

By: Representatives Wallace, Clarke, Eads,
Frierson, Livingston, McBride, Thomas

To: Judiciary B

HOUSE BILL NO. 1603

1 AN ACT TO AMEND SECTION 73-35-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF REAL ESTATE BROKER; TO AMEND SECTION
3 73-35-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DISTRICTS OF THE
4 MISSISSIPPI REAL ESTATE COMMISSION; TO CODIFY SECTION 73-35-6,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LICENSES FOR BUSINESS
6 ENTITIES; TO AMEND SECTION 73-35-7, MISSISSIPPI CODE OF 1972, TO
7 REVISE LICENSE QUALIFICATIONS; TO AMEND SECTION 73-35-8,
8 MISSISSIPPI CODE OF 1972, TO CLARIFY NONRESIDENT LICENSE
9 REQUIREMENTS; TO AMEND SECTION 73-35-13, MISSISSIPPI CODE OF 1972,
10 TO REVISE EXAMINATION REQUIREMENTS; TO CODIFY SECTION 73-35-14,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REAL ESTATE SCHOOLS AND
12 PLACE THE REGULATION OF SUCH SCHOOLS UNDER THE COMMISSION; TO
13 CODIFY SECTION 73-35-14.1, MISSISSIPPI CODE OF 1972, TO PROVIDE
14 STANDARDS FOR REAL ESTATE SCHOOLS; TO CODIFY SECTION 73-35-14.2,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE STANDARDS FOR INSTRUCTORS; TO
16 CODIFY SECTION 73-35-14.3, MISSISSIPPI CODE OF 1972, TO PROVIDE
17 STANDARDS FOR COURSE CONTENT; TO CODIFY SECTION 73-35-14.4,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR DISTANCE LEARNING
19 COURSES; TO CODIFY SECTION 73-35-14.5, MISSISSIPPI CODE OF 1972,
20 TO PROVIDE FOR TEMPORARY LICENSES AND POST-LICENSE EDUCATION; TO
21 AMEND SECTION 73-35-15, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE
22 REQUIREMENTS REGARDING BROKER LOCATION; TO AMEND SECTION 73-35-16,
23 MISSISSIPPI CODE OF 1972, TO REVISE THE PREMIUM AMOUNT FOR ERRORS
24 AND OMISSIONS INSURANCE; TO AMEND SECTION 73-35-18, MISSISSIPPI
25 CODE OF 1972, TO CLARIFY CONTINUING EDUCATION REQUIREMENTS; TO
26 AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972, TO REVISE THE
27 VENUE OF HEARINGS; TO AMEND SECTION 89-1-503, MISSISSIPPI CODE OF
28 1972, TO CLARIFY WRITTEN STATEMENTS IN CONVEYANCES; TO REPEAL
29 SECTION 73-35-20, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR A
30 TEMPORARY REAL ESTATE SALESPERSON LICENSE; TO AMEND SECTION 7 OF
31 CHAPTER 588, GENERAL LAWS OF 1999, TO DELETE THE REPEALER ON
32 CERTAIN SECTIONS OF THE REAL ESTATE BROKERS LICENSE LAW; AND FOR
33 RELATED PURPOSES.

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

35 **SECTION 1.** Section 73-35-3, Mississippi Code of 1972, is
36 amended as follows:

37 73-35-3. (1) The term "real estate broker" within the
38 meaning of this chapter shall include all persons, partnerships,
39 associations and corporations, foreign and domestic, who for a
40 fee, commission or other valuable consideration, or who with the
41 intention or expectation of receiving or collecting the same,
42 list, sell, purchase, exchange, rent, lease, manage or auction any



43 real estate, or the improvements thereon, including options; or
44 who negotiate or attempt to negotiate any such activity; or who
45 advertise or hold themselves out as engaged in such activities; or
46 who direct or assist in the procuring of a purchaser or prospect
47 calculated or intended to result in a real estate
48 transaction * * *. The term "real estate broker" shall also
49 include any person, partnership, association or corporation
50 employed by or on behalf of the owner or owners of lots or other
51 parcels of real estate, at a stated salary or upon fee, commission
52 or otherwise, to sell such real estate, or parts thereof, in lots
53 or other parcels, including timesharing and condominiums, and who
54 shall sell, exchange or lease, or offer or attempt or agree to
55 negotiate the sale, exchange or lease of, any such lot or parcel
56 of real estate.

57 (2) The term "real estate" as used in this chapter shall
58 include leaseholds as well as any and every interest or estate in
59 land, including timesharing and condominiums, whether corporeal or
60 incorporeal, freehold or nonfreehold, and whether said property is
61 situated in this state or elsewhere; provided, however, that the
62 term "real estate" as used in this chapter shall not include oil,
63 gas or mineral leases, nor shall it include any other mineral
64 leasehold, mineral estate or mineral interest of any nature
65 whatsoever.

66 (3) One (1) act in consideration of or with the expectation
67 or intention of, or upon the promise of, receiving compensation,
68 by fee, commission or otherwise, in the performance of any act or
69 activity contained in subsection (1) of this section, shall
70 constitute such person, partnership, association or corporation a
71 real estate broker and make him, them or it subject to the
72 provisions and requirements of this chapter.

73 (4) The term "real estate salesperson" shall mean and
74 include any person employed or engaged by or on behalf of a
75 licensed real estate broker to do or deal in any activity as



76 included or comprehended by the definitions of a real estate
77 broker in subsection (1) of this section, for compensation or
78 otherwise.

79 (5) Exempt from the licensing requirements of this chapter
80 shall be any person, partnership, association or corporation, who,
81 as a bona fide owner, shall perform any aforesaid act with
82 reference to property owned by them, or to the regular employees
83 thereof who are on a stated salary, where such acts are performed
84 in the regular course of business.

