

By: Senator(s) Mettetal

To: Business and Financial
Institutions

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2683

1 AN ACT TO AMEND SECTION 73-59-1, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERMS "ACTIVE LICENSEE" AND "INACTIVE LICENSEE" IN
3 RELATION TO THE RESIDENTIAL BUILDERS AND REMODELERS LICENSING LAW;
4 TO AMEND SECTION 73-59-3, MISSISSIPPI CODE OF 1972, TO REQUIRE
5 PROOF OF WORKERS' COMPENSATION INSURANCE AND LIABILITY INSURANCE
6 BEFORE OBTAINING A LICENSE; TO AMEND SECTION 73-59-13, MISSISSIPPI
7 CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF CONTRACTORS TO ISSUE
8 CEASE AND DESIST ORDERS UNDER THE RESIDENTIAL BUILDERS AND
9 REMODELERS LICENSING LAW; TO AMEND SECTION 73-59-15, MISSISSIPPI
10 CODE OF 1972, TO REVISE THE NUMBER OF SINGLE RESIDENCES ALLOWED TO
11 BE CONSTRUCTED WITHIN ONE YEAR BY A PERSON WITHOUT A LICENSE; TO
12 AMEND SECTION 73-59-17, MISSISSIPPI CODE OF 1972, TO REQUIRE
13 LICENSED RESIDENTIAL BUILDERS AND REMODELERS AT PERMITTED JOB
14 SITES TO DISPLAY THEIR LICENSE NUMBER AND THE STATE ISSUING THE
15 LICENSE; TO AMEND SECTION 31-3-15, MISSISSIPPI CODE OF 1972, TO
16 REQUIRE ANY CONTRACTOR TO DISPLAY AT THE JOB SITE HIS CERTIFICATE
17 OF RESPONSIBILITY NUMBER AND THE STATE ISSUING THE CERTIFICATE;
18 AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** Section 73-59-1, Mississippi Code of 1972, is
21 amended as follows:

22 73-59-1. For the purposes of this chapter, the following
23 words shall have the meanings ascribed herein:

24 (a) "Board" means the State Board of Contractors
25 created in Section 31-3-3, Mississippi Code of 1972.

26 (b) "Residential builder" means any corporation,
27 partnership or individual who constructs a building or structure
28 for sale for use by another as a residence or who, for a fixed
29 price, commission, fee, wage or other compensation, undertakes or
30 offers to undertake the construction, or superintending of the
31 construction, of any building or structure which is not more than
32 three (3) floors in height, to be used by another as a residence,
33 when the cost of the undertaking exceeds Fifty Thousand Dollars
34 (\$50,000.00).

35 (c) "Remodeler" means any corporation, partnership or
36 individual who, for a fixed price, commission, fee, wage or other
37 compensation, undertakes or offers to undertake the construction,
38 or superintending of the construction, of improvements to an
39 existing residence when the cost of the improvements exceeds Ten
40 Thousand Dollars (\$10,000.00).

41 (d) "Residential construction" means any undertaking
42 described in paragraph (b) of this section performed by a
43 residential builder.

44 (e) "Residential improvement" means any undertaking
45 described in paragraph (c) of this section performed by a
46 remodeler.

47 (f) "Active licensee" means any builder or remodeler
48 licensed under this chapter and engaged in building and
49 remodeling.

50 (g) "Inactive licensee" means any builder or remodeler
51 licensed under this chapter and not engaged in building or
52 remodeling.

53 **SECTION 2.** Section 73-59-3, Mississippi Code of 1972, is
54 amended as follows:

55 73-59-3. (1) Except as otherwise provided in Section
56 73-59-15, persons who perform or formerly performed residential
57 construction or residential improvement shall be licensed by the
58 board annually as an active licensee or inactive licensee, as
59 appropriate, and, as a prerequisite to obtaining a license or
60 renewal thereof, each shall submit to the board:

61 (a) Proof of workers' compensation insurance; however,
62 workers' compensation insurance shall not be required for inactive
63 licensees;

64 (b) A federal employment identification number or
65 social security number;

66 (c) Proof of general liability insurance; however,
67 liability insurance shall not be required for inactive licensees.

