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To: Business and Financial  
Institutions; Judiciary,  
Division A

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2647

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 rules or regulations, nor make any administrative  
291 or 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 any  
506 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, and shall stand repealed on June 30, 2023.

