

By: Senator(s) England

To: Business and Financial
Institutions

SENATE BILL NO. 2423

1 AN ACT TO AMEND SECTION 73-35-10, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE COMMISSION TO PROVIDE PRIOR WRITTEN NOTIFICATION TO
3 ANY LICENSEE WHOSE LICENSE, ONCE ISSUED, IS SUBJECT TO BE AMENDED,
4 SUSPENDED, REVOKED OR NOT RENEWED; TO AMEND SECTION 73-35-23,
5 MISSISSIPPI CODE OF 1972, TO CHANGE THE STANDARD OF PROOF REQUIRED
6 AT ADMINISTRATIVE HEARINGS FROM A PREPONDERANCE OF THE EVIDENCE TO
7 CLEAR AND CONVINCING EVIDENCE; TO REQUIRE ANY COMPLAINT INITIATED
8 BY OR FILED WITH THE COMMISSION TO BE RESOLVED BY DISMISSAL OR
9 ISSUANCE OF A FORMAL COMPLAINT WITHIN 120 DAYS OF THE DATE WRITTEN
10 NOTICE IS PROVIDED TO LICENSEE(S) AND THEIR RESPONSIBLE BROKER(S)
11 OF COMMENCEMENT OF AN INVESTIGATION PERTAINING TO ANY COMPLAINT;
12 TO REQUIRE ANY COMPLAINT INITIATED BY OR FILED WITH THE COMMISSION
13 TO BE RESOLVED BY FINAL DISMISSAL, FINAL RULING ON ANY FORMAL
14 COMPLAINT OR BY ENTRY OF AGREED DISPOSITIONAL ORDER WITHIN ONE
15 YEAR OF THE DATE WRITTEN NOTICE IS PROVIDED TO LICENSEE(S) AND
16 THEIR RESPONSIBLE BROKER(S) OF COMMENCEMENT OF AN INVESTIGATION
17 PERTAINING TO ANY COMPLAINT; AND FOR RELATED PURPOSES.

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

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

21 73-35-10. (1) (a) To qualify for a Mississippi real estate
22 broker's license or a Mississippi resident license as a real
23 estate salesperson, or a nonresident's license in Mississippi, an
24 applicant must have successfully been cleared for licensure
25 through an investigation that shall consist of a determination



26 that the applicant does not possess a background which calls into
27 question public trust, as set forth below in subsection (2), and
28 verification that the prospective licensee is not guilty of or in
29 violation of any statutory ground for denial of licensure as set
30 forth in Section 73-35-21.

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

45 (c) Any and all state or national criminal history
46 records information obtained by the commission that is not already
47 a matter of public record shall be deemed nonpublic and
48 confidential information restricted to the exclusive use of the
49 commission, its members, officers, investigators, agents and
50 attorneys in evaluating the applicant's eligibility or



51 disqualification for licensure, and shall be exempt from the
52 Mississippi Public Records Act of 1983. Except when introduced
53 into evidence in a hearing before the commission to determine
54 licensure, no such information or records related thereto shall,
55 except with the written consent of the applicant or by order of a
56 court of competent jurisdiction, be released or otherwise
57 disclosed by the commission to any other person or agency.

58 (d) The commission shall provide to the department the
59 fingerprints of the applicant, any additional information that may
60 be required by the department, and a form signed by the applicant
61 consenting to the check of the criminal records and to the use of
62 the fingerprints and other identifying information required by the
63 state or national repositories.

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

69 (2) (a) The commission must ensure that applicants for real
70 estate licenses do not possess a background that could call into
71 question public trust. An applicant found by the commission to
72 possess a background which calls into question the applicant's
73 ability to maintain public trust shall not be issued a real estate
74 license.



(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. At any time preceding the date of the application, if such felony involved an act of fraud, dishonesty or a 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.

(3) The commission shall provide prior written notification to any licensee whose license, once issued, is subject to be amended, suspended, revoked or not renewed. Said notice shall be delivered to the licensee whose license shall be affected and, if



applicable, to their responsible broker, not less than five (5)
business days prior to the effective date of the change. For
purposes of this subsection, written notice shall be delivered to
the email address for the licensee and broker on file with the
commission.

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

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

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



125 payment to the commission of such fees as it shall prescribe, not
126 exceeding, however, the actual cost to the commission. The * * *
127 clear and convincing standard of proof shall be used to examine
128 factors during all hearings. The commission shall render a
129 decision on any complaint and shall immediately notify the parties
130 to the proceedings in writing of its ruling, order or decision.

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

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



149 (4) Where in any proceeding before the commission any
150 witness shall fail or refuse to attend upon subpoena issued by the
151 commission, shall refuse to testify, or shall refuse to produce
152 any books and papers the production of which is called for by the
153 subpoena, the attendance of such witness and the giving of his
154 testimony and the production of the books and papers shall be
155 enforced by any court of competent jurisdiction of this state in
156 the same manner as the attendance and testimony of witnesses in
157 civil cases are enforced in the courts of this state.

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

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

168 (7) The commission shall establish an administrative hearing
169 option by July 1, 2022, which shall consist of administrative
170 hearing officers designated by the Attorney General for the
171 purpose of holding hearings, hearing evidence and rendering
172 decisions on matters determined to be the subject of a hearing for
173 a licensee or any other person charged with a violation of this



chapter or affecting the license of any person coming under its jurisdiction, when the licensee or any other person charged with a violation of this chapter shall request, in writing, for the matter to be heard by the administrative hearing officer. Administrative hearing officers shall be staff attorneys employed by the Attorney General's office, but must not currently hold a license issued by the commission. The administrative hearing officers shall have the same powers and authority in conducting hearings and rendering decisions as granted to the commission in this section. Hearings before an administrative hearing officer shall be held in the City of Jackson, Mississippi, at a place, time and manner agreed upon by the commission and the hearing officer. The * * * clear and convincing standard of proof shall be used to examine factors during all hearings. Any right of appeal available to a licensee or applicant for a license availing itself to the provisions hereof shall be preserved as if the matter had been heard and decided by the commission.

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

(9) Any complaint initiated by the commission or filed with it shall be resolved by dismissal or issuance of a formal complaint within one hundred twenty (120) days of the date written notice is provided to licensee(s) and their responsible broker(s) of commencement of an investigation pertaining to any complaint.



199 Any complaint initiated by the commission or filed with it
200 shall be resolved by final dismissal, final ruling on any formal
201 complaint or by entry of agreed dispositional order within one (1)
202 year of the date written notice is provided to licensee(s) and
203 their responsible broker(s) of commencement of an investigation
204 pertaining to any complaint. The requirement for final
205 disposition within one (1) year in this subsection shall not
206 operate to deprive any licensee of the right to utilize the
207 administrative hearing option provided for by law and any
208 administrative hearing may be scheduled to occur not more than
209 sixty (60) days outside the one-year-time limit in cases where
210 administrative hearing officers are not reasonably available to
211 conduct hearings within the one-year period.

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

