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To: Judiciary B

HOUSE BILL NO. 848

1 AN ACT TO PROVIDE FOR THE LICENSURE AND REGULATION OF HOME
 2 INSPECTORS; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE
 3 ADMINISTRATION OF THE ACT BY THE MISSISSIPPI REAL ESTATE
 4 COMMISSION; TO CREATE A HOME INSPECTOR REGULATORY BOARD; TO
 5 PRESCRIBE THE QUALIFICATIONS FOR A LICENSE; TO REQUIRE ALL HOME
 6 INSPECTORS TO CARRY GENERAL LIABILITY INSURANCE AND ERRORS AND
 7 OMISSIONS INSURANCE; TO PROVIDE CERTAIN LIABILITY PROTECTIONS; TO
 8 PROVIDE STANDARDS OF PRACTICE AND CODE OF ETHICS; TO PROVIDE
 9 EXEMPTIONS FROM THE ACT; TO PROVIDE CONTINUING EDUCATION
 10 REQUIREMENTS BEFORE RENEWAL OF A LICENSE; TO PROVIDE RECIPROCITY
 11 FOR NONRESIDENT HOME INSPECTORS; TO PROHIBIT THE UNLICENSED
 12 PRACTICE OF HOME INSPECTION AND PROVIDE CIVIL PENALTIES THEREFOR;
 13 TO PROVIDE FEE REQUIREMENTS FOR HOME INSPECTORS LICENSE AND CREATE
 14 THE HOME INSPECTORS LICENSE FUND; TO PROVIDE FOR DISCIPLINARY
 15 PROCEEDINGS; TO REQUIRE THE MISSISSIPPI REAL ESTATE COMMISSION TO
 16 MAINTAIN A ROSTER OF LICENSEES; TO ALLOW CERTAIN PERSONS ALREADY
 17 ENGAGED IN THE BUSINESS OF HOME INSPECTIONS TO QUALIFY FOR A
 18 LICENSE WITHOUT EXAMINATION; TO AUTHORIZE THE BOARD TO EMPLOY
 19 LEGAL COUNSEL WHEN NECESSARY; AND FOR RELATED PURPOSES.

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

21 SECTION 1. The following words shall have the meaning
 22 ascribed in this section unless the context clearly indicates
 23 otherwise:

24 (a) "Client" means any person who engages or seeks to
 25 engage the services of a home inspector for the purpose of
 26 obtaining an inspection of and written report on the conditions of
 27 a residential building.

28 (b) "Home inspection" means the process by which a home
 29 inspector examines the observable systems and components of
 30 improvements to residential real property that are readily
 31 accessible.

32 (c) "Home inspection report" means a written evaluation
 33 prepared and issued by a home inspector concerning the condition
 34 of the improvements to residential real property.

35 (d) "Home inspector" means any person, who for
36 compensation, conducts a home inspection.

37 (e) "Board" means the Home Inspector Regulatory Board
38 that is created pursuant to the provisions of this chapter.

39 (f) "Residential real property" means a structure
40 intended to be, or that is in fact, used as a residence and
41 consisting of one (1) to four (4) family dwelling units.

42 (g) "Commission" means the Mississippi Real Estate
43 Commission as established under Section 73-35-5, Mississippi Code
44 of 1972.

45 SECTION 2. This act shall be administered and enforced by
46 the Mississippi Real Estate Commission, which shall have the
47 duties and powers to:

48 (a) Receive applications for licensure as a home
49 inspector under this chapter, establish appropriate administrative
50 procedures for the processing of applications and issue licenses
51 to qualified applicants pursuant to the provisions of this
52 chapter;

53 (b) Implement recommendations made to the commission by
54 the Home Inspector Regulatory Board with respect to upgrading and
55 improving the experience, education and examination requirements
56 that are required for a home inspector license;

57 (c) Adopt and publish a code of ethics and standards of
58 practice for persons licensed under this act;

59 (d) Collect all licensing fees required or permitted by
60 this chapter;

