

By: Representative Morris

To: Judiciary B

HOUSE BILL NO. 1597
(As Passed the House)

1 AN ACT TO AMEND SECTION 73-34-7, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE NUMBER OF MEMBERS FROM THE SAME PROFESSIONAL APPRAISAL
3 ORGANIZATION WHO MAY BE APPOINTED BY THE GOVERNOR TO THE
4 MISSISSIPPI REAL ESTATE APPRAISER LICENSING AND CERTIFICATION
5 BOARD; TO AMEND SECTION 73-35-16, MISSISSIPPI CODE OF 1972, TO
6 INCREASE THE MAXIMUM AMOUNT OF PREMIUM FOR THE ERRORS AND
7 OMISSIONS INSURANCE PROGRAM OFFERED TO LICENSEES OF THE
8 MISSISSIPPI REAL ESTATE COMMISSION; TO AMEND SECTION 73-35-21,
9 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ASSOCIATE REAL ESTATE
10 BROKERS OR SALESPERSONS MAY OWN ANY LAWFULLY CONSTITUTED BUSINESS
11 ORGANIZATION FOR THE PURPOSE OF RECEIVING COMMISSIONS; TO MAKE
12 LEGISLATIVE FINDINGS REGARDING THE INTEREST ON REAL ESTATE
13 BROKERS' ACCOUNTS ACT; TO AMEND SECTIONS 73-35-103 AND 73-35-105,
14 MISSISSIPPI CODE OF 1972, TO REVISE THE INTEREST ON REAL ESTATE
15 BROKERS' ACCOUNTS ACT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 73-34-7, Mississippi Code of 1972, is
18 amended as follows:

19 73-34-7. (1) (a) There is hereby established, as an
20 adjunct board to the Mississippi Real Estate Commission, a board
21 to be known as the Mississippi Real Estate Appraiser Licensing and
22 Certification Board, which shall consist of six (6) members. Five
23 (5) members shall be appointed by the Governor, with the advice
24 and consent of the Senate, one (1) from each congressional
25 district as such district existed on January 1, 1989; the
26 Administrator of the Mississippi Real Estate Commission shall be
27 an ex officio, nonvoting member.

28 (b) The initial appointments made by the Governor shall
29 be in compliance with guidelines issued by the Federal Financial
30 Institutions Examination Council or its designee; and the
31 appointees shall serve for terms ending on December 31, 1991. Not
32 more than two (2) positions on the board shall be filled with

33 appointees who hold membership in the same professional appraisal
34 organization.

35 (c) From and after January 1, 1992, gubernatorial
36 appointments shall be made pursuant to the procedure established
37 in this paragraph (c). The five (5) members shall be appointed by
38 the Governor, with the advice and consent of the Senate, one (1)
39 from each congressional district as such district existed on July
40 1, 2004, and one (1) from the state at large. The provisions of
41 this paragraph (c) shall not affect persons who are members of the
42 Real Estate Appraiser Licensing and Certification Board as of
43 January 1, 2004. Such member shall serve out their respective
44 terms, upon the expiration of which the provisions of this
45 paragraph (c) shall take effect. Nothing provided herein shall be
46 construed as prohibiting the reappointment of any member of the
47 said board.

48 (d) At least three (3) members shall be certified
49 general real estate appraisers or at least two (2) members shall
50 be certified general real estate appraisers and one (1) member may
51 be a certified residential real estate appraiser. Not more than
52 two (2) positions on the board shall be filled with appointees who
53 hold membership in the same professional appraisal organization.
54 Of the initial appointments made pursuant to this paragraph (d),
55 two (2) shall serve for three (3) years, two (2) shall serve for
56 two (2) years and one (1) shall serve for one (1) year.
57 Thereafter, each member shall serve for a term of four (4) years.
58 Upon the expiration of a member's term, such member shall continue
59 to serve until the appointment and qualification of a successor.
60 Commencing with appointments made in 1992, no person shall be
61 appointed as a member of the board for more than two (2)
62 consecutive terms. The Governor may remove an appointed member
63 for cause.

64 (2) The board shall meet not less than twice a calendar
65 year. Written notice shall be given to each member of the time

66 and place of each meeting of the board at least ten (10) days
67 prior to the scheduled date of the meeting.

68 (3) A quorum of the board shall be three (3) voting members;
69 commencing January 1, 1992, at least one (1) present must be a
70 licensed certified general real estate appraiser or a certified
71 residential real estate appraiser. Appointed members of the board
72 are entitled to mileage and actual expenses as authorized by
73 Section 25-3-41 and per diem as provided by Section 25-3-69; ex
74 officio members are entitled to mileage and actual expenses only.