68 * * *

69 (2) The board shall issue or renew a license to an active or
70 inactive residential builder or remodeler upon payment to the
71 board of the license fee. The initial license fee shall be Fifty
72 Dollars (\$50.00). The license fee may thereafter be increased or
73 decreased by the board and cannot exceed One Hundred Dollars
74 (\$100.00); however, the receipts from fees collected by the board
75 shall be no greater than the amount required to pay all costs and
76 expenses incurred by the board in enforcing the provisions of this
77 chapter. Twenty-five Dollars (\$25.00) of the fee required by this
78 section which is assessed to residential builders licensed under
79 the provisions of Section 73-59-1 et seq. shall be deposited to
80 the Construction Education Fund created pursuant to Section
81 31-3-14 and shall be distributed to the Mississippi Housing
82 Institute. The remaining fees collected under this chapter shall
83 be deposited into the special fund in the State Treasury known as
84 the "State Board of Contractor's Fund" created pursuant to Section
85 31-3-17 and shall be used for the administration and enforcement
86 of this chapter and as provided in Section 31-3-14. Amounts in
87 such fund shall not lapse into the State General Fund at the end
88 of a fiscal year. Interest accrued to such fund shall remain in
89 the fund. All expenditures from the special fund shall be by
90 requisition to the Department of Finance and Administration,
91 signed by the executive secretary of the board and countersigned
92 by the chairman or vice chairman of the board.

93 (3) The license shall expire on the last day of the twelfth
94 month following its issuance or renewal and shall become invalid
95 unless renewed. The board shall notify by mail every licensee
96 under this chapter of the date of the expiration of his license
97 and the amount of the fee required for renewal of the license for
98 one (1) year. Such notice shall be mailed within thirty (30) days
99 prior to the expiration date of the license. The failure on the
100 part of any licensee to renew his license annually in such twelfth

101 month shall not deprive such licensee of the right of renewal,
102 provided that renewal is effected within one hundred twenty (120)
103 days after the expiration date of the license by payment of the
104 license fee plus a penalty of ten percent (10%) of the license
105 fee. A new license required to replace a revoked, lost, mutilated
106 or destroyed license may be issued, subject to the rules of the
107 board, for a charge of not more than Twenty-five Dollars (\$25.00).
108 An inactive licensee may become an active licensee upon
109 application meeting all the requirements of this section.

110 (4) Any person who is not a resident of the State of
111 Mississippi who desires to perform residential construction or
112 residential improvement shall be licensed to perform such
113 construction or improvement as provided by this chapter.

114 **SECTION 3.** Section 73-59-13, Mississippi Code of 1972, is
115 amended as follows:

116 73-59-13. (1) The board, upon satisfactory proof and in
117 accordance with the provisions of this chapter and the regulations
118 of the board pertaining thereto, is authorized to take the
119 disciplinary actions provided for in this section against any
120 person for any of the following reasons:

121 (a) Violating any of the provisions of this chapter or
122 the rules or regulations of the board pertaining to the work of
123 residential building or residential improvement;

124 (b) Fraud, deceit or misrepresentation in obtaining a
125 license;

126 (c) Gross negligence or misconduct;

127 (d) Engaging in work of residential building or
128 residential improvement on an expired license or while under
129 suspension or revocation of license unless the suspension or
130 revocation be abated in accordance with this chapter;

131 (e) Loaning a license to an unlicensed person;

132 (f) Failing to maintain workers' compensation
133 insurance, if applicable; or

134 (g) Failing to pay for goods or services for which the
135 builder is contractually bound.

136 (2) Any person, including members of the board, may prefer
137 charges against any other person for committing any of the acts
138 set forth in subsection (1) of this section. Such charges shall
139 be sworn to, either upon actual knowledge or upon information and
140 belief, and shall be filed with the board.

141 The board shall investigate all charges filed with it and,
142 upon finding reasonable cause to believe that the charges are not
143 frivolous, unfounded or filed in bad faith, may, in its
144 discretion, cause a hearing to be held, at a time and place fixed
145 by the board, regarding the charges and may compel the accused by
146 subpoena to appear before the board to respond to such charges.

