

By: Senator(s) Thompson, Sparks

To: Business and Financial
Institutions

SENATE BILL NO. 2624
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE REAL ESTATE COMMISSION TO ESTABLISH A PILOT PROGRAM
3 ALLOWING ADMINISTRATIVE HEARINGS ON CERTAIN LICENSING MATTERS
4 UNDER ITS JURISDICTION; TO PROVIDE THAT ADMINISTRATIVE HEARING
5 OFFICERS SHALL BE STAFF ATTORNEYS EMPLOYED BY THE ATTORNEY
6 GENERAL; TO AMEND SECTION 73-35-25, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE THAT AN APPEAL TAKE A DEFENDANT FROM AN ADVERSE RULING OR
8 ORDER OF THE MISSISSIPPI REAL ESTATE COMMISSION SHALL ACT AS A
9 SUPERSEDEAS; TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972,
10 TO CONFORM TO THE PRECEDING AMENDMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 73-35-23, Mississippi Code of 1972, is
13 amended as follows:

14 73-35-23. (1) The commission is hereby authorized and
15 directed to take legal action against any violator of this
16 chapter. Upon complaint initiated by the commission or filed with
17 it, the licensee or any other person charged with a violation of
18 this chapter shall be given fifteen (15) days' notice of the
19 hearing upon the charges filed, together with notice of the option
20 of appearing before the commission or an administrative hearing
21 officer as provided in subsection (6) of this section and a copy
22 of the complaint. The applicant or licensee or other violator



23 shall have an opportunity to be heard in person or by counsel, to
24 offer testimony, and to examine witnesses appearing in connection
25 with the complaint. Hearings shall be held at the offices of the
26 Mississippi Real Estate Commission, or at the commission's sole
27 discretion, at a place determined by the commission.

28 At such hearings, all witnesses shall be properly sworn and
29 stenographic notes of the proceedings shall be taken and filed as
30 a part of the record in the case. Any party to the proceedings
31 shall be furnished with a copy of such stenographic notes upon
32 payment to the commission of such fees as it shall prescribe, not
33 exceeding, however, the actual cost to the commission. The clear
34 and convincing standard of proof shall be used to examine factors
35 during all hearings. The commission shall render a decision on
36 any complaint and shall immediately notify the parties to the
37 proceedings in writing of its ruling, order or decision.

38 (2) In addition to the authority granted to the commission
39 as hereinabove set forth, the commission is hereby vested with the
40 authority to bring injunctive proceedings in any appropriate forum
41 against any violator or violators of this chapter, and all judges
42 or courts now having the power to grant injunctions are
43 specifically granted the power and jurisdiction to hear and
44 dispose of such proceedings.

45 (3) The commission is hereby authorized and empowered to
46 issue subpoenas for the attendance of witnesses and the production
47 of books and papers. The process issued by the commission shall



48 extend to all parts of the state, and such process shall be served
49 by any person designated by the commission for such service. The
50 person serving such process may receive such compensation as may
51 be allowed by the commission, not to exceed the fee prescribed by
52 law for similar services. All witnesses who are subpoenaed and
53 who appear in any proceedings before the commission may receive
54 the same fees and mileage as allowed by law, and all such fees
55 shall be taxed as part of the costs in the case.

56 (4) Where in any proceeding before the commission any
57 witness shall fail or refuse to attend upon subpoena issued by the
58 commission, shall refuse to testify, or shall refuse to produce
59 any books and papers the production of which is called for by the
60 subpoena, the attendance of such witness and the giving of his
61 testimony and the production of the books and papers shall be
62 enforced by any court of competent jurisdiction of this state in
63 the same manner as the attendance and testimony of witnesses in
64 civil cases are enforced in the courts of this state.

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

67 (6) The commission shall establish a pilot program whereby
68 an administrative hearing option shall be established, which shall
69 consist of administrative hearing officers designated by the
70 Attorney General for the purpose of holding hearings, hearing
71 evidence and rendering decisions on matters determined to be the
72 subject of a hearing for a licensee or any other person charged



73 with a violation of this chapter or affecting the license of any
74 person coming under its jurisdiction, when the licensee or any
75 other person charged with a violation of this chapter shall
76 request, in writing, for the matter to be heard by the
77 administrative hearing officer. Administrative hearing officers
78 shall be staff attorneys employed by the Attorney General's
79 office, but must not currently hold a license issued by the
80 commission. The administrative hearing officers shall have the
81 same powers and authority in conducting hearings and rendering
82 decisions as granted to the commission in this section. Hearings
83 before an administrative hearing officer shall be held in the City
84 of Jackson, Mississippi, at a place, time and manner agreed upon
85 by the commission and the hearing officer within the city. The
86 clear and convincing standard of proof shall be used to examine
87 factors during all hearings. Any right of appeal available to a
88 licensee or applicant for a license availing itself to the
89 provisions hereof shall be preserved as if the matter had been
90 heard and decided by the commission. This subsection (6) shall
91 stand repealed on July 1, 2024.

92 (7) Nothing in this section shall preclude the commission
93 and a licensee from entering into an agreed order resolving a
94 complaint prior to the hearing.

