

By: Representatives Morris, Whittington,  
 Scott, McBride, Formby, Bailey, Banks,  
 Barnett, Blackmon, Broomfield, Brown, Buck,  
 Burnett, Calhoun, Chism, Clark, Clarke,  
 Coleman (29th), Coleman (65th), Cummings,  
 Davis, Dedeaux, Ellis, Evans, Flaggs, Fredericks, Gadd, Gibbs, Green,  
 Guice, Gunn, Harrison, Hines, Holloway, Huddleston, Hudson, Mayo,  
 Middleton, Montgomery, Moss, Myers, Nicholson, Perkins, Reynolds,  
 Robinson (63rd), Smith (27th), Thomas, Watson, Wells-Smith, West, Young

To: Judiciary B

HOUSE BILL NO. 1637

1 AN ACT TO AMEND SECTIONS 73-35-103 AND 73-35-105, MISSISSIPPI  
 2 CODE OF 1972, TO REVISE THE INTEREST ON REAL ESTATE BROKERS'  
 3 ACCOUNTS ACT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 73-35-103, Mississippi Code of 1972, is  
 6 amended as follows:

7 73-35-103. As used in Sections 73-35-101 through 73-35-105,  
 8 the following terms shall have the meanings ascribed herein unless  
 9 the context clearly indicates otherwise:

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

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

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

18 (d) "Mississippi Housing Opportunity Foundation" means  
 19 the 501(c)(3) organization created by the Mississippi Association  
 20 of Realtors and Mississippi Bankers Association for the purpose of  
 21 increasing the supply of affordable housing in Mississippi and  
 22 encouraging homeownership among low and middle income wage earners  
 23 with funds generated via the IREBEA program.

24 **SECTION 2.** Section 73-35-105, Mississippi Code of 1972, is  
 25 amended as follows:

26 73-35-105. (1) The IREBEA program shall be a voluntary  
 27 program based upon willing participation by real estate brokers,

28 whether proprietorships, partnerships or professional  
29 corporations.

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

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

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

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

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

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

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

60 (f) Notification to clients or customers whose funds  
61 are nominal in amount or to be held for a short period of time is  
62 unnecessary for those brokers who choose to participate in the  
63 program. Participation in the IREBEA program is accomplished by  
64 the broker's written notification to an authorized financial  
65 institution. That communication shall contain an expression of  
66 the broker's desire to participate in the program and, if the  
67 institution has not already received appropriate notification,  
68 advice regarding the Internal Revenue Service's approval of the  
69 taxability of earned interest or dividends to the Mississippi  
70 Housing Opportunity Foundation Fund.

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

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

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

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

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

93 (5) Interest earnings from the Mississippi Housing  
94 Opportunity Foundation Fund shall be expended solely for the  
95 following purposes when allowed under Section 501(c)(3) of the  
96 Internal Revenue Code;

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

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

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

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

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

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

110 (6) All funds received from the IREBEA program shall be  
111 deposited with the Mississippi Housing Opportunity Foundation Fund  
112 quarterly. A separate accounting shall be made annually for all  
113 funds received. Only interest earnings from the corpus may be  
114 spent for the purposes in subsection (5) above.

115 (7) The educational programs authorized in subsection (5)  
116 and the budget therefor shall be approved by a board of  
117 directors \* \* \*. The board shall consist of four (4)  
118 representatives appointed by the Mississippi Association of  
119 Realtors and three (3) appointed by the Mississippi Bankers  
120 Association.

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

124 **SECTION 3.** This act shall take effect and be in force from  
125 and after July 1, 2004.