147 The board may send a certified inspector to inspect the
148 building or structure which is the subject of a complaint or the
149 board may use a county certified building inspector from the
150 county where the building or structure is located to inspect the
151 building or structure which is the subject of a complaint. The
152 report of the inspector shall be used in the investigation and the
153 determination of the board. The provisions above shall only apply
154 to hearings.

155 No disciplinary action may be taken until the accused has
156 been furnished both a statement of the charges against him and
157 notice of the time and place of the hearing thereon, which shall
158 be personally served on such accused or mailed by certified mail,
159 return receipt requested, to the last known business or residence
160 address of the accused not less than thirty (30) days prior to the
161 date fixed for the hearing. The complaining party shall be
162 notified of the place and time of the hearing by mail to the last
163 known business or residence address of the complaining party not
164 less than thirty (30) days prior to the date fixed for the
165 hearing.

166 (3) At any hearing held hereunder, the board shall have the
167 power to subpoena witnesses and compel their attendance and may
168 also require the production of books, papers, documents or other
169 materials which may be pertinent to the proceedings. The board
170 may designate or secure a hearing officer to conduct the hearing.
171 All evidence shall be presented under oath, which may be
172 administered by any member of the board, and thereafter the
173 proceedings may, if necessary, be transcribed in full by a court
174 reporter and filed as part of the record in the case. Copies of
175 such transcriptions may be provided to any party to the
176 proceedings at a price reflecting actual cost, to be fixed by the
177 board.

178 All witnesses who are subpoenaed and appear in any
179 proceedings before the board shall receive the same fees and
180 mileage as allowed by law to witnesses in county, circuit and
181 chancery court pursuant to Section 25-7-47, Mississippi Code of
182 1972, and all such fees shall be taxed as part of the costs in the
183 case.

184 When, in any proceeding before the board, any witness shall
185 fail or refuse to attend upon subpoena issued by the board, shall
186 refuse to testify, or shall refuse to produce any books and papers
187 the production of which is called for by the subpoena, the
188 attendance of such witness and the giving of his testimony and the
189 production of the books and papers shall be enforced by any court
190 of competent jurisdiction of this state in the manner provided for
191 the enforcement of attendance and testimony of witnesses in civil
192 cases in the courts of this state.

193 The accused and the complaining party shall have the right to
194 be present at the hearing in person, by counsel or other
195 representative, or both. The board is authorized for proper cause
196 to continue or recess the hearing as may be necessary.

197 (4) At the conclusion of the hearing, the board may either
198 decide the issue at that time or take the case under advisement

199 for further deliberation. The board shall render its decision not
200 more than ninety (90) days after the close of the hearing and
201 shall forward to the last known business or residence address of
202 the accused, by certified mail, return receipt requested, a
203 written statement of the decision of the board.

204 (5) If a majority of the board finds the accused guilty of
205 the charges filed, the board may:

206 (a) Issue a public or private reprimand;

207 (b) Suspend or revoke the license of the accused; or

208 (c) In lieu of or in addition to any reprimand,
209 suspension or revocation, assess and levy upon the guilty party a
210 monetary penalty of not less than One Hundred Dollars (\$100.00)
211 nor more than Five Thousand Dollars (\$5,000.00) for each
212 violation.

213 (6) A monetary penalty assessed and levied under this
214 section shall be paid to the board upon the expiration of the
215 period allowed for appeal of such penalties under this section or
216 may be paid sooner if the guilty party elects. Money collected by
217 the board under this section shall be deposited to the credit of
218 the State Board of Contractors' Fund.

219 When payment of a monetary penalty assessed and levied by the
220 board in accordance with this section is not paid when due, the
221 board shall have the power to institute and maintain proceedings
222 in its name for enforcement of payment in the chancery court of
223 the county of residence of the delinquent party; however, if the
224 delinquent party is a nonresident of the State of Mississippi,
225 such proceedings shall be in the Chancery Court of the First
226 Judicial District of Hinds County, Mississippi.

