

Senate Amendments to House Bill No. 1271

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

18 73-35-21. (1) Except as otherwise provided in this section,
19 the commission may, upon its own motion and shall upon the
20 verified complaint in writing of any person, hold a hearing
21 pursuant to Section 73-35-23 for the refusal of license or for the
22 suspension or revocation of a license previously issued, or for
23 such other action as the commission deems appropriate. The
24 commission shall have full power to refuse a license for cause or
25 to revoke or suspend a license where it has been obtained by false
26 or fraudulent representation, or where the licensee in performing
27 or attempting to perform any of the acts mentioned herein, is
28 deemed to be guilty of:

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

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

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

36 (d) Any misleading or untruthful advertising;

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

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

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

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

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

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

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

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

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

74 (n) Any act or conduct, whether of the same or a
75 different character than hereinabove specified, which constitutes
76 or demonstrates bad faith, incompetency or untrustworthiness, or
77 dishonest, fraudulent or improper dealing. However, simple
78 contact and/or communication with any mortgage broker or lender by
79 a real estate licensee about any professional, including, but not
80 limited to, an appraiser, home inspector, contractor, and/or
81 attorney regarding a listing and/or a prospective or pending

82 contract for the lease, sale and/or purchase of real estate shall
83 not constitute conduct in violation of this section.

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

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

104 (4) In addition to the reasons specified in subsection (1)
105 of this section, the commission shall be authorized to suspend the
106 license of any licensee for being out of compliance with an order
107 for support, as defined in Section 93-11-153. The procedure for

108 suspension of a license for being out of compliance with an order
109 for support, and the procedure for the reissuance or reinstatement
110 of a license suspended for that purpose, and the payment of any
111 fees for the reissuance or reinstatement of a license suspended
112 for that purpose, shall be governed by Section 93-11-157 or
113 93-11-163, as the case may be. If there is any conflict between
114 any provision of Section 93-11-157 or 93-11-163 and any provision
115 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
116 as the case may be, shall control.

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

125 (6) The Mississippi Real Estate Commission shall not
126 promulgate any rule or regulation, nor make any administrative or
127 other interpretation, whereby any real estate licensee may be held
128 responsible or subject to discipline or other actions by the
129 commission relating to the * * * information required to be
130 disclosed by Sections 89-1-501 through 89-1-523 or delivery of
131 information required to be disclosed by Sections 89-1-501 through
132 89-1-523.

133 (7) The Mississippi Real Estate Commission shall not
134 promulgate nor enforce any rule or regulation, nor make any
135 administrative or other interpretation, whereby any real estate
136 licensee may be required to include in any agreement or otherwise
137 be required to agree to any requirement regarding unilateral
138 termination by a buyer-agency agreement.

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

141 89-1-503. (1) The transferor of any real property subject
142 to Sections 89-1-501 through 89-1-523 shall deliver to the
143 prospective transferee the written property condition disclosure
144 statement required by Sections 89-1-501 through 89-1-523, as
145 follows:

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

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

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

158 If any disclosure, or any material amendment of any
159 disclosure, required to be made by Sections 89-1-501 through
160 89-1-523, is delivered after the execution of an offer to
161 purchase, the transferee shall have three (3) days after delivery
162 in person or five (5) days after delivery by deposit in the mail,
163 to terminate his or her offer by delivery of a written notice of
164 termination to the transferor or the transferor's agent.

165 (2) If a transferor of real property subject to Sections
166 89-1-501 through 89-1-523 shall fail to deliver the disclosure
167 statement required by Sections 89-1-501 through 89-1-523, or fails
168 to complete some portion of the disclosure statement, the
169 prospective transferee is presumed to be on notice to inquire of
170 the transferor concerning the content of the disclosure or the
171 lack thereof. Any duly licensed real estate broker or salesperson
172 involved with the transaction shall have no duty or obligation nor
173 be subject to discipline or other action of any kind by any
174 licensing authority of the State of Mississippi, pertaining to the
175 disclosure or the failure of any disclosure to comply with
176 Sections 89-1-501 through 89-1-523, or the delivery thereof.

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

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

183 89-1-523. (1) No transfer subject to Sections 89-1-501
184 through 89-1-523 shall be invalidated solely because of the
185 failure of any person to comply with any provision of Sections
186 89-1-501 through 89-1-523.

187 (2) Notwithstanding any other provision of law to the
188 contrary, no real estate licensee shall be subject to discipline
189 or other action of any kind by any licensing authority of the
190 State of Mississippi pertaining to information required to be
191 disclosed by Sections 89-1-501 through 89-1-523 or delivery of
192 information required to be disclosed by Sections 89-1-501 through
193 89-1-523.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE APPLICATION OF PROPERTY CONDITION DISCLOSURE
3 STATEMENT LIABILITY REGARDING SECTIONS 89-1-501 THROUGH 89-1-523;
4 TO AMEND SECTION 89-1-503, MISSISSIPPI CODE OF 1972, TO REVISE
5 PROPERTY CONDITION DISCLOSURE STATEMENT LIABILITY REGARDING
6 SECTIONS 89-1-501 THROUGH 89-1-523; TO REPEAL SECTION 89-1-519,
7 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT NO PERSON OR ENTITY
8 SHALL BE DEEMED THE AGENT OF THE TRANSFEROR OR TRANSFEREE FOR
9 PURPOSES OF THE DISCLOSURE REQUIREMENTS OF SECTIONS 89-1-501
10 THROUGH 89-1-523; TO AMEND SECTION 89-1-523, MISSISSIPPI CODE OF
11 1972, TO REVISE THE ABILITY TO DISCIPLINE A REAL ESTATE LICENSEE
12 FOR FAILURE TO COMPLY WITH PROPERTY CONDITION DISCLOSURE
13 STATEMENTS AS REQUIRED IN SECTIONS 89-1-501 THROUGH 89-1-523; AND
14 FOR RELATED PURPOSES.

SS26\HB1271A.J

Amanda White
Secretary of the Senate