

By: Senator(s) Burton

To: Business and Financial
Institutions

SENATE BILL NO. 2782

1 AN ACT TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE GROUNDS FOR REFUSING TO ISSUE OR SUSPENDING OR
3 REVOKING A LICENSE UNDER THE REAL ESTATE BROKERS LICENSE LAW; AND
4 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; * * *

59 (m) Failing to accept and alert the client to all
60 offers and counteroffers to buy, sell, or lease the client's
61 property or the property the client wants to purchase
62 or lease;

63 (n) Failing to help the client develop, communicate,
64 negotiate, and present offers, counteroffers, and notices that
65 relate to the offers and counteroffers until a lease or purchase
66 agreement is signed and all contingencies are satisfied or waived;

67 (o) Failing to answer all questions relating to the
68 offers, counteroffers, notices and contingencies of the client; or

69 (p) Any act or conduct, whether of the same or a
70 different character than hereinabove specified, which constitutes
71 or demonstrates bad faith, incompetency or untrustworthiness, or
72 dishonest, fraudulent or improper dealing.

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

87 (3) It is expressly provided that it is not the intent and
88 purpose of the Mississippi Legislature to prevent a license from
89 being issued to any person who is found to be of good reputation,
90 is able to give bond, and who has lived in the State of

91 Mississippi for the required period or is otherwise qualified
92 under this chapter.

93 (4) In addition to the reasons specified in subsection (1)
94 of this section, the commission shall be authorized to suspend the
95 license of any licensee for being out of compliance with an order
96 for support, as defined in Section 93-11-153. The procedure for
97 suspension of a license for being out of compliance with an order
98 for support, and the procedure for the reissuance or reinstatement
99 of a license suspended for that purpose, and the payment of any
100 fees for the reissuance or reinstatement of a license suspended
101 for that purpose, shall be governed by Section 93-11-157 or
102 93-11-163, as the case may be. If there is any conflict between
103 any provision of Section 93-11-157 or 93-11-163 and any provision
104 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
105 as the case may be, shall control.

106 (5) Nothing in this chapter shall prevent an associate
107 broker or salesperson from owning any lawfully constituted
108 business organization, including, but not limited to, a
109 corporation, limited liability company or limited liability
110 partnership, for the purpose of receiving payments contemplated in
111 this chapter. The business organization shall not be required to
112 be licensed under this chapter and shall not engage in any other
113 activity requiring a real estate license.

114 **SECTION 2.** This act shall take effect and be in force from
115 and after July 1, 2006.