

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

To: Business and Financial Institutions

SENATE BILL NO. 2507
(As Passed the Senate)

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 at no time be more than one (1) commissioner
138 from any one (1) congressional district of which he is a bona fide
139 resident, as such districts are constituted as of January 1, 1983.
140 Members to fill vacancies shall be appointed by the Governor for
141 the unexpired term. The Governor may remove any commissioner for



142 cause. The State of Mississippi shall not be required to furnish
143 office space for such commissioners. The provisions of this
144 section shall not affect persons who are members of the Real
145 Estate Commission as of July 1, 1988. Such members shall serve
146 out their respective terms, upon the expiration of which the
147 provisions of this section shall take effect. Nothing provided
148 herein shall be construed as prohibiting the reappointment of any
149 member of the said commission. The members of the commission as
150 constituted on January 1, 2002, whose terms have not expired shall
151 serve the balance of their terms, after which time the membership
152 of the commission shall be appointed as follows: There shall be
153 appointed one (1) member of the commission from each of the four
154 (4) Mississippi congressional districts as they currently exist
155 and one (1) from the state at large, and the Governor shall make
156 appointments from the congressional district having the smallest
157 number of commission members until the membership includes at
158 least one (1) member from each congressional district as required.
159 No more than one (1) member shall be appointed from the same
160 county.

161 (2) The commission shall organize by selecting from its
162 members a chairman, and may do all things necessary and convenient
163 for carrying into effect the provisions of this chapter, and may
164 from time to time promulgate rules and regulations. Each member
165 of the commission shall receive per diem as authorized in Section
166 25-3-69, Mississippi Code of 1972, and his actual and necessary
167 expenses incurred in the performance of duties pertaining to his
168 office as authorized in Section 25-3-41, Mississippi Code of 1972.

169 (3) The commission shall adopt a seal by which it shall
170 authenticate its proceedings. Copies of all records and papers in
171 the office of the commission, duly certified and authenticated by
172 the seal of said commission, shall be received in evidence in all
173 courts equally and with like effect as the original. All records
174 kept in the office of the commission under authority of this



175 chapter shall be open to public inspection except pending
176 investigative files.

177 **SECTION 3.** The following shall be codified as Section
178 73-35-6, Mississippi Code of 1972:

179 73-35-6. A corporation, partnership, company or association
180 shall be granted a license when individual broker licenses have
181 been issued to every member, owner, partner or officer of such
182 partnership, company, association or corporation who actively
183 participates in its brokerage business and when any required fee
184 is paid.

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

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

207 * * *



208 Every applicant for a resident license as a real estate
209 salesperson shall be age eighteen (18) years or over, shall
210 be * * * a bona fide resident of the State of Mississippi prior to
211 filing his application, * * * shall have successfully completed a
212 minimum of sixty (60) * * * hours in courses in real estate as
213 hereafter specified, and shall have successfully completed the
214 real estate salesperson's examination as hereafter
215 specified * * *.

216 * * *

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

220 The commission is authorized to exempt from such prelicensing
221 educational requirements, in whole or in part, a real estate
222 licensee of another state who desires to obtain a license under
223 this chapter; provided, however, that the prelicensing educational
224 requirements in the other state are determined by the commission
225 to be equivalent to prelicensing educational requirements in this
226 state and provided that such state extends this same privilege or
227 exemption to Mississippi real estate licensees.

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

230 73-35-8. (1) A nonresident may apply for a nonresident's
231 license in Mississippi provided the individual is (a) a licensed
232 broker in another state or (b) is a broker/salesperson or
233 salesperson affiliated with a resident or nonresident Mississippi
234 broker or (c) is a nonresident who applies for a broker's license
235 and who will maintain an office in Mississippi. The nonresident
236 broker need not maintain a place of business within Mississippi
237 provided he is regularly actively engaged in the real estate
238 business and maintains a place of business in the other state.
239 The nonresident licensee or applicant shall be subject to all the



240 provisions of this chapter except for the residency requirement
241 and approved equivalent prelicensing education.

