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To: Business and Financial Institutions

SENATE BILL NO. 2739

1 AN ACT TO AMEND SECTION 73-35-16, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE MAXIMUM AMOUNT OF PREMIUM FOR THE ERRORS AND
3 OMISSIONS INSURANCE PROGRAM OFFERED TO LICENSEES OF THE
4 MISSISSIPPI REAL ESTATE COMMISSION; TO AMEND SECTION 73-35-21,
5 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ASSOCIATE REAL ESTATE
6 BROKERS OR SALESPERSONS MAY OWN ANY LAWFULLY CONSTITUTED BUSINESS
7 ORGANIZATION FOR THE PURPOSE OF RECEIVING COMMISSIONS; TO AMEND
8 SECTION 73-35-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
9 COOPERATIVE AGREEMENT BETWEEN A MISSISSIPPI LICENSED REAL ESTATE
10 BROKER AND BROKER LICENSED IN ANOTHER STATE DOES NOT AUTHORIZE ANY
11 PERSON NOT LICENSED BY THE STATE OF MISSISSIPPI TO PERFORM ANY
12 REAL ESTATE ACTIVITY; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 73-35-16, Mississippi Code of 1972, is
15 amended as follows:

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

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

22 (b) "Claims-made" means policies written under a
23 claims-made basis which shall cover claims made (reported or
24 filed) during the year the policy is in force for incidents which
25 occur that year or during any previous period the policyholder was
26 insured under the claims-made contract. This form of coverage is
27 in contrast to the occurrence policy which covers today's incident
28 regardless of when a claim is filed even if it is one or more
29 years later.

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

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

34 (d) "Licensee" means any active individual broker,
35 broker-salesperson or salesperson, any partnership or any
36 corporation.

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

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

45 (g) "Proof of coverage" means a copy of the actual
46 policy of insurance, a certificate of insurance or a binder of
47 insurance.

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

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

53 (a) Any active individual broker, active
54 broker-salesperson or active salesperson;

55 (b) Any partnership (optional); or

56 (c) Any corporation (optional).

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

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

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

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

67 (a) All activities contemplated under this chapter are
68 included as covered activities;

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

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

73 (d) Limits apply per licensee per claim;

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

76 (f) Maximum deductible is One Thousand Dollars
77 (\$1,000.00) per licensee per claim for defense costs; and

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

80 (6) (a) The maximum contract period between the insurance
81 carrier and the commission is to be three (3) consecutive policy
82 terms, after which time period the commission shall place the
83 insurance out for competitive bid. The commission shall reserve
84 the right to place the contract out for bid at the end of any
85 policy period.

86 (b) The policy period shall be a twelve-month policy
87 term.

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

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

94 (ii) If the licensee purchases full prior acts
95 coverage on July 1, 1994, that licensee shall continue to be
96 guaranteed full prior acts coverage if the insurance carriers are
97 changed in the future.

98 (iii) If the licensee was not carrying errors and
99 omissions insurance on July 1, 1994, the individual certificate
100 shall be issued with a retroactive date of July 1, 1994. This
101 date shall not be advanced if the insurance carriers are changed
102 in the future.

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

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

109 (d) Each licensee shall be notified of the required
110 terms and conditions of coverage for the policy at least thirty
111 (30) days before the renewal date of the policy. A certificate of
112 coverage, showing compliance with the required terms and
113 conditions of coverage, shall be filed with the commission by the
114 renewal date of the policy by each licensee who elects not to
115 participate in the insurance program administered by the
116 commission.

117 (e) If the commission is unable to obtain errors and
118 omissions insurance coverage to insure all licensees who choose to
119 participate in the insurance program at a premium of no more than
120 Two Hundred Dollars (\$200.00) per twelve-months' policy period,
121 the requirement of insurance coverage under this section shall be
122 void during the applicable contract period.

123 (7) Licensees may obtain errors and omissions coverage
124 independently if the coverage contained in the policy complies
125 with the following minimum requirements:

126 (a) All activities contemplated under this chapter are
127 included as covered activities;

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

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

134 (d) If other insurance is provided as proof of errors
135 and omissions coverage, the other insurance carrier shall agree to
136 a noncancelable policy or to provide a letter of commitment to
137 notify the commission thirty (30) days before the intention to
138 cancel.

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

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

144 (b) For licensees not submitting proof of insurance
145 necessary to continue active licensure, the commission shall be
146 responsible for sending notice of deficiency to those licensees.
147 Licensees who do not correct the deficiency within thirty (30)
148 days shall have their licenses placed on inactive status. The
149 commission shall assess fees for inactive status and for return to
150 active status when errors and omissions insurance has been
151 obtained.

