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To: Business and Financial  
Institutions; Judiciary,  
Division A

SENATE BILL NO. 2647  
(As Sent to Governor)

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 89-1-503 AND 89-1-505, MISSISSIPPI CODE OF 1972, TO REVISE  
5 LIABILITY FOR FAILURE OF A TRANSFEROR OF REAL PROPERTY TO PROVIDE  
6 CERTAIN INFORMATION; TO AMEND SECTIONS 89-1-507 AND 89-1-515,  
7 MISSISSIPPI CODE OF 1972, TO REMOVE REFERENCES TO AGENTS OF  
8 TRANSFERORS OF REAL PROPERTY; TO AMEND SECTION 89-1-519,  
9 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PERSON OR ENTITY  
10 SHALL BE DEEMED THE AGENT OF THE TRANSFEROR OR TRANSFEREE FOR  
11 PURPOSES OF THE DISCLOSURE REQUIREMENTS OF SECTIONS 89-1-501  
12 THROUGH 89-1-523; TO AMEND SECTION 89-1-523, MISSISSIPPI CODE OF  
13 1972, TO REVISE LIABILITY REGARDING SECTIONS 89-1-501 THROUGH  
14 89-1-523; TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972, TO  
15 REVISE THE AUTHORITY OF THE REAL ESTATE COMMISSION REGARDING; TO  
16 REPEAL SECTIONS 89-1-521 AND 89-1-525, MISSISSIPPI CODE OF 1972,  
17 WHICH PROVIDE FOR CERTAIN DISCLOSURES AND PENALTIES OF LICENSED  
18 REAL ESTATE BROKERS AND SALESPERSONS; AND FOR RELATED PURPOSES.

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

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

22 73-35-4.1. (1) (a) In connection with any real estate  
23 transaction, the size or area, in square footage or otherwise, of  
24 the subject property, if provided by any real estate licensee in  
25 accordance with paragraph (b) (i) and (ii), shall not be considered



26 any warranty or guarantee of the size or area information, in  
27 square footage or otherwise, of the subject property.

28 (b) (i) If a real estate licensee provides any party  
29 to a real estate transaction with third-party information  
30 concerning the size or area, in square footage or otherwise, of  
31 the subject property involved in the transaction, the licensee  
32 shall identify the source of the information.

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

- 35 1. An appraisal or any measurement  
36 information prepared by a licensed appraiser;
- 37 2. A surveyor developer's plan prepared by a  
38 licensed surveyor;
- 39 3. A tax assessor's public record; or
- 40 4. A builder's plan used to construct or  
41 market the property.

42 (c) A real estate licensee has no duty to the seller or  
43 purchaser of real property to conduct an independent investigation  
44 of the size or area, in square footage or otherwise, of a subject  
45 property, or to independently verify the accuracy of any  
46 third-party information.

47 (d) A real estate licensee who has complied with the  
48 requirements of this section, as applicable, shall have no further  
49 duties to the seller or purchaser of real property regarding  
50 disclosed or undisclosed property size or area information, and



51 shall not be subject to liability to any party for any damages  
52 sustained with regard to any conflicting measurements or opinions  
53 of size or area, including exemplary or punitive damages.

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

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

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

72 (d) In any civil action brought pursuant to this  
73 section, the prevailing party shall be allowed court costs and  
74 reasonable attorney fees to be set by the court and collected as  
75 costs of the action.



76 (e) A transfer of a possessory interest in real  
77 property subject to the provisions of this section may not be  
78 invalidated solely because of the failure of any person to comply  
79 with the provisions of this section.

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

90 (3) Notwithstanding any other provision of law to the  
91 contrary, no real estate licensee shall have any duty or  
92 obligation nor be subject to discipline or other action of any  
93 kind by any licensing authority of the State of Mississippi,  
94 pertaining to information required to be disclosed by Sections  
95 89-1-501 through 89-1-523 or delivery of information required to  
96 be disclosed by Sections 89-1-501 through 89-1-523.

97 (4) The Mississippi Real Estate Commission shall not  
98 promulgate any rule or regulation, nor make any administrative or  
99 other interpretation, whereby any real estate licensee may be held  
100 responsible or subject to discipline or other actions by the



101 commission relating to the provisions of this section or the  
102 information required to be disclosed by Sections 89-1-501 through  
103 89-1-523 or delivery of information required to be disclosed by  
104 Sections 89-1-501 through 89-1-523.

105       **SECTION 2.** Section 89-1-503, Mississippi Code of 1972, is  
106 amended as follows:

107       89-1-503. (1) The transferor of any real property subject  
108 to Sections 89-1-501 through 89-1-523 shall deliver to the  
109 prospective transferee the written property condition disclosure  
110 statement required by Sections 89-1-501 through 89-1-523, as  
111 follows:

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

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

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

124       If any disclosure, or any material amendment of any  
125 disclosure, required to be made by Sections 89-1-501 through



126 89-1-523, is delivered after the execution of an offer to  
127 purchase, the transferee shall have three (3) days after delivery  
128 in person or five (5) days after delivery by deposit in the mail,  
129 to terminate his or her offer by delivery of a written notice of  
130 termination to the transferor or the transferor's agent.

