

1 HB667
2 150496-1
3 By Representative Fincher
4 RFD: Ways and Means Education
5 First Read: 23-APR-13

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8 SYNOPSIS: Under existing law, certain funds are
9 annually disbursed or transferred to the University
10 of Alabama Real Estate Research and Education
11 Center through the Alabama Real Estate Commission.

12 This bill would also provide for the
13 disbursement and transfer of certain funds through
14 the Alabama Real Estate Commission to the
15 University of South Alabama Center of Real Estate
16 Studies and, upon being established, a center for
17 real estate studies at Auburn University without
18 affecting the amount of funds disbursed or
19 transferred to the University of Alabama Real
20 Estate Research and Education Center.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Sections 34-27-4 and 34-27-31, Code of
27 Alabama 1975, to provide for the disbursement and transfer of

1 certain funds through the Alabama Real Estate Commission to
2 the University of South Alabama Center of Real Estate Studies
3 and, upon being established, a center for real estate studies
4 at Auburn University without affecting the amount of funds
5 disbursed or transferred to the University of Alabama Real
6 Estate Research and Education Center.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 34-27-4 and 34-27-31 of the Code
9 of Alabama 1975, are amended to read as follows:

10 "§34-27-4.

11 "(a) All fees, fines, charges, or other money,
12 except as provided in Section 34-27-31, and except as provided
13 in this section for multi-year licenses, collected by the
14 commission shall be deposited in the State Treasury to the
15 credit of the Real Estate Commission Revenue Fund and shall be
16 disbursed by the state Comptroller on order of the executive
17 director at the direction of the commission. A proportionate
18 share of all money collected by the commission as license fees
19 during each fiscal year of a multi-year license period or
20 during the renewal period immediately preceding that first
21 year, and all fees collected for research and education, shall
22 be reserved in the State Treasury in the Real Estate
23 Commission Proportionate Fund by the state Comptroller to be
24 disbursed quarterly to the University of Alabama Real Estate
25 Research and Education Center, the University of South Alabama
26 Center of Real Estate Studies, and, upon its creation, a
27 center for real estate studies at Auburn University with the

1 remainder to be disbursed for commission expenses incurred in
2 that fiscal year or the subsequent fiscal years of that
3 license period. The proportion for each fiscal year shall be
4 determined by dividing the amount of money collected by the
5 commission as license fees each fiscal year or during the
6 renewal period immediately preceding the first year by the
7 number of years within the multi-year license period. These
8 sums may be invested by the State Treasurer in any investments
9 which are legal for domestic life insurance companies under
10 the laws of this state. Any interest or other income from
11 investments in the proportionate fund shall be deposited into
12 the Real Estate Commission Revenue Fund for expenditure by the
13 commission. All other money including penalty fees collected
14 by the commission shall be disbursed during the fiscal year in
15 which they are collected. The state Comptroller and State
16 Treasurer are directed to pay all expenses incurred by the
17 commission in performing its responsibilities and exercising
18 its authority from the Real Estate Commission Revenue Fund in
19 the State Treasury on warrants of the state Comptroller drawn
20 on the State Treasury on order of the executive director. The
21 commission may not incur expenses that exceed the total fees
22 and charges collected and paid into the State Treasury; or
23 that exceed the amount appropriated by the Legislature. No
24 funds shall be withdrawn or expended except as budgeted and
25 allotted in accordance with Sections 41-4-80 through 41-4-96.
26 All money remaining unexpended in the Real Estate Commission

1 Revenue Fund at the end of each fiscal year shall be retained
2 by the commission for the following fiscal year.

3 "§34-27-31.

4 "(a) The commission shall establish and maintain a
5 Recovery Fund from which an aggrieved party may recover actual
6 or compensatory damages, not including interest and court
7 costs, sustained only within the State of Alabama as a result
8 of conduct of a broker or salesperson in violation of Article
9 1 or 2 of this chapter or the rules and regulations of the
10 commission.

