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To: Judiciary A

HOUSE BILL NO. 773

1 AN ACT TO AMEND SECTION 73-35-4.1, MISSISSIPPI CODE OF 1972,
2 TO REVISE LIABILITY FOR A REAL ESTATE LICENSEE REGARDING
3 DISCLOSURE OF THE SIZE OR AREA OF PROPERTY; TO AMEND SECTIONS
4 89-1-505 AND 89-1-523, MISSISSIPPI CODE OF 1972, TO REVISE
5 LIABILITY FOR CERTAIN REQUIRED REAL ESTATE DISCLOSURES; TO AMEND
6 SECTION 89-1-527, MISSISSIPPI CODE OF 1972, TO REVISE LIABILITY
7 FOR THE FAILURE TO DISCLOSE NONMATERIAL FACT; TO AMEND SECTION
8 89-1-503, MISSISSIPPI CODE OF 1972, TO REVISE LIABILITY FOR
9 FAILURE OF A TRANSFEROR OF REAL PROPERTY TO PROVIDE CERTAIN
10 INFORMATION; TO AMEND SECTIONS 89-1-507 AND 89-1-515, MISSISSIPPI
11 CODE OF 1972, TO REMOVE REFERENCES TO AGENTS OF TRANSFERORS OF
12 REAL PROPERTY; TO AMEND SECTION 89-1-519, MISSISSIPPI CODE OF
13 1972, TO PROVIDE THAT NO PERSON OR ENTITY SHALL BE DEEMED THE
14 AGENT OF THE TRANSFEROR OR TRANSFEREE FOR PURPOSES OF THE
15 DISCLOSURE REQUIREMENTS OF SECTIONS 89-1-501 THROUGH 89-1-523; TO
16 AMEND SECTION 89-1-523, MISSISSIPPI CODE OF 1972, TO REVISE
17 LIABILITY OF REAL ESTATE LICENSEES; TO AMEND SECTION 89-1-525,
18 MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF THE REAL
19 ESTATE COMMISSION; TO AMEND SECTIONS 73-35-21 AND 73-35-23,
20 MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE REAL
21 ESTATE COMMISSION REGARDING; TO REPEAL SECTIONS 89-1-521 AND
22 89-1-525, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR CERTAIN
23 DISCLOSURES AND PENALTIES OF LICENSED REAL ESTATE BROKERS AND
24 SALESPERSONS; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 73-35-4.1, Mississippi Code of 1972, is
27 amended as follows:

28 73-35-4.1. (1) (a) In connection with any real estate
29 transaction, the size or area, in square footage or otherwise, of



30 the subject property, if provided by any real estate licensee in
31 accordance with paragraph (b) (i) and (ii), shall not be considered
32 any warranty or guarantee of the size or area information, in
33 square footage or otherwise, of the subject property.

34 (b) (i) If a real estate licensee provides any party
35 to a real estate transaction with third-party information
36 concerning the size or area, in square footage or otherwise, of
37 the subject property involved in the transaction, the licensee
38 shall identify the source of the information.

39 (ii) For the purposes of this section,
40 "third-party information" means:

- 41 1. An appraisal or any measurement
42 information prepared by a licensed appraiser;
- 43 2. A surveyor developer's plan prepared by a
44 licensed surveyor;
- 45 3. A tax assessor's public record; or
- 46 4. A builder's plan used to construct or
47 market the property.

48 (c) A real estate licensee has no duty to the seller or
49 purchaser of real property to conduct an independent investigation
50 of the size or area, in square footage or otherwise, of a subject
51 property, or to independently verify the accuracy of any
52 third-party information.

53 (d) A real estate licensee who has complied with the
54 requirements of this section, as applicable, shall have no further



55 duties to the seller or purchaser of real property regarding
56 disclosed or undisclosed property size or area information, and
57 shall not be subject to liability to any party for any damages
58 sustained with regard to any conflicting measurements or opinions
59 of size or area, including exemplary or punitive damages.

60 (2) (a) If a real estate licensee has provided third-party
61 information to any party to a real estate transaction concerning
62 size or area of the subject real property, a party to the real
63 estate transaction may recover damages from the licensee in a
64 civil action only when a licensee knowingly violates the duty to
65 disclose the source of the information as required in this
66 section. However, nothing in this act shall provide immunity from
67 civil liability to any licensee who knowingly misrepresents the
68 size or area of the subject real property.