227 (7) When the board has taken a disciplinary action under
228 this section, the board may, in its discretion, stay such action
229 and place the guilty party on probation for a period not to exceed
230 one (1) year upon the condition that such party shall not further
231 violate either the laws of the State of Mississippi pertaining to

232 the practice of residential construction or residential remodeling
233 or the bylaws, rules or regulations promulgated by the board.

234 (8) The board shall not assess any of the costs of
235 disciplinary proceedings conducted pursuant to this section
236 against the prevailing party.

237 (9) The power and authority of the board to assess and levy
238 the monetary penalties provided for in this section shall not be
239 affected or diminished by any other proceedings, civil or
240 criminal, concerning the same violation or violations except as
241 provided in this section.

242 (10) The board, for sufficient cause, may reissue a revoked
243 license whenever a majority of the board members vote to do so.

244 (11) Whenever it appears to the board that any person has
245 engaged or is about to engage in any act or practice constituting
246 a violation of any provision of this chapter or any rule or order
247 issued hereunder, it may, in its discretion, and in addition to
248 other remedies authorized by law, issue a cease and desist order,
249 with or without a prior notice and hearing, against the person or
250 persons engaged in the prohibited activities. Such cease and
251 desist order shall direct the person or persons to cease and
252 desist from such illegal activity.

253 (12) Any person aggrieved by any order or decision of the
254 board may appeal within ten (10) days from the date of adjournment
255 of the session at which the board rendered such order or decision,
256 and may embody the facts, order and decision in a bill of
257 exceptions which shall be signed by the person acting as chairman
258 of the board. The board shall transmit the bill of exceptions to
259 either the chancery court of the county of residence of the
260 appellant, or the Chancery Court of the First Judicial District of
261 Hinds County, at the election of the appellant, and the court or
262 chancellor shall hear and determine the same either in termtime or
263 in vacation, on the case as presented by the bill of exceptions,
264 as an appellant court, and shall affirm or reverse the judgment.

265 If the judgment be reversed, the chancery court or chancellor
266 shall render such order or judgment as the board ought to have
267 rendered, and certify the same to the board; and costs shall be
268 awarded as in other cases. The board may employ counsel to defend
269 such appeals, to be paid out of the funds in the State Board of
270 Contractors' Fund.

271 The remedies provided under this chapter for any aggrieved
272 applicant shall not be exclusive, but shall be cumulative of and
273 supplemental to any other remedies which he may otherwise have in
274 law or in equity, whether by injunction or otherwise.

275 (13) Any political subdivision or agency of this state which
276 receives a complaint against a residential builder or remodeler
277 shall, in addition to exercising whatever authority such political
278 subdivision or agency has been given over such complaint, forward
279 the complaint to the board.

280 (14) In addition to the reasons specified in subsection (1)
281 of this section, the board shall be authorized to suspend the
282 license of any licensee for being out of compliance with an order
283 for support, as defined in Section 93-11-153. The procedure for
284 suspension of a license for being out of compliance with an order
285 for support, and the procedure for the reissuance or reinstatement
286 of a license suspended for that purpose, and the payment of any
287 fees for the reissuance or reinstatement of a license suspended
288 for that purpose, shall be governed by Section 93-11-157 or
289 93-11-163, as the case may be. Actions taken by the board in
290 suspending a license when required by Section 93-11-157 or
291 93-11-163 are not actions from which an appeal may be taken under
292 this section. Any appeal of a license suspension that is required
293 by Section 93-11-157 or 93-11-163 shall be taken in accordance
294 with the appeal procedure specified in Section 93-11-157 or
295 93-11-163, as the case may be, rather than the procedure specified
296 in this section. If there is any conflict between any provision
297 of Section 93-11-157 or 93-11-163 and any provision of this

298 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
299 case may be, shall control.

