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Chapter No. 472

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SENATE BILL NO. 2725

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2725

AN ACT TO REQUIRE BACKGROUND INVESTIGATIONS BY THE MISSISSIPPI REAL ESTATE COMMISSION OF APPLICANTS FOR A MISSISSIPPI REAL ESTATE BROKER'S OR SALESPERSON'S LICENSE, OR A NONRESIDENT'S LICENSE; TO AMEND SECTIONS 73-35-7, 73-35-8 AND 73-35-21, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) (a) To qualify for a Mississippi real estate broker's license or a Mississippi resident license as a real estate salesperson, or a nonresident's license in Mississippi, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination that the applicant does not possess a background which calls into question public trust, as set forth below in subsection (2), and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-35-21.

(b) To assist the commission in conducting its licensure investigation, from and after July 1, 2016, all applicants for a Mississippi real estate broker's license, or a

Mississippi resident license as a real estate salesperson, or a nonresident's license in Mississippi, and all applicants for renewal of any real estate license shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the commission, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(c) Any and all state or national criminal history records information obtained by the commission that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the commission, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the commission to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the commission to any other person or agency.

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

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

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

SECTION 2. Section 73-35-7, Mississippi Code of 1972, is amended as follows:

73-35-7. Licenses shall be granted only to persons who present, and to corporations, partnerships, companies or associations whose officers, associates or partners present satisfactory proof to the commission that they are trustworthy and competent to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interests of the public. Every person who applies for a resident license as a real estate broker: (a) shall be age twenty-one (21) years or over, and have his legal domicile in the State of Mississippi at the time he applies; (b) shall be subject to the jurisdiction of

this state, subject to the income tax laws and other excise laws thereof, subject to the road and bridge privilege tax laws thereof; (c) shall not be an elector in any other state; (d) shall have held a license as an active real estate salesperson for twelve (12) months immediately prior to making application for the broker's examination hereafter specified; (e) shall have successfully completed a minimum of one hundred twenty (120) hours of courses in real estate as hereafter specified; * * * (f) shall have successfully completed the real estate broker's examination as hereafter specified; and (g) shall have successfully been cleared for licensure by the commission's background investigation as provided in Section 1 of this act.

An applicant who has not held an active real estate salesperson's license for a period of at least twelve (12) months immediately prior to submitting an application shall have successfully completed a minimum of one hundred fifty (150) classroom hours in real estate courses, which courses are acceptable for credit toward a degree at a college or university as approved by the Southern Association of Colleges and Schools.

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

specified * * *, and shall have successfully completed the real estate salesperson's examination as hereafter specified.

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

The commission is authorized to exempt from such prelicensing educational requirements, in whole or in part, a real estate licensee of another state who desires to obtain a license under this chapter, provided that the prelicensing educational requirements in the other state are determined by the commission to be equivalent to prelicensing educational requirements in this state and provided that such state extends this same privilege or exemption to Mississippi real estate licensees. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SECTION 3. Section 73-35-8, Mississippi Code of 1972, is amended as follows:

73-35-8. (1) A nonresident may apply for a nonresident's license in Mississippi provided the individual is (* * *a) a licensed broker in another state, or (* * *b) is a broker/salesperson or salesperson affiliated with a resident or nonresident Mississippi broker, or (* * *c) is a nonresident who applies for a broker's license and who will maintain an office in Mississippi. The nonresident broker need not maintain a place of business within Mississippi provided he is regularly actively

engaged in the real estate business and maintains a place of business in the other state. The nonresident licensee or applicant shall be subject to all the provisions of this chapter, except for the residency requirement and approved equivalent prelicensing education.

(2) Every nonresident applicant shall file a statement of irrevocable consent with the Real Estate Commission that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside by service of process or pleading authorized by the laws of this state, by the Secretary of State of Mississippi, or by any member of the commission or chief executive officer thereof, the consent stipulating that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state. The consent shall be duly acknowledged. Every nonresident licensee shall consent to have any hearings conducted by the commission pursuant to Section 73-35-23, Mississippi Code of 1972, at a place designated by the commission.

(3) Any service of process or pleading shall be served on the executive officer of the commission by filing duplicate copies, one (1) of which shall be filed in the office of the commission and the other forwarded by certified mail to the last-known principal address of the nonresident licensee against whom such process or pleading is directed. No default in any such

action shall be taken except upon an affidavit of certification of the commission or the executive officer thereof that a copy of the process or pleading was mailed to the defendant as herein provided, and no default judgment shall be taken in any such action or proceeding until thirty (30) days after the mailing of process or pleading to the defendant.

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

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

(6) A certification from the Executive Officer of the Real Estate Commission in the state in which the nonresident maintains his principal place of business shall be required. An applicant shall disclose all states in which he has held a real estate license and furnish a certification of licensure from that state or states.

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

(8) Any nonresident broker, broker-salesperson and salesperson shall meet Mississippi continuing education

requirements after becoming licensed just as any resident licensee.

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

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

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

SECTION 4. Section 73-35-21, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

(d) Any misleading or untruthful advertising;

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

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

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

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

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

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

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

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

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

(m) Failing to successfully pass the commission's background investigation for licensure or renewal as provided in Section 1 of this act; or

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

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

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

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

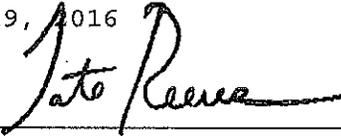
(4) In addition to the reasons specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance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

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

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

SECTION 5. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE SENATE
April 19, 2016



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 16, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

May 11, 2016
10:09 am