

By: Senator(s) Hewes, Jordan

To: Business and Financial
Institutions

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2904

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 existing on January 1, 2001, and shall consist of
95 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. (1) The Home Inspectors Regulatory Board shall
102 have 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 (2) The members of the commission and board shall be immune
131 from any civil action or criminal prosecution for initiating or

132 assisting in any lawful investigation of the actions of, or
133 participating in any disciplinary proceeding concerning, a home
134 inspector licensed pursuant to this chapter, provided that such
135 action is taken without malicious intent and in the reasonable
136 belief that the action was taken pursuant to the powers and duties
137 vested in the members of the commission and board under this
138 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

278 **LICENSURE FEES:**

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

282 **SERVICES:**

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

287 All fees charged and collected under this chapter shall be
288 paid by the commission at least once a week, accompanied by a
289 detailed statement thereof, to the credit of the fund known as the
290 "Home Inspector License Fund," hereby created in the State
291 Treasury. All monies which are collected under this chapter shall
292 be paid into and credited to such fund for the use of the board in
293 carrying out the provisions of the chapter including the payment

294 of salaries and expenses, printing an annual directory of
295 licensees, and for educational purposes. All interest earned on
296 the Home Inspector License Fund shall be retained by the board for
297 purposes consistent with this chapter. The commission shall
298 submit a monthly statement to the board detailing any expenses
299 which it bears as a share in the expense of administering this
300 chapter, for which expenses it shall be reimbursed in the amount
301 approved by the board. The commission shall prepare an annual
302 statement of income and expenses related to its regulatory related
303 administrative function.

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

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

312 (b) Violation of terms of license probation;

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

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

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

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

325 (2) Whenever it appears to the commission that any person
326 has engaged or is about to engage in any act or practice

327 constituting a violation of any provision of this act or any rule
328 or order hereunder, they may, in their discretion, seek any or all
329 of the following remedies:

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

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

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

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

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

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

360 SECTION 19. The commission shall maintain a roster of names
361 and addresses of all licenses and of all persons whose licenses
362 have been suspended or revoked. This roster shall be published on
363 a web site designated by the commission. All licensees under this
364 act shall inform the commission of any change in their business or
365 home address.

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

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

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

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

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