

By: Representatives Myers, Evans, Franks,
Holloway, Rushing, Wallace, West, Whittington

To: Judiciary B

HOUSE BILL NO. 1154

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 SECRETARY OF STATE; TO CREATE A
4 HOME INSPECTOR ADVISORY BOARD; TO PRESCRIBE THE QUALIFICATIONS FOR
5 A LICENSE; TO REQUIRE ALL HOME INSPECTORS TO CARRY GENERAL
6 LIABILITY INSURANCE; TO PROVIDE CERTAIN LIABILITY PROTECTIONS; TO
7 PROVIDE STANDARDS OF PRACTICE AND CODE OF ETHICS; TO PROVIDE
8 EXEMPTIONS FROM THE ACT; TO PROVIDE CONTINUING EDUCATION
9 REQUIREMENTS BEFORE RENEWAL OF A LICENSE; TO PROVIDE RECIPROCITY
10 FOR NONRESIDENT HOME INSPECTORS; TO PROHIBIT THE UNLICENSED
11 PRACTICE OF HOME INSPECTION AND PROVIDE CIVIL PENALTIES THEREFOR;
12 TO PROVIDE FOR DISCIPLINARY PROCEEDINGS; TO REQUIRE THE SECRETARY
13 OF STATE TO MAINTAIN A ROSTER OF LICENSEES; TO ALLOW CERTAIN
14 PERSONS ALREADY ENGAGED IN THE BUSINESS OF HOME INSPECTIONS TO
15 QUALIFY FOR A LICENSE WITHOUT EXAMINATION; AND FOR RELATED
16 PURPOSES.

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

18 SECTION 1. As used in this act; unless the context clearly
19 indicates otherwise:

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

24 (b) "Home inspection" means a written evaluation
25 prepared and issued by a home inspector concerning the condition
26 of the systems and improvements to residential real property.

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

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

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

35 (f) "Secretary of State" means the Office of the
36 Secretary of State of Mississippi.

37 SECTION 2. This act shall be administered and enforced by
38 the Secretary of State, which shall have the duties and powers to:

39 (a) Determine the qualifications and fitness of
40 applicants for a new or renewed license;

41 (b) Issue, renew, deny, revoke and suspend licenses
42 under this act;

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

45 (d) Make, amend and rescind such rules, forms and
46 orders as are necessary to carry out the provisions of this act,
47 including, but not limited to, rules and forms governing
48 registration, fees, applications and reports and defining any
49 terms, whether or not used in this chapter, insofar as the
50 definitions are not inconsistent with the provisions of this act;

51 (e) Conduct investigations, subpoena individuals and
52 records, and to do all other things necessary and proper to
53 discipline persons licensed under this act and to enforce this
54 act;

55 (f) Take administrative actions and conduct
56 administrative hearings in accordance with such rules and
57 procedures as it may prescribe;

58 (g) Develop and adopt a licensing examination to
59 determine the knowledge of an applicant of the home inspector
60 profession;

61 (h) Develop the application and license forms; and

62 (i) Impose fees and fines, which shall be paid to the
63 Secretary of State.

64 SECTION 3. For purpose of any investigation or proceeding
65 under this act, the Secretary of State or any officer designated
66 by him may administer oaths and affirmations, subpoena witnesses,
67 compel their attendance, take evidence, and require the production
68 of any books, papers, correspondence, memoranda, agreements, or
69 other documents or records which the Secretary of State deems
70 relevant or material to the inquiry.

71 SECTION 4. In case of contumacy by, or refusal to obey a
72 subpoena issued to, any person, the Chancery Court of the First
73 Judicial District of Hinds County, Mississippi, upon application
74 by the Secretary of State, may issue to this person an order
75 requiring him to appear before the Secretary of State, or the
76 officer designated by him, there to produce documentary evidence
77 if so ordered or to give evidence touching the matter under
78 investigation or in question. Failure to obey the order of the
79 court may be punished by the court as contempt of court.

80 SECTION 5. (1) There is hereby created the Home Inspector
81 Advisory Board to the Secretary of State, which shall consist of
82 five (5) members appointed by the Secretary of State, four (4) who
83 are licensed home inspectors and one (1) person from the state at
84 large. The members who are home inspectors shall be selected from
85 lists submitted by the Mississippi Association of Home Inspectors,
86 the Mississippi Association of Realtors and the Home Builders
87 Association of Mississippi.

88 (2) The Home Inspector Advisory Board shall advise the
89 Secretary of State or his designee on all matters relating to this
90 act. The advisory board shall meet as directed by the Secretary
91 of State or his designee, but no less than four (4) times annually
92 and shall be reimbursed for expenses on a per diem basis pursuant
93 to state law.

