MISSISSIPPI LEGISLATURE REGULAR SESSION 2000

By: Hewes, Michel

To: Business and Financial Institutions

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2795

AN ACT TO PROVIDE FOR THE LICENSURE AND REGULATION OF HOME INSPECTORS; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE ADMINISTRATION OF THE ACT BY THE SECRETARY OF STATE; TO CREATE A HOME INSPECTOR ADVISORY BOARD; TO PRESCRIBE THE QUALIFICATIONS FOR A LICENSE; TO REQUIRE ALL HOME INSPECTORS TO CARRY GENERAL LIABILITY INSURANCE AND ERRORS AND OMISSIONS INSURANCE; TO PROVIDE CERTAIN LIABILITY PROTECTIONS; TO PROVIDE STANDARDS OF PRACTICE AND CODE OF ETHICS; TO PROVIDE EXEMPTIONS FROM THE ACT; TO PROVIDE CONTINUING EDUCATION REQUIREMENTS BEFORE RENEWAL OF A LICENSE; TO PROVIDE RECIPROCITY FOR NONRESIDENT HOME INSPECTORS; TO PROHIBIT THE UNLICENSED PRACTICE OF HOME INSPECTION AND PROVIDE CIVIL PENALTIES THEREFOR; TO PROVIDE FOR DISCIPLINARY PROCEEDINGS; TO REQUIRE THE SECRETARY OF STATE TO MAINTAIN A ROSTER OF LICENSEES; TO ALLOW CERTAIN PERSONS ALREADY ENGAGED IN THE BUSINESS OF HOME INSPECTIONS TO QUALIFY FOR A LICENSE WITHOUT EXAMINATION; AND FOR RELATED PURPOSES.

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

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

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

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

(c) "Home inspection report" means a written evaluation prepared and issued by a home inspector concerning the condition of the improvements to residential real property; said report shall be on a standard form promulgated and approved by the Secretary of State.

(d) "Home inspector" means any person, who for

compensation, conducts a home inspection.

(e) "New inspection services" means the examination and evaluation of the structural, mechanical, plumbing and electrical features of new residential properties.

(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) "Secretary of State" means the Office of the Secretary of State of Mississippi.

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

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

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

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

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

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

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

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

(h) Develop the application and license forms; and

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

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

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

SECTION 5. Home Inspector Advisory Board.

(1) There is hereby created the Home Inspector Advisory Board to the Secretary of State, which shall consist of five (5) members appointed by the Secretary of State to include representatives from each congressional district and shall consist of the following: a builder/contractor, a realtor, a mortgage banker and two (2) home inspectors.

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

to state law.

SECTION 6. Licensing requirement for home inspectors.

(1) No person may engage in or transact any home inspection business, or hold himself out to the public as a home inspector, or offer to engage in or transact any home inspection business in this state unless the person is licensed by the Secretary of State.

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

(3) No person, firm or corporation shall offer to perform or perform new inspection services for a fee without having first obtained:

(a) A contractor's certificate of responsibility from the State Board of Contractors as provided in Section 31-3-13; and

(b) A home inspector license as required by this act.

SECTION 7. Application for license; examination requirements.

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

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

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

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

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

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

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

(3) The Secretary of State must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Secretary of State must send notification of acceptance or rejections to the applicant at 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 8. Insurance.

(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 Secretary of State.

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

SECTION 9. Liability.

(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 one (1) year after the date a home inspections 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 10. Standards of Practice and Code of Ethics.

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

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

SECTION 11. Exemptions. 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 Secretary of State: 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, or a licensed appraiser.

SECTION 12. Expiration of license; renewal. A license under

this act shall expire two (2) years after its date of issuance. The Secretary of State 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 13. Continuing education; compliance with requirements.

(1) Each person who applies for renewal of his license shall successfully complete home inspector continuing education courses approved by the Secretary of State at the rate of twenty-four (24) 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 Secretary of State pursuant to rule with the recommendation of the advisory board.

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

(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 Secretary of State, after the completion of each course, evidence of those successfully completing the course.

SECTION 14. Reciprocity; nonresident home inspector. A home inspector license may be issued to a home inspector who satisfies both 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, and (b) has passed the examination offered by the American Society of Home Inspectors or the National Association of Home Inspectors.

SECTION 15. Unlicensed practice; civil penalty; prohibited acts.

(1) On or after July 1, 2000, 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 Secretary of State.

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

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

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

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

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

(b) Violation of terms of license probation;

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

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

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

SECTION 17. Cease and desist order; investigation; notice;

hearing.

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

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

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

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

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

(4) The Secretary of State shall, after a hearing, issue an order either issuing, renewing, refusing to issue or renew,

reinstating, or revoking the license.

SECTION 18. Surrender of license; restoration of license.

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

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

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

SECTION 20. Application of act to current home inspectors. A person already engaged in the business of performing home inspections on July 1, 2000, is allowed ninety (90) days from July 1, 2000, to comply with the provisions of this act for purpose of qualifying to perform home inspections. Such person will qualify for a license without being required to take an examination if he can document to the satisfaction of the Secretary of State that he has conducted not less than fifty (50) fee-paid home inspections in the previous twelve (12) months or two hundred fifty (250) fee-paid home inspections over his career.

SECTION 21. Open records; exceptions. The information contained in or filed with any registration application or renewal application is subject to public disclosure. Information in the possession of, submitted to or obtained by the Secretary of State in connection with any investigation or examination under this act shall be confidential and exempt from the requirements of the

Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under this act or for any law enforcement purpose, in the absence of an order of a court of competent jurisdiction requiring such disclosure.

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

SECTION 23. This act shall take effect and be in force from and after July 1, 2000.