

By: Senator(s) Blackwell

To: Business and Financial  
Institutions

## SENATE BILL NO. 2497

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 until 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



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.

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

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

(ii) Submit certified copies of the court disposition or other documents acceptable to the commission for each conviction, plea of guilty or nolo contendere or a copy of the order or other document which shows the disciplinary action taken by the local, state or federal agency and the factual and 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



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

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

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

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

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



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

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

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

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

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

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

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



commission shall have full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false 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 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 within the five (5) years prior to filing the licensing application;

(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





194 Section 73-35-10, or if the background check reveals a conviction  
195 entered more than five (5) years ago, and the commission  
196 determines, after providing the applicant with a hearing, that the  
197 applicant's conviction is of the nature that makes an issuance or  
198 reissuances of a license against public interest; or

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

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



219 use an earnest money contract form. A real estate broker shall  
220 not participate in attorney's fees, unless the broker is a duly  
221 licensed attorney under the laws of this state and performs legal  
222 services in addition to brokerage services.

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

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

242 (5) Nothing in this chapter shall prevent an associate  
243 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.

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

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

