

By: Representative Tullos

To: Judiciary A

HOUSE BILL NO. 1069
(As Passed the House)

1 AN ACT TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE AUTHORITY OF THE MISSISSIPPI REAL ESTATE COMMISSION;
3 TO AMEND SECTION 73-35-25, MISSISSIPPI CODE OF 1972, TO PROVIDE
4 THAT IF AN APPEAL IS MADE WITHIN 30 DAYS OF ANY ORDER, RULE OR
5 DECISION OF THE COMMISSION, THEN THE ORDER, RULE OR DECISION
6 RENDERED BY THE COMMISSION SHALL BE STAYED UNTIL A FINAL JUDGMENT
7 IS ENTERED BY A COURT OF COMPETENT JURISDICTION; AND FOR RELATED
8 PURPOSES.

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

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

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



22 (a) Making any substantial misrepresentation in
23 connection with a real estate transaction;

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

26 (c) Pursuing a continued and flagrant course of
27 misrepresentation or making false promises through agents or
28 salespersons or any medium of advertising or otherwise;

29 (d) Any misleading or untruthful advertising;

30 (e) Acting for more than one (1) party in a transaction
31 or receiving compensation from more than one (1) party in a
32 transaction, or both, without the knowledge of all parties for
33 whom he or she acts;

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



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

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

50 (i) Failing to furnish voluntarily, at the time of
51 signing, copies of all listings, contracts and agreements to all
52 parties executing the same;

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

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

60 (l) Accepting a commission or valuable consideration as
61 a real estate salesperson for the performance of any of the acts
62 specified in this chapter from any person, except his or her
63 employer who must be a licensed real estate broker;

64 (m) Failing to successfully pass the commission's
65 background investigation for licensure or renewal as provided in
66 Section 73-35-10; or

67 (n) Any act or conduct, whether of the same or a
68 different character than hereinabove specified, which constitutes
69 or demonstrates bad faith, incompetency or untrustworthiness, or



70 dishonest, fraudulent or improper dealing. However, simple
71 contact and/or communication with any mortgage broker or lender by
72 a real estate licensee about any professional, including, but not
73 limited to, an appraiser, home inspector, contractor, and/or
74 attorney regarding a listing and/or a prospective or pending
75 contract for the lease, sale and/or purchase of real estate shall
76 not constitute conduct in violation of this section.

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

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



95 Mississippi for the required period or is otherwise qualified
96 under this chapter.

97 (4) In addition to the reasons specified in subsection (1)
98 of this section, the commission shall be authorized to suspend the
99 license of any licensee for being out of compliance with an order
100 for support, as defined in Section 93-11-153. The procedure for
101 suspension of a license for being out of compliance with an order
102 for support, and the procedure for the reissuance or reinstatement
103 of a license suspended for that purpose, and the payment of any
104 fees for the reissuance or reinstatement of a license suspended
105 for that purpose, shall be governed by Section 93-11-157 or
106 93-11-163, as the case may be. If there is any conflict between
107 any provision of Section 93-11-157 or 93-11-163 and any provision
108 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
109 as the case may be, shall control.

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

118 **SECTION 2.** Section 73-35-25, Mississippi Code of 1972, is
119 amended as follows:



120 73-35-25. (1) Any applicant or licensee or person aggrieved
121 shall have the right of appeal from any adverse ruling or order or
122 decision of the commission to the circuit court of the county of
123 residence of the applicant, licensee or person, or of the First
124 Judicial District of Hinds County, within thirty (30) days from
125 the service of notice of the action of the commission upon the
126 parties in interest.

127 (2) Notice of appeals shall be filed in the office of the
128 clerk of the court who shall issue a writ of certiorari directed
129 to the commission commanding it, within thirty (30) days after
130 service thereof, to certify to such court its entire record in the
131 matter in which the appeal has been taken. The appeal shall
132 thereupon be heard in due course by * * * the court, without a
133 jury, which shall review the record and make its determination of
134 the cause between the parties.

135 (3) Any order, rule or decision of the commission shall not
136 take effect until after the time for appeal to * * * the
137 court * * * has expired. * * * If an appeal is made within thirty
138 (30) days of any order, rule or decision of the commission, then
139 the order, rule or decision rendered by the commission shall be
140 stayed until a final judgment is entered by a court of competent
141 jurisdiction.

142 (4) Any person taking an appeal shall post a satisfactory
143 bond in the amount of Five Hundred Dollars (\$500.00) for the
144 payment of any costs which may be adjudged against him or her.



145 (5) Actions taken by the commission in suspending a license
146 when required by Section 93-11-157 or 93-11-163 are not actions
147 from which an appeal may be taken under this section. Any appeal
148 of a license suspension that is required by Section 93-11-157 or
149 93-11-163 shall be taken in accordance with the appeal procedure
150 specified in Section 93-11-157 or 93-11-163, as the case may be,
151 rather than the procedure specified in this section.

152 **SECTION 3.** This act shall take effect and be in force from
153 and after July 1, 2019.