242 (2) Every nonresident applicant shall file a statement of
243 irrevocable consent with the Real Estate Commission that legal
244 actions may be commenced against him in the proper court of any
245 county of this state in which a cause of action may arise or in
246 which the plaintiff may reside by service of process or pleading
247 authorized by the laws of this state, by the Secretary of State of
248 Mississippi, or by any member of the commission or chief executive
249 officer thereof, the consent stipulating that the service of
250 process or pleading shall be taken in all courts to be valid and
251 binding as if personal service had been made upon the nonresident
252 licensee in this state. The consent shall be duly acknowledged.
253 Every nonresident licensee shall consent to have any hearings
254 conducted by the commission pursuant to Section 73-35-23,
255 Mississippi Code of 1972, at a place designated by the commission.

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

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

271 (5) Each applicant for a nonresident license must qualify in
272 all respects, including education, examination and fees, as an



273 applicant who is a resident of Mississippi with the exception of
274 the residency requirement and approved equivalent prelicensing
275 education.

276 (6) A certification from the Executive Officer of the Real
277 Estate Commission in the state in which the nonresident maintains
278 his principal place of business shall be required. An applicant
279 shall disclose all states in which he has held a real estate
280 license and furnish a certification of licensure from that state
281 or states.

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

285 (8) Any nonresident broker, broker-salesperson and
286 salesperson shall meet Mississippi continuing education
287 requirements after becoming licensed just as any resident
288 licensee.

289 (9) A broker or salesperson licensed in this state, on
290 inactive status in good standing and no longer a resident of this
291 state, may, after meeting other requirements for nonresident
292 licensees, make application for a nonresident license without
293 being required to meet current pre-licensing educational
294 requirements at the time of application or having to sit for the
295 examination in order to obtain the equivalent nonresident license.

296 (10) A nonresident licensee in good standing who changes his
297 legal domicile to the State of Mississippi may obtain a resident
298 license equivalent to his nonresident license without meeting the
299 current educational requirements or sitting for the examination,
300 provided other requirements set forth for residents of the state
301 are met.

302 (11) A nonresident licensee may utilize the inactive status
303 for his license under the same requirements as a resident
304 licensee, including, but not limited to, continuing education



305 requirements and ceasing active status under a licensed
306 nonresident broker.

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

309 73-35-13. (1) In addition to proof of his honesty,
310 trustworthiness and good reputation, the applicant shall take a
311 written examination which shall be held at least four (4) times
312 each year at regular intervals and on stated times by the
313 commission and shall test reading, writing, spelling, elementary
314 arithmetic and his general knowledge of the statutes of this state
315 relating to real property, deeds, mortgages, agreements of sale,
316 agency, contract, leases, ethics, appraisals and the provisions of
317 this chapter and such other matters the commission certifies as
318 necessary to the practice of real estate brokerage in the State of
319 Mississippi. The examination for a broker's license shall differ
320 from the examination for a salesperson's license, in that it shall
321 be of a more exacting nature and require higher standards of
322 knowledge of real estate. The commission shall cause examinations
323 to be conducted at such times and places as it shall determine.

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

328 (3) No person shall be permitted or authorized to act as a
329 real estate broker or salesperson until he has qualified by
330 examination, except as hereinbefore provided. Any individual who
331 fails to pass the examination for salesperson upon two (2)
332 occasions, shall be ineligible for a similar examination, until
333 after the expiration of three (3) months from the time such
334 individual last took the examination. Any individual who fails to
335 pass the broker's examination upon two (2) occasions, shall be
336 ineligible for a similar examination until after the expiration of
337 six (6) months from the time such individual last took the



338 examination, and then only upon making application as in the first
339 instance.

340 (4) If the applicant is a partnership, association or
341 corporation, said examination shall be taken on behalf of said
342 partnership, association or corporation by the member or officer
343 thereof who is designated in the application as the person to
344 receive a license by virtue of the issuing of a license to such
345 partnership, association or corporation.

