

By: Representative Myers

To: Judiciary B

HOUSE BILL NO. 963

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 CERTAIN GENERAL LIABILITY INSURANCE AND ERRORS
 7 AND OMISSIONS INSURANCE; TO PROVIDE CERTAIN LIABILITY PROTECTIONS;
 8 TO 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.

44 **SECTION 2.** This act shall be administered and enforced by
45 the Mississippi Real Estate Commission, which shall have the
46 duties and powers to:

47 (a) Receive applications for licensure as a home
48 inspector under this chapter, establish appropriate administrative
49 procedures for the processing of applications and issue licenses
50 to qualified applicants pursuant to the provisions of this
51 chapter;

52 (b) Implement recommendations made to the commission by
53 the Home Inspector Regulatory Board with respect to upgrading and
54 improving the experience, education and examination requirements
55 that are required for a home inspector license;

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

58 (d) Collect all licensing fees required or permitted by
59 this chapter;

60 (e) Take appropriate action upon a decision and the
61 related findings of fact made by the board if, after an
62 administrative hearing, the board (i) determines that a license
63 home inspector under this chapter has violated the code of ethics
64 and standards established under this section and (ii) recommends
65 that the license of the home inspector be suspended or revoked,
66 that renewal be denied, or that some other disciplinary action be
67 taken;



68 (f) Develop and adopt a licensing examination, which
69 would meet nationally recognized standards, to determine the
70 knowledge of an applicant of the home inspector profession;

71 (g) Solicit bids and enter into contracts with one or
72 more educational testing services or organizations approved by the
73 board for the preparation of questions and answers for licensure
74 examinations under this chapter;

75 (h) Develop the application and license forms;

76 (i) Adopt rules and regulations for the administration
77 of this chapter that are not inconsistent with the provisions of
78 this chapter or the Constitution and laws of Mississippi or of the
79 United States;

80 (j) Employ an assistant to the commission administrator
81 who shall keep a record of all proceedings, transactions,
82 communications and official acts of the commission and board and
83 perform such other duties as the commission and board may require;
84 and

85 (k) Employ such other staff and technical assistance as
86 may be necessary to properly administer the requirements of this
87 chapter.

88 **SECTION 3.** (1) There is hereby created, as an adjunct board
89 to the Mississippi Real Estate Commission, a board to be known as
90 the Home Inspector Regulatory Board, which shall consist of five
91 (5) members appointed by the Governor, with the advice and consent
92 of the Senate, to include one (1) representative from each
93 congressional district, one (1) from the state at large and all
94 shall be licensed home inspectors.

95 (2) The Home Inspector Regulatory Board shall advise the
96 commission or its designee on all matters relating to this act.
97 The board shall meet no less than four (4) times annually and
98 shall be reimbursed for expenses on a per diem basis pursuant to
99 state law.



100 **SECTION 4.** (1) The Home Inspectors Regulatory Board shall
101 have the duties and powers to:

102 (a) Be responsible for matters relating to home
103 inspectors code of ethics and standards, home inspector
104 qualifications, testing standards and disciplinary functions.

105 (b) Hold meetings, public hearings and administrative
106 hearings and prepare examination specifications for licensed home
107 inspectors.

108 (c) Conduct investigations, subpoena individuals and
109 records, administer oaths, take testimony and receive evidence and
110 to do all other things necessary and proper to discipline a person
111 licensed under this act and to enforce this act. In case of
112 contumacy by, or refusal to obey a subpoena issued to, any person,
113 the Chancery Court of the First Judicial District of Hinds County,
114 Mississippi, upon application by the commission, may issue to this
115 person an order requiring him to appear before the commission, or
116 the officer designated by him, there to produce documentary
117 evidence if so ordered or to give evidence touching the matter
118 under investigation or in question. Failure to obey the order of
119 the court may be punished by the court as contempt of court.

120 (d) Further define by regulation, the type of
121 educational experience, home inspector experience and equivalent
122 experience that will meet the statutory requirements.

123 (e) Recommend suspension or revocation of licenses
124 pursuant to the disciplinary proceedings provided for in this
125 chapter.

126 (f) Present an annual budget to the Mississippi
127 Legislature for approval. A copy of the budget shall be given to
128 the commission.

129 (2) The members of the commission and board shall be immune
130 from any civil action or criminal prosecution for initiating or
131 assisting in any lawful investigation of the actions of, or
132 participating in any disciplinary proceeding concerning, a home



133 inspector licensed pursuant to this chapter, provided that such
134 action is taken without malicious intent and in the reasonable
135 belief that the action was taken pursuant to the powers and duties
136 vested in the members of the commission and board under this
137 chapter.