61 (e) Take appropriate action upon a decision and the
62 related findings of fact made by the board if, after an
63 administrative hearing, the board (i) determines that a license
64 home inspector under this chapter has violated the code of ethics
65 and standards established under this section and (ii) recommends
66 that the license of the home inspector be suspended or revoked,

67 that renewal be denied, or that some other disciplinary action be
68 taken;

69 (f) Develop and adopt a licensing examination, which
70 would meet nationally recognized standards, to determine the
71 knowledge of an applicant of the home inspector profession;

72 (g) Solicit bids and enter into contracts with one or
73 more educational testing services or organizations approved by the
74 board for the preparation of questions and answers for licensure
75 examinations under this chapter;

76 (h) Develop the application and license forms;

77 (i) Adopt rules and regulations for the administration
78 of this chapter that are not inconsistent with the provisions of
79 this chapter or the Constitution and laws of Mississippi or of the
80 United States;

81 (j) Employ an assistant to the commission administrator
82 who shall keep a record of all proceedings, transactions,
83 communications and official acts of the commission and board and
84 perform such other duties as the commission and board may require;
85 and

86 (k) Employ such other staff and technical assistance as
87 may be necessary to properly administer the requirements of this
88 chapter.

89 SECTION 3. (1) There is hereby created, as an adjunct board
90 to the Mississippi Real Estate Commission, a board to be known as
91 the Home Inspector Regulatory Board, which shall consist of five
92 (5) members appointed by the Governor, with the advice and consent
93 of the Senate, to include representatives from each congressional
94 district and shall consist of licensed home inspectors.

95 (2) The Home Inspector Regulatory Board shall advise the
96 commission or its designee on all matters relating to this act.
97 The board shall meet no less than four (4) times annually and
98 shall be reimbursed for expenses on a per diem basis pursuant to
99 state law.

100 SECTION 4. (1) The Home Inspectors Regulatory Board shall
101 have the duties and powers to:

102 (a) Be responsible for matters relating to home
103 inspectors code of ethics and standards, home inspector
104 qualifications, testing standards and disciplinary functions.

105 (b) Hold meetings, public hearings and administrative
106 hearings and prepare examination specifications for licensed home
107 inspectors.

108 (c) Conduct investigations, subpoena individuals and
109 records, administer oaths, take testimony and receive evidence and
110 to do all other things necessary and proper to discipline a person
111 licensed under this act and to enforce this act. In case of
112 contumacy by, or refusal to obey a subpoena issued to, any person,
113 the Chancery Court of the First Judicial District of Hinds County,
114 Mississippi, upon application by the commission, may issue to this
115 person an order requiring him to appear before the commission, or
116 the officer designated by him, there to produce documentary
117 evidence if so ordered or to give evidence touching the matter
118 under investigation or in question. Failure to obey the order of
119 the court may be punished by the court as contempt of court.

120 (d) Further define by regulation, the type of
121 educational experience, home inspector experience and equivalent
122 experience that will meet the statutory requirements.

123 (e) Recommend suspension or revocation of licenses
124 pursuant to the disciplinary proceedings provided for in this
125 chapter.

126 (f) Present an annual budget to the Mississippi
127 Legislature for approval. A copy of the budget shall be given to
128 the commission.

129 (2) The members of the commission and board shall be immune
130 from any civil action or criminal prosecution for initiating or
131 assisting in any lawful investigation of the actions of, or
132 participating in any disciplinary proceeding concerning, a home

133 inspector licensed pursuant to this chapter, provided that such
134 action is taken without malicious intent and in the reasonable
135 belief that the action was taken pursuant to the powers and duties
136 vested in the members of the commission and board under this
137 chapter.

138 SECTION 5. (1) No person may engage in or transact any home
139 inspection business, or hold himself out to the public as a home
140 inspector, or offer to engage in or transact any home inspection
141 business in this state unless the person is licensed by the
142 commission.