346 (5) Upon satisfactorily passing such examination and upon
347 complying with all other provisions of law and conditions of this
348 chapter, a license shall thereupon be issued to the successful
349 applicant who, upon receiving such license, is authorized to
350 conduct the business of a real estate broker or real estate
351 salesperson in this state.

352 (6) The commission is authorized to exempt from such
353 examination, in whole or in part, a real estate licensee of
354 another state who desires to obtain a license under this chapter;
355 provided, however, that the examination administered in the other
356 state is determined by the commission to be equivalent to such
357 examination given in this state and provided that such other state
358 extends this same privilege or exemption to Mississippi real
359 estate licensees.

360 **SECTION 7.** The following shall be codified as Section
361 73-35-14, Mississippi Code of 1972:

362 73-35-14. (1) An institution or organization desiring to
363 conduct a school or offer a course of instruction to prepare
364 persons to be licensed under this chapter, or to offer
365 post-licensure courses, shall apply to the commission for
366 accreditation, and shall submit evidence that it is prepared to
367 carry out a prescribed minimum curriculum in real estate
368 principles and practices as set forth in this chapter and can meet
369 other standards established by the commission. An investigation
370 of the school and of the institution or organization with which



371 such school is affiliated shall be made by the commission. If, in
372 the opinion of the commission, the requirements for an accredited
373 school for instruction in real estate principles and practices are
374 met, the commission shall approve the school as an accredited real
375 estate school upon payment of the fees set forth in this chapter
376 and such other fees as established by the commission. All schools
377 so accredited shall register at required intervals on a form
378 provided and pay the required registration fees specified in this
379 chapter and such other fees as established by the commission.

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

396 (3) A college or university in the State of Mississippi
397 accredited by the Southern Association of Colleges and Schools or
398 the comparable regional accrediting authority shall be an approved
399 education provider for prelicense courses for both the broker's
400 and salesperson's license by virtue of such accreditation. Such
401 colleges and universities are not required to meet any other
402 standards provided herein.



403 **SECTION 8.** The following shall be codified as Section
404 73-35-14.1, Mississippi Code of 1972:

405 73-35-14.1. (1) Minimum standards for initial and
406 continuing accreditation as a real estate school or prelicense
407 education provider shall include:

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

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

422 (c) Schools and prelicense education providers must use
423 a method for instructor evaluation by students attending
424 prelicense education classes. The commission may establish
425 minimum standards for instructor evaluation. In the event the
426 provider does not meet the minimum standards, the commission may
427 revoke a provider's authority to offer prelicense education
428 courses. Schools and prelicense education providers must provide
429 the results of such instructor evaluations to the commission in
430 the manner the commission directs.

431 (2) The commission may establish by rule such other
432 standards for schools, prelicense education providers and
433 post-license education providers as the commission may deem
434 necessary.



435 **SECTION 9.** The following shall be codified as Section
436 73-35-14.2, Mississippi Code of 1972:

437 73-35-14.2. (1) Minimum standards for instructors for
438 prelicense and post-license education courses required for
439 licensure as a real estate broker or a real estate salesperson
440 shall include:

441 (a) Licensure as a Mississippi real estate broker or
442 real estate salesperson for the immediate past five (5) years
443 prior to application; or

444 (b) Current certification as a Certified Public
445 Accountant; or

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

449 (d) Demonstration of significant expertise in a
450 particular real estate related subject, as determined and approved
451 by the commission.

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

455 **SECTION 10.** The following shall be codified as Section
456 73-35-14.3, Mississippi Code of 1972:

457 73-35-14.3. (1) Minimum standards for the content for
458 education courses required for licensure as a real estate broker
459 or a real estate salesperson shall include content on:

460 (a) The provisions of this chapter and any rules and
461 regulations promulgated hereunder;

462 (b) Listing property;

463 (c) Property valuation/appraisal;

464 (d) Real estate arithmetic;

465 (e) Characteristics of real property;

466 (f) Agency and nonagency relationships;

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



- 468 (h) Leasing and property management;
- 469 (i) Transfer of title/ownership/deeds;
- 470 (j) Settlement procedures;
- 471 (k) Financing;
- 472 (l) Professional responsibilities and ethics;
- 473 (m) Fair housing; and
- 474 (n) Federal laws affecting real estate.

