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(17th), Smith (27th), Straughter, Taylor, Thomas, Watson, West,
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To: Judiciary B

HOUSE BILL NO. 848
(As Passed the House)

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.

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

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

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

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

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

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

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

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

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

(e) Take appropriate action upon a decision and the related findings of fact made by the board if, after an administrative hearing, the board (i) determines that a license home inspector under this chapter has violated the code of ethics and standards established under this section and (ii) recommends 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 one (1) representative from each
94 congressional district, one (1) from the state at large and all
95 shall be licensed home inspectors.

96 (2) The Home Inspector Regulatory Board shall advise the
97 commission or its designee on all matters relating to this act.
98 The board shall meet no less than four (4) times annually and

99 shall be reimbursed for expenses on a per diem basis pursuant to
100 state law.

101 SECTION 4. The Home Inspectors Regulatory Board shall have
102 the duties and powers to:

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

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

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

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

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

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

130 SECTION 5. (1) No person may engage in or transact any home
131 inspection business, or hold himself out to the public as a home

132 inspector, or offer to engage in or transact any home inspection
133 business in this state unless the person is licensed by the
134 commission.

135 (2) No license shall be issued under the provisions of this
136 act to a partnership, association, corporation, limited liability
137 company or partnership, firm or group. However, nothing in this
138 act precludes a licensed home inspector from performing home
139 inspection for and on behalf of a partnership, association,
140 corporation, limited liability company or partnership, firm or
141 group or from entering into contracts or enforcing contracts as
142 partnership, association, corporation, limited liability company
143 or partnership, firm or group.

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

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

149 (a) Have successfully completed high school or its
150 equivalent;

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

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

155 (d) Have passed an examination as prescribed by the
156 commission; and

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

160 (3) The commission must review each application for a
161 license submitted to it and must notify each applicant that the
162 application is either accepted or rejected. The commission must
163 send notification of acceptance or rejections to the applicant at
164 the address provided by the applicant in the application within

thirty (30) days of receiving the application. If the application is rejected, the notice sent to the applicant must state the reasons for the rejection.

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

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

(3) Insurance coverage limits shall be no less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for general liability and no less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for errors and omissions, per occurrence.

SECTION 8. (1) An action by a client to recover damages for any act or omission of a home inspector relating to a home inspection that he conducts shall be commenced within three (3) years after the date a home inspection is completed or the action shall be barred. Further, a licensed home inspector shall not be liable for any latent defects that may be contained in the observable systems and components of improvements to residential real property that he has inspected and has issued a home inspection report.

(2) Any professional who is licensed by the State of Mississippi when acting within the scope of his profession and is not a licensed home inspector shall not be liable for the findings, errors, or omissions of the home inspection, provided that he has not provided physical work on the residential building; has not committed proven fraud in the real estate transaction; and has no personal or financial interest in the ownership of the residential building.

(3) Any person who in good faith or intention recommends or endorses a home inspector without compensation, remuneration, rebate, or any other form of consideration shall not be liable for

the actions of that home inspector, including errors, omissions, failure to perform any contracted duties of a home inspection, or failure to meet the standards of practice, report writing standards, or code of ethics.

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

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

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

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

SECTION 12. (1) Each person who applies for renewal of his license shall successfully complete home inspector continuing education courses approved by the commission at the rate of twenty (20) hours every two (2) years. No license may be renewed except upon the successful completion of the required courses or their equivalent or upon a waiver of those requirements for good cause shown as determined by the commission pursuant to rule with the recommendation of the regulatory board.

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

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

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

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

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

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

(4) After October 1, 2001, no person licensed under this section shall offer to perform or perform inspection services on new construction for a fee without having first obtained a residential home builders license from the Mississippi Board of Contractors and certification by the Southern Building Code Congress or any other national professional code organization.

SECTION 15. The commission shall charge and collect appropriate fees for its services under this chapter. The fees

264 charged shall not exceed the amounts indicated below and shall be
265 set by the board.