143 (2) No license shall be issued under the provisions of this
144 act to a partnership, association, corporation, limited liability
145 company or partnership, firm or group. However, nothing in this
146 act precludes a licensed home inspector from performing home
147 inspection for and on behalf of a partnership, association,
148 corporation, limited liability company or partnership, firm or
149 group or from entering into contracts or enforcing contracts as
150 partnership, association, corporation, limited liability company
151 or partnership, firm or group.

152 SECTION 6. (1) An application for an original license shall
153 be made in writing to the commission on forms as the commission
154 may prescribe and shall be accompanied by the required fee and
155 proof of liability insurance and errors and omissions insurance.

156 (2) To qualify for a license under this act, a person shall:

157 (a) Have successfully completed high school or its
158 equivalent;

159 (b) Be at least twenty-one (21) years of age;

160 (c) Have successfully completed an approved course of
161 study of at least sixty (60) hours that may include field work as
162 prescribed by the commission;

163 (d) Have passed an examination as prescribed by the
164 commission; and

165 (e) Provide a certificate of insurance for errors and
166 omissions and general liability insurance (in the required
167 amounts) pursuant to Section 8 of this act.

168 (3) The commission must review each application for a
169 license submitted to it and must notify each applicant that the
170 application is either accepted or rejected. The commission must
171 send notification of acceptance or rejections to the applicant at
172 the address provided by the applicant in the application within
173 thirty (30) days of receiving the application. If the application
174 is rejected, the notice sent to the applicant must state the
175 reasons for the rejection.

176 SECTION 7. (1) All home inspectors are required to carry
177 general liability insurance and errors and omissions insurance.

178 (2) Such policy and certificates shall provide that
179 cancellation or nonrenewal of the policy shall not be effective
180 unless and until at least ten (10) days notice of cancellation or
181 nonrenewal has been received in writing by the commission.

182 (3) Insurance coverage limits shall be no less than One
183 Hundred Thousand Dollars (\$100,000.00) for general liability and
184 no less than One Hundred Thousand Dollars (\$100,000.00) for errors
185 and omissions, per occurrence.

186 SECTION 8. (1) An action by a client to recover damages for
187 any act or omission of a home inspector relating to a home
188 inspection that he conducts shall be commenced within one (1) year
189 after the date a home inspection is completed or the action shall
190 be barred. Further, a licensed home inspector shall not be liable
191 for any latent defects that may be contained in the observable
192 systems and components of improvements to residential real
193 property that he has inspected and has issued a home inspection
194 report.

195 (2) Any professional who is licensed by the State of
196 Mississippi when acting within the scope of his profession and is
197 not a licensed home inspector shall not be liable for the

198 findings, errors, or omissions of the home inspection, provided
199 that he has not provided physical work on the residential
200 building; has not committed proven fraud in the real estate
201 transaction; and has no personal or financial interest in the
202 ownership of the residential building.

203 (3) Any person who in good faith or intention recommends or
204 endorses a home inspector without compensation, remuneration,
205 rebate, or any other form of consideration shall not be liable for
206 the actions of that home inspector, including errors, omissions,
207 failure to perform any contracted duties of a home inspection, or
208 failure to meet the standards of practice, report writing
209 standards, or code of ethics.

210 SECTION 9. (1) A licensed home inspector is required to
211 follow the Standards of Practice and Code of Ethics as adopted and
212 published by the commission.

213 (2) A home inspection report must be issued by a home
214 inspector to a client as specified in the Standards of Practice.

215 SECTION 10. The requirements of this act shall not prevent
216 the following from performing a visual inspection of a home that
217 is within the scope of their license without further license from
218 the board: specialty contractor, general contractor, architect,
219 engineer, insurance adjuster, individual employed by a
220 governmental entity, person employed by a bank, savings and loan
221 or credit union, licensed real estate broker or salesperson, a
222 licensed appraiser or a home builder.

223 SECTION 11. A license under this act shall expire two (2)
224 years after its date of issuance. The commission may issue a
225 renewal license without examination, on submission of a completed
226 renewal application, payment of the required license renewal fee,
227 and successful completion of continuing education requirements.