69 (b) The sole and exclusive civil remedy at common law
70 or otherwise for a violation of this section by a real estate
71 licensee shall be an action for actual damages suffered by the
72 party as a result of such violation and shall not include
73 exemplary or punitive damages.

74 (c) For any real estate transaction commenced after the
75 effective date of this section, any civil action brought pursuant
76 to this section shall be commenced within two (2) years after the
77 date of transfer of the subject real property.

78 (d) In any civil action brought pursuant to this
79 section, the prevailing party shall be allowed court costs and



80 reasonable attorney fees to be set by the court and collected as
81 costs of the action.

82 (e) A transfer of a possessory interest in real
83 property subject to the provisions of this section may not be
84 invalidated solely because of the failure of any person to comply
85 with the provisions of this section.

86 (f) The provisions of this section shall apply to,
87 regulate and determine the rights, duties, obligations and
88 remedies, at common law or otherwise, of the seller marketing the
89 seller's real property for sale through a real estate licensee,
90 and of the purchaser of real property offered for sale through a
91 real estate licensee, with respect to disclosure of third-party
92 information concerning the subject real property's size or area,
93 in square footage or otherwise, and this section hereby supplants
94 and abrogates all common-law liability, rights, duties,
95 obligations and remedies of all parties therefor.

96 (3) Notwithstanding any other provision of law to the
97 contrary, no real estate licensee shall have any duty or
98 obligation, and shall not be liable to any party to any real
99 estate transaction nor be subject to discipline or other action of
100 any kind by any licensing authority of the State of Mississippi,
101 pertaining to information required to be disclosed by Sections
102 89-1-501 through 89-1-523.

103 (4) The Mississippi Real Estate Commission shall not
104 promulgate any rule or regulation, nor make any administrative or



105 other interpretation, whereby any real estate licensee may be held
106 responsible or subject to discipline or other actions by the
107 commission relating to the provisions of this section or the
108 information required to be disclosed by Sections 89-1-501 through
109 89-1-523.

110 **SECTION 2.** Section 89-1-505, Mississippi Code of 1972, is
111 amended as follows:

112 89-1-505. (1) * * * The transferor shall not be liable for
113 any error, inaccuracy or omission of any information delivered
114 pursuant to Sections 89-1-501 through 89-1-523 if the error,
115 inaccuracy or omission was not within the personal knowledge of
116 the transferor, was based on information timely provided by public
117 agencies or by other persons providing information as specified in
118 subsection (2) that is required to be disclosed pursuant to
119 Sections 89-1-501 through 89-1-523, and ordinary care was
120 exercised in obtaining and transmitting the information.

121 (2) The delivery of any information required to be disclosed
122 by Sections 89-1-501 through 89-1-523 to a prospective transferee
123 by a public agency or other person providing information required
124 to be disclosed pursuant to Sections 89-1-501 through 89-1-523
125 shall be deemed to comply with the requirements of Sections
126 89-1-501 through 89-1-523 and shall relieve the transferor or any
127 listing or selling agent of any further duty under Sections
128 89-1-501 through 89-1-523 with respect to that item of
129 information.



130 (3) The delivery of a report or opinion prepared by a
131 licensed engineer, land surveyor, geologist, structural pest
132 control operator, contractor or other expert, dealing with matters
133 within the scope of the professional's license or expertise, shall
134 be sufficient compliance for application of the exemption provided
135 by subsection (1) * * *.

136 (4) No listing or selling agent shall be liable for any
137 error, inaccuracy or omission of any information delivered
138 pursuant to Sections 89-1-501 through 89-1-523.

139 (5) The Mississippi Real Estate Commission shall not
140 promulgate any rule or regulation, nor make any administrative or
141 other interpretation, whereby any real estate licensee may be held
142 responsible or subject to discipline or other actions by the
143 commission relating to the provisions of this section or the
144 information required to be disclosed by Sections 89-1-501 through
145 89-1-523 or delivery of information required to be disclosed by
146 Sections 89-1-501 through 89-1-523.