85 (6) The provisions of this chapter shall not apply to:

86 (a) Attorneys-at-law in the performance of primary or
87 incidental duties as such attorneys-at-law.

88 (b) Any person holding in good faith a duly executed
89 power of attorney from the owner, authorizing the final
90 consummation and execution for the sale, purchase, leasing or
91 exchange of real estate.

92 (c) The acts of any person while acting as a receiver,
93 trustee, administrator, executor, guardian or under court order,
94 or while acting under authority of a deed of trust or will.

95 (d) Public officers while performing their duties as
96 such.

97 (e) Anyone dealing exclusively in oil and gas leases
98 and mineral rights.

99 (7) Nothing in this chapter shall be construed to prohibit
100 life insurance companies and their representatives from
101 negotiating or attempting to negotiate loans secured by mortgages
102 on real estate, nor shall these companies or their representatives
103 be required to qualify as real estate brokers or agents under this
104 chapter.

105 (8) The provisions of this chapter shall not apply to the
106 activities of mortgagees approved by the Federal Housing
107 Administration or the United States Department of Veterans
108 Affairs, banks chartered under the laws of the State of



109 Mississippi or the United States, savings and loan associations
110 chartered under the laws of the State of Mississippi or the United
111 States, licensees under the Small Loan Regulatory Law, being
112 Sections 75-67-101 through 75-67-135, and under the Small Loan
113 Privilege Tax Law, being Sections 75-67-201 through 75-67-243,
114 small business investment companies licensed by the Small Business
115 Administration and chartered under the laws of the State of
116 Mississippi, or any of their affiliates and subsidiaries, related
117 to the making of a loan secured by a lien on real estate or to the
118 disposing of real estate acquired by foreclosure or in lieu of
119 foreclosure or otherwise held as security. No director, officer
120 or employee of any such financial institution shall be required to
121 qualify as a real estate broker or agent under this chapter when
122 engaged in the aforesaid activities for and on behalf of such
123 financial institution.

124 **SECTION 2.** Section 73-35-5, Mississippi Code of 1972, is
125 amended as follows:

126 73-35-5. (1) There is hereby created the Mississippi Real
127 Estate Commission. The commission shall consist of five (5)
128 persons, to be appointed by the Governor with the advice and
129 consent of the Senate. Each appointee shall have been a resident
130 and citizen of this state for at least six (6) years prior to his
131 appointment, and his vocation for at least five (5) years shall
132 have been that of a real estate broker. One (1) member shall be
133 appointed for the term of one (1) year; two (2) members for terms
134 of two (2) years; two (2) members for terms of four (4) years;
135 thereafter, the term of the members of said commission shall be
136 for four (4) years and until their successors are appointed and
137 qualify. There shall be at least one (1) commissioner from each
138 congressional district * * *, as such districts are constituted as
139 of July 1, 2002. The commissioners appointed from each of the
140 congressional districts shall be bona fide residents of the
141 district from which each is appointed. One (1) additional



142 commissioner shall be appointed without regard to residence in any
143 particular congressional district. Members to fill vacancies
144 shall be appointed by the Governor for the unexpired term. The
145 Governor may remove any commissioner for cause. The State of
146 Mississippi shall not be required to furnish office space for such
147 commissioners. The provisions of this section shall not affect
148 persons who are members of the Real Estate Commission as of
149 January 1, 2002. Such members shall serve out their respective
150 terms, upon the expiration of which the provisions of this section
151 shall take effect. Nothing provided herein shall be construed as
152 prohibiting the reappointment of any member of the said
153 commission.

154 (2) The commission shall organize by selecting from its
155 members a chairman, and may do all things necessary and convenient
156 for carrying into effect the provisions of this chapter, and may
157 from time to time promulgate rules and regulations. Each member
158 of the commission shall receive per diem as authorized in Section
159 25-3-69, Mississippi Code of 1972, and his actual and necessary
160 expenses incurred in the performance of duties pertaining to his
161 office as authorized in Section 25-3-41, Mississippi Code of 1972.

162 (3) The commission shall adopt a seal by which it shall
163 authenticate its proceedings. Copies of all records and papers in
164 the office of the commission, duly certified and authenticated by
165 the seal of said commission, shall be received in evidence in all
166 courts equally and with like effect as the original. All records
167 kept in the office of the commission under authority of this
168 chapter shall be open to public inspection except pending
169 investigative files.

170 **SECTION 3.** The following shall be codified as Section
171 73-35-6, Mississippi Code of 1972:

172 73-35-6. A corporation, partnership, company or association
173 shall be granted a license when individual broker's licenses have
174 been issued to every member, owner, partner or officer of such



175 partnership, company, association or corporation who actively
176 participates in its brokerage business and when any required fee
177 is paid.

178 **SECTION 4.** Section 73-35-7, Mississippi Code of 1972, is
179 amended as follows:

180 73-35-7. Licenses shall be granted only to persons who
181 present, and to corporations, partnerships, companies or
182 associations whose officers, associates or partners present
183 satisfactory proof to the commission that they are trustworthy and
184 competent to transact the business of a real estate broker or real
185 estate salesperson in such manner as to safeguard the interests of
186 the public. Every person who applies for a resident license as a
187 real estate broker: (a) shall be age twenty-one (21) years or
188 over, * * * and have his legal domicile in the State of
189 Mississippi at the time he applies; (b) shall be subject to the
190 jurisdiction of this state, subject to the income tax laws and
191 other excise laws thereof, subject to the road and bridge
192 privilege tax laws thereof; (c) shall not be an elector in any
193 other state; (d) shall have held a license as an active real
194 estate salesperson for twelve (12) months immediately prior to
195 making application for the broker's examination hereafter
196 specified; (e) shall have successfully completed a minimum of one
197 hundred twenty (120) * * * hours of courses in real estate as
198 hereafter specified; and (f) shall have successfully completed the
199 real estate broker's examination as hereafter specified.

