

By: Senator(s) Hewes, Michel

To: Business and Financial Institutions

SENATE BILL NO. 2605

1 AN ACT TO AMEND SECTIONS 73-35-103 AND 73-35-105, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT INTEREST EARNED ON REAL ESTATE
3 BROKERS' ESCROW ACCOUNTS SHALL BE MADE PAYABLE TO THE MISSISSIPPI
4 HOUSING OPPORTUNITY FOUNDATION; TO PROVIDE THE PURPOSES FOR WHICH
5 THE INTEREST EARNINGS MAY BE EXPENDED; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

28 73-35-105. (1) The IREBEA program shall be a voluntary
29 program based upon willing participation by real estate brokers,
30 whether proprietorships, partnerships or professional
31 corporations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

98 (a) To increase affordable housing opportunities in
99 Mississippi by all necessary and proper means;

100 (b) To promote the availability of affordable,
101 adequate, safe and decent housing to the citizens of the State of
102 Mississippi;

103 (c) To support education and research in housing
104 issues, problems and opportunities;

105 (d) To provide technical assistance to groups seeking
106 to deal with housing issues and needs;

107 (e) To engage in activities intended to enhance the
108 ability of Mississippi citizens to secure housing;

109 (f) To provide financial resources to organizations
110 that encourage homeownership opportunities for moderate, low and
111 very low income individuals and families; however, interest
112 earnings from the Mississippi Housing Opportunity Foundation Fund
113 shall not be used to provide or supplement any down payment which
114 exceeds twenty percent (20%) of the value of the house, nor to
115 assist in the purchase of any house the value of which exceeds One
116 Hundred Thousand Dollars (\$100,000.00).

117 (6) All funds received from the IREBEA program shall be
118 deposited with the Mississippi Housing Opportunity Foundation Fund
119 quarterly. A separate accounting shall be made annually for all
120 funds received. Only interest earnings from the corpus may be
121 spent for the purposes in subsection (5) above.

122 (7) The program authorized in subsection (5) and the budget
123 therefor shall be approved by a board of directors * * *. The
124 board shall consist of four (4) representatives appointed by the
125 Mississippi Association of Realtors and three (3) appointed by the
126 Mississippi Bankers Association.

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

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