11 "(b) Notwithstanding any other provision to the
12 contrary, payments from the Recovery Fund are subject to the
13 following conditions and limitations:

14 "(1) The fund shall not be obligated for the acts or
15 omissions of a broker or salesperson while acting on his or
16 her own behalf or on behalf of his or her child, spouse, or
17 parent regarding property in which he or she or his or her
18 spouse, child, or parent has, or is attempting to acquire, an
19 interest; or for the acts or omissions of an inactive
20 licensee; or for the acts or omissions of a corporation,
21 branch office, or partnership except through its licensed
22 salespersons and brokers as individuals. The fund shall not be
23 obligated for any judgment or settlement resulting from an act
24 or omission of a broker or salesperson committed in
25 conjunction with the marketing or development of a
26 time-sharing project.

1 "(2) Payments for claims based on judgments or
2 settlements against any one person shall not exceed fifty
3 thousand dollars (\$50,000) in the aggregate.

4 "(3) Payments for claims arising out of the same
5 transaction shall not exceed twenty-five thousand dollars
6 (\$25,000) in the aggregate, regardless of the number of
7 claimants.

8 "(4) The fund shall not be liable for payments to a
9 licensee or bonding company unless the licensee or bonding
10 company was a principal party to a real estate transaction on
11 which the judgment was based.

12 "(c) (1) When any person makes application for an
13 original license as a broker or salesperson, he or she shall
14 pay, in addition to all other fees, a fee of thirty dollars
15 (\$30) for deposit in the Recovery Fund. In the event the
16 commission does not issue the license, this fee shall be
17 returned to the applicant.

18 "(2) Any salesperson licensee who has paid the
19 additional fee and who has attained a broker license and has
20 paid the additional broker fee shall be refunded, upon
21 request, one of the additional fees and no other salesperson
22 licensee shall be required to pay an additional fee upon
23 attaining broker status.

24 "(3) Payments made to the Recovery Fund in lieu of
25 bond by a licensee shall be paid only one time when he or she
26 is originally licensed by the commission.

1 "(d) When the balance remaining in the Recovery Fund
2 is less than five hundred thousand dollars (\$500,000), each
3 broker and salesperson shall on order of the commission pay a
4 fee of thirty dollars (\$30) per license for deposit in the
5 Recovery Fund. A licensee on inactive status shall not be
6 required to contribute to the fund at that time. A fee of
7 thirty dollars (\$30) shall be paid at the time a license is
8 activated.

9 "(e) (1) When an aggrieved person commences an action
10 for a judgment which may result in collection from the
11 Recovery Fund, the aggrieved person shall notify the
12 commission in writing, by certified mail, return receipt
13 requested, to this effect at the time of the commencement of
14 the action.

15 "(2) When the commission receives the notice
16 described in subdivision (e) (1), it may enter an appearance,
17 file pleadings and motions, appear at court hearings, defend
18 the action, or take whatever other action it deems appropriate
19 either on the behalf and in the name of the defendant, or in
20 its own name. The commission may also take any appropriate
21 method of review either on behalf and in the name of the
22 defendant, or in its own name. The commission may settle or
23 compromise the claim. Any expenses incurred by the commission
24 in defending, satisfying, or settling any claim shall be paid
25 from the Recovery Fund.

26 "(3) When an aggrieved person recovers a valid
27 judgment in a court of competent jurisdiction against a broker

1 or salesperson on the grounds described in subsection (a)
2 above, which occurred on or after October 1, 1979, the
3 aggrieved person may, on the termination of all proceedings,
4 including reviews and appeals in connection with the judgment,
5 file a verified claim in the court in which the judgment was
6 entered and, on 10 days' written notice to the commission, may
7 apply to the court for an order directing payment out of the
8 Recovery Fund of the amount unpaid on the judgment.

9 "(4) The court shall proceed on the application
10 immediately and, on hearing, the aggrieved person shall be
11 required to show each of the following:

12 "a. He or she is not the spouse, child, or parent of
13 the debtor, or the personal representative of the spouse,
14 child, or parent.

