

By: Representative Hood

To: Judiciary A

HOUSE BILL NO. 1368

1 AN ACT TO AMEND SECTION 73-35-10, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE MISSISSIPPI REAL ESTATE COMMISSION TO PROVIDE
3 WRITTEN NOTICE TO A LICENSED REAL ESTATE BROKER OR SALESPERSON OR
4 A NONRESIDENT LICENSEE OF A PENDING CHANGE TO THE PERSON'S
5 LICENSE; TO AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972, TO
6 REVISE THE STANDARD OF PROOF IN COMMISSION AND ADMINISTRATIVE
7 HEARINGS ON ALLEGED VIOLATIONS OF THE REAL ESTATE BROKERS LICENSE
8 LAW FROM PREPONDERANCE OF THE EVIDENCE TO CLEAR AND CONVINCING; TO
9 ESTABLISH TIME FRAMES FOR DISPOSITION OF COMPLAINTS AGAINST
10 LICENSEES BEFORE THE MISSISSIPPI REAL ESTATE COMMISSION; AND FOR
11 RELATED PURPOSES.

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

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

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



violation of any statutory ground for denial of licensure as set forth in Section 73-35-21.

(b) To assist the commission in conducting its licensure investigation, from and after July 1, 2016, all applicants for a Mississippi real estate broker's license, or a Mississippi resident license as a real estate salesperson, or a nonresident's license in Mississippi, and all applicants for renewal of any real estate license shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the commission, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(c) Any and all state or national criminal history records information obtained by the commission that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the commission, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the commission to determine



48 licensure, no such information or records related thereto shall,
49 except with the written consent of the applicant or by order of a
50 court of competent jurisdiction, be released or otherwise
51 disclosed by the commission to any other person or agency.

52 (d) The commission shall provide to the department the
53 fingerprints of the applicant, any additional information that may
54 be required by the department, and a form signed by the applicant
55 consenting to the check of the criminal records and to the use of
56 the fingerprints and other identifying information required by the
57 state or national repositories.

58 (e) The commission shall charge and collect from the
59 applicant, in addition to all other applicable fees and costs,
60 such amount as may be incurred by the commission in requesting and
61 obtaining state and national criminal history records information
62 on the applicant.

63 (2) (a) The commission must ensure that applicants for real
64 estate licenses do not possess a background that could call into
65 question public trust. An applicant found by the commission to
66 possess a background which calls into question the applicant's
67 ability to maintain public trust shall not be issued a real estate
68 license.

69 (b) The commission shall not issue a real estate
70 license if:



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

74 (ii) The applicant has been convicted of, or pled
75 guilty or nolo contendere to, a felony in a domestic or foreign
76 court:

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

79 2. At any time preceding the date of the
80 application, if such felony involved an act of fraud, dishonesty
81 or a breach of trust, or money laundering.

82 (c) The commission shall adopt rules and regulations
83 necessary to implement, administer and enforce the provisions of
84 this section.

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

90 (3) The commission shall provide prior written notification
91 to a licensee whose license, once issued, is subject to being
92 amended, suspended, revoked or not renewed. The notice must be
93 delivered to the licensee whose license will be affected and, if
94 applicable, to their responsible broker, not less than five (5)
95 business days before the effective date of the change. For



96 purposes of this subsection, written notice must be delivered to
97 the email address for the licensee and broker, if applicable,
98 which is on file with the commission.

99 **SECTION 2.** Section 73-35-23, Mississippi Code of 1972, is
100 amended as follows:

101 73-35-23. (1) The commission is * * * authorized and
102 directed to take legal action against any violator of this
103 chapter. Upon complaint initiated by the commission or filed with
104 it, the licensee or any other person charged with a violation of
105 this chapter shall be given fifteen (15) days' notice of the
106 hearing upon the charges filed, together with notice of the option
107 of appearing before the commission or an administrative hearing
108 officer as provided in subsection (7) of this section, and a copy
109 of the complaint. The applicant or licensee or other violator
110 shall have an opportunity to be heard in person or by counsel, to
111 offer testimony, and to examine witnesses appearing in connection
112 with the complaint. Hearings shall be held at the offices of the
113 Mississippi Real Estate Commission, or at the commission's sole
114 discretion, at a place determined by the commission.

