

By: Senator(s) Sparks, Boyd

To: Business and Financial
Institutions

SENATE BILL NO. 2548

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

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

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

11 73-35-21. (1) Except as otherwise provided in this section,
12 the commission may, upon its own motion and shall upon the
13 verified complaint in writing of any person, hold a hearing
14 pursuant to Section 73-35-23 for the refusal of license or for the
15 suspension or revocation of a license previously issued, or for
16 such other action as the commission deems appropriate. The
17 commission shall have full power to refuse a license for cause or
18 to revoke or suspend a license where it has been obtained by false
19 or fraudulent representation, or where the licensee in performing



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

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

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

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

(d) Any misleading or untruthful advertising;

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

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



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

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

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

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

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

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

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

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



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

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

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



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

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

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

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



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

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

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

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

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

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



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

152 (2) If a transferor of real property subject to Sections
153 89-1-501 through 89-1-523 shall fail to deliver the disclosure
154 statement required by Sections 89-1-501 through 89-1-523, or fails
155 to complete some portion of the disclosure statement, the
156 prospective transferee is presumed to be on notice to inquire of
157 the transferor concerning the content of the disclosure or the
158 lack thereof. Any duly licensed real estate broker or salesperson
159 involved with the transaction shall have no duty or obligation nor
160 be subject to discipline or other action of any kind by any
161 licensing authority of the State of Mississippi, pertaining to the
162 disclosure or the failure of any disclosure to comply with
163 Sections 89-1-501 through 89-1-523, or the delivery thereof.

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

168 **SECTION 4.** This act shall take effect and be in force from
169 and after its passage.

