

By: Senator(s) Hewes, Mettetal, Michel, Lee

To: Business and Financial Institutions

SENATE BILL NO. 2507

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 CODIFY SECTION 73-35-14.5, MISSISSIPPI CODE OF 1972,
 20 TO PROVIDE FOR TEMPORARY LICENSES AND POST-LICENSE EDUCATION; TO
 21 AMEND SECTION 73-35-15, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE
 22 REQUIREMENTS REGARDING BROKER LOCATION; TO AMEND SECTION 73-35-16,
 23 MISSISSIPPI CODE OF 1972, TO REVISE THE PREMIUM AMOUNT FOR ERRORS
 24 AND OMISSIONS INSURANCE; TO AMEND SECTION 73-35-18, MISSISSIPPI
 25 CODE OF 1972, TO CLARIFY CONTINUING EDUCATION REQUIREMENTS; TO
 26 AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972, TO REVISE THE
 27 VENUE OF HEARINGS; TO AMEND SECTION 89-1-503, MISSISSIPPI CODE OF
 28 1972, TO CLARIFY WRITTEN STATEMENTS IN CONVEYANCES; TO REPEAL
 29 SECTION 73-35-20, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR A
 30 TEMPORARY REAL ESTATE SALES PERSON LICENSE; TO AMEND SECTION 7 OF
 31 CHAPTER 588, GENERAL LAWS OF 1999, TO DELETE THE REPEALER ON
 32 CERTAIN SECTIONS OF THE REAL ESTATE BROKERS LICENSE LAW; AND FOR
 33 RELATED PURPOSES.

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

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

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



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

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

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

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



76 included or comprehended by the definitions of a real estate
77 broker in subsection (1) of this section, for compensation or
78 otherwise.

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

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

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

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

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

95 (d) Public officers while performing their duties as
96 such.

97 (e) Anyone dealing exclusively in oil and gas leases
98 and mineral rights.

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

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



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

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

126 73-35-5. (1) There is hereby created the Mississippi Real
127 Estate Commission. The commission shall consist of five (5)
128 persons, to be appointed by the Governor with the advice and
129 consent of the Senate. Each appointee shall have been a resident
130 and citizen of this state for at least six (6) years prior to his
131 appointment, and his vocation for at least five (5) years shall
132 have been that of a real estate broker. One (1) member shall be
133 appointed for the term of one (1) year; two (2) members for terms
134 of two (2) years; two (2) members for terms of four (4) years;
135 thereafter, the term of the members of said commission shall be
136 for four (4) years and until their successors are appointed and
137 qualify. There shall be at least one (1) commissioner from each
138 congressional district * * *, as such districts are constituted as
139 of July 1, 2002. The commissioners appointed from each of the
140 congressional districts shall be bona fide residents of the
141 district from which each is appointed. One (1) additional



142 commissioner shall be appointed without regard to residence in any
143 particular congressional district. Members to fill vacancies
144 shall be appointed by the Governor for the unexpired term. The
145 Governor may remove any commissioner for cause. The State of
146 Mississippi shall not be required to furnish office space for such
147 commissioners. The provisions of this section shall not affect
148 persons who are members of the Real Estate Commission as of
149 January 1, 2002. Such members shall serve out their respective
150 terms, upon the expiration of which the provisions of this section
151 shall take effect. Nothing provided herein shall be construed as
152 prohibiting the reappointment of any member of the said
153 commission.

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

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

170 **SECTION 3.** The following shall be codified as Section
171 73-35-6, Mississippi Code of 1972:

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



175 partnership, company, association or corporation who actively
176 participates in its brokerage business and when any required fee
177 is paid.

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

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

200 * * *

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



207 real estate salesperson's examination as hereafter
208 specified * * *.

209 * * *

210 * * * The residency requirements set forth in this section
211 shall not apply to those licensees of other states who qualify and
212 obtain nonresident licenses in this state.

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

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

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

235 (2) Every nonresident applicant shall file a statement of
236 irrevocable consent with the Real Estate Commission that legal
237 actions may be commenced against him in the proper court of any
238 county of this state in which a cause of action may arise or in
239 which the plaintiff may reside by service of process or pleading



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

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

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

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

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



273 license and furnish a certification of licensure from that state
274 or states.

