

By: Senator(s) Hewes, Michel

To: Business and Financial
Institutions

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

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

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

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

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

(e) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a premium of no more than Two Hundred Fifty Dollars (\$250.00) per twelve-months' policy period, the requirement of insurance coverage under this section shall be void during the applicable contract period.

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

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

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

(c) The deductible is not more than Two Thousand Five Hundred Dollars (\$2,500.00) per licensee per claim for damages and the deductible is not more than One Thousand Dollars (\$1,000.00) 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.