200 * * *

201 Every applicant for a resident license as a real estate
202 salesperson shall be age eighteen (18) years or over, shall
203 be * * * a bona fide resident of the State of Mississippi prior to
204 filing his application, and shall have successfully completed a
205 minimum of sixty (60) * * * hours in courses in real estate as
206 hereafter specified; and shall have successfully completed the



207 real estate salesperson's examination as hereafter specified.

208 * * *

209 The residency requirements set forth in this section shall
210 not apply to those licensees of other states who qualify and
211 obtain nonresident licenses in this state.

212 The commission is authorized to exempt from such prelicensing
213 educational requirements, in whole or in part, a real estate
214 licensee of another state who desires to obtain a license under
215 this chapter; provided, however, that the prelicensing educational
216 requirements in the other state are determined by the commission
217 to be equivalent to prelicensing educational requirements in this
218 state and provided that such state extends this same privilege or
219 exemption to Mississippi real estate licensees.

220 **SECTION 5.** Section 73-35-8, Mississippi Code of 1972, is
221 amended as follows:

222 73-35-8. (1) A nonresident may apply for a nonresident's
223 license in Mississippi provided the individual is (i) a licensed
224 broker in another state or (ii) is a broker/salesperson or
225 salesperson affiliated with a resident or nonresident Mississippi
226 broker or (iii) is a nonresident who applies for a broker's
227 license and who will maintain an office in Mississippi. The
228 nonresident broker need not maintain a place of business within
229 Mississippi provided he is regularly actively engaged in the real
230 estate business and maintains a place of business in the other
231 state. The nonresident licensee or applicant shall be subject to
232 all the provisions of this chapter except for the residency
233 requirement and approved equivalent prelicensing education.

234 (2) Every nonresident applicant shall file a statement of
235 irrevocable consent with the Real Estate Commission that legal
236 actions may be commenced against him in the proper court of any
237 county of this state in which a cause of action may arise or in
238 which the plaintiff may reside by service of process or pleading
239 authorized by the laws of this state, by the Secretary of State of



240 Mississippi, or by any member of the commission or chief executive
241 officer thereof, the consent stipulating that the service of
242 process or pleading shall be taken in all courts to be valid and
243 binding as if personal service had been made upon the nonresident
244 licensee in this state. The consent shall be duly acknowledged.
245 Every nonresident licensee shall consent to have any hearings
246 conducted by the commission pursuant to Section 73-35-23,
247 Mississippi Code of 1972, at a place designated by the commission.

248 (3) Any service of process or pleading shall be served on
249 the executive officer of the commission by filing duplicate
250 copies, one (1) of which shall be filed in the office of the
251 commission and the other forwarded by certified mail to the last
252 known principal address of the nonresident licensee against whom
253 such process or pleading is directed. No default in any such
254 action shall be taken except upon an affidavit of certification of
255 the commission or the executive officer thereof that a copy of the
256 process or pleading was mailed to the defendant as herein
257 provided, and no default judgment shall be taken in any such
258 action or proceeding until thirty (30) days after the mailing of
259 process or pleading to the defendant.

260 (4) An applicant shall sign an agreement to cooperate with
261 any investigation of the applicant's real estate brokerage
262 activities which the commission may undertake.

263 (5) Each applicant for a nonresident license must qualify in
264 all respects, including education, examination and fees, as an
265 applicant who is a resident of Mississippi with the exception of
266 the residency requirement and approved equivalent prelicensing
267 education.

268 (6) A certification from the Executive Officer of the Real
269 Estate Commission in the state in which the nonresident maintains
270 his principal place of business shall be required. An applicant
271 shall disclose all states in which he has held a real estate



272 license and furnish a certification of licensure from that state
273 or states.

274 (7) The applicant/broker shall obtain an appropriate
275 Mississippi license for the firm through which he intends to
276 operate as a broker.

277 (8) Any nonresident broker, broker-salesperson and
278 salesperson shall meet Mississippi continuing education
279 requirements after becoming licensed just as any resident
280 licensee.

281 (9) A broker or salesperson licensed in this state, on
282 inactive status in good standing and no longer a resident of this
283 state, may, after meeting other requirements for nonresident
284 licensees, make application for a nonresident license without
285 being required to meet current prelicensing educational
286 requirements at the time of application or having to sit for the
287 examination in order to obtain the equivalent nonresident license.

288 (10) A nonresident licensee in good standing who changes his
289 legal domicile to the State of Mississippi may obtain a resident
290 license equivalent to his nonresident license without meeting the
291 current educational requirements or sitting for the examination,
292 provided other requirements set forth for residents of the state
293 are met.

294 (11) A nonresident licensee may utilize the inactive status
295 for his license under the same requirements as a resident
296 licensee, including but not limited to, continuing education
297 requirements and ceasing active status under a licensed
298 nonresident broker.

299 **SECTION 6.** Section 73-35-13, Mississippi Code of 1972, is
300 amended as follows:

301 73-35-13. (1) In addition to proof of his honesty,
302 trustworthiness and good reputation, the applicant shall take a
303 written examination which shall be held at least four (4) times
304 each year at regular intervals and on stated times by the



305 commission and shall test reading, writing, spelling, elementary
306 arithmetic and his general knowledge of the statutes of this state
307 relating to real property, deeds, mortgages, agreements of sale,
308 agency, contract, leases, ethics, appraisals, the provisions of
309 this chapter and such other matters the commission certifies as
310 necessary to the practice of real estate brokerage in the State of
311 Mississippi. The examination for a broker's license shall differ
312 from the examination for a salesperson's license, in that it shall
313 be of a more exacting nature and require higher standards of
314 knowledge of real estate. The commission shall cause examinations
315 to be conducted at such times and places as it shall determine.

