

By: Representatives Watson, Bell (21st)

To: Judiciary A

HOUSE BILL NO. 1070

1 AN ACT TO AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE THE REAL ESTATE COMMISSION TO ESTABLISH A PROGRAM
 3 ALLOWING ADMINISTRATIVE HEARINGS ON CERTAIN LICENSING MATTERS UNDER
 4 ITS JURISDICTION; TO PROVIDE THAT ADMINISTRATIVE HEARING OFFICERS
 5 SHALL BE STAFF ATTORNEYS EMPLOYED BY THE ATTORNEY GENERAL; TO
 6 PROHIBIT CERTAIN COMMUNICATIONS BY THE COMMISSION PRIOR TO DELIVERY
 7 OF NOTICE TO THE LICENSEE'S RESPONSIBLE BROKER; TO AMEND SECTION
 8 73-35-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPEAL TAKEN
 9 BY A DEFENDANT FROM AN ADVERSE RULING OR ORDER OF THE MISSISSIPPI
 10 REAL ESTATE COMMISSION SHALL ACT AS AN AUTOMATIC SUPERSEDEAS; TO
 11 AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 12 PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 73-35-23, Mississippi Code of 1972, is
 15 amended as follows:

16 73-35-23. (1) The commission is hereby authorized and
 17 directed to take legal action against any violator of this
 18 chapter. Upon complaint initiated by the commission or filed with
 19 it, the licensee or any other person charged with a violation of
 20 this chapter shall be given fifteen (15) days' notice of the
 21 hearing upon the charges filed, together with notice of the option
 22 of appearing before the commission or an administrative hearing
 23 officer as provided in subsection (7) of this section, and a copy



24 of the complaint. The applicant or licensee or other violator
25 shall have an opportunity to be heard in person or by counsel, to
26 offer testimony, and to examine witnesses appearing in connection
27 with the complaint. Hearings shall be held at the offices of the
28 Mississippi Real Estate Commission, or at the commission's sole
29 discretion, at a place determined by the commission.

30 At such hearings, all witnesses shall be properly sworn and
31 stenographic notes of the proceedings shall be taken and filed as
32 a part of the record in the case. Any party to the proceedings
33 shall be furnished with a copy of such stenographic notes upon
34 payment to the commission of such fees as it shall prescribe, not
35 exceeding, however, the actual cost to the commission. The
36 preponderance of evidence standard of proof shall be used to
37 examine factors during all hearings. The commission shall render
38 a decision on any complaint and shall immediately notify the
39 parties to the proceedings in writing of its ruling, order or
40 decision.

41 (2) In addition to the authority granted to the commission
42 as hereinabove set forth, the commission is hereby vested with the
43 authority to bring injunctive proceedings in any appropriate forum
44 against any violator or violators of this chapter, and all judges
45 or courts now having the power to grant injunctions are
46 specifically granted the power and jurisdiction to hear and
47 dispose of such proceedings.



48 (3) The commission is hereby authorized and empowered to
49 issue subpoenas for the attendance of witnesses and the production
50 of books and papers. The process issued by the commission shall
51 extend to all parts of the state, and such process shall be served
52 by any person designated by the commission for such service. The
53 person serving such process may receive such compensation as may
54 be allowed by the commission, not to exceed the fee prescribed by
55 law for similar services. All witnesses who are subpoenaed and
56 who appear in any proceedings before the commission may receive
57 the same fees and mileage as allowed by law, and all such fees
58 shall be taxed as part of the costs in the case.

59 (4) Where in any proceeding before the commission any
60 witness shall fail or refuse to attend upon subpoena issued by the
61 commission, shall refuse to testify, or shall refuse to produce
62 any books and papers the production of which is called for by the
63 subpoena, the attendance of such witness and the giving of his
64 testimony and the production of the books and papers shall be
65 enforced by any court of competent jurisdiction of this state in
66 the same manner as the attendance and testimony of witnesses in
67 civil cases are enforced in the courts of this state.

68 (5) The commission may obtain legal counsel privately to
69 represent it in proceedings when legal counsel is required.

70 (6) No commissioner, administrator, employee, investigator,
71 representative or agent of the commission shall communicate with a



72 licensee in connection with any preliminary or formal
73 investigation associated with alleged violations of licensing law
74 or regulations prior to the delivery of written notice to the
75 licensee's responsible broker. Any licensee represented by legal
76 counsel shall be entitled to communication through such legal
77 counsel unless waived in writing by the licensee.

78 (7) The commission shall establish an administrative hearing
79 option no later than July 1, 2022, which shall consist of
80 administrative hearing officers designated by the Attorney General
81 for the purpose of holding hearings, hearing evidence and
82 rendering decisions on matters determined to be the subject of a
83 hearing for a licensee, or any other person charged with a
84 violation of this chapter, or affecting the license of any person
85 coming under its jurisdiction, when the licensee or any other
86 person charged with a violation of this chapter shall request, in
87 writing, for the matter to be heard by the administrative hearing
88 officer.