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

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

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

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

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

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

302 73-35-13. (1) In addition to proof of his honesty,
303 trustworthiness and good reputation, the applicant shall take a
304 written examination which shall be held at least four (4) times
305 each year at regular intervals and on stated times by the



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

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

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

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



339 (5) Upon satisfactorily passing such examination and upon
340 complying with all other provisions of law and conditions of this
341 chapter, a license shall thereupon be issued to the successful
342 applicant who, upon receiving such license, is authorized to
343 conduct the business of a real estate broker or real estate
344 salesperson in this state.

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

353 **SECTION 7.** The following shall be codified as Section
354 73-35-14, Mississippi Code of 1972:

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



371 provided and pay the required registration fees specified in this
372 chapter and such other fees as established by the commission.

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

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

396 **SECTION 8.** The following shall be codified as Section
397 73-35-14.1, Mississippi Code of 1972:

398 73-35-14.1. (1) Minimum standards for initial and
399 continuing accreditation as a real estate school or prelicense
400 education provider shall include:

401 (a) Payment of any fees established by the commission.
402 If the school or provider is accredited as a prelicense school or



403 prelicense education provider, fees shall include a biennial fee
404 of Two Thousand Five Hundred Dollars (\$2,500.00).

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

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

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

428 **SECTION 9.** The following shall be codified as Section
429 73-35-14.2, Mississippi Code of 1972:

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



434 (a) Licensure as a Mississippi real estate broker or
435 real estate salesperson for the immediate past five (5) years
436 prior to application; or

437 (b) Current certification as a Certified Public
438 Accountant; or

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

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; and

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 on
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 course(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.** The following shall be codified as Section
512 73-35-14.5, Mississippi Code of 1972:

513 73-35-14.5. (1) Upon passing the Mississippi broker's or
514 salesperson's examination and complying with all other conditions
515 for licensure, a temporary license shall be issued to the
516 applicant. The fee for the temporary license shall also be the
517 same for the permanent license as provided in Section 73-35-17. A
518 temporary license shall be valid for a period of one (1) year
519 following the first day of the month after its issuance.

520 (2) All Mississippi residents who apply for and receive a
521 nonresident Mississippi broker's or salesperson's license shall be
522 subject to the requirements under this section, including
523 temporary licensure and completion of a thirty-hour post-license
524 course.

525 (3) The holder of a temporary license shall not be issued a
526 permanent license until he has satisfactorily completed a
527 thirty-hour post-license course prescribed by the commission and
528 offered by providers specifically certified by the commission to
529 offer this mandated post-license education. The holder of a
530 temporary license shall complete the entire thirty-hour course
531 within twelve (12) months of issuance of his temporary license;



532 otherwise this temporary license shall automatically be placed on
533 inactive status by the Mississippi Real Estate Commission. If the
534 holder of the temporary license does not complete the course and
535 have his permanent license issued within one (1) year following
536 the first day of the month after its issuance, the temporary
537 license shall automatically expire and lapse. A temporary license
538 is not subject to renewal procedures in this chapter and may not
539 be renewed.

540 (4) The thirty-hour post-license course shall be offered by
541 providers certified and approved by the commission, and an annual
542 certification fee of One Thousand Dollars (\$1,000.00) shall be
543 charged to providers. The thirty-hour post-license coursework
544 shall be offered in no less than fifteen-hour increments of
545 classroom instruction. No more than eight (8) hours may be earned
546 in a single day. The commission shall determine standards for
547 approval of post-license courses and course providers, and shall
548 require certification of such coursework of the applicant. There
549 shall be different content criteria for post-license education for
550 salesperson licensees and for broker licensees. In the
551 post-license course for salesperson licensees, a minimum of
552 twenty-four (24) hours of the thirty-hour coursework shall be in
553 the following subjects: agency relationships, contracts, earnest
554 money, antitrust, fair housing, ethics and property condition
555 disclosure. The remaining six (6) hours shall be in subjects
556 intended to enhance the competency of salesperson licensees in
557 representing consumers, and may include the following subjects:
558 pricing property, environmental issues, home inspections, leases
559 and property management, and mortgage processes. In the
560 post-license course for broker licensees, a minimum of twenty-four
561 (24) hours of the thirty-hour coursework shall be in the following
562 subjects: managing escrow accounts, intraoffice confidentiality,
563 broker responsibilities to licensees, office policies and
564 procedures (including agency office policies), broker agreements



565 with licensees and assistants and Mississippi Real Estate
566 Commission required forms and any other subject as the commission
567 may, by rule, require to be included in such course. The
568 remaining six (6) hours shall be in subjects intended to enhance
569 the competency of brokers, including, without limitation, managing
570 agents, recruiting, retention, budgeting and financial planning.

