

By: Representative Kinkade

To: Business and Commerce;
Judiciary B

HOUSE BILL NO. 986

1 AN ACT TO AMEND SECTION 73-35-10, MISSISSIPPI CODE OF 1972,
2 TO ALLOW THE REAL ESTATE COMMISSION TO EXERCISE DISCRETION WHEN
3 ISSUING LICENSES TO INDIVIDUALS WHO WERE CONVICTED OF A CRIME OF
4 MORAL TURPITUDE MORE THAN FIVE YEARS PRIOR TO APPLYING FOR A
5 LICENSE; TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972, TO
6 CONFORM; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 73-35-10, Mississippi Code of 1972, is
9 amended as follows:

10 73-35-10. (1) (a) To qualify for a Mississippi real estate
11 broker's license * * *, a Mississippi resident license as a real
12 estate salesperson or a nonresident's license in Mississippi, an
13 applicant must have successfully been cleared for licensure
14 through an investigation that shall consist of a determination
15 that the applicant does not possess a background which calls into
16 question public trust, as set forth below in subsection (2), and
17 verification that the prospective licensee is not guilty of or in
18 violation of any statutory ground for the commission, in its
19 discretion, to issue a denial of licensure as set forth in Section
20 73-35-21.



21 (b) If an applicant possesses a background that calls
22 into question public trust, or a violation of statutory grounds
23 set forth in Section 73-35-21, the commission shall issue a
24 denial, unless, the commission determines that:

25 (i) At least five (5) years have passed from the
26 date of expiration of probation, parole or conviction, or the date
27 of release from incarceration, whichever is later; and

28 (ii) The applicant has paid all restitution, fees
29 and fines associated with the violation.

30 This provision shall apply to all felonies and any
31 misdemeanors that involve the theft of money, services, property
32 or crimes of moral turpitude. If the commission finds that the
33 applicant has satisfied the requirements of subparagraphs (i) and
34 (ii) of this paragraph, and that the applicant has been
35 effectively rehabilitated, then the commission may, in its
36 discretion, grant an issuance or reissuance of the requested
37 license. An applicant who appears before the commission
38 requesting licensure and who is denied, will not be eligible for
39 reconsideration for six (6) months from the date the denial was
40 issued by the commission.

41 (* * *c) To assist the commission in conducting its
42 licensure investigation, from and after July 1, 2016, all
43 applicants for a Mississippi real estate broker's license, or a
44 Mississippi resident license as a real estate salesperson, or a
45 nonresident's license in Mississippi, and all applicants for



46 renewal of any real estate license shall undergo a
47 fingerprint-based criminal history records check of the
48 Mississippi central criminal database and the Federal Bureau of
49 Investigation criminal history database. Each applicant shall
50 submit a full set of the applicant's fingerprints in a form and
51 manner prescribed by the commission, which shall be forwarded to
52 the Mississippi Department of Public Safety (department) and the
53 Federal Bureau of Investigation Identification Division for this
54 purpose.

55 (d) If within the past ten (10) years, an applicant has
56 been convicted of or pled guilty to or nolo contendere to any
57 felony or a misdemeanor involving the theft of services, money,
58 property, crimes of moral turpitude or had any disciplinary
59 sanctions imposed on them by any local, state or federal
60 occupational licensing body, the applicant shall:

61 (i) Complete and submit a form prescribed by the
62 commission containing information relevant to the conviction, plea
63 or disciplinary sanction;

64 (ii) Submit certified copies of the court
65 disposition or other documents acceptable to the commission for
66 each conviction, plea of guilty or nolo contendere or a copy of
67 the order or other document which shows the disciplinary action
68 taken by the local, state or federal agency and the factual and
69 legal basis for the action, whichever is applicable;



70 (iii) Exercise due diligence to provide any
71 missing and/or necessary information that the commission may need
72 or request in order to have a clear understanding of the charges
73 against the applicant and the court's disposition of the case
74 against the applicant;

75 (iv) Appear before the commission for a hearing
76 following the same procedures as outlined in Section 73-35-23, to
77 determine if the conviction, plea or disciplinary sanction
78 constitutes grounds for denial of a license, and if so, whether or
79 not the applicant may move forward with the licensing process.

80 (* * *e) Any and all state or national criminal
81 history records information obtained by the commission that is not
82 already a matter of public record shall be deemed nonpublic and
83 confidential information restricted to the exclusive use of the
84 commission, its members, officers, investigators, agents and
85 attorneys in evaluating the applicant's eligibility or
86 disqualification for licensure, and shall be exempt from the
87 Mississippi Public Records Act of 1983. Except when introduced
88 into evidence in a hearing before the commission to determine
89 licensure, no such information or records related thereto shall,
90 except with the written consent of the applicant or by order of a
91 court of competent jurisdiction, be released or otherwise
92 disclosed by the commission to any other person or agency.

93 (* * *f) The commission shall provide to the
94 department the fingerprints of the applicant, any additional



95 information that may be required by the department, and a form
96 signed by the applicant consenting to the check of the criminal
97 records and to the use of the fingerprints and other identifying
98 information required by the state or national repositories.