147 **SECTION 3.** Section 89-1-523, Mississippi Code of 1972, is
148 amended as follows:

149 89-1-523. No transfer subject to Sections 89-1-501 through
150 89-1-523 shall be invalidated solely because of the failure of any
151 person to comply with any provision of Sections 89-1-501 through
152 89-1-523. * * *

153 **SECTION 4.** Section 89-1-527, Mississippi Code of 1972, is
154 amended as follows:



155 89-1-527. (1) The fact or suspicion that real property is
156 or was:

157 (a) The site of a natural death, suicide, homicide or
158 felony crime (except for illegal drug activity that affects the
159 physical condition of the property, its physical environment or
160 the improvements located thereon);

161 (b) The site of an act or occurrence that had no effect
162 on the physical condition of the property, its physical
163 environment or the improvements located thereon;

164 (c) Owned or occupied by a person affected or exposed
165 to any disease not known to be transmitted through common
166 occupancy of real estate including, but not limited to, the human
167 immunodeficiency virus (HIV) and the acquired immune deficiency
168 syndrome (AIDS);

169 does not constitute a material fact that must be disclosed in a
170 real estate transaction. A failure to disclose such nonmaterial
171 facts or suspicions shall not give rise to a criminal, civil or
172 administrative action against the owner of such real property, a
173 licensed real estate broker or any affiliated licensee of the
174 broker.

175 (2) A failure to disclose in any real estate transaction any
176 information that is provided or maintained, or is required to be
177 provided or maintained, in accordance with Section 45-33-21
178 through Section 45-33-57, shall not give rise to a cause of action
179 against an owner of real property, a licensed real estate broker



180 or any affiliated licensee of the broker. Likewise, no cause of
181 action shall arise against any licensed real estate broker or
182 affiliated licensee of the broker for revealing information to a
183 seller or buyer of real estate in accordance with Section 45-33-21
184 through Section 45-33-57. Any factors related to this subsection,
185 if known to a property owner or licensee shall be disclosed if
186 requested by a consumer.

187 (3) Failure to disclose any of the facts or suspicions of
188 facts described in subsections (1) and (2) shall not be grounds
189 for the termination or rescission of any transaction in which real
190 property has been or will be transferred or leased. * * *

191 **SECTION 5.** Section 89-1-503, Mississippi Code of 1972, is
192 amended as follows:

193 89-1-503. (1) The transferor of any real property subject
194 to Sections 89-1-501 through 89-1-523 shall deliver to the
195 prospective transferee the written property condition disclosure
196 statement required by Sections 89-1-501 through 89-1-523, as
197 follows:

198 (a) In the case of a sale, as soon as practicable
199 before transfer of title.

200 (b) In the case of transfer by a real property sales
201 contract, or by a lease together with an option to purchase, or a
202 ground lease coupled with improvements, as soon as practicable
203 before execution of the contract. For the purpose of this
204 paragraph, "execution" means the making or acceptance of an offer.



205 With respect to any transfer subject to paragraph (a) or (b),
206 the transferor shall indicate compliance with Sections 89-1-501
207 through 89-1-523 either on the receipt for deposit, the real
208 property sales contract, the lease, or any addendum attached
209 thereto or on a separate document.

210 If any disclosure, or any material amendment of any
211 disclosure, required to be made by Sections 89-1-501 through
212 89-1-523, is delivered after the execution of an offer to
213 purchase, the transferee shall have three (3) days after delivery
214 in person or five (5) days after delivery by deposit in the mail,
215 to terminate his or her offer by delivery of a written notice of
216 termination to the transferor or the transferor's agent.

217 (2) If a transferor of real property subject to Sections
218 89-1-501 through 89-1-523 shall fail to deliver the disclosure
219 statement required by Sections 89-1-501 through 89-1-523, or fails
220 to complete some portion of the disclosure statement, the
221 prospective transferee is presumed to be on notice to inquire of
222 the transferor concerning the content of the disclosure or the
223 lack thereof and any duly licensed real estate broker or
224 salesperson involved with the transaction shall have no duty or
225 obligation, and shall not be liable to any party, nor be subject
226 to discipline or other action of any kind by any licensing
227 authority of the State of Mississippi, pertaining to the
228 disclosure or the failure of any disclosure to comply with
229 Sections 89-1-501 through 89-1-523.