15 "b. He or she has obtained a judgment, as described
16 in subdivision (e)(3), stating the amount of the judgment and
17 the amount owing on the judgment at the date of the
18 application, and, that in the action, he or she had joined any
19 and all bonding companies which issued corporate surety bonds
20 to the judgment debtor as principal and all other necessary
21 parties.

22 "c. The following items, if recovered by him or her,
23 have been applied to the actual compensatory damages awarded
24 by the court:

25 "1. Any amount recovered from the judgment creditor.

26 "2. Any amount recovered from bonding companies.

1 "3. Any amount recovered in out-of-court
2 settlements.

3 "(5) The court shall order that the Recovery Fund
4 pay whatever sum it finds due under this section.

5 "(6) Should the commission pay from the Recovery
6 Fund any amount in settlement of a claim or toward
7 satisfaction of a judgment against a licensee, all licenses of
8 the licensee may be terminated by the commission. The
9 commission may refuse to issue a new license to the former
10 licensee until he or she has repaid in full, plus interest at
11 the rate of 12 percent a year, the amount paid from the
12 Recovery Fund. A discharge in bankruptcy shall not relieve a
13 person from the penalties and disabilities provided in this
14 section.

15 "(7) If the balance in the Recovery Fund is
16 insufficient to satisfy a duly authorized claim or portion of
17 a claim, the commission shall, when sufficient money has been
18 deposited in the Recovery Fund, satisfy the unpaid claims or
19 portions, plus interest at the rate of 12 percent a year in
20 the order that the claims were originally filed.

21 "(f) The sums received by the commission pursuant to
22 this section shall be deposited into the State Treasury and
23 held in a special fund to be known as the Real Estate Recovery
24 Fund, and shall be held by the commission in trust for
25 carrying out the purposes of the Recovery Fund. These sums may
26 be invested by the State Treasurer in any investments which
27 are legal for domestic life insurance companies under the laws

1 of this state. Any interest or other income from investments
2 of the Recovery Fund shall be deposited in the Real Estate
3 Commission Revenue Fund with one-half being transmitted to the
4 University of Alabama Real Estate Research and Education
5 Center and one-eighth being transmitted to the University of
6 South Alabama Center of Real Estate Studies. In the event a
7 center for real estate studies is established at Auburn
8 University, one-eighth shall also be transmitted to the Auburn
9 University real estate studies center.

10 "(g) The commission may transfer funds one time only
11 from the Real Estate Recovery Fund to the University of
12 Alabama Real Estate Research and Education Center. The amount
13 of the transfer may not reduce the Real Estate Recovery Fund
14 below six hundred thousand dollars (\$600,000).

15 "(h) When, on order of the court, the commission has
16 paid from the Recovery Fund any sum, the commission shall be
17 subrogated to all the rights of the judgment creditor, and all
18 his or her right, title, and interest in the judgment, to the
19 extent of the amount paid from the Recovery Fund, shall be
20 assigned to the commission. Any amount and interest recovered
21 by the commission on the judgment shall be deposited to the
22 fund.

23 "(i) The failure of an aggrieved person to strictly
24 comply with all of the provisions of this section shall
25 constitute a waiver of any rights under this section.

26 "(j) Each licensee shall notify the commission
27 within 10 days after notice to him or her of the institution

1 of any criminal prosecution against him or her, or of a civil
2 summons and complaint against him or her, if the subject
3 matter of the civil complaint involves a real estate
4 transaction or involves the goodwill of an existing real
5 estate business. The notification shall be in writing by
6 certified mail and shall include a copy of the summons and
7 complaint. If a criminal charge is made, it shall include the
8 specific charge made against the licensee together with a copy
9 of any indictment or information alleging the charges.

10 "(k) Each licensee shall notify the commission in
11 writing by certified mail within 10 days after he or she
12 receives notice that any criminal verdict has been rendered
13 against him or her, or that a criminal action pending against
14 him or her has been dismissed, or that a civil action in which
15 he or she was a defendant and which involved a real estate
16 transaction or the goodwill of a real estate business has
17 resulted in a judgment or been dismissed. The notification
18 shall be in writing and shall include a copy of the court
19 order or other document giving the licensee notice."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.