 room either in his home or an office elsewhere, to be used for the
517 transaction of real estate business, or such business and any
518 allied business. The certificate of registration as broker and
519 the certificate of each real estate salesperson employed by such
520 broker shall be prominently displayed in said office. The said
521 place of business shall be designated in the license. In case of
522 removal from the designated address, the licensee shall make
523 application to the commission before removal, or within ten (10)
524 days after removal, designating the new location of such office,
525 whereupon the commission shall forthwith issue a new license for
526 the new location for the unexpired period.

527 (2) All licenses issued to a real estate salesperson or
528 broker-salesperson shall designate the responsible broker of such
529 salesperson or broker-salesperson. Prompt notice in writing,
530 within three (3) days, shall be given to the commission by any
531 real estate salesperson of a change of responsible broker, and of



532 the name of the principal broker into whose agency the salesperson
533 is about to enter; and a new license shall thereupon be issued by
534 the commission to such salesperson for the unexpired term of the
535 original license upon the return to the commission of the license
536 previously issued. The change of responsible broker or employment
537 by any licensed real estate salesperson without notice to the
538 commission as required shall automatically cancel his license.
539 Upon termination of a salesperson's agency, the responsible broker
540 shall within three (3) days return the salesperson's license to
541 the commission for cancellation. It shall be unlawful for any
542 real estate salesperson to perform any of the acts contemplated by
543 this chapter either directly or indirectly after his agency has
544 been terminated and his license has been returned for cancellation
545 until his license has been reissued by the commission.

546 **SECTION 13.** Section 73-35-16, Mississippi Code of 1972, is
547 amended as follows:

548 73-35-16. (1) The following words and phrases shall have
549 the meanings ascribed herein unless the context clearly indicates
550 otherwise:

551 (a) "Aggregate limit" means a provision in an insurance
552 contract limiting the maximum liability of an insurer for a series
553 of losses in a given time period such as the policy term.

554 (b) "Claims-made" means policies written under a
555 claims-made basis which shall cover claims made (reported or
556 filed) during the year the policy is in force for incidents which
557 occur that year or during any previous period the policyholder was
558 insured under the claims-made contract. This form of coverage is
559 in contrast to the occurrence policy which covers today's incident
560 regardless of when a claim is filed even if it is one or more
561 years later.

562 (c) "Extended reporting period" means a designated
563 period of time after a claims-made policy has expired during which



564 a claim may be made and coverage triggered as if the claim had
565 been made during the policy period.

566 (d) "Licensee" means any active individual broker,
567 broker-salesperson or salesperson, any partnership or any
568 corporation.

569 (e) "Per-claim limit" means the maximum limit payable,
570 per licensee, for damages arising out of the same error, omission
571 or wrongful act.

572 (f) "Prior acts coverage" applies to policies on a
573 claims-made versus occurrence basis. Prior acts coverage responds
574 to claims that are made during a current policy period, but the
575 act or acts causing the claim or injuries for which the claim is
576 made occurred prior to the inception of the current policy period.

577 (g) "Proof of coverage" means a copy of the actual
578 policy of insurance, a certificate of insurance or a binder of
579 insurance.

580 (h) "Retroactive date" means a provision, found in many
581 claims-made policies, that the policy shall not cover claims for
582 injuries or damages that occurred before the retroactive date even
583 if the claim is first made during the policy period.

584 (2) The following persons shall submit proof of insurance:

585 (a) Any active individual broker, active
586 broker-salesperson or active salesperson;

587 (b) Any partnership (optional); or

588 (c) Any corporation (optional).

589 (3) Individuals whose licenses are on inactive status are
590 not required to carry errors and omissions insurance.

591 (4) All Mississippi licensees shall be covered for
592 activities contemplated under this chapter.

