

By: Representatives Deweese, Barnett, Bell
(21st), Felsher, Ford (73rd), Haney, Hawkins,
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To: Judiciary A

HOUSE BILL NO. 1271

1 AN ACT TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,
2 TO REVISE LIABILITY REGARDING SECTIONS 89-1-501 THROUGH 89-1-523;
3 TO AMEND SECTION 89-1-503, MISSISSIPPI CODE OF 1972, TO REVISE
4 LIABILITY REGARDING SECTIONS 89-1-501 THROUGH 89-1-523; TO REPEAL
5 SECTION 89-1-519, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT NO
6 PERSON OR ENTITY SHALL BE DEEMED THE AGENT OF THE TRANSFEROR OR
7 TRANSFEREE FOR PURPOSES OF THE DISCLOSURE REQUIREMENTS OF SECTIONS
8 89-1-501 THROUGH 89-1-523; TO AMEND SECTION 89-1-523, MISSISSIPPI
9 CODE OF 1972, TO REVISE LIABILITY REGARDING SECTIONS 89-1-501
10 THROUGH 89-1-523; AND FOR RELATED PURPOSES.

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

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

14 73-35-21. (1) Except as otherwise provided in this section,
15 the commission may, upon its own motion and shall upon the
16 verified complaint in writing of any person, hold a hearing
17 pursuant to Section 73-35-23 for the refusal of license or for the
18 suspension or revocation of a license previously issued, or for
19 such other action as the commission deems appropriate. The
20 commission shall have full power to refuse a license for cause or
21 to revoke or suspend a license where it has been obtained by false
22 or fraudulent representation, or where the licensee in performing



23 or attempting to perform any of the acts mentioned herein, is
24 deemed to be guilty of:

25 (a) Making any substantial misrepresentation in
26 connection with a real estate transaction;

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

29 (c) Pursuing a continued and flagrant course of
30 misrepresentation or making false promises through agents or
31 salespersons or any medium of advertising or otherwise;

32 (d) Any misleading or untruthful advertising;

33 (e) Acting for more than one (1) party in a transaction
34 or receiving compensation from more than one (1) party in a
35 transaction, or both, without the knowledge of all parties for
36 whom he acts;

37 (f) Failing, within a reasonable time, to account for
38 or to remit any monies coming into his possession which belong to
39 others, or commingling of monies belonging to others with his own
40 funds. Every responsible broker procuring the execution of an
41 earnest money contract or option or other contract who shall take
42 or receive any cash or checks shall deposit, within a reasonable
43 period of time, the sum or sums so received in a trust or escrow
44 account in a bank or trust company pending the consummation or
45 termination of the transaction. "Reasonable time" in this context
46 means by the close of business of the next banking day;



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

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

52 (i) Failing to furnish voluntarily, at the time of
53 signing, copies of all listings, contracts and agreements to all
54 parties executing the same;

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

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

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

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

69 (n) Any act or conduct, whether of the same or a
70 different character than hereinabove specified, which constitutes
71 or demonstrates bad faith, incompetency or untrustworthiness, or



72 dishonest, fraudulent or improper dealing. However, simple
73 contact and/or communication with any mortgage broker or lender by
74 a real estate licensee about any professional, including, but not
75 limited to, an appraiser, home inspector, contractor, and/or
76 attorney regarding a listing and/or a prospective or pending
77 contract for the lease, sale and/or purchase of real estate shall
78 not constitute conduct in violation of this section.

79 (2) No real estate broker shall practice law or give legal
80 advice directly or indirectly unless said broker be a duly
81 licensed attorney under the laws of this state. He shall not act
82 as a public conveyancer nor give advice or opinions as to the
83 legal effect of instruments nor give opinions concerning the
84 validity of title to real estate; nor shall he prevent or
85 discourage any party to a real estate transaction from employing
86 the services of an attorney; nor shall a broker undertake to
87 prepare documents fixing and defining the legal rights of parties
88 to a transaction. However, when acting as a broker, he may use an
89 earnest money contract form. A real estate broker shall not
90 participate in attorney's fees, unless the broker is a duly
91 licensed attorney under the laws of this state and performs legal
92 services in addition to brokerage services.