316 (2) In event the license of any real estate broker or
317 salesperson is revoked by the commission subsequent to the
318 enactment of this chapter, no new license shall be issued to such
319 person unless he complies with the provisions of this chapter.

320 (3) No person shall be permitted or authorized to act as a
321 real estate broker or salesperson until he has qualified by
322 examination, except as hereinbefore provided. Any individual who
323 fails to pass the examination for salesperson upon two (2)
324 occasions, shall be ineligible for a similar examination, until
325 after the expiration of three (3) months from the time such
326 individual last took the examination. Any individual who fails to
327 pass the broker's examination upon two (2) occasions, shall be
328 ineligible for a similar examination until after the expiration of
329 six (6) months from the time such individual last took the
330 examination, and then only upon making application as in the first
331 instance.

332 (4) If the applicant is a partnership, association or
333 corporation, said examination shall be taken on behalf of said
334 partnership, association or corporation by the member or officer
335 thereof who is designated in the application as the person to
336 receive a license by virtue of the issuing of a license to such
337 partnership, association or corporation.



338 (5) Upon satisfactorily passing such examination and upon
339 complying with all other provisions of law and conditions of this
340 chapter, a license shall thereupon be issued to the successful
341 applicant who, upon receiving such license, is authorized to
342 conduct the business of a real estate broker or real estate
343 salesperson in this state.

344 (6) The commission is authorized to exempt from such
345 examination, in whole or in part, a real estate licensee of
346 another state who desires to obtain a license under this chapter;
347 provided, however, that the examination administered in the other
348 state is determined by the commission to be equivalent to such
349 examination given in this state and provided that such other state
350 extends this same privilege or exemption to Mississippi real
351 estate licensees.

352 **SECTION 7.** The following shall be codified as Section
353 73-35-14, Mississippi Code of 1972:

354 73-35-14. (1) An institution or organization desiring to
355 conduct a school or offer a course of instruction to prepare
356 persons to be licensed under this chapter, or to offer
357 post-licensure courses, shall apply to the commission for
358 accreditation, and shall submit evidence that it is prepared to
359 carry out a prescribed minimum curriculum in real estate
360 principles and practices as set forth in this chapter and can meet
361 other standards established by the commission. An investigation
362 of the school and of the institution or organization with which
363 such school is affiliated shall be made by the commission. If, in
364 the opinion of the commission, the requirements for an accredited
365 school for instruction in real estate principles and practices are
366 met, the commission shall approve the school as an accredited real
367 estate school upon payment of the fees set forth in this chapter
368 and such other fees as established by the commission. All schools
369 so accredited shall register at required intervals on a form



370 provided and pay the required registration fees specified in this
371 chapter and such other fees as established by the commission.

372 (2) The commission shall have the authority to revoke,
373 suspend or otherwise discipline the accreditation of any real
374 estate school, prelicense education provider or post-license
375 education provider if the commission determines that the school or
376 education provider is not meeting or has not met the standards
377 required for such accreditation. If the commission determines
378 that any accredited real estate school or education provider is
379 not maintaining the standards required by the commission, notices
380 thereof in writing specifying the defect or defects shall be given
381 promptly to the school or provider. If such defect or defects are
382 not remedied in the time specified by the commission, the
383 commission shall hold a hearing to determine the disciplinary
384 action, if any, to be taken. Such hearing will be noticed to the
385 school or provider, who will be allowed to attend the hearing and
386 present to the commission its reasons why it should not be
387 disciplined.

388 (3) A college or university in the State of Mississippi
389 accredited by the Southern Association of Colleges and Schools or
390 the comparable regional accrediting authority shall be an approved
391 education provider for prelicense courses for both the broker's
392 and salesperson's license by virtue of such accreditation. Such
393 colleges and universities are not required to meet any other
394 standards provided herein.

395 **SECTION 8.** The following shall be codified as Section
396 73-35-14.1, Mississippi Code of 1972:

397 73-35-14.1. (1) Minimum standards for initial and
398 continuing accreditation as a real estate school or prelicense
399 education provider shall include:

400 (a) Payment of any fees established by the commission.
401 If the school or provider is accredited as a prelicense school or



402 prelicense education provider, fees shall include a biennial fee
403 of Two Thousand Five Hundred Dollars (\$2,500.00).

404 (b) The school or prelicense education provider must
405 maintain an annual average pass rate of at least sixty-five
406 percent (65%) on each of the real estate broker's license
407 examination and the real estate salesperson's license examination.
408 The term "annual average pass rate" shall be as defined by the
409 commission. If a school or prelicense education provider does not
410 meet the minimum annual average pass rate, the commission shall
411 allow the school or prelicense education provider a minimum of a
412 three-month time period in which to attain the minimum annual
413 average pass rate.

414 (c) Schools and prelicense education providers must use
415 a method for instructor evaluation by students attending
416 prelicense education classes. The commission may establish
417 minimum standards for instructor evaluation. In the event the
418 provider does not meet those minimum standards, the commission may
419 revoke a provider's authority to offer prelicense education
420 courses. Schools and prelicense education providers must provide
421 the results of such instructor evaluations to the commission in
422 the manner the commission directs.

423 (2) The commission may establish by rule such other
424 standards for schools, prelicense education providers and
425 post-license education providers as the commission may deem
426 necessary.