115 At such hearings, all witnesses shall be properly sworn and
116 stenographic notes of the proceedings shall be taken and filed as
117 a part of the record in the case. Any party to the proceedings
118 shall be furnished with a copy of such stenographic notes upon
119 payment to the commission of such fees as it shall prescribe, not
120 exceeding, however, the actual cost to the commission. The * * *



121 clear and convincing standard of proof shall be used to examine
122 factors during all hearings. The commission shall render a
123 decision on any complaint and shall immediately notify the parties
124 to the proceedings in writing of its ruling, order or decision.

125 (2) In addition to the authority granted to the commission
126 as hereinabove set forth, the commission is hereby vested with the
127 authority to bring injunctive proceedings in any appropriate forum
128 against any violator or violators of this chapter, and all judges
129 or courts now having the power to grant injunctions are
130 specifically granted the power and jurisdiction to hear and
131 dispose of such proceedings.

132 (3) The commission is * * * authorized and empowered to
133 issue subpoenas for the attendance of witnesses and the production
134 of books and papers. The process issued by the commission shall
135 extend to all parts of the state, and such process shall be served
136 by any person designated by the commission for such service. The
137 person serving such process may receive such compensation as may
138 be allowed by the commission, not to exceed the fee prescribed by
139 law for similar services. All witnesses who are subpoenaed and
140 who appear in any proceedings before the commission may receive
141 the same fees and mileage as allowed by law, and all such fees
142 shall be taxed as part of the costs in the case.

143 (4) Where in any proceeding before the commission any
144 witness shall fail or refuse to attend upon subpoena issued by the
145 commission, shall refuse to testify, or shall refuse to produce



any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the same manner as the attendance and testimony of witnesses in civil cases are enforced in the courts of this state.

(5) The commission may obtain legal counsel privately to represent it in proceedings when legal counsel is required.

(6) No commissioner, administrator, employee, investigator, representative or agent of the commission shall communicate with a licensee in connection with any preliminary or formal investigation associated with alleged violations of licensing law or regulations prior to the delivery of written notice to the licensee's responsible broker. Any licensee represented by legal counsel shall be entitled to communication through such legal counsel unless waived in writing by the licensee.

(7) The commission shall establish an administrative hearing option by July 1, 2022, which shall consist of administrative hearing officers designated by the Attorney General for the purpose of holding hearings, hearing evidence and rendering decisions on matters determined to be the subject of a hearing for a licensee or any other person charged with a violation of this chapter or affecting the license of any person coming under its jurisdiction, when the licensee or any other person charged with a violation of this chapter shall request, in writing, for the



171 matter to be heard by the administrative hearing officer.
172 Administrative hearing officers shall be staff attorneys employed
173 by the Attorney General's office, but must not currently hold a
174 license issued by the commission. The administrative hearing
175 officers shall have the same powers and authority in conducting
176 hearings and rendering decisions as granted to the commission in
177 this section. Hearings before an administrative hearing officer
178 shall be held in the City of Jackson, Mississippi, at a place,
179 time and manner agreed upon by the commission and the hearing
180 officer. The * * * clear and convincing standard of proof shall
181 be used to examine factors during all hearings. Any right of
182 appeal available to a licensee or applicant for a license availing
183 itself to the provisions hereof shall be preserved as if the
184 matter had been heard and decided by the commission.

185 (8) Nothing in this section shall preclude the commission
186 and a licensee from entering into an agreed order resolving a
187 complaint prior to the hearing.

188 (9) (a) A complaint initiated by the commission or filed
189 with the commission must be resolved by dismissal or issuance of a
190 formal complaint within one hundred twenty (120) days of the date
191 written notice is provided to a licensee and the licensee's
192 responsible broker of commencement of an investigation pertaining
193 to the complaint.

194 (b) A complaint initiated by the commission or filed
195 with the commission must be resolved by final dismissal, final



196 ruling on a formal complaint, or entry of agreed dispositional
197 order within one (1) year of the date written notice is provided
198 to a licensee and the licensee's responsible broker of
199 commencement of an investigation pertaining to the complaint. The
200 requirement for final disposition within one (1) year in this
201 paragraph may not operate to deprive a licensee of the right to
202 utilize the administrative hearing option provided for by law, and
203 an administrative hearing must be scheduled to occur not later
204 than sixty (60) days after the expiration of the one-year time
205 limit in those cases where administrative hearing officers are not
206 reasonably available to conduct hearings within the one-year
207 period.

208 **SECTION 3.** This act shall take effect and be in force from
209 and after July 1, 2025.