230 **SECTION 6.** Section 89-1-507, Mississippi Code of 1972, is
231 amended as follows:

232 89-1-507. If information disclosed in accordance with
233 Sections 89-1-501 through 89-1-523 is subsequently rendered
234 inaccurate as a result of any act, occurrence or agreement
235 subsequent to the delivery of the required disclosures, the
236 inaccuracy resulting therefrom does not constitute a violation of
237 Sections 89-1-501 through 89-1-523. If at the time the disclosures
238 are required to be made, an item of information required to be
239 disclosed is unknown or not available to the transferor, and the
240 transferor * * * has made a reasonable effort to ascertain it, the
241 transferor may use an approximation of the information, provided
242 the approximation is clearly identified as such, is reasonable, is
243 based on the best information available to the transferor * * *,
244 and is not used for the purpose of circumventing or evading
245 Sections 89-1-501 through 89-1-523.

246 **SECTION 7.** Section 89-1-515, Mississippi Code of 1972, is
247 amended as follows:

248 89-1-515. Any disclosure made pursuant to Sections 89-1-501
249 through 89-1-523 may be amended in writing by the
250 transferor * * *, but the amendment shall be subject to the
251 provisions of Section 89-1-503.

252 **SECTION 8.** Section 89-1-519, Mississippi Code of 1972, is
253 amended as follows:



254 89-1-519. * * * (1) No person or entity * * * shall * * *
255 be deemed the agent of the transferor or transferee for purposes
256 of the disclosure requirements of Sections 89-1-501 through
257 89-1-523 * * *.

258 (2) Notwithstanding any other provision of law to the
259 contrary, no real estate licensee shall have any duty or
260 obligation, and shall not be liable to any party to any real
261 estate transaction nor be subject to discipline or other action of
262 any kind by any licensing authority of the State of Mississippi,
263 pertaining to information required to be disclosed by Sections
264 89-1-501 through 89-1-523 or delivery of information required to
265 be disclosed by Sections 89-1-501 through 89-1-523.

266 **SECTION 9.** Section 89-1-523, Mississippi Code of 1972, is
267 amended as follows:

268 89-1-523. (1) No transfer subject to Sections 89-1-501
269 through 89-1-523 shall be invalidated solely because of the
270 failure of any person to comply with any provision of Sections
271 89-1-501 through 89-1-523. * * *

272 (2) Notwithstanding any other provision of law to the
273 contrary, no real estate licensee shall have any duty or
274 obligation, and shall not be liable to any party to any real
275 estate transaction nor be subject to discipline or other action of
276 any kind by any licensing authority of the State of Mississippi,
277 pertaining to information required to be disclosed by Sections



278 89-1-501 through 89-1-523 or delivery of information required to
279 be disclosed by Sections 89-1-501 through 89-1-523.

280 **SECTION 10.** Section 89-1-525, Mississippi Code of 1972, is
281 amended as follows:

282 89-1-525. (1) Except as otherwise provided in this section,
283 the Mississippi Real Estate Commission is authorized to enforce
284 the provisions of Sections 89-1-501 through 89-1-523. Any
285 violation of the provisions of Sections 89-1-501 through 89-1-523
286 shall be treated in the same manner as a violation of the Real
287 Estate Broker License Law of 1954, Section 73-35-1 et seq., and
288 shall be subject to same penalties as provided in that chapter.

289 (2) The Mississippi Real Estate Commission shall not
290 promulgate any rule or regulation, nor make any administrative or
291 other interpretation, that are not clearly provided in Sections
292 89-1-501 through 89-1-523 whereby any real estate licensee is held
293 responsible or subject to discipline or other actions by the
294 commission relating to the provisions of this section or the
295 information required to be disclosed by Sections 89-1-501 through
296 89-1-523 or delivery of information required to be disclosed by
297 Sections 89-1-501 through 89-1-523.