95 **SECTION 2.** Section 73-35-25, Mississippi Code of 1972, is
96 amended as follows:



97 73-35-25. (1) Any applicant or licensee or person aggrieved
98 shall have the right of appeal from any adverse ruling or order or
99 decision of the commission or administrative hearing officer to
100 the circuit court of the county of residence of the applicant,
101 licensee or person, or of the First Judicial District of Hinds
102 County, within thirty (30) days from the service of notice of the
103 action of the commission upon the parties in interest.

104 (2) Notice of appeals shall be filed in the office of the
105 clerk of the court who shall issue a writ of certiorari directed
106 to the commission commanding it, within thirty (30) days after
107 service thereof, to certify to such court its entire record in the
108 matter in which the appeal has been taken. The appeal shall
109 thereupon be heard in due course by said court, without a jury,
110 which shall review the record and make its determination of the
111 cause between the parties.

112 (3) Any order, rule or decision of the commission or
113 administrative hearing officer shall not take effect until after
114 the time for appeal to * * * the court * * * has expired. * * *
115 If an appeal is taken by a defendant, such appeal * * * shall
116 act * * * as a supersedeas and the court shall dispose of * * *
117 the appeal and enter its decision promptly. However, the
118 commission may file a motion within ten (10) days of the date of
119 filing the notice of appeal and request the court to lift the
120 supersedeas upon the commission's showing, by clear and convincing
121 evidence, that immediate and irreparable harm will or may occur if



122 the licensee or person aggrieved were to continue operating as a
123 licensee.

124 (4) Any person taking an appeal shall post a satisfactory
125 bond in the amount of Five Hundred Dollars (\$500.00) for the
126 payment of any costs which may be adjudged against him.

127 (5) Actions taken by the commission in suspending a license
128 when required by Section 93-11-157 or 93-11-163 are not actions
129 from which an appeal may be taken under this section. Any appeal
130 of a license suspension that is required by Section 93-11-157 or
131 93-11-163 shall be taken in accordance with the appeal procedure
132 specified in Section 93-11-157 or 93-11-163, as the case may be,
133 rather than the procedure specified in this section.

134 **SECTION 3.** Section 73-35-21, Mississippi Code of 1972, is
135 amended as follows:

136 73-35-21. (1) The commission may, upon its own motion and
137 shall upon the verified complaint in writing of any person, hold a
138 hearing pursuant to Section 73-35-23 for the refusal of license or
139 for the suspension or revocation of a license previously issued,
140 or for such other action as the commission deems appropriate. The
141 commission shall have full power to refuse a license for cause or
142 to revoke or suspend a license where it has been obtained by false
143 or fraudulent representation, or where the licensee in performing
144 or attempting to perform any of the acts mentioned herein, is
145 deemed to be guilty of:



- 146 (a) Making any substantial misrepresentation in
147 connection with a real estate transaction;
- 148 (b) Making any false promises of a character likely to
149 influence, persuade or induce;
- 150 (c) Pursuing a continued and flagrant course of
151 misrepresentation or making false promises through agents or
152 salespersons or any medium of advertising or otherwise;
- 153 (d) Any misleading or untruthful advertising;
- 154 (e) Acting for more than one (1) party in a transaction
155 or receiving compensation from more than one (1) party in a
156 transaction, or both, without the knowledge of all parties for
157 whom he acts;
- 158 (f) Failing, within a reasonable time, to account for
159 or to remit any monies coming into his possession which belong to
160 others, or commingling of monies belonging to others with his own
161 funds. Every responsible broker procuring the execution of an
162 earnest money contract or option or other contract who shall take
163 or receive any cash or checks shall deposit, within a reasonable
164 period of time, the sum or sums so received in a trust or escrow
165 account in a bank or trust company pending the consummation or
166 termination of the transaction. "Reasonable time" in this context
167 means by the close of business of the next banking day;
- 168 (g) Entering a guilty plea or conviction in a court of
169 competent jurisdiction of this state, or any other state or the
170 United States of any felony;



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

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

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

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

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

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

190 (n) Any act or conduct, whether of the same or a
191 different character than hereinabove specified, which constitutes
192 or demonstrates bad faith, incompetency or untrustworthiness, or
193 dishonest, fraudulent or improper dealing. However, simple
194 contact and/or communication with any mortgage broker or lender by
195 a real estate licensee about any professional, including, but not



196 limited to, an appraiser, home inspector, contractor, and/or
197 attorney regarding a listing and/or a prospective or pending
198 contract for the lease, sale and/or purchase of real estate shall
199 not constitute conduct in violation of this section.

200 (2) No real estate broker shall practice law or give legal
201 advice directly or indirectly unless said broker be a duly
202 licensed attorney under the laws of this state. He shall not act
203 as a public conveyancer nor give advice or opinions as to the
204 legal effect of instruments nor give opinions concerning the
205 validity of title to real estate; nor shall he prevent or
206 discourage any party to a real estate transaction from employing
207 the services of an attorney; nor shall a broker undertake to
208 prepare documents fixing and defining the legal rights of parties
209 to a transaction. However, when acting as a broker, he may use an
210 earnest money contract form. A real estate broker shall not
211 participate in attorney's fees, unless the broker is a duly
212 licensed attorney under the laws of this state and performs legal
213 services in addition to brokerage services.

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



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

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

241 **SECTION 4.** This act shall take effect and be in force from
242 and after July 1, 2021.