75 (4) The board shall elect a chairman and such other officers
76 as it deems necessary. Such officers shall serve as such for
77 terms established by the board.

78 **SECTION 2.** Section 73-35-16, Mississippi Code of 1972, is
79 amended as follows:

80 73-35-16. (1) The following words and phrases shall have
81 the meanings ascribed herein unless the context clearly indicates
82 otherwise:

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

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

94 (c) "Extended reporting period" means a designated
95 period of time after a claims-made policy has expired during which
96 a claim may be made and coverage triggered as if the claim had
97 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 three (3) 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-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 3. 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

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

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

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

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

242 (d) Any misleading or untruthful advertising;

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

247 (f) Failing, within a reasonable time, to account for
248 or to remit any monies coming into his possession which belong to
249 others, or commingling of monies belonging to others with his own
250 funds. Every responsible broker procuring the execution of an
251 earnest money contract or option or other contract who shall take
252 or receive any cash or checks shall deposit, within a reasonable
253 period of time, the sum or sums so received in a trust or escrow
254 account in a bank or trust company pending the consummation or
255 termination of the transaction. "Reasonable time" in this context
256 means by the close of business of the next banking day;

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

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

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

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

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

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

276 (m) Any act or conduct, whether of the same or a
277 different character than hereinabove specified, which constitutes
278 or demonstrates bad faith, incompetency or untrustworthiness, or
279 dishonest, fraudulent or improper dealing.

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

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

300 (4) In addition to the reasons specified in subsection (1)
301 of this section, the commission shall be authorized to suspend the
302 license of any licensee for being out of compliance with an order
303 for support, as defined in Section 93-11-153. The procedure for
304 suspension of a license for being out of compliance with an order
305 for support, and the procedure for the reissuance or reinstatement
306 of a license suspended for that purpose, and the payment of any
307 fees for the reissuance or reinstatement of a license suspended
308 for that purpose, shall be governed by Section 93-11-157 or
309 93-11-163, as the case may be. If there is any conflict between
310 any provision of Section 93-11-157 or 93-11-163 and any provision
311 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
312 as the case may be, shall control.

313 (5) Nothing in this chapter shall prevent an associate
314 broker or salesperson from owning any lawfully constituted
315 business organization, including, but not limited to, a
316 corporation, limited liability company or limited liability
317 partnership, for the purpose of receiving payments contemplated in
318 this chapter. The business organization shall not be required to
319 be licensed under this chapter and shall not engage in any other
320 activity requiring a real estate license.

321 **SECTION 4.** The Mississippi Legislature supports the efforts
322 of the Mississippi Association of Realtors and Mississippi Bankers
323 Association to establish a foundation dedicated to funding
324 initiatives that will increase housing opportunity in Mississippi.
325 The primary goal is to increase the supply of affordable housing

and enhance the ability of low and middle income wage earning Mississippians to achieve the American Dream of homeownership.

The IREBEA program created by this act shall be strictly voluntary. Buyers who wish to have their escrow deposits placed in an interest-bearing account for their own benefit still will be able to do so. Brokers who participate in the fund will be issued a "notice to customers" to be displayed in the lobby of their offices, announcing the program and outlining its objectives.

The Mississippi Legislature does not expect real estate licensees to obtain the express permission of clients to use interest earned from their deposits to participate in this program; it is sufficient for licensees to prominently display their notice of participation in this program by posting a sign in the lobby of their offices, announcing the program and outlining its objectives.

SECTION 5. Section 73-35-103, Mississippi Code of 1972, is amended as follows:

73-35-103. As used in Sections 73-35-101 through 73-35-105, the following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Real estate broker" or "broker" means an individual, partnership or corporation licensed pursuant to Section 73-35-1 et seq., and as defined under Section 73-35-3(1).

(b) "IREBEA" means the program created and governed by Sections 73-35-101 through 73-35-105.

(c) "Interest earnings" means the total interest earnings generated by the IREBEA at each individual financial institution.

(d) "Mississippi Housing Opportunity Foundation" means the 501(c)(3) organization created by the Mississippi Association of Realtors and Mississippi Bankers Association for the purpose of increasing the supply of affordable housing in Mississippi and

encouraging homeownership among low and middle income wage earners
with funds generated via the IREBEA program.

SECTION 6. Section 73-35-105, Mississippi Code of 1972, is
amended as follows:

73-35-105. (1) The IREBEA program shall be a voluntary
program based upon willing participation by real estate brokers,
whether proprietorships, partnerships or professional
corporations.

(2) IREBEA shall apply to all clients or customers of the
participating brokers whose funds on deposit are either nominal in
amount or to be held for a short period of time.