99 (* * *g) The commission shall charge and collect from
100 the applicant, in addition to all other applicable fees and costs,
101 such amount as may be incurred by the commission in requesting and
102 obtaining state and national criminal history records information
103 on the applicant.

104 (2) (a) The commission must ensure that applicants for real
105 estate licenses do not possess a background that could call into
106 question public trust. An applicant found by the commission to
107 possess a background * * * that calls into question the
108 applicant's ability to maintain public trust * * * may, in the
109 commission's discretion, not be issued a real estate license. If
110 the applicant possesses a background that could call into question
111 public trust, the commission shall make a determination as to
112 whether or not the applicant has been properly rehabilitated using
113 the considerations outlined in subsection (1) of this section.

114 (b) The commission shall not issue a real estate
115 license if:

116 (i) The applicant has had a real estate license
117 revoked in any governmental jurisdiction within the five-year
118 period immediately preceding the date of the application;



119 (ii) The applicant has been convicted of, or pled
120 guilty or nolo contendere to, a felony in a domestic or foreign
121 court:

122 1. During the five-year period immediately
123 preceding the date of the application for licensing; or

124 2. * * * During the five-year period
125 immediately preceding the date of the application, * * * the
126 applicant was involved in an act of fraud, dishonesty * * *,
127 breach of trust * * * or money laundering.

128 (c) The commission shall adopt rules and regulations
129 necessary to implement, administer and enforce the provisions of
130 this section.

131 (d) The requirement of a criminal background check
132 provided in this section shall not apply to persons who have held
133 a broker's or salesperson's license in this state for at least
134 twenty-five (25) years and who are older than seventy (70) years
135 of age.

136 **SECTION 2.** Section 73-35-21, Mississippi Code of 1972, is
137 amended as follows:

138 73-35-21. (1) Except as otherwise provided in this section,
139 the commission may, upon its own motion and shall upon the
140 verified complaint in writing of any person, hold a hearing
141 pursuant to Section 73-35-23 for the refusal of license or for the
142 suspension or revocation of a license previously issued, or for
143 such other action as the commission deems appropriate. The



144 commission shall have full power to refuse a license for cause or
145 to revoke or suspend a license where it has been obtained by false
146 or fraudulent representation, or where the licensee in performing
147 or attempting to perform any of the acts mentioned herein, is
148 deemed to be guilty of:

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

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

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

156 (d) Any misleading or untruthful advertising;

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

161 (f) Failing, within a reasonable time, to account for
162 or to remit any monies coming into his possession which belong to
163 others, or commingling of monies belonging to others with his own
164 funds. Every responsible broker procuring the execution of an
165 earnest money contract or option or other contract who shall take
166 or receive any cash or checks shall deposit, within a reasonable
167 period of time, the sum or sums so received in a trust or escrow
168 account in a bank or trust company pending the consummation or



169 termination of the transaction. "Reasonable time" in this context
170 means by the close of business of the next banking day;

171 (g) Entering a guilty plea or conviction in a court of
172 competent jurisdiction of this state, or any other state or the
173 United States of any felony within the five (5) years prior to
174 filing the licensing application;

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

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

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

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

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

191 (m) Failing to successfully pass the commission's
192 background investigation for licensure or renewal as provided in
193 Section 73-35-10, or if the background check reveals a conviction



194 entered more than five (5) years ago, and the commission
195 determines, after providing the applicant with a hearing, that the
196 applicant's conviction is of the nature that makes an issuance or
197 reissuances of a license against public interest; or

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

208 (2) No real estate broker shall practice law or give legal
209 advice directly or indirectly unless said broker * * * is a duly
210 licensed attorney under the laws of this state. He or she shall
211 not act as a public conveyancer nor give advice or opinions as to
212 the legal effect of instruments nor give opinions concerning the
213 validity of title to real estate; nor shall he or she prevent or
214 discourage any party to a real estate transaction from employing
215 the services of an attorney; nor shall a broker undertake to
216 prepare documents fixing and defining the legal rights of parties
217 to a transaction. However, when acting as a broker, he or she may
218 use an earnest money contract form. A real estate broker shall



219 not participate in attorney's fees, unless the broker is a duly
220 licensed attorney under the laws of this state and performs legal
221 services in addition to brokerage services.

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

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

241 (5) Nothing in this chapter shall prevent an associate
242 broker or salesperson from owning any lawfully constituted
243 business organization, including, but not limited to, a



244 corporation, limited liability company or limited liability
245 partnership, for the purpose of receiving payments contemplated in
246 this chapter. The business organization shall not be required to
247 be licensed under this chapter and shall not engage in any other
248 activity requiring a real estate license.

249 (6) The Mississippi Real Estate Commission shall not
250 promulgate any rule or regulation, nor make any administrative or
251 other interpretation, whereby any real estate licensee may be held
252 responsible or subject to discipline or other actions by the
253 commission relating to the provisions of this section or the
254 information required to be disclosed by Sections 89-1-501 through
255 89-1-523 or delivery of information required to be disclosed by
256 Sections 89-1-501 through 89-1-523.

257 **SECTION 3.** This act shall take effect and be in force from
258 and after July 1, 2024.