571 (5) The holder of an active license who has satisfactorily
572 completed the post-license course and whose permanent license has
573 been issued shall not be subject to the sixteen-hour continuing
574 education requirement in this chapter for the first renewal of his
575 permanent license.

576 **SECTION 13.** Section 73-35-15, Mississippi Code of 1972, is
577 amended as follows:

578 73-35-15. (1) Every person, partnership, association or
579 corporation licensed as a real estate broker shall be required to
580 have and maintain a definite place of business, which shall be a
581 room either in his home or an office elsewhere, to be used for the
582 transaction of real estate business, or such business and any
583 allied business. The certificate of registration as broker and
584 the certificate of each real estate salesperson employed by such
585 broker shall be prominently displayed in said office. The said
586 place of business shall be designated in the license. In case of
587 removal from the designated address, the licensee shall make
588 application to the commission before removal, or within ten (10)
589 days after removal, designating the new location of such office,
590 whereupon the commission shall forthwith issue a new license for
591 the new location for the unexpired period.

592 (2) All licenses issued to a real estate salesperson or
593 broker-salesperson shall designate the responsible broker of such
594 salesperson or broker-salesperson. Prompt notice in writing,
595 within three (3) days, shall be given to the commission by any
596 real estate salesperson of a change of responsible broker, and of
597 the name of the principal broker into whose agency the salesperson



598 is about to enter; and a new license shall thereupon be issued by
599 the commission to such salesperson for the unexpired term of the
600 original license upon the return to the commission of the license
601 previously issued. The change of responsible broker or employment
602 by any licensed real estate salesperson without notice to the
603 commission as required shall automatically cancel his license.
604 Upon termination of a salesperson's agency, the responsible broker
605 shall within three (3) days return the salesperson's license to
606 the commission for cancellation. It shall be unlawful for any
607 real estate salesperson to perform any of the acts contemplated by
608 this chapter either directly or indirectly after his agency has
609 been terminated and his license has been returned for cancellation
610 until his license has been reissued by the commission.

611 **SECTION 14.** Section 73-35-16, Mississippi Code of 1972, is
612 amended as follows:

613 73-35-16. (1) The following words and phrases shall have
614 the meanings ascribed herein unless the context clearly indicates
615 otherwise:

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

619 (b) "Claims-made" means policies written under a
620 claims-made basis which shall cover claims made (reported or
621 filed) during the year the policy is in force for incidents which
622 occur that year or during any previous period the policyholder was
623 insured under the claims-made contract. This form of coverage is
624 in contrast to the occurrence policy which covers today's incident
625 regardless of when a claim is filed even if it is one or more
626 years later.

627 (c) "Extended reporting period" means a designated
628 period of time after a claims-made policy has expired during which
629 a claim may be made and coverage triggered as if the claim had
630 been made during the policy period.



631 (d) "Licensee" means any active individual broker,
632 broker-salesperson or salesperson, any partnership or any
633 corporation.

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

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

642 (g) "Proof of coverage" means a copy of the actual
643 policy of insurance, a certificate of insurance or a binder of
644 insurance.

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

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

650 (a) Any active individual broker, active
651 broker-salesperson or active salesperson;

652 (b) Any partnership (optional); or

653 (c) Any corporation (optional).

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

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

658 (5) Licensees may obtain errors and omissions coverage
659 through the insurance carrier approved by the Mississippi Real
660 Estate Commission and provided on a group policy basis. The
661 following are minimum requirements of the group policy to be
662 issued to the commission, including, as named insureds, all
663 licensees who have paid their required premium:



664 (a) All activities contemplated under this chapter are
665 included as covered activities;

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

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

670 (d) Limits apply per licensee per claim;

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

673 (f) Maximum deductible is One Thousand Dollars
674 (\$1,000.00) per licensee per claim for defense costs; and

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

677 (6) (a) The maximum contract period between the insurance
678 carrier and the commission is to be three (3) consecutive policy
679 terms, after which time period the commission shall place the
680 insurance out for competitive bid. The commission shall reserve
681 the right to place the contract out for bid at the end of any
682 policy period.