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

300 73-35-21. (1) Except as otherwise provided in this section,
301 the commission may, upon its own motion and shall upon the
302 verified complaint in writing of any person, hold a hearing



303 pursuant to Section 73-35-23 for the refusal of license or for the
304 suspension or revocation of a license previously issued, or for
305 such other action as the commission deems appropriate. The
306 commission shall have full power to refuse a license for cause or
307 to revoke or suspend a license where it has been obtained by false
308 or fraudulent representation, or where the licensee in performing
309 or attempting to perform any of the acts mentioned herein, is
310 deemed to be guilty of:

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

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

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

318 (d) Any misleading or untruthful advertising;

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

323 (f) Failing, within a reasonable time, to account for
324 or to remit any monies coming into his possession which belong to
325 others, or commingling of monies belonging to others with his own
326 funds. Every responsible broker procuring the execution of an
327 earnest money contract or option or other contract who shall take



328 or receive any cash or checks shall deposit, within a reasonable
329 period of time, the sum or sums so received in a trust or escrow
330 account in a bank or trust company pending the consummation or
331 termination of the transaction. "Reasonable time" in this context
332 means by the close of business of the next banking day;

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

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

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

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

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

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



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

355 (n) Any act or conduct, whether of the same or a
356 different character than hereinabove specified, which constitutes
357 or demonstrates bad faith, incompetency or untrustworthiness, or
358 dishonest, fraudulent or improper dealing. However, simple
359 contact and/or communication with any mortgage broker or lender by
360 a real estate licensee about any professional, including, but not
361 limited to, an appraiser, home inspector, contractor, and/or
362 attorney regarding a listing and/or a prospective or pending
363 contract for the lease, sale and/or purchase of real estate shall
364 not constitute conduct in violation of this section.

365 (2) No real estate broker shall practice law or give legal
366 advice directly or indirectly unless said broker be a duly
367 licensed attorney under the laws of this state. He shall not act
368 as a public conveyancer nor give advice or opinions as to the
369 legal effect of instruments nor give opinions concerning the
370 validity of title to real estate; nor shall he prevent or
371 discourage any party to a real estate transaction from employing
372 the services of an attorney; nor shall a broker undertake to
373 prepare documents fixing and defining the legal rights of parties
374 to a transaction. However, when acting as a broker, he may use an
375 earnest money contract form. A real estate broker shall not
376 participate in attorney's fees, unless the broker is a duly



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

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

385 (4) In addition to the reasons specified in subsection (1)
386 of this section, the commission shall be authorized to suspend the
387 license of any licensee for being out of compliance with an order
388 for support, as defined in Section 93-11-153. The procedure for
389 suspension of a license for being out of compliance with an order
390 for support, and the procedure for the reissuance or reinstatement
391 of a license suspended for that purpose, and the payment of any
392 fees for the reissuance or reinstatement of a license suspended
393 for that purpose, shall be governed by Section 93-11-157 or
394 93-11-163, as the case may be. If there is any conflict between
395 any provision of Section 93-11-157 or 93-11-163 and any provision
396 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
397 as the case may be, shall control.

398 (5) Nothing in this chapter shall prevent an associate
399 broker or salesperson from owning any lawfully constituted
400 business organization, including, but not limited to, a
401 corporation, limited liability company or limited liability



402 partnership, for the purpose of receiving payments contemplated in
403 this chapter. The business organization shall not be required to
404 be licensed under this chapter and shall not engage in any other
405 activity requiring a real estate license.

406 (6) The Mississippi Real Estate Commission shall not
407 promulgate any rule or regulation, nor make any administrative or
408 other interpretation, whereby any real estate licensee may be held
409 responsible or subject to discipline or other actions by the
410 commission relating to the provisions of this section or the
411 information required to be disclosed by Sections 89-1-501 through
412 89-1-523 or delivery of information required to be disclosed by
413 Sections 89-1-501 through 89-1-523.

414 **SECTION 12.** Section 73-35-23, Mississippi Code of 1972, is
415 amended as follows:

416 73-35-23. (1) The commission is hereby authorized and
417 directed to take legal action against any violator of this
418 chapter. Upon complaint initiated by the commission or filed with
419 it, the licensee or any other person charged with a violation of
420 this chapter shall be given fifteen (15) days' notice of the
421 hearing upon the charges filed, together with notice of the option
422 of appearing before the commission or an administrative hearing
423 officer as provided in subsection (7) of this section, and a copy
424 of the complaint. The applicant or licensee or other violator
425 shall have an opportunity to be heard in person or by counsel, to
426 offer testimony, and to examine witnesses appearing in connection



427 with the complaint. Hearings shall be held at the offices of the
428 Mississippi Real Estate Commission, or at the commission's sole
429 discretion, at a place determined by the commission.