427 **SECTION 9.** The following shall be codified as Section
428 73-35-14.2, Mississippi Code of 1972:

429 73-35-14.2. (1) Minimum standards for instructors for
430 prelicense and post-license education courses required for
431 licensure as a real estate broker or a real estate salesperson
432 shall include:



433 (a) Licensure as a Mississippi real estate broker or
434 real estate salesperson for the immediate past five (5) years
435 prior to application; or

436 (b) Current certification as a Certified Public
437 Accountant; or

438 (c) Attainment of a Juris Doctor (J.D.) or Bachelor of
439 Laws (L.L.B.) degree from a law school whose accreditation is
440 recognized by the Mississippi Supreme Court.

441 (2) The commission may establish by rule such other
442 standards for instructors of prelicense education and post-license
443 education as the commission may deem necessary.

444 **SECTION 10.** The following shall be codified as Section
445 73-35-14.3, Mississippi Code of 1972:

446 73-35-14.3. (1) Minimum standards for the content for
447 education courses required for licensure as a real estate broker
448 or a real estate salesperson shall include content on:

449 (a) The provisions of this chapter and any rules and
450 regulations promulgated hereunder;

451 (b) Listing property;

452 (c) Property valuation/appraisal;

453 (d) Real estate arithmetic;

454 (e) Characteristics of real property;

455 (f) Agency and nonagency relationships;

456 (g) Real estate sale contracts/agreements of sale;

457 (h) Leasing and property management;

458 (i) Transfer of title/ownership/deeds;

459 (j) Settlement procedures;

460 (k) Financing;

461 (l) Professional responsibilities and ethics;

462 (m) Fair housing;

463 (n) Federal laws affecting real estate.

464 (2) A prelicense course must meet any standards that the
465 Association of Real Estate Licensing Law Officials (ARELLO), or



466 its successor(s), may have for prelicense courses, including,
467 without limitation, standards for content, form, examination,
468 facilities and instructors. If ARELLO or its successor(s) operate
469 a certification program for prelicense courses, a prelicense
470 course must be certified by ARELLO or its successor(s) before the
471 commission may approve the course.

472 (3) The commission may establish by rule such other
473 standards for prelicense education course content as the
474 commission may deem necessary.

475 (4) No more than eight (8) prelicense hours may be earned in
476 a single day.

477 (5) Courses covering the general content of subsection (1)
478 of this section that are acceptable for credit toward a degree at
479 a college or university as approved by the Southern Association of
480 Colleges and Schools or the comparable regional accrediting
481 authority shall qualify for the minimum standards for prelicense
482 education by virtue of said accreditation. A semester-hour credit
483 shall be equal to fifteen (15) classroom hours and a quarter-hour
484 credit shall be equal to ten (10) classroom hours. Courses given
485 under this section by such accredited institutions are not
486 required to meet ARELLO standards or certifications. The
487 commission may establish by rule that specific areas of the
488 general content areas listed in subsection (1) of this section are
489 not required to be met by courses offered by the accredited
490 institutions under this subsection.

491 **SECTION 11.** The following shall be codified as Section
492 73-35-14.4, Mississippi Code of 1972:

493 73-35-14.4. (1) The term "distance learning courses(s)"
494 shall mean any course approved by the commission in which the
495 student is not physically present in a classroom with the
496 instructor, including, without limitation, correspondence courses,
497 video/DVD based courses and online electronic courses.



498 (2) The commission may approve distance learning courses for
499 prelicense education, post-license education and continuing
500 education courses. Any distance learning course must meet any
501 standards that the Association of Real Estate Licensing Law
502 Officials (ARELLO), or its successor(s), may have for such
503 courses, including, without limitation, standards for content,
504 form, examination, facilities and instructors. If no ARELLO
505 standards exist for a distance learning course, the commission
506 shall establish by rule such minimum standards. If ARELLO or its
507 successor(s) operate a certification program for distance learning
508 courses, a distance learning course must be certified by ARELLO or
509 its successor(s) before the commission may approve the course.

510 **SECTION 12.** The following shall be codified as Section
511 73-35-14.5, Mississippi Code of 1972:

512 73-35-14.5. (1) Upon passing the Mississippi broker's or
513 salesperson's examination and complying with all other conditions
514 for licensure, a temporary license shall be issued to the
515 applicant. The fee for the temporary license shall also be the
516 same for the permanent license as provided in Section 73-35-17. A
517 temporary license shall be valid for a period of one (1) year
518 following the first day of the month after its issuance.

519 (2) All Mississippi residents who apply for and receive a
520 nonresident Mississippi broker's or salesperson's license shall be
521 subject to the requirements under this section, including
522 temporary licensure and completion of a thirty-hour post-license
523 course.

524 (3) The holder of a temporary license shall not be issued a
525 permanent license until he has satisfactorily completed a
526 thirty-hour post-license course prescribed by the commission and
527 offered by providers specifically certified by the commission to
528 offer this mandated post-license education. The holder of a
529 temporary license shall complete the entire thirty-hour course
530 within twelve (12) months of issuance of his temporary license;



531 otherwise this temporary license shall automatically be placed on
532 inactive status by the Mississippi Real Estate Commission. If the
533 holder of the temporary license does not complete the course and
534 have his permanent license issued within one (1) year following
535 the first day of the month after its issuance, the temporary
536 license shall automatically expire and lapse. A temporary license
537 is not subject to renewal procedures in this chapter and may not
538 be renewed.