475 (2) A prelicense course must meet any standards that the
476 Association of Real Estate Licensing Law Officials (ARELLO), or
477 its successor(s), may have for prelicense courses, including,
478 without limitation, standards for content, form, examination,
479 facilities and instructors. If ARELLO or its successor(s) operate
480 a certification program for prelicense courses, a prelicense
481 course must be certified by ARELLO or its successor(s) before the
482 commission may approve the course.

483 (3) The commission may establish by rule such other
484 standards for prelicense education course content as the
485 commission may deem necessary.

486 (4) No more than eight (8) prelicense hours may be earned on
487 a single day.

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



500 not required to be met by courses offered by the accredited
501 institutions under this subsection.

502 **SECTION 11.** The following shall be codified as Section
503 73-35-14.4, Mississippi Code of 1972:

504 73-35-14.4. (1) The term "distance learning course(s)"
505 shall mean any course approved by the commission in which the
506 student is not physically present in a classroom with the
507 instructor, including, without limitation, correspondence courses,
508 video/DVD-based courses and online electronic courses.

509 (2) The commission may approve distance learning courses for
510 prelicense education, post-license education and continuing
511 education courses. Any distance learning course must meet any
512 standards that the Association of Real Estate Licensing Law
513 Officials (ARELLO), or its successor(s), may have for such
514 courses, including, without limitation, standards for content,
515 form, examination, facilities and instructors. If no ARELLO
516 standards exist for a distance learning course, the commission
517 shall establish by rule such minimum standards. If ARELLO or its
518 successor(s) operate a certification program for distance learning
519 courses, a distance learning course must be certified by ARELLO or
520 its successor(s) before the commission may approve the course.

521 **SECTION 12.** The following shall be codified as Section
522 73-35-14.5, Mississippi Code of 1972:

523 73-35-14.5. (1) Upon passing the Mississippi broker's or
524 salesperson's examination and complying with all other conditions
525 for licensure, a temporary license shall be issued to the
526 applicant. The fee for the temporary license shall also be the
527 same for the permanent license as provided in Section 73-35-17. A
528 temporary license shall be valid for a period of one (1) year
529 following the first day of the month after its issuance.

530 (2) All Mississippi residents who apply for and receive a
531 nonresident Mississippi broker's or salesperson's license shall be
532 subject to the requirements under this section, including



533 temporary licensure and completion of a thirty-hour post-license
534 course.

535 (3) The holder of a temporary license shall not be issued a
536 permanent license until he has satisfactorily completed a
537 thirty-hour post-license course prescribed by the commission and
538 offered by providers specifically certified by the commission to
539 offer this mandated post-license education. The holder of a
540 temporary license shall complete the entire thirty-hour course
541 within twelve (12) months of issuance of his temporary license;
542 otherwise this temporary license shall automatically be placed on
543 inactive status by the Mississippi Real Estate Commission. If the
544 holder of the temporary license does not complete the course and
545 have his permanent license issued within one (1) year following
546 the first day of the month after its issuance, the temporary
547 license shall automatically expire and lapse. A temporary license
548 is not subject to renewal procedures in this chapter and may not
549 be renewed.