94 SECTION 6. (1) No person may engage in or transact any home
95 inspection business, or hold himself out to the public as a home
96 inspector, or offer to engage in or transact any home inspection

97 business in this state unless the person is licensed by the
98 Secretary of State.

99 (2) No license shall be issued under the provisions of this
100 act to a partnership, association, corporation, limited liability
101 company or partnership, firm or group. However, nothing in this
102 act precludes a licensed home inspector from performing home
103 inspection for and on behalf of a partnership, association,
104 corporation, limited liability company or partnership, firm or
105 group or from entering into contracts or enforcing contracts as a
106 partnership, association, corporation, limited liability company
107 or partnership, firm or group.

108 SECTION 7. (1) An application for an original license shall
109 be made in writing to the Secretary of State on forms as the
110 Secretary of State may prescribe and shall be accompanied by the
111 required fee and proof of liability insurance.

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

113 (a) Have successfully completed high school or its
114 equivalent;

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

116 (c) Have successfully completed an approved course of
117 study of at least sixty (60) hours that includes field work as
118 prescribed by the Secretary of State;

119 (d) Have passed an examination as prescribed by the
120 Secretary of State; and

121 (e) Provide a certificate of insurance for general
122 liability insurance (in the required amounts) pursuant to Section
123 8 of this act.

124 (3) The Secretary of State must review each application for
125 a license submitted and must notify each applicant that the
126 application is either accepted or rejected. The Secretary of
127 State must send notification of acceptance or rejections to the
128 applicant at the address provided by the applicant in the
129 application within thirty (30) days of receiving the application.

130 If the application is rejected, the notice sent to the applicant
131 must state the reasons for the rejection.

132 SECTION 8. (1) All home inspectors are required to carry
133 general liability insurance.

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

138 (3) Insurance coverage limits shall be no less than One
139 Hundred Thousand Dollars (\$100,000.00) for general liability, per
140 occurrence.

141 SECTION 9. (1) An action by a client to recover damages for
142 any act or omission of a home inspector relating to a home
143 inspection that he conducts shall be commenced within one (1) year
144 after the date the home inspection is completed or the action
145 shall be barred. Further, a licensed home inspector shall not be
146 liable for damages in excess of ten (10) times the fee of the
147 original inspection. Further, a licensed home inspector shall not
148 be liable for any latent defects that may be contained in the
149 observable systems and components of improvements to residential
150 real property that he has inspected and has issued a home
151 inspection report.

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

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

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

167 (4) No person shall be denied access to a property they are
168 considering purchasing with the licensed fee paid home inspector
169 of their choice.

170 SECTION 10. (1) A licensed home inspector is required to
171 follow the Standards of Practice and Code of Ethics as adopted and
172 published by the Secretary of State.

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

175 SECTION 11. The requirements of this act shall not prevent
176 the following from performing a visual inspection of a home that
177 is within the scope of their license without further license from
178 the Secretary of State: specialty contractor, general contractor,
179 architect, engineer, insurance adjuster, individual employed by a
180 governmental entity, person employed by a bank, savings and loan
181 or credit union, licensed real estate broker or salesperson, or a
182 licensed appraiser.

183 SECTION 12. A license under this act shall expire two (2)
184 years after its date of issuance. The Secretary of State may
185 issue a renewal license without examination, on submission of a
186 completed renewal application, payment of the required license
187 renewal fee, and successful completion of continuing education
188 requirements.

189 SECTION 13. (1) Each person who applies for renewal of his
190 license shall successfully complete home inspector continuing
191 education courses approved by the Secretary of State at the rate
192 of twenty-four (24) hours every two (2) years. No license may be
193 renewed except upon the successful completion of the required
194 courses or their equivalent or upon a waiver of those requirements

195 for good cause shown as determined by the Secretary of State
196 pursuant to rule with the recommendation of the advisory board.

197 (2) The Secretary of State shall establish criteria for
198 certifying providers of continuing education for home inspectors.
199 All such continuing education providers must be approved by the
200 Secretary of State.

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

207 SECTION 14. A home inspector license may be issued to a home
208 inspector who holds a valid certificate of certification,
209 registration or home inspector license in good standing issued by
210 another state, which has requirements for licensure substantially
211 identical to those of this state.

212 SECTION 15. (1) On or after July 1, 2001, any person who
213 acts as a home inspector, or holds himself out as a home
214 inspector, without being licensed under this act, shall, in
215 addition to any other penalty provided by law, be liable for an
216 administrative fine not to exceed Five Hundred Dollars (\$500.00)
217 for a first offense and not to exceed One Thousand Dollars
218 (\$1,000.00) for a second or subsequent offense as determined by
219 the Secretary of State.