539 (4) The thirty-hour post-license course shall be offered by
540 providers certified and approved by the commission, and an annual
541 certification fee of One Thousand Dollars (\$1,000.00) shall be
542 charged to providers. The thirty-hour post-license course work
543 shall be offered in no less than fifteen-hour increments of
544 classroom instruction. No more than eight (8) hours may be earned
545 in a single day. The commission shall determine standards for
546 approval of post-license courses and course providers, and shall
547 require certification of such course work of the applicant. There
548 shall be different content criteria for post-license education for
549 salesperson licensees and for broker licensees. In the
550 post-license course for salesperson licensees, a minimum of
551 twenty-four (24) hours of the thirty-hour course work shall be in
552 the following subjects: agency relationships, contracts, earnest
553 money, antitrust, fair housing, ethics and property condition
554 disclosure. The remaining six (6) hours shall be in subjects
555 intended to enhance the competency of salesperson licensees in
556 representing consumers, and may include the following subjects:
557 pricing property, environmental issues, home inspections, leases
558 and property management and mortgage processes. In the
559 post-license course for broker licensees, a minimum of twenty-four
560 (24) hours of the thirty hour course work shall be in the
561 following subjects: managing escrow accounts, intraoffice
562 confidentiality, broker responsibilities to licensees, office
563 policies and procedures (including agency office policies), broker



564 agreements with licensees and assistants and MREC required forms
565 and any other subject as the commission may, by rule, require to
566 be included in such course. The remaining six (6) hours shall be
567 in subjects intended to enhance the competency of brokers,
568 including, without limitation, managing agents, recruiting,
569 retention, budgeting and financial planning.

570 (5) The holder of an active license who has satisfactorily
571 completed the post-license course and whose permanent license has
572 been issued shall not be subject to the sixteen-hour continuing
573 education requirement in this chapter for the first renewal of his
574 permanent license.

575 **SECTION 13.** Section 73-35-15, Mississippi Code of 1972, is
576 amended as follows:

577 73-35-15. (1) Every person, partnership, association or
578 corporation licensed as a real estate broker shall be required to
579 have and maintain a definite place of business, which shall be a
580 room either in his home or an office elsewhere, to be used for the
581 transaction of real estate business, or such business and any
582 allied business. The certificate of registration as broker and
583 the certificate of each real estate salesperson employed by such
584 broker shall be prominently displayed in said office. The said
585 place of business shall be designated in the license. In case of
586 removal from the designated address, the licensee shall make
587 application to the commission before removal, or within ten (10)
588 days after removal, designating the new location of such office,
589 whereupon the commission shall forthwith issue a new license for
590 the new location for the unexpired period.

591 (2) All licenses issued to a real estate salesperson or
592 broker-salesperson shall designate the responsible broker of such
593 salesperson or broker-salesperson. Prompt notice in writing,
594 within three (3) days, shall be given to the commission by any
595 real estate salesperson of a change of responsible broker, and of
596 the name of the principal broker into whose agency the salesperson



597 is about to enter; and a new license shall thereupon be issued by
598 the commission to such salesperson for the unexpired term of the
599 original license upon the return to the commission of the license
600 previously issued. The change of responsible broker or employment
601 by any licensed real estate salesperson without notice to the
602 commission as required shall automatically cancel his license.
603 Upon termination of a salesperson's agency, the responsible broker
604 shall within three (3) days return the salesperson's license to
605 the commission for cancellation. It shall be unlawful for any
606 real estate salesperson to perform any of the acts contemplated by
607 this chapter either directly or indirectly after his agency has
608 been terminated and his license has been returned for cancellation
609 until his license has been reissued by the commission.

610 **SECTION 14.** Section 73-35-16, Mississippi Code of 1972, is
611 amended as follows:

612 73-35-16. (1) The following words and phrases shall have
613 the meanings ascribed herein unless the context clearly indicates
614 otherwise:

615 (a) "Aggregate limit" means a provision in an insurance
616 contract limiting the maximum liability of an insurer for a series
617 of losses in a given time period such as the policy term.

618 (b) "Claims-made" means policies written under a
619 claims-made basis which shall cover claims made (reported or
620 filed) during the year the policy is in force for incidents which
621 occur that year or during any previous period the policyholder was
622 insured under the claims-made contract. This form of coverage is
623 in contrast to the occurrence policy which covers today's incident
624 regardless of when a claim is filed even if it is one or more
625 years later.

626 (c) "Extended reporting period" means a designated
627 period of time after a claims-made policy has expired during which
628 a claim may be made and coverage triggered as if the claim had
629 been made during the policy period.



630 (d) "Licensee" means any active individual broker,
631 broker-salesperson or salesperson, any partnership or any
632 corporation.

633 (e) "Per-claim limit" means the maximum limit payable,
634 per licensee, for damages arising out of the same error, omission
635 or wrongful act.

636 (f) "Prior acts coverage" applies to policies on a
637 claims-made versus occurrence basis. Prior acts coverage responds
638 to claims that are made during a current policy period, but the
639 act or acts causing the claim or injuries for which the claim is
640 made occurred prior to the inception of the current policy period.

641 (g) "Proof of coverage" means a copy of the actual
642 policy of insurance, a certificate of insurance or a binder of
643 insurance.

644 (h) "Retroactive date" means a provision, found in many
645 claims-made policies, that the policy shall not cover claims for
646 injuries or damages that occurred before the retroactive date even
647 if the claim is first made during the policy period.

648 (2) The following persons shall submit proof of insurance:

649 (a) Any active individual broker, active
650 broker-salesperson or active salesperson;

651 (b) Any partnership (optional); or

652 (c) Any corporation (optional).

653 (3) Individuals whose licenses are on inactive status are
654 not required to carry errors and omissions insurance.

655 (4) All Mississippi licensees shall be covered for
656 activities contemplated under this chapter.

