

By: Senator(s) Hewes, Michel

To: Business and Financial  
Institutions

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2463

1 AN ACT TO AMEND SECTION 73-35-16, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE MAXIMUM AMOUNT OF PREMIUM FOR THE ERRORS AND  
3 OMISSIONS INSURANCE PROGRAM OFFERED TO LICENSEES OF THE  
4 MISSISSIPPI REAL ESTATE COMMISSION; AND FOR RELATED PURPOSES.

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

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

8 73-35-16. (1) The following words and phrases shall have  
9 the meanings ascribed herein unless the context clearly indicates  
10 otherwise:

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

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

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

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

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

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

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

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

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

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

47           (b) Any partnership (optional); or

48           (c) Any corporation (optional).

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

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

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

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

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

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

65 (d) Limits apply per licensee per claim;

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

68 (f) Maximum deductible is One Thousand Dollars  
69 (\$1,000.00) per licensee per claim for defense costs; and

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

72 (6) (a) The maximum contract period between the insurance  
73 carrier and the commission is to be three (3) consecutive policy  
74 terms, after which time period the commission shall place the  
75 insurance out for competitive bid. The commission shall reserve  
76 the right to place the contract out for bid at the end of any  
77 policy period.

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

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

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

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

90 (iii) If the licensee was not carrying errors and  
91 omissions insurance on July 1, 1994, the individual certificate  
92 shall be issued with a retroactive date of July 1, 1994. This

93 date shall not be advanced if the insurance carriers are changed  
94 in the future.

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

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

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

109 (e) If the commission is unable to obtain errors and  
110 omissions insurance coverage to insure all licensees who choose to  
111 participate in the insurance program at a premium of no more than  
112 Two Hundred Dollars (\$200.00) per twelve-months' policy period,  
113 the requirement of insurance coverage under this section shall be  
114 void during the applicable contract period.

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

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

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

122 (c) The deductible is not more than Two Thousand Five  
123 Hundred Dollars (\$2,500.00) per licensee per claim for damages and  
124 the deductible is not more than One Thousand Dollars (\$1,000.00)  
125 per licensee per claim for defense costs; and

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

131           (8) The following provisions apply to individual licensees:

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

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

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

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

151           **SECTION 2.** This act shall take effect and be in force from  
152 and after July 1, 2004.