93 (3) It is expressly provided that it is not the intent and
94 purpose of the Mississippi Legislature to prevent a license from
95 being issued to any person who is found to be of good reputation,
96 is able to give bond, and who has lived in the State of



97 Mississippi for the required period or is otherwise qualified
98 under this chapter.

99 (4) In addition to the reasons specified in subsection (1)
100 of this section, the commission shall be authorized to suspend the
101 license of any licensee for being out of compliance with an order
102 for support, as defined in Section 93-11-153. The procedure for
103 suspension of a license for being out of compliance with an order
104 for support, and the procedure for the reissuance or reinstatement
105 of a license suspended for that purpose, and the payment of any
106 fees for the reissuance or reinstatement of a license suspended
107 for that purpose, shall be governed by Section 93-11-157 or
108 93-11-163, as the case may be. If there is any conflict between
109 any provision of Section 93-11-157 or 93-11-163 and any provision
110 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
111 as the case may be, shall control.

112 (5) Nothing in this chapter shall prevent an associate
113 broker or salesperson from owning any lawfully constituted
114 business organization, including, but not limited to, a
115 corporation, limited liability company or limited liability
116 partnership, for the purpose of receiving payments contemplated in
117 this chapter. The business organization shall not be required to
118 be licensed under this chapter and shall not engage in any other
119 activity requiring a real estate license.

120 (6) The Mississippi Real Estate Commission shall not
121 promulgate any rule or regulation, nor make any administrative or



122 other interpretation, whereby any real estate licensee may be held
123 responsible or subject to discipline or other actions by the
124 commission relating to the * * * information required to be
125 disclosed by Sections 89-1-501 through 89-1-523 or delivery of
126 information required to be disclosed by Sections 89-1-501 through
127 89-1-523.

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

130 89-1-503. (1) The transferor of any real property subject
131 to Sections 89-1-501 through 89-1-523 shall deliver to the
132 prospective transferee the written property condition disclosure
133 statement required by Sections 89-1-501 through 89-1-523, as
134 follows:

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

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

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



147 If any disclosure, or any material amendment of any
148 disclosure, required to be made by Sections 89-1-501 through
149 89-1-523, is delivered after the execution of an offer to
150 purchase, the transferee shall have three (3) days after delivery
151 in person or five (5) days after delivery by deposit in the mail,
152 to terminate his or her offer by delivery of a written notice of
153 termination to the transferor or the transferor's agent.

154 (2) If a transferor of real property subject to Sections
155 89-1-501 through 89-1-523 shall fail to deliver the disclosure
156 statement required by Sections 89-1-501 through 89-1-523, or fails
157 to complete some portion of the disclosure statement, the
158 prospective transferee is presumed to be on notice to inquire of
159 the transferor concerning the content of the disclosure or the
160 lack thereof. Any duly licensed real estate broker or salesperson
161 involved with the transaction shall have no duty or obligation nor
162 be subject to discipline or other action of any kind by any
163 licensing authority of the State of Mississippi, pertaining to the
164 disclosure or the failure of any disclosure to comply with
165 Sections 89-1-501 through 89-1-523, or the delivery thereof.

166 **SECTION 3.** Section 89-1-519, Mississippi Code of 1972, which
167 provides that no person or entity shall be deemed the agent of the
168 transferor or transferee for purposes of the disclosure
169 requirements of Sections 89-1-501 through 89-1-523, is repealed.

170 **SECTION 4.** Section 89-1-523, Mississippi Code of 1972, is
171 amended as follows:



172 89-1-523. (1) No transfer subject to Sections 89-1-501
173 through 89-1-523 shall be invalidated solely because of the
174 failure of any person to comply with any provision of Sections
175 89-1-501 through 89-1-523.

176 (2) Notwithstanding any other provision of law to the
177 contrary, no real estate licensee shall be subject to discipline
178 or other action of any kind by any licensing authority of the
179 State of Mississippi pertaining to information required to be
180 disclosed by Section 89-1-501 through 89-1-523 or delivery of
181 information required to be disclosed by Sections 89-1-501 through
182 89-1-523.

183 **SECTION 5.** This act shall take effect and be in force from
184 and after its passage.