657 (5) Licensees may obtain errors and omissions coverage
658 through the insurance carrier approved by the Mississippi Real
659 Estate Commission and provided on a group policy basis. The
660 following are minimum requirements of the group policy to be
661 issued to the commission, including, as named insureds, all
662 licensees who have paid their required premium:



663 (a) All activities contemplated under this chapter are
664 included as covered activities;

665 (b) A per-claim limit is not less than One Hundred
666 Thousand Dollars (\$100,000.00);

667 (c) An annual aggregate limit is not less than One
668 Hundred Thousand Dollars (\$100,000.00);

669 (d) Limits apply per licensee per claim;

670 (e) Maximum deductible is Two Thousand Five Hundred
671 Dollars (\$2,500.00) per licensee per claim for damages;

672 (f) Maximum deductible is One Thousand Dollars
673 (\$1,000.00) per licensee per claim for defense costs; and

674 (g) The contract of insurance pays, on behalf of the
675 injured person(s), liabilities owed.

676 (6) (a) The maximum contract period between the insurance
677 carrier and the commission is to be three (3) consecutive policy
678 terms, after which time period the commission shall place the
679 insurance out for competitive bid. The commission shall reserve
680 the right to place the contract out for bid at the end of any
681 policy period.

682 (b) The policy period shall be a twelve-month policy
683 term.

684 (c) The retroactive date for the master policy shall
685 not be before July 1, 1994.

686 (i) The licensee may purchase full prior acts
687 coverage on July 1, 1994, if the licensee can show proof of errors
688 and omissions coverage that has been in effect since at least
689 March 15, 1994.

690 (ii) If the licensee purchases full prior acts
691 coverage on July 1, 1994, that licensee shall continue to be
692 guaranteed full prior acts coverage if the insurance carriers are
693 changed in the future.

694 (iii) If the licensee was not carrying errors and
695 omissions insurance on July 1, 1994, the individual certificate



696 shall be issued with a retroactive date of July 1, 1994. This
697 date shall not be advanced if the insurance carriers are changed
698 in the future.

699 (iv) For any new licensee who first obtains a
700 license after July 1, 1994, the retroactive date shall be the
701 effective date of licensure.

702 (v) For any licensee who changes status of license
703 from inactive to active, the retroactive date shall be the
704 effective date of change to "active" licensure.

705 (d) Each licensee shall be notified of the required
706 terms and conditions of coverage for the policy at least thirty
707 (30) days before the renewal date of the policy. A certificate of
708 coverage, showing compliance with the required terms and
709 conditions of coverage, shall be filed with the commission by the
710 renewal date of the policy by each licensee who elects not to
711 participate in the insurance program administered by the
712 commission.

713 (e) If the commission is unable to obtain errors and
714 omissions insurance coverage to insure all licensees who choose to
715 participate in the insurance program at a premium of no more than
716 One Hundred Fifty Dollars (\$150.00) per twelve-months' policy
717 period, the requirement of insurance coverage under this section
718 shall be void during the applicable contract period.

719 (7) Licensees may obtain errors and omissions coverage
720 independently if the coverage contained in the policy complies
721 with the following minimum requirements:

722 (a) All activities contemplated under this chapter are
723 included as covered activities;

724 (b) A per-claim limit is not less than One Hundred
725 Thousand Dollars (\$100,000.00);

726 (c) The deductible is not more than Two Thousand Five
727 Hundred Dollars (\$2,500.00) per licensee per claim for damages and



728 the deductible is not more than One Thousand Dollars (\$1,000.00)
729 per licensee per claim for defense costs; and

730 (d) If other insurance is provided as proof of errors
731 and omissions coverage, the other insurance carrier shall agree to
732 a noncancelable policy or to provide a letter of commitment to
733 notify the commission thirty (30) days before the intention to
734 cancel.

735 (8) The following provisions apply to individual licensees:

736 (a) The commission shall require receipt of proof of
737 errors and omissions insurance from new licensees within thirty
738 (30) days of licensure. Any licenses issued at any time other
739 than policy renewal time shall be subject to a pro rata premium.

740 (b) For licensees not submitting proof of insurance
741 necessary to continue active licensure, the commission shall be
742 responsible for sending notice of deficiency to those licensees.
743 Licensees who do not correct the deficiency within thirty (30)
744 days shall have their licenses placed on inactive status. The
745 commission shall assess fees for inactive status and for return to
746 active status when errors and omissions insurance has been
747 obtained.

748 (c) Any licensee insured in the state program whose
749 license becomes inactive shall not be charged an additional
750 premium if the license is reactivated during the policy period.

751 (9) The commission is authorized to adopt such rules and
752 regulations as it deems appropriate to handle administrative
753 duties relating to operation of the program, including billing and
754 premium collection.

755 **SECTION 15.** Section 73-35-18, Mississippi Code of 1972, is
756 amended as follows:

757 73-35-18. (1) Each individual applicant for renewal of a
758 license issued by the Mississippi Real Estate Commission shall, on
759 or before the expiration date of his license, or at a time
760 directed by the commission, submit proof of completion of not less



761 than sixteen (16) clock hours of approved course work to the
762 commission, in addition to any other requirements for renewal.
763 The sixteen (16) clock hours' course work requirement shall apply
764 to each two-year license renewal, and hours in excess thereof
765 shall not be cumulated or credited for the purposes of subsequent
766 license renewals except as provided in this subsection (1). The
767 commission shall develop standards for approval of courses and
768 shall require certification of such course work of the applicant.
769 The commission may determine any required subject matter within
770 the mandated sixteen (16) hours; provided that the required
771 subjects shall not exceed eight (8) hours of the total sixteen
772 (16) hours. Approved continuing education hours earned in the
773 final three (3) months of a licensee's renewal period, if in
774 excess of the required minimum sixteen (16) hours, may be carried
775 over and credited to the next renewal period. However, no more
776 than six (6) hours may be carried over in this manner. Any member
777 of the Mississippi Legislature who has a real estate license shall
778 be credited with eight (8) hours of credit for the attendance of
779 each year of a legislative session. No person may receive
780 continuing education credit for prelicense education courses
781 taken, except as follows: a licensee whose license is on inactive
782 status and whose continuing education credits are at least thirty
783 (30) hours in arrears may, at the discretion of the commission,
784 receive continuing education credit for retaking prelicense
785 coursework, provided the entire prelicense course is retaken.