683 (b) The policy period shall be a twelve-month policy
684 term.

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

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

691 (ii) If the licensee purchases full prior acts
692 coverage on July 1, 1994, that licensee shall continue to be
693 guaranteed full prior acts coverage if the insurance carriers are
694 changed in the future.

695 (iii) If the licensee was not carrying errors and
696 omissions insurance on July 1, 1994, the individual certificate



697 shall be issued with a retroactive date of July 1, 1994. This
698 date shall not be advanced if the insurance carriers are changed
699 in the future.

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

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

706 (d) Each licensee shall be notified of the required
707 terms and conditions of coverage for the policy at least thirty
708 (30) days before the renewal date of the policy. A certificate of
709 coverage, showing compliance with the required terms and
710 conditions of coverage, shall be filed with the commission by the
711 renewal date of the policy by each licensee who elects not to
712 participate in the insurance program administered by the
713 commission.

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

720 (7) Licensees may obtain errors and omissions coverage
721 independently if the coverage contained in the policy complies
722 with the following minimum requirements:

723 (a) All activities contemplated under this chapter are
724 included as covered activities;

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

727 (c) The deductible is not more than Two Thousand Five
728 Hundred Dollars (\$2,500.00) per licensee per claim for damages and



729 the deductible is not more than One Thousand Dollars (\$1,000.00)
730 per licensee per claim for defense costs; and

731 (d) If other insurance is provided as proof of errors
732 and omissions coverage, the other insurance carrier shall agree to
733 a noncancelable policy or to provide a letter of commitment to
734 notify the commission thirty (30) days before the intention to
735 cancel.

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

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

741 (b) For licensees not submitting proof of insurance
742 necessary to continue active licensure, the commission shall be
743 responsible for sending notice of deficiency to those licensees.
744 Licensees who do not correct the deficiency within thirty (30)
745 days shall have their licenses placed on inactive status. The
746 commission shall assess fees for inactive status and for return to
747 active status when errors and omissions insurance has been
748 obtained.

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

752 (9) The commission is authorized to adopt such rules and
753 regulations as it deems appropriate to handle administrative
754 duties relating to operation of the program, including billing and
755 premium collection.

756 **SECTION 15.** Section 73-35-18, Mississippi Code of 1972, is
757 amended as follows:

758 73-35-18. (1) Each individual applicant for renewal of a
759 license issued by the Mississippi Real Estate Commission shall, on
760 or before the expiration date of his license, or at a time
761 directed by the commission, submit proof of completion of not less



762 than sixteen (16) clock hours of approved coursework to the
763 commission, in addition to any other requirements for renewal.
764 The sixteen (16) clock hours' coursework requirement shall apply
765 to each two-year license renewal, and hours in excess thereof
766 shall not be cumulated or credited for the purposes of subsequent
767 license renewals except as provided in this subsection (1). The
768 commission shall develop standards for approval of courses and
769 shall require certification of such coursework of the applicant.
770 The commission may determine any required subject matter within
771 the mandated sixteen (16) hours; provided that the required
772 subjects shall not exceed eight (8) hours of the total sixteen
773 (16) hours. Approved continuing education hours earned in the
774 final three (3) months of a licensee's renewal period, if in
775 excess of the required minimum sixteen (16) hours, may be carried
776 over and credited to the next renewal period. However, no more
777 than six (6) hours may be carried over in this manner. Any member
778 of the Mississippi Legislature who has a real estate license shall
779 be credited with eight (8) hours of credit for the attendance of
780 each year of a legislative session. No person may receive
781 continuing education credit for prelicense education courses
782 taken; however, a licensee whose license is on active status and
783 whose continuing education credits are at least thirty (30) hours
784 in arrears may receive, in the discretion of the commission,
785 continuing education credit for retaking prelicense coursework if
786 the entire prelicense course is retaken.

787 (2) This section shall apply to renewals of licenses which
788 expire on and after July 1, 1994; however, an applicant for first
789 renewal who has been licensed for not more than one (1) year shall
790 not be required to comply with this section for the first renewal
791 of the applicant's license. The provisions of this section shall
792 not apply to persons who have held a broker's or salesperson's
793 license in this state for at least twenty-five (25) years and who
794 are older than seventy (70) years of age. Inactive licensees are



795 not required to meet the real estate continuing education
796 requirements specified in this section; however, such inactive
797 licensees, before activating their license to active status, must
798 cumulatively meet requirements missed during the period their
799 license was inactive.