550 (4) The thirty-hour post-license course shall be offered by
551 providers certified and approved by the commission, and an annual
552 certification fee of One Thousand Dollars (\$1,000.00) shall be
553 charged to providers. The thirty-hour post-license coursework
554 shall be offered in no less than fifteen-hour increments of
555 classroom instruction. No more than eight (8) hours may be earned
556 in a single day. The commission shall determine standards for
557 approval of post-license courses and course providers, and shall
558 require certification of such coursework of the applicant. There
559 shall be different content criteria for post-license education for
560 salesperson licensees and for broker licensees. In the
561 post-license course for salesperson licensees, a minimum of
562 twenty-four (24) hours of the thirty-hour coursework shall be in
563 the following subjects: agency relationships, contracts, earnest
564 money, antitrust, fair housing, ethics and property condition
565 disclosure. The remaining six (6) hours shall be in subjects



566 intended to enhance the competency of salesperson licensees in
567 representing consumers, and may include the following subjects:
568 pricing property, environmental issues, home inspections, leases
569 and property management, and mortgage processes. In the
570 post-license course for broker licensees, a minimum of twenty-four
571 (24) hours of the thirty-hour coursework shall be in the following
572 subjects: managing escrow accounts, intraoffice confidentiality,
573 broker responsibilities to licensees, office policies and
574 procedures (including agency office policies), broker agreements
575 with licensees and assistants and Mississippi Real Estate
576 Commission required forms and any other subject as the commission
577 may, by rule, require to be included in such course. The
578 remaining six (6) hours shall be in subjects intended to enhance
579 the competency of brokers, including, without limitation, managing
580 agents, recruiting, retention, budgeting and financial planning.

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

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

588 73-35-15. (1) Every person, partnership, association or
589 corporation licensed as a real estate broker shall be required to
590 have and maintain a definite place of business, which shall be a
591 room either in his home or an office elsewhere, to be used for the
592 transaction of real estate business, or such business and any
593 allied business. The certificate of registration as broker and
594 the certificate of each real estate salesperson employed by such
595 broker shall be prominently displayed in said office. The said
596 place of business shall be designated in the license. In case of
597 removal from the designated address, the licensee shall make
598 application to the commission before removal, or within ten (10)



599 days after removal, designating the new location of such office,
600 whereupon the commission shall forthwith issue a new license for
601 the new location for the unexpired period.

602 (2) All licenses issued to a real estate salesperson or
603 broker-salesperson shall designate the responsible broker of such
604 salesperson or broker-salesperson. Prompt notice in writing,
605 within three (3) days, shall be given to the commission by any
606 real estate salesperson of a change of responsible broker, and of
607 the name of the principal broker into whose agency the salesperson
608 is about to enter; and a new license shall thereupon be issued by
609 the commission to such salesperson for the unexpired term of the
610 original license upon the return to the commission of the license
611 previously issued. The change of responsible broker or employment
612 by any licensed real estate salesperson without notice to the
613 commission as required shall automatically cancel his license.
614 Upon termination of a salesperson's agency, the responsible broker
615 shall within three (3) days return the salesperson's license to
616 the commission for cancellation. It shall be unlawful for any
617 real estate salesperson to perform any of the acts contemplated by
618 this chapter either directly or indirectly after his agency has
619 been terminated and his license has been returned for cancellation
620 until his license has been reissued by the commission.

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

623 73-35-16. (1) The following words and phrases shall have
624 the meanings ascribed herein unless the context clearly indicates
625 otherwise:

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

629 (b) "Claims-made" means policies written under a
630 claims-made basis which shall cover claims made (reported or
631 filed) during the year the policy is in force for incidents which



632 occur that year or during any previous period the policyholder was
633 insured under the claims-made contract. This form of coverage is
634 in contrast to the occurrence policy which covers today's incident
635 regardless of when a claim is filed even if it is one or more
636 years later.

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

641 (d) "Licensee" means any active individual broker,
642 broker-salesperson or salesperson, any partnership or any
643 corporation.

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

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

652 (g) "Proof of coverage" means a copy of the actual
653 policy of insurance, a certificate of insurance or a binder of
654 insurance.

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

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

660 (a) Any active individual broker, active
661 broker-salesperson or active salesperson;

662 (b) Any partnership (optional); or

663 (c) Any corporation (optional).



