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Chapter No. 398

11/HR12/R1550

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# ***HOUSE BILL NO. 1395***

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1395

AN ACT TO AMEND SECTION 73-35-16, MISSISSIPPI CODE OF 1972, TO REVISE THE REAL ESTATE BROKERS LICENSE LAW OF 1954 TO CHANGE THE MAXIMUM CONTRACT PERIOD ALLOWED BETWEEN THE MISSISSIPPI REAL ESTATE COMMISSION AND THE INSURANCE CARRIER APPROVED BY THE COMMISSION TO PROVIDE A GROUP POLICY OF ERRORS AND OMISSIONS COVERAGE TO LICENSEES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Any partnership (optional); or

(c) Any corporation (optional).

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

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

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

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

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

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

(d) Limits apply per licensee per claim;

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

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

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

(6) (a) The maximum contract period between the insurance carrier and the commission is to be five (5) consecutive policy terms, after which time period the commission shall place the insurance out for competitive bid. The commission shall reserve the right to place the contract out for bid at the end of any policy period.

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

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

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

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

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

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

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

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

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

(e) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a premium of no more than Two Hundred Fifty Dollars (\$250.00) per twelve (12) months' policy period, the requirement of insurance coverage under this section shall be void during the applicable contract period.

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

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

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

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

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

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

(8) The following provisions apply to individual licensees:

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

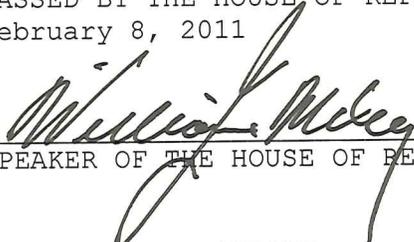
(b) For licensees not submitting proof of insurance necessary to continue active licensure, the commission shall be responsible for sending notice of deficiency to those licensees. Licensees who do not correct the deficiency within thirty (30) days shall have their licenses placed on inactive status.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

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

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

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2011.

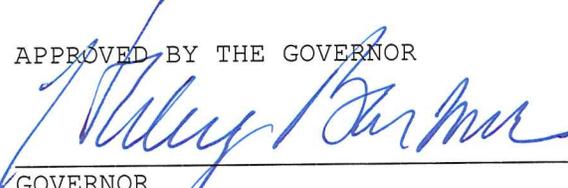
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 8, 2011

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 3, 2011

  
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PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
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GOVERNOR