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To: Business and Financial Institutions

SENATE BILL NO. 2097

1 AN ACT TO AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE REAL ESTATE COMMISSION TO ESTABLISH A 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 PROHIBIT CERTAIN COMMUNICATIONS BY THE COMMISSION
7 PRIOR TO DELIVERY OF NOTICE TO THE LICENSEE'S RESPONSIBLE BROKER;
8 TO AMEND SECTION 73-35-25, MISSISSIPPI CODE OF 1972, TO PROVIDE
9 THAT AN APPEAL TAKEN BY A DEFENDANT FROM AN ADVERSE RULING OR
10 ORDER OF THE MISSISSIPPI REAL ESTATE COMMISSION SHALL ACT AS AN
11 AUTOMATIC SUPERSEDEAS; TO AMEND SECTION 73-35-21, MISSISSIPPI CODE
12 OF 1972, TO CONFORM TO THE PRECEDING AMENDMENT; AND FOR RELATED
13 PURPOSES.

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

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

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



24 officer as provided in subsection (7) of this section, and a copy
25 of the complaint. The applicant or licensee or other violator
26 shall have an opportunity to be heard in person or by counsel, to
27 offer testimony, and to examine witnesses appearing in connection
28 with the complaint. Hearings shall be held at the offices of the
29 Mississippi Real Estate Commission, or at the commission's sole
30 discretion, at a place determined by the commission.

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

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



49 (3) The commission is hereby authorized and empowered to
50 issue subpoenas for the attendance of witnesses and the production
51 of books and papers. The process issued by the commission shall
52 extend to all parts of the state, and such process shall be served
53 by any person designated by the commission for such service. The
54 person serving such process may receive such compensation as may
55 be allowed by the commission, not to exceed the fee prescribed by
56 law for similar services. All witnesses who are subpoenaed and
57 who appear in any proceedings before the commission may receive
58 the same fees and mileage as allowed by law, and all such fees
59 shall be taxed as part of the costs in the case.

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

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

71 (6) No commissioner, administrator, employee, investigator,
72 representative or agent of the commission shall communicate with a
73 licensee in connection with any preliminary or formal



74 investigation associated with alleged violations of licensing law
75 or regulations prior to the delivery of written notice to the
76 licensee's responsible broker. Any licensee represented by legal
77 counsel shall be entitled to communication through such legal
78 counsel unless waived in writing by the licensee.

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

89 Administrative hearing officers shall be staff attorneys employed
90 by the Attorney General's office, but must not currently hold a
91 license issued by the commission. The administrative hearing
92 officers shall have the same powers and authority in conducting
93 hearings and rendering decisions as granted to the commission in
94 this section. Hearings before an administrative hearing officer
95 shall be held in the City of Jackson, Mississippi, at a place,
96 time and manner agreed upon by the commission and the hearing
97 officer. The preponderance of evidence standard of proof shall be
98 used to examine factors during all hearings. Any right of appeal



99 available to a licensee or applicant for a license availing itself
100 to the provisions hereof shall be preserved as if the matter had
101 been heard and decided by the commission.

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

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

107 73-35-25. (1) Any applicant or licensee or person aggrieved
108 shall have the right of appeal from any adverse ruling or order or
109 decision of the commission or administrative hearing officer to
110 the circuit court of the county of residence of the applicant,
111 licensee or person, or of the First Judicial District of Hinds
112 County, within thirty (30) days from the service of notice of the
113 action of the commission upon the parties in interest.

114 (2) Notice of appeals shall be filed in the office of the
115 clerk of the court who shall issue a writ of certiorari directed
116 to the commission commanding it, within thirty (30) days after
117 service thereof, to certify to such court its entire record in the
118 matter in which the appeal has been taken. The appeal shall
119 thereupon be heard in due course by said court, without a jury,
120 which shall review the record and make its determination of the
121 cause between the parties.

122 (3) Any order, rule or decision of the commission or
123 administrative hearing officer shall not take effect until after



124 the time for appeal to * * * the court * * * has expired. * * *
125 If an appeal is taken by a defendant, such appeal * * * shall
126 act * * * as * * * an automatic supersedeas and the court shall
127 dispose of * * * the appeal and enter its decision promptly.
128 However, the commission may file a motion within ten (10) days of
129 the date of filing the notice of appeal and request the court to
130 lift the supersedeas upon the commission's showing, by clear and
131 convincing evidence, that immediate and irreparable harm will or
132 may occur if the licensee or person aggrieved were to continue
133 operating as a licensee.

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

137 (5) Actions taken by the commission in suspending a license
138 when required by Section 93-11-157 or 93-11-163 are not actions
139 from which an appeal may be taken under this section. Any appeal
140 of a license suspension that is required by Section 93-11-157 or
141 93-11-163 shall be taken in accordance with the appeal procedure
142 specified in Section 93-11-157 or 93-11-163, as the case may be,
143 rather than the procedure specified in this section.

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

146 73-35-21. (1) The commission may, upon its own motion and
147 shall upon the verified complaint in writing of any person, hold a
148 hearing pursuant to Section 73-35-23 for the refusal of license or



149 for the suspension or revocation of a license previously issued,
150 or for such other action as the commission deems appropriate. The
151 commission shall have full power to refuse a license for cause or
152 to revoke or suspend a license where it has been obtained by false
153 or fraudulent representation, or where the licensee in performing
154 or attempting to perform any of the acts mentioned herein, is
155 deemed to be guilty of:

156 (a) Making any substantial misrepresentation in
157 connection with a real estate transaction;

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

160 (c) Pursuing a continued and flagrant course of
161 misrepresentation or making false promises through agents or
162 salespersons or any medium of advertising or otherwise;

163 (d) Any misleading or untruthful advertising;

164 (e) Acting for more than one (1) party in a transaction
165 or receiving compensation from more than one (1) party in a
166 transaction, or both, without the knowledge of all parties for
167 whom he acts;

168 (f) Failing, within a reasonable time, to account for
169 or to remit any monies coming into his possession which belong to
170 others, or commingling of monies belonging to others with his own
171 funds. Every responsible broker procuring the execution of an
172 earnest money contract or option or other contract who shall take
173 or receive any cash or checks shall deposit, within a reasonable



174 period of time, the sum or sums so received in a trust or escrow
175 account in a bank or trust company pending the consummation or
176 termination of the transaction. "Reasonable time" in this context
177 means by the close of business of the next banking day;

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

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

183 (i) Failing to furnish voluntarily, at the time of
184 signing, copies of all listings, contracts and agreements to all
185 parties executing the same;

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

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

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



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

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

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



222 licensed attorney under the laws of this state and performs legal
223 services in addition to brokerage services.

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

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

243 (5) Nothing in this chapter shall prevent an associate
244 broker or salesperson from owning any lawfully constituted
245 business organization, including, but not limited to, a
246 corporation, limited liability company or limited liability



247 partnership, for the purpose of receiving payments contemplated in
248 this chapter. The business organization shall not be required to
249 be licensed under this chapter and shall not engage in any other
250 activity requiring a real estate license.

251 **SECTION 4.** This act shall take effect and be in force from
252 and after its passage.