228 SECTION 12. (1) Each person who applies for renewal of his
229 license shall successfully complete home inspector continuing
230 education courses approved by the commission at the rate of twenty

231 (20) hours every two (2) years. No license may be renewed except
232 upon the successful completion of the required courses or their
233 equivalent or upon a waiver of those requirements for good cause
234 shown as determined by the commission pursuant to rule with the
235 recommendation of the regulatory board.

236 (2) The commission shall establish criteria for certifying
237 providers of continuing education for home inspectors. All such
238 continuing education providers must be approved by the commission.

239 (3) Each renewal applicant shall certify, on his or her
240 renewal application, full compliance with continuing education
241 requirements. The provider of approval of continuing education
242 shall retain and submit to the commission, after the completion of
243 each course, evidence of those successfully completing the course.

244 SECTION 13. A home inspector license may be issued to a home
245 inspector who satisfies one of the following requirements: (a)
246 holds a valid certificate of certification, registration or home
247 inspector license in good standing issued by another state, which
248 has requirements for licensure substantially identical to those of
249 this state, or (b) has passed the examination offered by the
250 American Society of Home Inspectors or the National Association of
251 Home Inspectors.

252 SECTION 14. (1) On or after July 1, 2001, any person who
253 acts as a home inspector, or holds himself out as a home
254 inspector, without being licensed under this act, shall, in
255 addition to any other penalty provided by law, be liable for an
256 administrative fine not to exceed One Thousand Dollars (\$1,000.00)
257 for a first offense and not to exceed Five Thousand Dollars
258 (\$5,000.00) for a second or subsequent offense as determined by
259 the commission.

260 (2) A home inspector who does not have a license as required
261 by this act may not bring any action either at law or in equity to
262 enforce the provisions of any contract for home inspection.

263 (3) The commission has the authority and power to
264 investigate any and all unlicensed activity.

265 (4) No licensed home inspector may perform repairs on a
266 residential building as part of or result of the home inspection.

267 (5) No person licensed under this section shall offer to
268 perform or perform inspection services on new construction for a
269 fee without having first obtained a residential home builders
270 license from the Mississippi Board of Contractors and
271 certification by the Southern Building Code Congress or any other
272 national professional code organization.

273 SECTION 15. The commission shall charge and collect
274 appropriate fees for its services under this chapter. The fees
275 charged shall not exceed the amounts indicated below and shall be
276 set by the board.

277 **LICENSURE FEES:**

278 Application and examination.....\$175.00
279 Initial and renewal license.....\$325.00
280 Delinquent renewal penalty.....100% of renewal fee

281 **SERVICES:**

282 For each change of address.....\$25.00
283 For each duplicate license.....\$25.00
284 To change status as a licensee from active to inactive.\$25.00
285 For each bad check received by the commission.....\$25.00

286 All fees charged and collected under this chapter shall be
287 paid by the commission at least once a week, accompanied by a
288 detailed statement thereof, to the credit of the fund known as the
289 "Home Inspector License Fund," hereby created in the State
290 Treasury. All monies which are collected under this chapter shall
291 be paid into and credited to such fund for the use of the board in
292 carrying out the provisions of the chapter including the payment
293 of salaries and expenses, printing an annual directory of
294 licensees, and for educational purposes. All interest earned on
295 the Home Inspector License Fund shall be retained by the board for

296 purposes consistent with this chapter. The commission shall
297 submit a monthly statement to the board detailing any expenses
298 which it bears as a share in the expense of administering this
299 chapter, for which expenses it shall be reimbursed in the amount
300 approved by the board. The commission shall prepare an annual
301 statement of income and expenses related to its regulatory related
302 administrative function.

303 SECTION 16. The commission may refuse to issue or to renew
304 or may revoke or suspend a license or may place on probation,
305 censure, reprimand, or take other disciplinary action with regard
306 to any license issued under this act, including the issuance of
307 fines for each violation, for any one (1) or combination of the
308 following causes:

309 (a) Violations of this act or the commission's rules
310 promulgated pursuant hereto;

311 (b) Violation of terms of license probation;

312 (c) Conviction of a felony or making a plea of guilty
313 or nolo contendere within five (5) years prior to the date of
314 application;

315 (d) Operating without adequate insurance coverage
316 required for licensees; and

317 (e) Fraud in the procurement or performance of a
318 contract to conduct a home inspection.

