

By: Hewes, Michel

To: Business and
Financial
Institutions

SENATE BILL NO. 2795
(As Passed the Senate)

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

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

18 SECTION 1. Definitions. As used in this act; unless the
19 context clearly 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 the process by which a home
25 inspector examines the observable systems and components of
26 improvements to residential real property that are readily
27 accessible.

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

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

34 compensation, conducts a home inspection.

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

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

41 (g) "Secretary of State" means the Office of the
42 Secretary of State of Mississippi.

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

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

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

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

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

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

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

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

67 (h) Develop the application and license forms; and
68 (i) Impose fees and fines, which shall be paid to the
69 Secretary of State.

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

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

88 SECTION 5. Home Inspector Advisory Board.

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

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

100 to state law.

101 SECTION 6. Licensing requirement for home inspectors.

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

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

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

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

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

122 SECTION 7. Application for license; examination
123 requirements.

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

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

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

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

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

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

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

141 (3) The Secretary of State must review each application for
142 a license submitted to it and must notify each applicant that the
143 application is either accepted or rejected. The Secretary of
144 State must send notification of acceptance or rejections to the
145 applicant at the address provided by the applicant in the
146 application within thirty (30) days of receiving the application.

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

149 SECTION 8. Insurance.

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

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

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

160 SECTION 9. Liability.

161 (1) An action by a client to recover damages for any act or
162 omission of a home inspector relating to a home inspection that he
163 conducts shall be commenced within one (1) year after the date a
164 home inspections completed or the action shall be barred.

165 Further, a licensed home inspector shall not be liable for any

166 latent defects that may be contained in the observable systems and
167 components of improvements to residential real property that he
168 has inspected and has issued a home inspection report.

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

177 (3) Any person who in good faith or intention recommends or
178 endorses a home inspector without compensation, remuneration,
179 rebate, or any other form of consideration shall not be liable for
180 the actions of that home inspector, including errors, omissions,
181 failure to perform any contracted duties of a home inspection, or
182 failure to meet the standards of practice, report writing
183 standards, or code of ethics.

184 SECTION 10. Standards of Practice and Code of Ethics.

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

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

190 SECTION 11. Exemptions. The requirements of this act shall
191 not prevent the following from performing a visual inspection of a
192 home that is within the scope of their license without further
193 license from the Secretary of State: specialty contractor,
194 general contractor, architect, engineer, insurance adjuster,
195 individual employed by a governmental entity, person employed by a
196 bank, savings and loan or credit union, licensed real estate
197 broker or salesperson, or a licensed appraiser.

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

199 this act shall expire two (2) years after its date of issuance.
200 The Secretary of State may issue a renewal license without
201 examination, on submission of a completed renewal application,
202 payment of the required license renewal fee, and successful
203 completion of continuing education requirements.

204 SECTION 13. Continuing education; compliance with
205 requirements.

206 (1) Each person who applies for renewal of his license shall
207 successfully complete home inspector continuing education courses
208 approved by the Secretary of State at the rate of twenty-four (24)
209 hours every two (2) years. No license may be renewed except upon
210 the successful completion of the required courses or their
211 equivalent or upon a waiver of those requirements for good cause
212 shown as determined by the Secretary of State pursuant to rule
213 with the recommendation of the advisory board.

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

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

224 SECTION 14. Reciprocity; nonresident home inspector. A home
225 inspector license may be issued to a home inspector who satisfies
226 both of the following requirements: (a) holds a valid certificate
227 of certification, registration or home inspector license in good
228 standing issued by another state, which has requirements for
229 licensure substantially identical to those of this state, and (b)
230 has passed the examination offered by the American Society of Home
231 Inspectors or the National Association of Home Inspectors.

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

234 (1) On or after July 1, 2000, any person who acts as a home
235 inspector, or holds himself out as a home inspector, without being
236 licensed under this act, shall, in addition to any other penalty
237 provided by law, be liable for an administrative fine not to
238 exceed One Thousand Dollars (\$1,000.00) for a first offense and
239 not to exceed Five Thousand Dollars (\$5,000.00) for a second or
240 subsequent offense as determined by the Secretary of State.

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

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

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

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

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

256 (b) Violation of terms of license probation;

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

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

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

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

265 hearing.

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

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

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

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

287 (3) With the exception of actions authorized by subsection
288 (2)(a) and (b) above, the Secretary of State shall, before taking
289 any disciplinary action that it may deem proper with regard to a
290 license, at least twenty (20) days prior to the date set for a
291 hearing, notify the applicant or licensee in writing of any
292 charges made and the time and place for a hearing of the charges.

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

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

298 reinstating, or revoking the license.

299 SECTION 18. Surrender of license; restoration of license.

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

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

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

315 SECTION 20. Application of act to current home inspectors.
316 A person already engaged in the business of performing home
317 inspections on July 1, 2000, is allowed ninety (90) days from July
318 1, 2000, to comply with the provisions of this act for purpose of
319 qualifying to perform home inspections. Such person will qualify
320 for a license without being required to take an examination if he
321 can document to the satisfaction of the Secretary of State that he
322 has conducted not less than fifty (50) fee-paid home inspections
323 in the previous twelve (12) months or two hundred fifty (250)
324 fee-paid home inspections over his career.

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

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

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

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