89 Administrative hearing officers shall be staff attorneys
90 employed by the Attorney General's office, but must not currently
91 hold a license issued by the commission. The administrative
92 hearing officers shall have the same powers and authority in
93 conducting hearings and rendering decisions as granted to the
94 commission in this section. Hearings before an administrative
95 hearing officer shall be held in the City of Jackson, Mississippi,



96 at a place, time and manner agreed upon by the commission and the
97 hearing officer.

98 The preponderance of evidence standard of proof shall be
99 used to examine factors during all hearings. Any right of appeal
100 available to a licensee or applicant for a license availing itself
101 to the provisions under this act shall be preserved as if the
102 matter had been heard and decided by the commission.

103 (8) Nothing in this section shall preclude the commission
104 and a licensee from entering into an agreed order resolving a
105 complaint prior to the hearing.

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

108 73-35-25. (1) Any applicant or licensee or person aggrieved
109 shall have the right of appeal from any adverse ruling or order or
110 decision of the commission or administrative hearing officer to
111 the circuit court of the county of residence of the applicant,
112 licensee or person, or of the First Judicial District of Hinds
113 County, within thirty (30) days from the service of notice of the
114 action of the commission upon the parties in interest.

115 (2) Notice of appeals shall be filed in the office of the
116 clerk of the court who shall issue a writ of certiorari directed
117 to the commission commanding it, within thirty (30) days after
118 service thereof, to certify to such court its entire record in the
119 matter in which the appeal has been taken. The appeal shall
120 thereupon be heard in due course by said court, without a jury,



121 which shall review the record and make its determination of the
122 cause between the parties.

123 (3) Any order, rule or decision of the commission or the
124 administrative hearing officer shall not take effect until after
125 the time for appeal to * * * the court * * * has expired. * * *
126 If an appeal is taken by a defendant, such appeal * * * shall
127 act * * * as * * * an automatic supersedeas and the court shall
128 dispose of * * * the appeal and enter its decision promptly.

129 However, the commission may file a motion within ten (10) days
130 of the date of filing the notice of appeal and request the court to
131 lift the supersedeas upon the commission's showing, by clear and
132 convincing evidence, that immediate and irreparable harm will or may
133 occur if the licensee or person aggrieved were to continue operating
134 as a licensee.

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

138 (5) Actions taken by the commission in suspending a license
139 when required by Section 93-11-157 or 93-11-163 are not actions
140 from which an appeal may be taken under this section. Any appeal
141 of a license suspension that is required by Section 93-11-157 or
142 93-11-163 shall be taken in accordance with the appeal procedure
143 specified in Section 93-11-157 or 93-11-163, as the case may be,
144 rather than the procedure specified in this section.



145 **SECTION 3.** Section 73-35-21, Mississippi Code of 1972, is
146 amended as follows:

147 73-35-21. (1) The commission may, upon its own motion and
148 shall upon the verified complaint in writing of any person, hold a
149 hearing pursuant to Section 73-35-23 for the refusal of license or
150 for the suspension or revocation of a license previously issued,
151 or for such other action as the commission deems appropriate. The
152 commission shall have full power to refuse a license for cause or
153 to revoke or suspend a license where it has been obtained by false
154 or fraudulent representation, or where the licensee in performing
155 or attempting to perform any of the acts mentioned herein, is
156 deemed to be guilty of:

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

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

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

164 (d) Any misleading or untruthful advertising;

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



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

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

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

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

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

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



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

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

201 (n) Any act or conduct, whether of the same or a
202 different character than hereinabove specified, which constitutes
203 or demonstrates bad faith, incompetency or untrustworthiness, or
204 dishonest, fraudulent or improper dealing. However, simple
205 contact and/or communication with any mortgage broker or lender by
206 a real estate licensee about any professional, including, but not
207 limited to, an appraiser, home inspector, contractor, and/or
208 attorney regarding a listing and/or a prospective or pending
209 contract for the lease, sale and/or purchase of real estate shall
210 not constitute conduct in violation of this section.

211 (2) No real estate broker shall practice law or give legal
212 advice directly or indirectly unless said broker be a duly
213 licensed attorney under the laws of this state. He shall not act
214 as a public conveyancer nor give advice or opinions as to the
215 legal effect of instruments nor give opinions concerning the
216 validity of title to real estate; nor shall he prevent or
217 discourage any party to a real estate transaction from employing
218 the services of an attorney; nor shall a broker undertake to



219 prepare documents fixing and defining the legal rights of parties
220 to a transaction. However, when acting as a broker, he may use an
221 earnest money contract form. A real estate broker shall not
222 participate in attorney's fees, unless the broker is a duly
223 licensed attorney under the laws of this state and performs legal
224 services in addition to brokerage services.

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

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



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

252 **SECTION 4.** This act shall take effect and be in force from
253 and after its passage.

