

**Adopted
AMENDMENT NO 1 PROPOSED TO**

House Bill No. 1597

BY: Representatives Bailey, Snowden, Morris

1 **AMEND** by striking Sections 2 and 4 in their entirety and by
2 renumbering succeeding sections.

3 **AMEND further** by striking Sections 6 and 7 in their entirety
4 and inserting the following in lieu thereof and renumbering
5 succeeding sections:

6 "**SECTION 6.** The Mississippi Legislature supports the efforts
7 of the Mississippi Association of Realtors and Mississippi Bankers
8 Association to establish a foundation dedicated to funding
9 initiatives that will increase housing opportunity in Mississippi.
10 The primary goal is to increase the supply of affordable housing
11 and enhance the ability of low and middle income wage earning
12 Mississippians to achieve the American Dream of homeownership.

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

19 The Mississippi Legislature does not expect real estate
20 licensees to obtain the express permission of clients to use
21 interest earned from their deposits to participate in this

22 program; it is sufficient for licensees to prominently display
23 their notice of participation in this program by posting a sign in
24 the lobby of their offices, announcing the program and outlining
25 its objectives.

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

28 73-35-103. As used in Sections 73-35-101 through 73-35-105,
29 the following terms shall have the meanings ascribed herein unless
30 the context clearly indicates otherwise:

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

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

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

39 (d) "Mississippi Housing Opportunity Foundation" means
40 the 501(c)(3) organization created by the Mississippi Association
41 of Realtors and Mississippi Bankers Association for the purpose of
42 increasing the supply of affordable housing in Mississippi and
43 encouraging homeownership among low and middle income wage earners
44 with funds generated via the IREBEA program.

45 **SECTION 8.** Section 73-35-105, Mississippi Code of 1972, is
46 amended as follows:

47 73-35-105. (1) The IREBEA program shall be a voluntary
48 program based upon willing participation by real estate brokers,
49 whether proprietorships, partnerships or professional
50 corporations.

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

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

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

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

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

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

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

81 (f) Notification to clients or customers whose funds
82 are nominal in amount or to be held for a short period of time is
83 unnecessary for those brokers who choose to participate in the
84 program. Participation in the IREBEA program is accomplished by
85 the broker's written notification to an authorized financial

86 institution. That communication shall contain an expression of
87 the broker's desire to participate in the program and, if the
88 institution has not already received appropriate notification,
89 advice regarding the Internal Revenue Service's approval of the
90 taxability of earned interest or dividends to the Mississippi
91 Housing Opportunity Foundation Fund.

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

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

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

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

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

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

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

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

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

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

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

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

131 (6) All funds received from the IREBEA program shall be
132 deposited with the Mississippi Housing Opportunity Foundation Fund
133 quarterly. A separate accounting shall be made annually for all
134 funds received. The corpus from the previous Real Estate
135 Endowment Fund authorized under this act may be disbanded and
136 distributed for use by the educational institution holding the
137 funds at its discretion. The program authorized in subsection (5)
138 and the budget therefore shall be approved by a board of
139 directors. The board shall consist of four (4) representatives
140 appointed by the Mississippi Association of Realtors and three (3)
141 appointed by the Mississippi Bankers Association. This
142 legislation shall only allow for this project to be performed.
143 However, the Mississippi Housing Opportunity Foundation and their
144 attorney(s) shall be responsible for complying with all federal
145 and state laws and regulations including, but not limited to, any
146 necessary IRS code provisions.

147 (7) The educational programs authorized in subsection (5)
148 and the budget therefor shall be approved by a board of
149 directors * * *. The board shall consist of four (4)

150 representatives appointed by the Mississippi Association of
151 Realtors and three (3) appointed by the Mississippi Bankers
152 Association.

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

156 **AMEND further** the title to conform.