266 **LICENSURE FEES:**

267 Application and examination.....\$175.00
268 Initial and renewal license.....\$325.00
269 Delinquent renewal penalty.....100% of renewal fee

270 **SERVICES:**

271 For each change of address.....\$25.00
272 For each duplicate license.....\$25.00
273 To change status as a licensee from active to inactive.\$25.00
274 For each bad check received by the commission.....\$25.00

275 All fees charged and collected under this chapter shall be
276 paid by the commission at least once a week, accompanied by a
277 detailed statement thereof, to the credit of the fund known as the
278 "Home Inspector License Fund," hereby created in the State
279 Treasury. All monies which are collected under this chapter shall
280 be paid into and credited to such fund for the use of the board in
281 carrying out the provisions of the chapter including the payment
282 of salaries and expenses, printing an annual directory of
283 licensees, and for educational purposes. All interest earned on
284 the Home Inspector License Fund shall be retained by the board for
285 purposes consistent with this chapter. The commission shall
286 submit a monthly statement to the board detailing any expenses
287 which it bears as a share in the expense of administering this
288 chapter, for which expenses it shall be reimbursed in the amount
289 approved by the board. The commission shall prepare an annual
290 statement of income and expenses related to its regulatory related
291 administrative function.

292 SECTION 16. The commission may refuse to issue or to renew
293 or may revoke or suspend a license or may place on probation,
294 censure, reprimand, or take other disciplinary action with regard
295 to any license issued under this act, including the issuance of

296 fines for each violation, for any one (1) or combination of the
297 following causes:

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

300 (b) Violation of terms of license probation;

301 (c) Conviction of a felony or making a plea of guilty
302 or nolo contendere within five (5) years prior to the date of
303 application;

304 (d) Operating without adequate insurance coverage
305 required for licensees; and

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

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

313 (2) Whenever it appears to the commission that any person
314 has engaged or is about to engage in any act or practice
315 constituting a violation of any provision of this act or any rule
316 or order hereunder, they may, in their discretion, seek any or all
317 of the following remedy: Bring an action in chancery court to
318 enjoin the acts or practices to enforce compliance with this
319 chapter or any rule or order hereunder. Upon a proper showing a
320 permanent or temporary injunction, restraining order or writ of
321 mandamus shall be granted and a receiver or conservator may be
322 appointed for the defendant or the defendant's assets.

323 (3) With the exception of actions authorized by subsection
324 (2)(a) and (b) above, the commission shall, before taking any
325 disciplinary action that it may deem proper with regard to a
326 license, at least twenty (20) days prior to the date set for a
327 hearing, notify the applicant or licensee in writing of any
328 charges made and the time and place for a hearing of the charges.

329 Such written notice may be served by personal delivery or
330 certified or registered mail at the licensee's last known address
331 as reflected on their licensing application.

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

335 SECTION 18. (1) Upon the revocation or suspension of a
336 license, the licensee shall immediately surrender the license to
337 the commission. If the licensee fails to do so, the commission
338 shall have the right to seize the license.

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

342 SECTION 19. The commission shall maintain a roster of names
343 and addresses of all licenses and of all persons whose licenses
344 have been suspended or revoked. This roster shall be published on
345 a web site designated by the commission. All licensees under this
346 act shall inform the commission of any change in their business or
347 home address.

348 SECTION 20. A person already engaged in the business of
349 performing home inspections on July 1, 2001, is allowed ninety
350 (90) days from July 1, 2001, to comply with the provisions of this
351 act for the purpose of qualifying to perform home inspections.
352 Such person will qualify for a license without being required to
353 take an examination if he can document to the satisfaction of the
354 commission that he has conducted not less than twenty (20)
355 fee-paid home inspections in the previous twelve (12) months or
356 one hundred (100) fee-paid home inspections over his career or
357 that he has received certification as a home inspector from a
358 nationally recognized education center in a curriculum approved by
359 the United States Department of Housing and Urban Development and
360 the United States Department of Education.

361 SECTION 21. The information contained in or filed with any
362 registration application or renewal application is subject to
363 public disclosure. Information in the possession of, submitted to
364 or obtained by the commission in connection with any investigation
365 or examination under this act shall be confidential and exempt
366 from the requirements of the Mississippi Public Records Act of
367 1983. No such information may be disclosed by the commission or
368 its employees unless necessary or appropriate in connection with a
369 particular investigation or proceeding under this act or for any
370 law enforcement purpose, in the absence of an order of a court of
371 competent jurisdiction requiring such disclosure.

372 SECTION 22. Any condition, stipulation or provision binding
373 any person engaging the services of a home inspector to waive
374 compliance with any provision of this act or any rule or order
375 hereunder is void.

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

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