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 Barnett, Blackmon, Broomfield, Brown, Buck,
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 Middleton, Montgomery, Moss, Myers, Nicholson, Perkins, Reynolds,
 Robinson (63rd), Smith (27th), Thomas, Watson, Wells-Smith, West, Young

To: Judiciary B

COMMITTEE SUBSTITUTE
 FOR
 HOUSE BILL NO. 1637

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

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

7 **SECTION 1.** The Mississippi Legislature supports the efforts
 8 of the Mississippi Association of Realtors and Mississippi Bankers
 9 Association to establish a foundation dedicated to funding
 10 initiatives that will increase housing opportunity in Mississippi.
 11 The primary goal is to increase the supply of affordable housing
 12 and enhance the ability of low and middle income wage earning
 13 Mississippians to achieve the American Dream of homeownership.

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

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

27 **SECTION 2.** Section 73-35-103, Mississippi Code of 1972, is
 28 amended as follows:

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

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

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

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

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

46 **SECTION 3.** Section 73-35-105, Mississippi Code of 1972, is
47 amended as follows:

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

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

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

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

60 (b) Upon the request of the client or customer,
61 earnings may be made available to the client whenever possible

62 upon deposited funds which are neither nominal in amount nor to be
63 held for a short period of time; however, traditional
64 broker-client or broker-customer relationships do not compel
65 brokers either to invest clients' or customers' funds or to advise
66 clients or customers to make their funds productive.

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

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

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

82 (f) Notification to clients or customers whose funds
83 are nominal in amount or to be held for a short period of time is
84 unnecessary for those brokers who choose to participate in the
85 program. Participation in the IREBEA program is accomplished by
86 the broker's written notification to an authorized financial
87 institution. That communication shall contain an expression of
88 the broker's desire to participate in the program and, if the
89 institution has not already received appropriate notification,
90 advice regarding the Internal Revenue Service's approval of the
91 taxability of earned interest or dividends to the Mississippi
92 Housing Opportunity Foundation Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (7) The educational programs authorized in subsection (5)
149 and the budget therefor shall be approved by a board of
150 directors * * *. The board shall consist of four (4)
151 representatives appointed by the Mississippi Association of
152 Realtors and three (3) appointed by the Mississippi Bankers
153 Association.

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

157 **SECTION 4.** This act shall take effect and be in force from
158 and after July 1, 2004.