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

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

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

674 (a) All activities contemplated under this chapter are
675 included as covered activities;

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

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

680 (d) Limits apply per licensee per claim;

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

683 (f) Maximum deductible is One Thousand Dollars
684 (\$1,000.00) per licensee per claim for defense costs; and

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

687 (6) (a) The maximum contract period between the insurance
688 carrier and the commission is to be three (3) consecutive policy
689 terms, after which time period the commission shall place the
690 insurance out for competitive bid. The commission shall reserve
691 the right to place the contract out for bid at the end of any
692 policy period.

693 (b) The policy period shall be a twelve-month policy
694 term.

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



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

701 (ii) If the licensee purchases full prior acts
702 coverage on July 1, 1994, that licensee shall continue to be
703 guaranteed full prior acts coverage if the insurance carriers are
704 changed in the future.

705 (iii) If the licensee was not carrying errors and
706 omissions insurance on July 1, 1994, the individual certificate
707 shall be issued with a retroactive date of July 1, 1994. This
708 date shall not be advanced if the insurance carriers are changed
709 in the future.

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

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

716 (d) Each licensee shall be notified of the required
717 terms and conditions of coverage for the policy at least thirty
718 (30) days before the renewal date of the policy. A certificate of
719 coverage, showing compliance with the required terms and
720 conditions of coverage, shall be filed with the commission by the
721 renewal date of the policy by each licensee who elects not to
722 participate in the insurance program administered by the
723 commission.

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



730 (7) Licensees may obtain errors and omissions coverage
731 independently if the coverage contained in the policy complies
732 with the following minimum requirements:

733 (a) All activities contemplated under this chapter are
734 included as covered activities;

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

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

741 (d) If other insurance is provided as proof of errors
742 and omissions coverage, the other insurance carrier shall agree to
743 a noncancelable policy or to provide a letter of commitment to
744 notify the commission thirty (30) days before the intention to
745 cancel.

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

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

751 (b) For licensees not submitting proof of insurance
752 necessary to continue active licensure, the commission shall be
753 responsible for sending notice of deficiency to those licensees.
754 Licensees who do not correct the deficiency within thirty (30)
755 days shall have their licenses placed on inactive status. The
756 commission shall assess fees for inactive status and for return to
757 active status when errors and omissions insurance has been
758 obtained.

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



762 (9) The commission is authorized to adopt such rules and
763 regulations as it deems appropriate to handle administrative
764 duties relating to operation of the program, including billing and
765 premium collection.

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

768 73-35-18. (1) Each individual applicant for renewal of a
769 license issued by the Mississippi Real Estate Commission shall, on
770 or before the expiration date of his license, or at a time
771 directed by the commission, submit proof of completion of not less
772 than sixteen (16) clock hours of approved coursework to the
773 commission, in addition to any other requirements for renewal.
774 The sixteen (16) clock hours' coursework requirement shall apply
775 to each two-year license renewal, and hours in excess thereof
776 shall not be cumulated or credited for the purposes of subsequent
777 license renewals except as provided in this subsection (1). The
778 commission shall develop standards for approval of courses and
779 shall require certification of such coursework of the applicant.
780 The commission may determine any required subject matter within
781 the mandated sixteen (16) hours; provided that the required
782 subjects shall not exceed eight (8) hours of the total sixteen
783 (16) hours. Approved continuing education hours earned in the
784 final three (3) months of a licensee's renewal period, if in
785 excess of the required minimum sixteen (16) hours, may be carried
786 over and credited to the next renewal period. However, no more
787 than six (6) hours may be carried over in this manner. Any member
788 of the Mississippi Legislature who has a real estate license shall
789 be credited with eight (8) hours of credit for the attendance of
790 each year of a legislative session. No person may receive
791 continuing education credit for prelicense education courses
792 taken; however, a licensee whose license is on active status and
793 whose continuing education credits are at least thirty (30) hours
794 in arrears may receive, in the discretion of the commission,



795 continuing education credit for retaking prelicense coursework if
796 the entire prelicense course is retaken.