131 (2) If a transferor of real property subject to Sections  
132 89-1-501 through 89-1-523 shall fail to deliver the disclosure  
133 statement required by Sections 89-1-501 through 89-1-523, or fails  
134 to complete some portion of the disclosure statement, the  
135 prospective transferee is presumed to be on notice to inquire of  
136 the transferor concerning the content of the disclosure or the  
137 lack thereof. Any duly licensed real estate broker or salesperson  
138 involved with the transaction shall have no duty or obligation nor  
139 be subject to discipline or other action of any kind by any  
140 licensing authority of the State of Mississippi, pertaining to the  
141 disclosure or the failure of any disclosure to comply with  
142 Sections 89-1-501 through 89-1-523.

143 **SECTION 3.** Section 89-1-505, Mississippi Code of 1972, is  
144 amended as follows:

145 89-1-505. (1) \* \* \* The transferor \* \* \* shall not be  
146 liable for any error, inaccuracy or omission of any information  
147 delivered pursuant to Sections 89-1-501 through 89-1-523 if the  
148 error, inaccuracy or omission was not within the personal  
149 knowledge of the transferor \* \* \*, was based on information timely  
150 provided by public agencies or by other persons providing



151 information as specified in subsection (2) that is required to be  
152 disclosed pursuant to Sections 89-1-501 through 89-1-523, and  
153 ordinary care was exercised in obtaining and transmitting \* \* \*  
154 the information.

155 (2) The delivery of any information required to be disclosed  
156 by Sections 89-1-501 through 89-1-523 to a prospective transferee  
157 by a public agency or other person providing information required  
158 to be disclosed pursuant to Sections 89-1-501 through 89-1-523  
159 shall be deemed to comply with the requirements of Sections  
160 89-1-501 through 89-1-523 and shall relieve the transferor \* \* \*  
161 of any further duty under Sections 89-1-501 through 89-1-523 with  
162 respect to that item of information.

163 (3) The delivery of a report or opinion prepared by a  
164 licensed engineer, land surveyor, geologist, structural pest  
165 control operator, contractor or other expert, dealing with matters  
166 within the scope of the professional's license or expertise, shall  
167 be sufficient compliance for application of the exemption provided  
168 by subsection (1) if the information is provided to the  
169 prospective transferee pursuant to a request therefor, whether  
170 written or oral. In responding to such a request, an expert may  
171 indicate, in writing, an understanding that the information  
172 provided will be used in fulfilling the requirements of Section  
173 89-1-509 and, if so, shall indicate the required disclosures, or  
174 parts thereof, to which the information being furnished is  
175 applicable. Where such a statement is furnished, the expert shall



176 not be responsible for any items of information, or parts thereof,  
177 other than those expressly set forth in the statement.

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

181 (5) The Mississippi Real Estate Commission shall not  
182 promulgate any rule or regulation, nor make any administrative or  
183 other interpretation, whereby any real estate licensee may be held  
184 responsible or subject to discipline or other actions by the  
185 commission relating to the provisions of this section or the  
186 information required to be disclosed by Sections 89-1-501 through  
187 89-1-523 or delivery of information required to be disclosed by  
188 Sections 89-1-501 through 89-1-523.

189 **SECTION 4.** Section 89-1-507, Mississippi Code of 1972, is  
190 amended as follows:

191 89-1-507. If information disclosed in accordance with  
192 Sections 89-1-501 through 89-1-523 is subsequently rendered  
193 inaccurate as a result of any act, occurrence or agreement  
194 subsequent to the delivery of the required disclosures, the  
195 inaccuracy resulting therefrom does not constitute a violation of  
196 Sections 89-1-501 through 89-1-523. If at the time the disclosures  
197 are required to be made, an item of information required to be  
198 disclosed is unknown or not available to the transferor, and the  
199 transferor \* \* \* has made a reasonable effort to ascertain it, the  
200 transferor may use an approximation of the information, provided





201 the approximation is clearly identified as such, is reasonable, is  
202 based on the best information available to the transferor \* \* \*,  
203 and is not used for the purpose of circumventing or evading  
204 Sections 89-1-501 through 89-1-523.

205 **SECTION 5.** Section 89-1-515, Mississippi Code of 1972, is  
206 amended as follows:

207 89-1-515. Any disclosure made pursuant to Sections 89-1-501  
208 through 89-1-523 may be amended in writing by the  
209 transferor \* \* \*, but the amendment shall be subject to the  
210 provisions of Section 89-1-503.