430 At such hearings, all witnesses shall be properly sworn and
431 stenographic notes of the proceedings shall be taken and filed as
432 a part of the record in the case. Any party to the proceedings
433 shall be furnished with a copy of such stenographic notes upon
434 payment to the commission of such fees as it shall prescribe, not
435 exceeding, however, the actual cost to the commission. The
436 preponderance of evidence standard of proof shall be used to
437 examine factors during all hearings. The commission shall render
438 a decision on any complaint and shall immediately notify the
439 parties to the proceedings in writing of its ruling, order or
440 decision.

441 (2) In addition to the authority granted to the commission
442 as hereinabove set forth, the commission is hereby vested with the
443 authority to bring injunctive proceedings in any appropriate forum
444 against any violator or violators of this chapter, and all judges
445 or courts now having the power to grant injunctions are
446 specifically granted the power and jurisdiction to hear and
447 dispose of such proceedings.

448 (3) The commission is hereby authorized and empowered to
449 issue subpoenas for the attendance of witnesses and the production
450 of books and papers. The process issued by the commission shall
451 extend to all parts of the state, and such process shall be served



452 by any person designated by the commission for such service. The
453 person serving such process may receive such compensation as may
454 be allowed by the commission, not to exceed the fee prescribed by
455 law for similar services. All witnesses who are subpoenaed and
456 who appear in any proceedings before the commission may receive
457 the same fees and mileage as allowed by law, and all such fees
458 shall be taxed as part of the costs in the case.

459 (4) Where in any proceeding before the commission any
460 witness shall fail or refuse to attend upon subpoena issued by the
461 commission, shall refuse to testify, or shall refuse to produce
462 any books and papers the production of which is called for by the
463 subpoena, the attendance of such witness and the giving of his
464 testimony and the production of the books and papers shall be
465 enforced by any court of competent jurisdiction of this state in
466 the same manner as the attendance and testimony of witnesses in
467 civil cases are enforced in the courts of this state.

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

470 (6) No commissioner, administrator, employee, investigator,
471 representative or agent of the commission shall communicate with a
472 licensee in connection with any preliminary or formal
473 investigation associated with alleged violations of licensing law
474 or regulations prior to the delivery of written notice to the
475 licensee's responsible broker. Any licensee represented by legal



476 counsel shall be entitled to communication through such legal
477 counsel unless waived in writing by the licensee.

478 (7) The commission shall establish an administrative hearing
479 option by July 1, 2022, which shall consist of administrative
480 hearing officers designated by the Attorney General for the
481 purpose of holding hearings, hearing evidence and rendering
482 decisions on matters determined to be the subject of a hearing for
483 a licensee or any other person charged with a violation of this
484 chapter or affecting the license of any person coming under its
485 jurisdiction, when the licensee or any other person charged with a
486 violation of this chapter shall request, in writing, for the
487 matter to be heard by the administrative hearing officer.
488 Administrative hearing officers shall be staff attorneys employed
489 by the Attorney General's office, but must not currently hold a
490 license issued by the commission. The administrative hearing
491 officers shall have the same powers and authority in conducting
492 hearings and rendering decisions as granted to the commission in
493 this section. Hearings before an administrative hearing officer
494 shall be held in the City of Jackson, Mississippi, at a place,
495 time and manner agreed upon by the commission and the hearing
496 officer. The preponderance of evidence standard of proof shall be
497 used to examine factors during all hearings. Any right of appeal
498 available to a licensee or applicant for a license availing itself
499 to the provisions hereof shall be preserved as if the matter had
500 been heard and decided by the commission.



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

504 (9) The provisions of this section shall not be construed to
505 authorize the Mississippi Real Estate Commission to promulgate
506 any rule or regulation, nor make any administrative or other
507 interpretation, whereby any real estate licensee may be held
508 responsible or subject to discipline or other actions by the
509 commission relating to the provisions of this section or the
510 information required to be disclosed by Sections 89-1-501 through
511 89-1-523 or delivery of information required to be disclosed by
512 Sections 89-1-501 through 89-1-523.

513 **SECTION 13.** Sections 89-1-521 and 89-1-525, Mississippi Code
514 of 1972, which provide for certain disclosures and penalties of
515 licensed real estate brokers and salespersons, are repealed.

516 **SECTION 14.** This act shall take effect and be in force from
517 and after July 1, 2023.