797 (2) This section shall apply to renewals of licenses which
798 expire on and after July 1, 1994; however, an applicant for first
799 renewal who has been licensed for not more than one (1) year shall
800 not be required to comply with this section for the first renewal
801 of the applicant's license. The provisions of this section shall
802 not apply to persons who have held a broker's or salesperson's
803 license in this state for at least twenty-five (25) years and who
804 are older than seventy (70) years of age. Inactive licensees are
805 not required to meet the real estate continuing education
806 requirements specified in this section; however, such inactive
807 licensees, before activating their license to active status, must
808 cumulatively meet requirements missed during the period their
809 license was inactive.

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

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

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

822 73-35-23. (1) The commission is hereby authorized and
823 directed to take legal action against any violator of this
824 chapter. Upon complaint initiated by the commission or filed with
825 it, the licensee or any other person charged with a violation of
826 this chapter shall be given fifteen (15) days' notice of the
827 hearing upon the charges filed, together with a copy of the



828 complaint. The applicant or licensee or other violator shall have
829 an opportunity to be heard in person or by counsel, to offer
830 testimony, and to examine witnesses appearing in connection with
831 the complaint. Hearings shall be held at the offices of the
832 Mississippi Real Estate Commission, or at a place determined by
833 the commission.

834 At such hearings, all witnesses shall be properly sworn and
835 stenographic notes of the proceedings shall be taken and filed as
836 a part of the record in the case. Any party to the proceedings
837 shall be furnished with a copy of such stenographic notes upon
838 payment to the commission of such fees as it shall prescribe, not
839 exceeding, however, the actual cost to the commission. The
840 commission shall render a decision on any complaint and shall
841 immediately notify the parties to the proceedings in writing of
842 its ruling, order or decision.

843 (2) In addition to the authority granted to the commission
844 as hereinabove set forth, the commission is hereby vested with the
845 authority to bring injunctive proceedings in any appropriate forum
846 against any violator or violators of this chapter, and all judges
847 or courts now having the power to grant injunctions are
848 specifically granted the power and jurisdiction to hear and
849 dispose of such proceedings.

850 (3) The commission is hereby authorized and empowered to
851 issue subpoenas for the attendance of witnesses and the production
852 of books and papers. The process issued by the commission shall
853 extend to all parts of the state, and such process shall be served
854 by any person designated by the commission for such service. The
855 person serving such process may receive such compensation as may
856 be allowed by the commission, not to exceed the fee prescribed by
857 law for similar services. All witnesses who are subpoenaed and
858 who appear in any proceedings before the commission may receive
859 the same fees and mileage as allowed by law, and all such fees
860 shall be taxed as part of the costs in the case.



861 (4) Where in any proceeding before the commission any
862 witness shall fail or refuse to attend upon subpoena issued by the
863 commission, shall refuse to testify, or shall refuse to produce
864 any books and papers the production of which is called for by the
865 subpoena, the attendance of such witness and the giving of his
866 testimony and the production of the books and papers shall be
867 enforced by any court of competent jurisdiction of this state in
868 the same manner as the attendance and testimony of witnesses in
869 civil cases are enforced in the courts of this state.

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

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

874 89-1-503. The transferor of any real property subject to
875 Sections 89-1-501 through 89-1-523 shall deliver to the
876 prospective transferee the written property condition disclosure
877 statement required by Sections 89-1-501 through 89-1-523, as
878 follows:

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

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

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

891 If any disclosure, or any material amendment of any
892 disclosure, required to be made by Sections 89-1-501 through
893 89-1-523, is delivered after the execution of an offer to



894 purchase, the transferee shall have three (3) days after delivery
895 in person or five (5) days after delivery by deposit in the mail,
896 to terminate his or her offer by delivery of a written notice of
897 termination to the transferor or the transferor's agent.

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

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

903 Section 7. Section 1 of this act shall take effect and be in
904 force from and after July 1, 1999, and the remainder of this act
905 shall take effect and be in force from and after January 1,
906 2000 * * *.

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

