

By: Representative Tullos

To: Judiciary A

HOUSE BILL NO. 1103
(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, THE APPEAL SHALL ACT AS A SUPERSEDEAS,
6 AND THE ORDER, RULE OR DECISION RENDERED BY THE COMMISSION SHALL
7 BE STAYED UNTIL A FINAL JUDGMENT IS ENTERED BY A COURT OF
8 COMPETENT JURISDICTION; TO PROVIDE THAT THE PROVISIONS OF THIS ACT
9 SHALL CONTROL; AND FOR RELATED PURPOSES.

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

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

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



attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

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

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

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

(d) Any misleading or untruthful advertising;

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

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



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

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

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

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

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

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

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

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



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

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

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



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

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

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

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



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

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

(3) Any order, rule or decision of the commission shall not take effect until after the time for appeal to * * * the court * * * has expired. * * * When an appeal is made within thirty (30) days of any order, rule or decision of the commission, the appeal shall act as a supersedeas, and the order, rule or decision rendered by the commission shall be stayed until a final judgment is entered by a court of competent jurisdiction. However, the commission may file a motion within ten (10) days of the date of the filing of the appeal requesting the court to lift the supersedeas upon the commission's showing by clear and



convincing evidence that immediate and irreparable harm will or
may occur if the licensee or person aggrieved were to continue
operating as a licensed broker. Whenever a conflict with the
provisions of this subsection and any court rule arises, the
provisions of this subsection shall control and supersede the
court rule.

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

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

SECTION 3. This act shall take effect and be in force from
and after July 1, 2020.