(3) The following principles shall apply to clients' or
customers' funds which are held by brokers who elect to
participate in IREBEA:

(a) No earnings on the IREBEA accounts may be made
available to or utilized by a broker.

(b) Upon the request of the client or customer,
earnings may be made available to the client whenever possible
upon deposited funds which are neither nominal in amount nor to be
held for a short period of time; however, traditional
broker-client or broker-customer relationships do not compel
brokers either to invest clients' or customers' funds or to advise
clients or customers to make their funds productive.

(c) Clients' or customers' funds which are nominal in
amount or to be held for a short period of time shall be retained
in an interest bearing checking or savings trust account with the
interest, less any service charge or fees, made payable at least
quarterly to the Mississippi Housing Opportunity Foundation Fund
as required in subsection (6).

(d) The broker shall select in writing that the
Mississippi Housing Opportunity Foundation shall be the
beneficiary of such fund for the interest earnings on such
fund. * * *

391 (e) The determination of whether clients' or customers'
392 funds are nominal in amount or to be held for a short period of
393 time rests in the sound judgment of each broker, and no charge of
394 ethical impropriety or other breach of professional conduct shall
395 attend a broker's exercise of judgment in that regard.

396 (f) Notification to clients or customers whose funds
397 are nominal in amount or to be held for a short period of time is
398 unnecessary for those brokers who choose to participate in the
399 program. Participation in the IREBEA program is accomplished by
400 the broker's written notification to an authorized financial
401 institution. That communication shall contain an expression of
402 the broker's desire to participate in the program and, if the
403 institution has not already received appropriate notification,
404 advice regarding the Internal Revenue Service's approval of the
405 taxability of earned interest or dividends to the Mississippi
406 Housing Opportunity Foundation Fund.

407 (4) The following principles shall apply to those clients'
408 or customers' funds held in trust accounts by brokers who elect
409 not to participate in IREBEA:

410 (a) No earnings from the funds may be made available to
411 any broker.

412 (b) Upon the request of a client or customer, earnings
413 may be made available to the client or customer whenever possible
414 upon deposited funds which are neither nominal in amount nor to be
415 held for a short period of time; however, traditional
416 broker-client or broker-customer relationships do not compel
417 brokers either to invest clients' or customers' funds or to advise
418 clients or customers to make their funds productive.

419 (c) Clients' or customers' funds which are nominal in
420 amount or to be held for short periods of time, and for which
421 individual income generation allocation is not arranged with a
422 financial institution, shall be retained in a noninterest-bearing
423 demand trust account.

(d) The determination of whether clients' or customers' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each broker, and no charge of ethical impropriety or other breach of professional conduct shall attend a broker's exercise of judgment in that regard.

(5) The corpus and interest earnings from the Mississippi Housing Opportunity Foundation Fund shall be expended solely for the following purposes when allowed under Section 501(c)(3) of the Internal Revenue Code;

(a) Increase affordable housing opportunities in Mississippi by all necessary and proper means;

(b) Promote the availability of affordable, adequate, safe and decent housing to the citizens of Mississippi;

(c) Support education and research in housing issues, problems and opportunities;

(d) Provide technical assistance to groups seeking to deal with housing issues and needs;

(e) Engage in activities intended to enhance the ability of Mississippi citizens to secure housing;

(f) Provide financial resources to organizations that encourage homeownership opportunities for moderate, low and very low income individuals and families.

(6) All funds received from the IREBEA program shall be deposited with the Mississippi Housing Opportunity Foundation Fund quarterly. A separate accounting shall be made annually for all funds received. The corpus from the previous Real Estate Endowment Fund authorized under this act may be disbanded and distributed for use by the educational institution holding the funds at its discretion. The program authorized in subsection (5) and the budget therefore shall be approved by a board of directors. The board shall consist of four (4) representatives appointed by the Mississippi Association of Realtors and three (3) appointed by the Mississippi Bankers Association. This

457 legislation shall only allow for this project to be performed.
458 However, the Mississippi Housing Opportunity Foundation and their
459 attorney(s) shall be responsible for complying with all federal
460 and state laws and regulations, including, but not limited to, any
461 necessary IRS code provisions.

462 (7) The educational programs authorized in subsection (5)
463 and the budget therefor shall be approved by a board of
464 directors * * *. The board shall consist of four (4)
465 representatives appointed by the Mississippi Association of
466 Realtors and three (3) appointed by the Mississippi Bankers
467 Association.

468 (8) The Mississippi Real Estate Commission shall adopt
469 appropriate and necessary rules in compliance with the provisions
470 of Sections 73-35-101 through 73-35-105.

471 **SECTION 7.** This act shall take effect and be in force from
472 and after July 1, 2004.