786 (2) This section shall apply to renewals of licenses which
787 expire on and after July 1, 1994; however, an applicant for first
788 renewal who has been licensed for not more than one (1) year shall
789 not be required to comply with this section for the first renewal
790 of the applicant's license. The provisions of this section shall
791 not apply to persons who have held a broker's or salesperson's
792 license in this state for at least twenty-five (25) years and who
793 are older than seventy (70) years of age. Inactive licensees are



794 not required to meet the real estate continuing education
795 requirements specified in this section; however, such inactive
796 licensees, before activating their license to active status, must
797 cumulatively meet requirements missed during the period their
798 license was inactive.

799 (3) The commission shall promulgate rules and regulations as
800 necessary to accomplish the purposes of this section in accordance
801 with the Mississippi Administrative Procedures Law.

802 (4) Any person who has been licensed as a real estate broker
803 and allowed his license to expire for a period of less than five
804 (5) years shall be eligible for reinstatement upon completion of
805 the education requirements and payment of all penalties and
806 reinstatement fees as prescribed by the commission. This
807 subsection (4) of this section shall stand repealed from and after
808 December 31, 1994.

809 **SECTION 16.** Section 73-35-23, Mississippi Code of 1972, is
810 amended as follows:

811 73-35-23. (1) The commission is hereby authorized and
812 directed to take legal action against any violator of this
813 chapter. Upon complaint initiated by the commission or filed with
814 it, the licensee or any other person charged with a violation of
815 this chapter shall be given fifteen (15) days' notice of the
816 hearing upon the charges filed, together with a copy of the
817 complaint. The applicant or licensee or other violator shall have
818 an opportunity to be heard in person or by counsel, to offer
819 testimony, and to examine witnesses appearing in connection with
820 the complaint. Hearings shall be held at the offices of the
821 Mississippi Real Estate Commission, or at the commission's sole
822 discretion, at a place determined by the commission.

823 At such hearings, all witnesses shall be sworn and
824 stenographic notes of the proceedings shall be taken and filed as
825 a part of the record in the case. Any party to the proceedings
826 shall be furnished with a copy of such stenographic notes upon



827 payment to the commission of such fees as it shall prescribe, not
828 exceeding, however, the actual cost to the commission. The
829 commission shall render a decision on any complaint and shall
830 immediately notify the parties to the proceedings in writing of
831 its ruling, order or decision.

832 (2) In addition to the authority granted to the commission
833 as hereinabove set forth, the commission is hereby vested with the
834 authority to bring injunctive proceedings in any appropriate forum
835 against any violator or violators of this chapter, and all judges
836 or courts now having the power to grant injunctions are
837 specifically granted the power and jurisdiction to hear and
838 dispose of such proceedings.

839 (3) The commission is hereby authorized and empowered to
840 issue subpoenas for the attendance of witnesses and the production
841 of books and papers. The process issued by the commission shall
842 extend to all parts of the state, and such process shall be served
843 by any person designated by the commission for such service. The
844 person serving such process receive such compensation as may be
845 allowed by the commission, not to exceed the fee prescribed by
846 law for similar services. All witnesses who are subpoenaed and
847 who appear in any proceedings before the commission receive the
848 same fees and mileage as allowed by law, and all such fees shall
849 be taxed as part of the costs in the case.

850 (4) Where in any proceeding before the commission any
851 witness shall fail or refuse to attend upon subpoena issued by the
852 commission, shall refuse to testify, or shall refuse to produce
853 any books and papers the production of which is called for by the
854 subpoena, the attendance of such witness and the giving of his
855 testimony and the production of the books and papers shall be
856 enforced by any court of competent jurisdiction of this state in
857 the same manner as the attendance and testimony of witnesses in
858 civil cases are enforced in the courts of this state.

859 (5) The commission may obtain legal counsel privately to



860 represent it in proceedings when legal counsel is required.

861 **SECTION 17.** Section 89-1-503, Mississippi Code of 1972, is
862 amended as follows:

863 89-1-503. The transferor of any real property subject to
864 Sections 89-1-501-89-1-523 shall deliver to the prospective
865 transferee the written property condition disclosure statement
866 required by Sections 89-1-501 through 89-1-523, as follows:

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

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

874 With respect to any transfer subject to paragraph (a) or (b),
875 the transferor shall indicate compliance with this act either on
876 the receipt for deposit, the real property sales contract, the
877 lease, or any addendum attached thereto or on a separate document.

878 If any disclosure, or any material amendment of any
879 disclosure, required to be made by Section 89-1-501 through
880 89-1-523, is delivered after the execution of an offer to
881 purchase, the transferee shall have three (3) days after delivery
882 in person or five (5) days after delivery by deposit in the mail,
883 to terminate his or her offer by delivery of a written notice of
884 termination to the transferor or the transferor's agent.

885 **SECTION 18.** Section 73-35-20, Mississippi Code of 1972,
886 which provides for a temporary real estate salesperson license, is
887 repealed.

888 **SECTION 19.** Section 7 of Chapter 588, Laws of 1999, is
889 amended as follows:

890 Section 7. Section 1 of this act shall take effect and be in
891 force from and after July 1, 1999, and the remainder of this act
892 shall take effect and be in force from and after January 1, 2000.



893 **SECTION 20.** This act shall take effect and be in force from
894 and after July 1, 2002.