211 **SECTION 6.** Section 89-1-519, Mississippi Code of 1972, is  
212 amended as follows:

213 89-1-519. \* \* \* (1) No person or entity \* \* \* shall \* \* \*  
214 be deemed the agent of the transferor or transferee for purposes  
215 of the disclosure requirements of Sections 89-1-501 through  
216 89-1-523 \* \* \*.

217 (2) Notwithstanding any other provision of law to the  
218 contrary, no real estate licensee shall have any duty or  
219 obligation nor be subject to discipline or other action of any  
220 kind by any licensing authority of the State of Mississippi,  
221 pertaining to information required to be disclosed by Sections  
222 89-1-501 through 89-1-523 or delivery of information required to  
223 be disclosed by Sections 89-1-501 through 89-1-523.

224 **SECTION 7.** Section 89-1-523, Mississippi Code of 1972, is  
225 amended as follows:



226 89-1-523. No transfer subject to Sections 89-1-501 through  
227 89-1-523 shall be invalidated solely because of the failure of any  
228 person to comply with any provision of Sections 89-1-501 through  
229 89-1-523. \* \* \*

230 **SECTION 8.** Section 73-35-21, Mississippi Code of 1972, is  
231 amended as follows:

232 73-35-21. (1) Except as otherwise provided in this section,  
233 the commission may, upon its own motion and shall upon the  
234 verified complaint in writing of any person, hold a hearing  
235 pursuant to Section 73-35-23 for the refusal of license or for the  
236 suspension or revocation of a license previously issued, or for  
237 such other action as the commission deems appropriate. The  
238 commission shall have full power to refuse a license for cause or  
239 to revoke or suspend a license where it has been obtained by false  
240 or fraudulent representation, or where the licensee in performing  
241 or attempting to perform any of the acts mentioned herein, is  
242 deemed to be guilty of:

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

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

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

250 (d) Any misleading or untruthful advertising;



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

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

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

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

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

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



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

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

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

287 (n) Any act or conduct, whether of the same or a  
288 different character than hereinabove specified, which constitutes  
289 or demonstrates bad faith, incompetency or untrustworthiness, or  
290 dishonest, fraudulent or improper dealing. However, simple  
291 contact and/or communication with any mortgage broker or lender by  
292 a real estate licensee about any professional, including, but not  
293 limited to, an appraiser, home inspector, contractor, and/or  
294 attorney regarding a listing and/or a prospective or pending  
295 contract for the lease, sale and/or purchase of real estate shall  
296 not constitute conduct in violation of this section.

297 (2) No real estate broker shall practice law or give legal  
298 advice directly or indirectly unless said broker be a duly  
299 licensed attorney under the laws of this state. He shall not act  
300 as a public conveyancer nor give advice or opinions as to the



301 legal effect of instruments nor give opinions concerning the  
302 validity of title to real estate; nor shall he prevent or  
303 discourage any party to a real estate transaction from employing  
304 the services of an attorney; nor shall a broker undertake to  
305 prepare documents fixing and defining the legal rights of parties  
306 to a transaction. However, when acting as a broker, he may use an  
307 earnest money contract form. A real estate broker shall not  
308 participate in attorney's fees, unless the broker is a duly  
309 licensed attorney under the laws of this state and performs legal  
310 services in addition to brokerage services.

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

317 (4) In addition to the reasons specified in subsection (1)  
318 of this section, the commission shall be authorized to suspend the  
319 license of any licensee for being out of compliance with an order  
320 for support, as defined in Section 93-11-153. The procedure for  
321 suspension of a license for being out of compliance with an order  
322 for support, and the procedure for the reissuance or reinstatement  
323 of a license suspended for that purpose, and the payment of any  
324 fees for the reissuance or reinstatement of a license suspended  
325 for that purpose, shall be governed by Section 93-11-157 or



326 93-11-163, as the case may be. If there is any conflict between  
327 any provision of Section 93-11-157 or 93-11-163 and any provision  
328 of this chapter, the provisions of Section 93-11-157 or 93-11-163,  
329 as the case may be, shall control.

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

338 (6) The Mississippi Real Estate Commission shall not  
339 promulgate any rule or regulation, nor make any administrative or  
340 other interpretation, whereby any real estate licensee may be held  
341 responsible or subject to discipline or other actions by the  
342 commission relating to the provisions of this section or the  
343 information required to be disclosed by Sections 89-1-501 through  
344 89-1-523 or delivery of information required to be disclosed by  
345 Sections 89-1-501 through 89-1-523.

346 **SECTION 9.** Sections 89-1-521 and 89-1-525, Mississippi Code  
347 of 1972, which provide for certain disclosures and penalties of  
348 licensed real estate brokers and salespersons, are repealed.

349 **SECTION 10.** This act shall take effect and be in force from  
350 and after its passage.