319 SECTION 17. (1) The commission may investigate the actions
320 of an applicant or of a person holding or claiming to hold a
321 license upon complaint in writing of any person setting forth
322 facts which, if proved, would constitute a violation of this act
323 or rules promulgated hereunder.

324 (2) Whenever it appears to the commission that any person
325 has engaged or is about to engage in any act or practice
326 constituting a violation of any provision of this act or any rule
327 or order hereunder, they may, in their discretion, seek any or all
328 of the following remedies:

329 (a) When in the public interest to prevent harm to the
330 welfare and safety of the public, issue a cease and desist order,
331 with or without a prior hearing against the person or persons
332 engaged in the prohibited activities, directing them to cease and
333 desist from further illegal activity; or

334 (b) Bring an action in chancery court to enjoin the
335 acts or practices to enforce compliance with this chapter or any
336 rule or order hereunder. Upon a proper showing a permanent or
337 temporary injunction, restraining order or writ of mandamus shall
338 be granted and a receiver or conservator may be appointed for the
339 defendant or the defendant's assets.

340 (3) With the exception of actions authorized by subsection
341 (2)(a) and (b) above, the commission shall, before taking any
342 disciplinary action that it may deem proper with regard to a
343 license, at least twenty (20) days prior to the date set for a
344 hearing, notify the applicant or licensee in writing of any
345 charges made and the time and place for a hearing of the charges.
346 Such written notice may be served by personal delivery or
347 certified or registered mail at the licensee's last known address
348 as reflected on their licensing application.

349 (4) The commission shall, after a hearing, issue an order
350 either issuing, renewing, refusing to issue or renew, reinstating,
351 or revoking the license.

352 SECTION 18. (1) Upon the revocation or suspension of a
353 license, the licensee shall immediately surrender the license to
354 the commission. If the licensee fails to do so, the commission
355 shall have the right to seize the license.

356 (2) If circumstances of suspension or revocation so
357 indicate, the commission may require an examination of the
358 licensee before restoring his license.

359 SECTION 19. The commission shall maintain a roster of names
360 and addresses of all licenses and of all persons whose licenses
361 have been suspended or revoked. This roster shall be published on

362 a web site designated by the commission. All licensees under this
363 act shall inform the commission of any change in their business or
364 home address.

365 SECTION 20. A person already engaged in the business of
366 performing home inspections on July 1, 2001, is allowed ninety
367 (90) days from July 1, 2001, to comply with the provisions of this
368 act for the purpose of qualifying to perform home inspections.
369 Such person will qualify for a license without being required to
370 take an examination if he can document to the satisfaction of the
371 commission that he has conducted not less than twenty (20)
372 fee-paid home inspections in the previous twelve (12) months or
373 one hundred (100) fee-paid home inspections over his career.

374 SECTION 21. The information contained in or filed with any
375 registration application or renewal application is subject to
376 public disclosure. Information in the possession of, submitted to
377 or obtained by the commission in connection with any investigation
378 or examination under this act shall be confidential and exempt
379 from the requirements of the Mississippi Public Records Act of
380 1983. No such information may be disclosed by the commission or
381 its employees unless necessary or appropriate in connection with a
382 particular investigation or proceeding under this act or for any
383 law enforcement purpose, in the absence of an order of a court of
384 competent jurisdiction requiring such disclosure.

385 SECTION 22. Any condition, stipulation or provision binding
386 any person engaging the services of a home inspector to waive
387 compliance with any provision of this act or any rule or order
388 hereunder is void.

389 SECTION 23. The board may employ legal counsel to represent
390 it in any proceedings when legal counsel is required.

391 SECTION 24. This act shall take effect and be in force from
392 and after July 1, 2001.