300 **SECTION 4.** Section 73-59-15, Mississippi Code of 1972, is
301 amended as follows:

302 73-59-15. (1) This chapter shall not apply to:

303 (a) Agricultural buildings, buildings used for
304 agricultural purposes, buildings constructed as a community
305 effort, or tenant houses;

306 (b) Any person who undertakes construction or
307 improvement on his own residence, or who acts as his own general
308 contractor in the performance of construction or improvement on
309 his own residence, or who acts under the supervision of the
310 owner-occupant who is the general contractor;

311 (c) Any person who undertakes residential construction
312 or improvement, or who acts as a general contractor in the
313 performance of residential construction or improvement, or who
314 acts under supervision of the owner-occupant with respect to
315 residential construction or improvement, when the owner of such
316 construction or improvement is related to such person by
317 consanguinity or direct affinity;

318 (d) The owners of property who supervise, superintend,
319 oversee, direct or in any manner assume charge of the
320 construction, alteration, repair, improvement, movement,
321 demolition, putting up, tearing down or maintenance of any
322 building, railroad, excavation, project, development, improvement,
323 plant facility or any other construction undertaking on such
324 property for use by such owner and which will not be for sale,
325 rent, public use or public assembly;

326 (e) An employee of a licensed residential builder;

327 (f) A contractor holding a valid license or certificate
328 of responsibility for general construction from the board;

329 (g) Any nonresident contractor holding a valid license
330 or certificate of responsibility for general construction;

331 (h) Any person who constructs one (1) single residence
332 or less within a period of one (1) year in any county or
333 municipality which does not require a building permit or any local
334 certification for such construction.

335 (2) A person specified in subsection (1)(b) shall not make
336 more than one (1) application for a permit to construct a single
337 residence or shall not construct more than one (1) single
338 residence within a period of one (1) year. There shall be a
339 rebuttable presumption that such person intends to construct for
340 the purpose of resale, lease, rent or any similar purpose if more
341 than one (1) application is made for a permit to construct a
342 single residence or if more than one (1) single residence is
343 constructed within a period of one (1) year.

344 (3) The provisions of this section shall not apply to
345 builders and remodelers who are not domiciled in the State of
346 Mississippi. Builders and remodelers who are not domiciled in the
347 State of Mississippi are not required to be licensed under the
348 provisions of this chapter if the state in which they are
349 domiciled requires licensing and the licensing state's
350 requirements are at least the equivalent of those requirements
351 provided in this chapter.

352 **SECTION 5.** Section 73-59-17, Mississippi Code of 1972, is
353 amended as follows:

354 73-59-17. (1) The building official, or other authority
355 charged with the duty of issuing building or similar permits, of
356 any municipality or county, shall refuse to issue a permit for any
357 undertaking which would classify the applicant as a residential
358 builder or remodeler under this chapter unless the applicant has
359 furnished evidence that he is either licensed as required by this
360 chapter or exempt from the requirements of this chapter. The
361 building official, or other authority charged with the duty of
362 issuing building or similar permits, shall also report to the
363 board the name and address of any person who, in his opinion, has

364 violated this chapter by accepting, or contracting to accomplish,
365 work which would classify the person as a residential builder or
366 remodeler under this chapter without a license or acknowledgement.

367 (2) Upon the issuance of a building permit to a residential
368 builder or remodeler by the building official, or other authority
369 charged with the duty of issuing building or similar permits, of
370 any municipality or county, the licensed builder or remodeler
371 shall exhibit a sign at the permitted job site which shall
372 include, prominently displayed, the license number of the builder
373 or remodeler and the state issuing the license.

374 **SECTION 6.** Section 31-3-15, Mississippi Code of 1972, is
375 amended as follows:

376 31-3-15. (1) No contract for public or private projects
377 shall be issued or awarded to any contractor who did not have a
378 current certificate of responsibility issued by the board at the
379 time of the submission of the bid, or a similar certificate issued
380 by a similar board of another state which recognizes certificates
381 issued by the board. Any contract issued or awarded in violation
382 of this section shall be null and void.

383 (2) Any contractor awarded a contract for public or private
384 projects shall exhibit a sign at the job site which shall include,
385 prominently displayed, his certificate of responsibility number
386 and the name of the state issuing the certificate.

387 **SECTION 7.** This act shall take effect and be in force from
388 and after July 1, 2007.