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

155 (9) The commission is authorized to adopt such rules and
156 regulations as it deems appropriate to handle administrative
157 duties relating to operation of the program, including billing and
158 premium collection.

159 **SECTION 2.** Section 73-35-21, Mississippi Code of 1972, is
160 amended as follows:

161 73-35-21. (1) The commission may, upon its own motion and
162 shall upon the verified complaint in writing of any person, hold a

163 hearing for the refusal of license or for the suspension or
164 revocation of a license previously issued, or for such other
165 action as the commission deems appropriate. The commission shall
166 have full power to refuse a license for cause or to revoke or
167 suspend a license where it has been obtained by false or
168 fraudulent representation, or where the licensee in performing or
169 attempting to perform any of the acts mentioned herein, is deemed
170 to be guilty of:

171 (a) Making any substantial misrepresentation in
172 connection with a real estate transaction;

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

175 (c) Pursuing a continued and flagrant course of
176 misrepresentation or making false promises through agents or
177 salespersons or any medium of advertising or otherwise;

178 (d) Any misleading or untruthful advertising;

179 (e) Acting for more than one (1) party in a transaction
180 or receiving compensation from more than one (1) party in a
181 transaction, or both, without the knowledge of all parties for
182 whom he acts;

183 (f) Failing, within a reasonable time, to account for
184 or to remit any monies coming into his possession which belong to
185 others, or commingling of monies belonging to others with his own
186 funds. Every responsible broker procuring the execution of an
187 earnest money contract or option or other contract who shall take
188 or receive any cash or checks shall deposit, within a reasonable
189 period of time, the sum or sums so received in a trust or escrow
190 account in a bank or trust company pending the consummation or
191 termination of the transaction. "Reasonable time" in this context
192 means by the close of business of the next banking day;

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

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

198 (i) Failing to furnish voluntarily, at the time of
199 signing, copies of all listings, contracts and agreements to all
200 parties executing the same;

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

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

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

212 (m) Any act or conduct, whether of the same or a
213 different character than hereinabove specified, which constitutes
214 or demonstrates bad faith, incompetency or untrustworthiness, or
215 dishonest, fraudulent or improper dealing.

216 (2) No real estate broker shall practice law or give legal
217 advice directly or indirectly unless said broker be a duly
218 licensed attorney under the laws of this state. He shall not act
219 as a public conveyancer nor give advice or opinions as to the
220 legal effect of instruments nor give opinions concerning the
221 validity of title to real estate; nor shall he prevent or
222 discourage any party to a real estate transaction from employing
223 the services of an attorney; nor shall a broker undertake to
224 prepare documents fixing and defining the legal rights of parties
225 to a transaction. However, when acting as a broker, he may use an
226 earnest money contract form. A real estate broker shall not
227 participate in attorney's fees, unless the broker is a duly

228 licensed attorney under the laws of this state and performs legal
229 services in addition to brokerage services.

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

236 (4) In addition to the reasons specified in subsection (1)
237 of this section, the commission shall be authorized to suspend the
238 license of any licensee for being out of compliance with an order
239 for support, as defined in Section 93-11-153. The procedure for
240 suspension of a license for being out of compliance with an order
241 for support, and the procedure for the reissuance or reinstatement
242 of a license suspended for that purpose, and the payment of any
243 fees for the reissuance or reinstatement of a license suspended
244 for that purpose, shall be governed by Section 93-11-157 or
245 93-11-163, as the case may be. If there is any conflict between
246 any provision of Section 93-11-157 or 93-11-163 and any provision
247 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
248 as the case may be, shall control.

249 (5) Nothing in this chapter shall prevent a real estate
250 licensee from owning any lawfully constituted business
251 organization, including, but not limited to, a corporation,
252 limited liability company or limited liability partnership, for
253 the purpose of receiving payments contemplated in this chapter.
254 The business organization shall not be required to be licensed
255 under this chapter and shall not engage in any other activity
256 requiring a real estate license.

257 **SECTION 3.** Section 73-35-11, Mississippi Code of 1972, is
258 amended as follows:

259 73-35-11. A broker licensed in Mississippi may lawfully
260 enter into a cooperative agreement with a broker licensed in a

261 state other than Mississippi to divide the commission of the sale
262 of real estate within the State of Mississippi. The cooperative
263 agreement shall state the compensation to be paid to the
264 Mississippi broker and shall be filed with the commission within
265 ten (10) days of the parties affixing their signatures. This
266 cooperative agreement does not authorize any person not licensed
267 by the State of Mississippi to perform any real estate activity
268 described in Section 73-35-1 and Section 73-35-3.

269 * * *

270 The Mississippi broker shall determine that the cooperating
271 broker is licensed as a broker in another state.

272 * * *

273 **SECTION 4.** This act shall take effect and be in force from
274 and after July 1, 2004.