593 (5) Licensees may obtain errors and omissions coverage
594 through the insurance carrier approved by the Mississippi Real
595 Estate Commission and provided on a group policy basis. The
596 following are minimum requirements of the group policy to be



597 issued to the commission, including, as named insureds, all
598 licensees who have paid their required premium:

599 (a) All activities contemplated under this chapter are
600 included as covered activities;

601 (b) A per-claim limit is not less than One Hundred
602 Thousand Dollars (\$100,000.00);

603 (c) An annual aggregate limit is not less than One
604 Hundred Thousand Dollars (\$100,000.00);

605 (d) Limits apply per licensee per claim;

606 (e) Maximum deductible is Two Thousand Five Hundred
607 Dollars (\$2,500.00) per licensee per claim for damages;

608 (f) Maximum deductible is One Thousand Dollars
609 (\$1,000.00) per licensee per claim for defense costs; and

610 (g) The contract of insurance pays, on behalf of the
611 injured person(s), liabilities owed.

612 (6) (a) The maximum contract period between the insurance
613 carrier and the commission is to be three (3) consecutive policy
614 terms, after which time period the commission shall place the
615 insurance out for competitive bid. The commission shall reserve
616 the right to place the contract out for bid at the end of any
617 policy period.

618 (b) The policy period shall be a twelve-month policy
619 term.

620 (c) The retroactive date for the master policy shall
621 not be before July 1, 1994.

622 (i) The licensee may purchase full prior acts
623 coverage on July 1, 1994, if the licensee can show proof of errors
624 and omissions coverage that has been in effect since at least
625 March 15, 1994.

626 (ii) If the licensee purchases full prior acts
627 coverage on July 1, 1994, that licensee shall continue to be
628 guaranteed full prior acts coverage if the insurance carriers are
629 changed in the future.



630 (iii) If the licensee was not carrying errors and
631 omissions insurance on July 1, 1994, the individual certificate
632 shall be issued with a retroactive date of July 1, 1994. This
633 date shall not be advanced if the insurance carriers are changed
634 in the future.

635 (iv) For any new licensee who first obtains a
636 license after July 1, 1994, the retroactive date shall be the
637 effective date of licensure.

638 (v) For any licensee who changes status of license
639 from inactive to active, the retroactive date shall be the
640 effective date of change to "active" licensure.

641 (d) Each licensee shall be notified of the required
642 terms and conditions of coverage for the policy at least thirty
643 (30) days before the renewal date of the policy. A certificate of
644 coverage, showing compliance with the required terms and
645 conditions of coverage, shall be filed with the commission by the
646 renewal date of the policy by each licensee who elects not to
647 participate in the insurance program administered by the
648 commission.

649 (e) If the commission is unable to obtain errors and
650 omissions insurance coverage to insure all licensees who choose to
651 participate in the insurance program at a premium of no more than
652 One Hundred Fifty Dollars (\$150.00) per twelve-months' policy
653 period, the requirement of insurance coverage under this section
654 shall be void during the applicable contract period.

655 (7) Licensees may obtain errors and omissions coverage
656 independently if the coverage contained in the policy complies
657 with the following minimum requirements:

658 (a) All activities contemplated under this chapter are
659 included as covered activities;

660 (b) A per-claim limit is not less than One Hundred
661 Thousand Dollars (\$100,000.00);



662 (c) The deductible is not more than Two Thousand Five
663 Hundred Dollars (\$2,500.00) per licensee per claim for damages and
664 the deductible is not more than One Thousand Dollars (\$1,000.00)
665 per licensee per claim for defense costs; and

666 (d) If other insurance is provided as proof of errors
667 and omissions coverage, the other insurance carrier shall agree to
668 a noncancelable policy or to provide a letter of commitment to
669 notify the commission thirty (30) days before the intention to
670 cancel.

671 (8) The following provisions apply to individual licensees:

672 (a) The commission shall require receipt of proof of
673 errors and omissions insurance from new licensees within thirty
674 (30) days of licensure. Any licenses issued at any time other
675 than policy renewal time shall be subject to a pro rata premium.

676 (b) For licensees not submitting proof of insurance
677 necessary to continue active licensure, the commission shall be
678 responsible for sending notice of deficiency to those licensees.
679 Licensees who do not correct the deficiency within thirty (30)
680 days shall have their licenses placed on inactive status. The
681 commission shall assess fees for inactive status and for return to
682 active status when errors and omissions insurance has been
683 obtained.

