

By: Senator(s) Hewes, Michel

To: Business and Financial  
Institutions

SENATE BILL NO. 2611

1 AN ACT TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY THAT ASSOCIATE REAL ESTATE BROKERS OR SALESPERSONS MAY  
3 OWN ANY LAWFULLY CONSTITUTED BUSINESS ORGANIZATION FOR THE PURPOSE  
4 OF RECEIVING COMMISSIONS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 73-35-21, Mississippi Code of 1972, is  
7 amended as follows:

8 73-35-21. (1) The commission may, upon its own motion and  
9 shall upon the verified complaint in writing of any person, hold a  
10 hearing for the refusal of license or for the suspension or  
11 revocation of a license previously issued, or for such other  
12 action as the commission deems appropriate. The commission shall  
13 have full power to refuse a license for cause or to revoke or  
14 suspend a license where it has been obtained by false or  
15 fraudulent representation, or where the licensee in performing or  
16 attempting to perform any of the acts mentioned herein, is deemed  
17 to be guilty of:

18 (a) Making any substantial misrepresentation in  
19 connection with a real estate transaction;

20 (b) Making any false promises of a character likely to  
21 influence, persuade or induce;

22 (c) Pursuing a continued and flagrant course of  
23 misrepresentation or making false promises through agents or  
24 salespersons or any medium of advertising or otherwise;

25 (d) Any misleading or untruthful advertising;

26 (e) Acting for more than one (1) party in a transaction  
27 or receiving compensation from more than one (1) party in a

28 transaction, or both, without the knowledge of all parties for  
29 whom he acts;

30 (f) Failing, within a reasonable time, to account for  
31 or to remit any monies coming into his possession which belong to  
32 others, or commingling of monies belonging to others with his own  
33 funds. Every responsible broker procuring the execution of an  
34 earnest money contract or option or other contract who shall take  
35 or receive any cash or checks shall deposit, within a reasonable  
36 period of time, the sum or sums so received in a trust or escrow  
37 account in a bank or trust company pending the consummation or  
38 termination of the transaction. "Reasonable time" in this context  
39 means by the close of business of the next banking day;

40 (g) Entering a guilty plea or conviction in a court of  
41 competent jurisdiction of this state, or any other state or the  
42 United States of any felony;

43 (h) Displaying a "for sale" or "for rent" sign on any  
44 property without the owner's consent;

45 (i) Failing to furnish voluntarily, at the time of  
46 signing, copies of all listings, contracts and agreements to all  
47 parties executing the same;

48 (j) Paying any rebate, profit or commission to any  
49 person other than a real estate broker or salesperson licensed  
50 under the provisions of this chapter;

51 (k) Inducing any party to a contract, sale or lease to  
52 break such contract for the purpose of substituting in lieu  
53 thereof a new contract, where such substitution is motivated by  
54 the personal gain of the licensee;

55 (l) Accepting a commission or valuable consideration as  
56 a real estate salesperson for the performance of any of the acts  
57 specified in this chapter from any person, except his employer who  
58 must be a licensed real estate broker; or

59 (m) Any act or conduct, whether of the same or a  
60 different character than hereinabove specified, which constitutes

61 or demonstrates bad faith, incompetency or untrustworthiness, or  
62 dishonest, fraudulent or improper dealing.

63 (2) No real estate broker shall practice law or give legal  
64 advice directly or indirectly unless said broker be a duly  
65 licensed attorney under the laws of this state. He shall not act  
66 as a public conveyancer nor give advice or opinions as to the  
67 legal effect of instruments nor give opinions concerning the  
68 validity of title to real estate; nor shall he prevent or  
69 discourage any party to a real estate transaction from employing  
70 the services of an attorney; nor shall a broker undertake to  
71 prepare documents fixing and defining the legal rights of parties  
72 to a transaction. However, when acting as a broker, he may use an  
73 earnest money contract form. A real estate broker shall not  
74 participate in attorney's fees, unless the broker is a duly  
75 licensed attorney under the laws of this state and performs legal  
76 services in addition to brokerage services.

77 (3) It is expressly provided that it is not the intent and  
78 purpose of the Mississippi Legislature to prevent a license from  
79 being issued to any person who is found to be of good reputation,  
80 is able to give bond, and who has lived in the State of  
81 Mississippi for the required period or is otherwise qualified  
82 under this chapter.

83 (4) In addition to the reasons specified in subsection (1)  
84 of this section, the commission shall be authorized to suspend the  
85 license of any licensee for being out of compliance with an order  
86 for support, as defined in Section 93-11-153. The procedure for  
87 suspension of a license for being out of compliance with an order  
88 for support, and the procedure for the reissuance or reinstatement  
89 of a license suspended for that purpose, and the payment of any  
90 fees for the reissuance or reinstatement of a license suspended  
91 for that purpose, shall be governed by Section 93-11-157 or  
92 93-11-163, as the case may be. If there is any conflict between  
93 any provision of Section 93-11-157 or 93-11-163 and any provision

94 of this chapter, the provisions of Section 93-11-157 or 93-11-163,  
95 as the case may be, shall control.

96 (5) Nothing in this chapter shall prevent an associate  
97 broker or salesperson from owning any lawfully constituted  
98 business organization, including, but not limited to, a  
99 corporation, limited liability company or limited liability  
100 partnership, for the purpose of receiving payments contemplated in  
101 this chapter. The business organization shall not be required to  
102 be licensed under this chapter and shall not engage in any other  
103 activity requiring a real estate license.

104 **SECTION 2.** This act shall take effect and be in force from  
105 and after July 1, 2004.