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

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

810 **SECTION 16.** Section 73-35-23, Mississippi Code of 1972, is
811 amended as follows:

812 73-35-23. (1) The commission is hereby authorized and
813 directed to take legal action against any violator of this
814 chapter. Upon complaint initiated by the commission or filed with
815 it, the licensee or any other person charged with a violation of
816 this chapter shall be given fifteen (15) days' notice of the
817 hearing upon the charges filed, together with a copy of the
818 complaint. The applicant or licensee or other violator shall have
819 an opportunity to be heard in person or by counsel, to offer
820 testimony, and to examine witnesses appearing in connection with
821 the complaint. Hearings shall be held at the offices of the
822 Mississippi Real Estate Commission, or at a place determined by
823 the commission.

824 At such hearings, all witnesses shall be properly sworn and
825 stenographic notes of the proceedings shall be taken and filed as
826 a part of the record in the case. Any party to the proceedings
827 shall be furnished with a copy of such stenographic notes upon



828 payment to the commission of such fees as it shall prescribe, not
829 exceeding, however, the actual cost to the commission. The
830 commission shall render a decision on any complaint and shall
831 immediately notify the parties to the proceedings in writing of
832 its ruling, order or decision.

833 (2) In addition to the authority granted to the commission
834 as hereinabove set forth, the commission is hereby vested with the
835 authority to bring injunctive proceedings in any appropriate forum
836 against any violator or violators of this chapter, and all judges
837 or courts now having the power to grant injunctions are
838 specifically granted the power and jurisdiction to hear and
839 dispose of such proceedings.

840 (3) The commission is hereby authorized and empowered to
841 issue subpoenas for the attendance of witnesses and the production
842 of books and papers. The process issued by the commission shall
843 extend to all parts of the state, and such process shall be served
844 by any person designated by the commission for such service. The
845 person serving such process may receive such compensation as may
846 be allowed by the commission, not to exceed the fee prescribed by
847 law for similar services. All witnesses who are subpoenaed and
848 who appear in any proceedings before the commission may receive
849 the same fees and mileage as allowed by law, and all such fees
850 shall be taxed as part of the costs in the case.

851 (4) Where in any proceeding before the commission any
852 witness shall fail or refuse to attend upon subpoena issued by the
853 commission, shall refuse to testify, or shall refuse to produce
854 any books and papers the production of which is called for by the
855 subpoena, the attendance of such witness and the giving of his
856 testimony and the production of the books and papers shall be
857 enforced by any court of competent jurisdiction of this state in
858 the same manner as the attendance and testimony of witnesses in
859 civil cases are enforced in the courts of this state.



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

862 **SECTION 17.** Section 89-1-503, Mississippi Code of 1972, is
863 amended as follows:

864 89-1-503. The transferor of any real property subject to
865 Sections 89-1-501 through 89-1-523 shall deliver to the
866 prospective transferee the written property condition disclosure
867 statement required by Sections 89-1-501 through 89-1-523, as
868 follows:

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

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

876 With respect to any transfer subject to paragraph (a) or (b),
877 the transferor shall indicate compliance with Sections 89-1-501
878 through 89-1-523 either on the receipt for deposit, the real
879 property sales contract, the lease, or any addendum attached
880 thereto or on a separate document.

881 If any disclosure, or any material amendment of any
882 disclosure, required to be made by Sections 89-1-501 through
883 89-1-523, is delivered after the execution of an offer to
884 purchase, the transferee shall have three (3) days after delivery
885 in person or five (5) days after delivery by deposit in the mail,
886 to terminate his or her offer by delivery of a written notice of
887 termination to the transferor or the transferor's agent.

888 **SECTION 18.** Section 73-35-20, Mississippi Code of 1972,
889 which provides for a temporary real estate salesperson's license,
890 is hereby repealed.

891 **SECTION 19.** Section 7 of Chapter 588, General Laws of 1999,
892 is amended as follows:



893 Section 7. Section 1 of this act shall take effect and be in
894 force from and after July 1, 1999, and the remainder of this act
895 shall take effect and be in force from and after January 1,
896 2000 * * *.

897 **SECTION 20.** This act shall take effect and be in force from
898 and after July 1, 2002.