684 (c) Any licensee insured in the state program whose
685 license becomes inactive shall not be charged an additional
686 premium if the license is reactivated during the policy period.

687 (9) The commission is authorized to adopt such rules and
688 regulations as it deems appropriate to handle administrative
689 duties relating to operation of the program, including billing and
690 premium collection.

691 **SECTION 14.** Section 73-35-18, Mississippi Code of 1972, is
692 amended as follows:

693 73-35-18. (1) Each individual applicant for renewal of a
694 license issued by the Mississippi Real Estate Commission shall, on



695 or before the expiration date of his license, or at a time
696 directed by the commission, submit proof of completion of not less
697 than sixteen (16) clock hours of approved course work to the
698 commission, in addition to any other requirements for renewal.
699 The sixteen (16) clock hours' course work requirement shall apply
700 to each two-year license renewal, and hours in excess thereof
701 shall not be cumulated or credited for the purposes of subsequent
702 license renewals except as provided in this subsection (1). The
703 commission shall develop standards for approval of courses and
704 shall require certification of such course work of the applicant.
705 The commission may determine any required subject matter within
706 the mandated sixteen (16) hours; provided that the required
707 subjects shall not exceed eight (8) hours of the total sixteen
708 (16) hours. Approved continuing education hours earned in the
709 final three (3) months of a licensee's renewal period, if in
710 excess of the required minimum sixteen (16) hours, may be carried
711 over and credited to the next renewal period. However, no more
712 than six (6) hours may be carried over in this manner. Any member
713 of the Mississippi Legislature who has a real estate license shall
714 be credited with eight (8) hours of credit for the attendance of
715 each year of a legislative session. No person may receive
716 continuing education credit for prelicense education courses
717 taken, except as follows: a licensee whose license is on inactive
718 status and whose continuing education credits are at least thirty
719 (30) hours in arrears may, at the discretion of the commission,
720 receive continuing education credit for retaking prelicense
721 coursework, provided the entire prelicense course is retaken.

722 (2) This section shall apply to renewals of licenses which
723 expire on and after July 1, 1994; however, an applicant for first
724 renewal who has been licensed for not more than one (1) year shall
725 not be required to comply with this section for the first renewal
726 of the applicant's license. The provisions of this section shall
727 not apply to persons who have held a broker's or salesperson's



728 license in this state for at least twenty-five (25) years and who
729 are older than seventy (70) years of age. Inactive licensees are
730 not required to meet the real estate continuing education
731 requirements specified in this section; however, such inactive
732 licensees, before activating their license to active status, must
733 cumulatively meet requirements missed during the period their
734 license was inactive.

735 (3) The commission shall promulgate rules and regulations as
736 necessary to accomplish the purposes of this section in accordance
737 with the Mississippi Administrative Procedures Law.

738 (4) Any person who has been licensed as a real estate broker
739 and allowed his license to expire for a period of less than five
740 (5) years shall be eligible for reinstatement upon completion of
741 the education requirements and payment of all penalties and
742 reinstatement fees as prescribed by the commission. This
743 subsection (4) of this section shall stand repealed from and after
744 December 31, 1994.

745 **SECTION 15.** Section 73-35-23, Mississippi Code of 1972, is
746 amended as follows:

747 73-35-23. (1) The commission is hereby authorized and
748 directed to take legal action against any violator of this
749 chapter. Upon complaint initiated by the commission or filed with
750 it, the licensee or any other person charged with a violation of
751 this chapter shall be given fifteen (15) days' notice of the
752 hearing upon the charges filed, together with a copy of the
753 complaint. The applicant or licensee or other violator shall have
754 an opportunity to be heard in person or by counsel, to offer
755 testimony, and to examine witnesses appearing in connection with
756 the complaint. Hearings shall be held at the offices of the
757 Mississippi Real Estate Commission, or at the commission's sole
758 discretion, at a place determined by the commission.