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

223 (3) The Secretary of State has the authority and power to
224 investigate any and all unlicensed activity.

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

227 SECTION 16. The Secretary of State may refuse to issue or to
228 renew or may revoke or suspend a license or may place on
229 probation, censure, reprimand, or take other disciplinary action
230 with regard to any license issued under this act, including the
231 issuance of fines for each violation, for any one (1) or
232 combination of the following causes:

233 (a) Violations of this act or the Secretary of State's
234 rules promulgated pursuant hereto;

235 (b) Violation of terms of license probation;

236 (c) Conviction of a felony or making a plea of guilty
237 or nolo contendere within five (5) years prior to the date of
238 application;

239 (d) Operating without adequate insurance coverage
240 required for licensees; and

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

243 SECTION 17. (1) The Secretary of State may investigate the
244 actions of an applicant or of a person holding or claiming to hold
245 a license upon complaint in writing of any person setting forth
246 facts which, if proved, would constitute a violation of this act
247 or rules promulgated hereunder.

248 (2) Whenever it appears to the Secretary of State that any
249 person has engaged or is about to engage in any act or practice
250 constituting a violation of any provision of this act or any rule
251 or order hereunder, he may, in his discretion, seek any or all of
252 the following remedies:

253 (a) When in the public interest to prevent harm to the
254 welfare and safety of the public, issue a cease and desist order,
255 with or without a prior hearing against the person or persons
256 engaged in the prohibited activities, directing them to cease and
257 desist from further illegal activity; or

258 (b) Bring an action in chancery court to enjoin the
259 acts or practices to enforce compliance with this chapter or any

260 rule or order hereunder. Upon a proper showing, a permanent or
261 temporary injunction, restraining order or writ of mandamus shall
262 be granted and a receiver or conservator may be appointed for the
263 defendant or the defendant's assets.

264 (3) With the exception of actions authorized by subsection
265 (2)(a)and (b) above, the Secretary of State shall, before taking
266 any disciplinary action that it may deem proper with regard to a
267 license, at least twenty (20) days prior to the date set for a
268 hearing, notify the applicant or licensee in writing of any
269 charges made and the time and place for a hearing of the charges.
270 Such written notice may be served by personal delivery or
271 certified or registered mail at the licensee's last known address
272 as reflected on their licensing application.

273 (4) The Secretary of State shall, after a hearing, issue an
274 order either issuing, renewing, refusing to issue or renew,
275 reinstating, or revoking the license.

276 SECTION 18. (1) Upon the revocation or suspension of a
277 license, the licensee shall immediately surrender the license to
278 the Secretary of State. If the licensee fails to do so, the
279 Secretary of State shall have the right to seize the license.

280 (2) If circumstances of suspension or revocation so
281 indicate, the Secretary of State may require an examination of the
282 licensee before restoring his license.

283 SECTION 19. The Secretary of State shall maintain a roster
284 of names and addresses of all licenses and of all persons whose
285 licenses have been suspended or revoked. This roster shall be
286 available upon written request and payment of the required fee.
287 This roster may also be published on a web site designated by the
288 Secretary of State. All licensees under this act shall inform the
289 Secretary of State of any change in their business or home
290 address.

291 SECTION 20. A person already engaged in the practice of
292 performing home inspections and who has held an active business

293 license from a municipal or county government on July 1, 2001,
294 shall qualify for a license without being required to take an
295 examination if he can document to the satisfaction of the
296 Secretary of State that he has conducted not less than twenty-five
297 (25) verifiable fee-paid home inspections or that he has received
298 certification as a home inspector from a nationally recognized
299 education center in a curriculum approved by the United States
300 Department of Housing and Urban Development and the United States
301 Department of Education.

302 SECTION 21. The information contained in or filed with any
303 registration application or renewal application is subject to
304 public disclosure. Information in the possession of, submitted to
305 or obtained by the Secretary of State in connection with any
306 investigation or examination under this act shall be confidential
307 and exempt from the requirements of the Mississippi Public Records
308 Act of 1983. No such information may be disclosed by the
309 Secretary of State or his officers or employees unless necessary
310 or appropriate in connection with a particular investigation or
311 proceeding under this act or for any law enforcement purpose, in
312 the absence of an order of a court of competent jurisdiction
313 requiring such disclosure.

314 SECTION 22. Any condition, stipulation or provision binding
315 any person engaging the services of a home inspector to waive
316 compliance with any provision of this act or any rule or order
317 hereunder is void.

318 SECTION 23. This act shall take effect and be in force from
319 and after July 1, 2001.