759 At such hearings, all witnesses shall be sworn and
760 stenographic notes of the proceedings shall be taken and filed as



761 a part of the record in the case. Any party to the proceedings
762 shall be furnished with a copy of such stenographic notes upon
763 payment to the commission of such fees as it shall prescribe, not
764 exceeding, however, the actual cost to the commission. The
765 commission shall render a decision on any complaint and shall
766 immediately notify the parties to the proceedings in writing of
767 its ruling, order or decision.

768 (2) In addition to the authority granted to the commission
769 as hereinabove set forth, the commission is hereby vested with the
770 authority to bring injunctive proceedings in any appropriate forum
771 against any violator or violators of this chapter, and all judges
772 or courts now having the power to grant injunctions are
773 specifically granted the power and jurisdiction to hear and
774 dispose of such proceedings.

775 (3) The commission is hereby authorized and empowered to
776 issue subpoenas for the attendance of witnesses and the production
777 of books and papers. The process issued by the commission shall
778 extend to all parts of the state, and such process shall be served
779 by any person designated by the commission for such service. The
780 person serving such process receive such compensation as may be
781 allowed by the commission, not to exceed the fee prescribed by
782 law for similar services. All witnesses who are subpoenaed and
783 who appear in any proceedings before the commission receive the
784 same fees and mileage as allowed by law, and all such fees shall
785 be taxed as part of the costs in the case.

786 (4) Where in any proceeding before the commission any
787 witness shall fail or refuse to attend upon subpoena issued by the
788 commission, shall refuse to testify, or shall refuse to produce
789 any books and papers the production of which is called for by the
790 subpoena, the attendance of such witness and the giving of his
791 testimony and the production of the books and papers shall be
792 enforced by any court of competent jurisdiction of this state in
793 the same manner as the attendance and testimony of witnesses in



794 civil cases are enforced in the courts of this state.

795 (5) The commission may obtain legal counsel privately to
796 represent it in proceedings when legal counsel is required.

797 **SECTION 16.** Section 89-1-503, Mississippi Code of 1972, is
798 amended as follows:

799 89-1-503. The transferor of any real property subject to
800 Sections 89-1-501-89-1-523 shall deliver to the prospective
801 transferee the written property condition disclosure statement
802 required by Sections 89-1-501 through 89-1-523, as follows:

803 (a) In the case of a sale, as soon as practicable
804 before transfer of title.

805 (b) In the case of transfer by a real property sales
806 contract, or by a lease together with an option to purchase, or a
807 ground lease coupled with improvements, as soon as practicable
808 before execution of the contract. For the purpose of this
809 paragraph, "execution" means the making or acceptance of an offer.

810 With respect to any transfer subject to paragraph (a) or (b),
811 the transferor shall indicate compliance with this act either on
812 the receipt for deposit, the real property sales contract, the
813 lease, or any addendum attached thereto or on a separate document.

814 If any disclosure, or any material amendment of any
815 disclosure, required to be made by Section 89-1-501 through
816 89-1-523, is delivered after the execution of an offer to
817 purchase, the transferee shall have three (3) days after delivery
818 in person or five (5) days after delivery by deposit in the mail,
819 to terminate his or her offer by delivery of a written notice of
820 termination to the transferor or the transferor's agent.

821 **SECTION 17.** Section 73-35-20, Mississippi Code of 1972,
822 which provides for a temporary real estate salesperson license, is
823 repealed.

824 **SECTION 18.** Section 7 of Chapter 588, Laws of 1999, is
825 amended as follows:



826 Section 7. Section 1 of this act shall take effect and be in
827 force from and after July 1, 1999, and the remainder of this act
828 shall take effect and be in force from and after January 1,
829 2000 * * *.

830 **SECTION 19.** This act shall take effect and be in force from
831 and after July 1, 2002, and shall apply to persons who apply for
832 licensing after that date. Any person who has applied for a
833 license before July 1, 2002, shall be governed by the law as it
834 existed before July 1, 2002.