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

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

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

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

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

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

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

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



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

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

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

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

182 (3) (a) For home inspectors doing the majority of their
183 business in cities with less than twenty-eight thousand (28,000)
184 in population, the insurance coverage limits shall be no less than
185 Two Hundred Fifty Thousand Dollars (\$250,000.00) for general
186 liability insurance and no less than Two Hundred Fifty Thousand
187 Dollars (\$250,000.00) for errors and omissions insurance per
188 occurrence.

189 (b) Home inspectors doing a majority of their business
190 in cities with twenty-eight thousand (28,000) or more in
191 population shall file with the commission a surety bond in the sum
192 of Fifty Thousand Dollars (\$50,000.00) conditioned to satisfy any
193 judgment rendered by a court of competent jurisdiction in favor of
194 any person who has sustained damages resulting from the services
195 of the home inspector. Such bond shall be executed by the home
196 inspector and a resident surety company qualified to transact
197 business within the state. In addition, these home inspectors are



198 required to carry insurance coverage limits of no less than Fifty
199 Thousand Dollars (\$50,000.00) for general liability insurance and
200 no less than Fifty Thousand Dollars (\$50,000.00) for errors and
201 omissions insurance, per occurrence.

202 (c) All home inspectors shall file annual statements
203 with the board detailing where they do business. The commission
204 shall revoke the license of any home inspector who files a false
205 statement.

206 **SECTION 8.** (1) An action by a client to recover damages for
207 any act or omission of a home inspector relating to a home
208 inspection that he conducts shall be commenced within three (3)
209 years after the date a home inspection is completed or the action
210 shall be barred. Further, a licensed home inspector shall not be
211 liable for any latent defects that may be contained in the
212 observable systems and components of improvements to residential
213 real property that he has inspected and has issued a home
214 inspection report.

215 (2) Any professional who is licensed by the State of
216 Mississippi when acting within the scope of his profession and is
217 not a licensed home inspector shall not be liable for the
218 findings, errors, or omissions of the home inspection, provided
219 that he has not provided physical work on the residential
220 building; has not committed proven fraud in the real estate
221 transaction; and has no personal or financial interest in the
222 ownership of the residential building.

223 (3) Any person who in good faith or intention recommends or
224 endorses a home inspector without compensation, remuneration,
225 rebate, or any other form of consideration shall not be liable for
226 the actions of that home inspector, including errors, omissions,
227 failure to perform any contracted duties of a home inspection, or
228 failure to meet the standards of practice, report writing
229 standards, or code of ethics.



230 **SECTION 9.** (1) A licensed home inspector is required to
231 follow the Standards of Practice and Code of Ethics as adopted and
232 published by the commission.

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

235 **SECTION 10.** The requirements of this act shall not prevent
236 the following from performing a visual inspection of a home that
237 is within the scope of their license without further license from
238 the board: specialty contractor, general contractor, architect,
239 engineer, insurance adjuster, individual employed by a
240 governmental entity, person employed by a bank, savings and loan
241 or credit union, licensed real estate broker or salesperson, a
242 licensed appraiser or a home builder.

243 **SECTION 11.** A license under this act shall expire two (2)
244 years after its date of issuance. The commission may issue a
245 renewal license without examination, on submission of a completed
246 renewal application, payment of the required license renewal fee,
247 and successful completion of continuing education requirements.

248 **SECTION 12.** (1) Each person who applies for renewal of his
249 license shall successfully complete home inspector continuing
250 education courses approved by the commission at the rate of twenty
251 (20) hours every two (2) years. No license may be renewed except
252 upon the successful completion of the required courses or their
253 equivalent or upon a waiver of those requirements for good cause
254 shown as determined by the commission pursuant to rule with the
255 recommendation of the regulatory board.

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

259 (3) Each renewal applicant shall certify, on his or her
260 renewal application, full compliance with continuing education
261 requirements. The provider of approval of continuing education



262 shall retain and submit to the commission, after the completion of
263 each course, evidence of those successfully completing the course.

264 **SECTION 13.** A home inspector license may be issued to a home
265 inspector from another state who satisfies one of the following
266 requirements: (a) holds a valid certificate of certification,
267 registration or home inspector license in good standing issued by
268 another state, which has requirements for licensure substantially
269 identical to those of this state, or (b) has passed the
270 examination offered by the American Society of Home Inspectors or
271 the National Association of Home Inspectors.

272 **SECTION 14.** (1) On or after July 1, 2002, any person who
273 acts as a home inspector, or holds himself out as a home
274 inspector, without being licensed under this act, shall, in
275 addition to any other penalty provided by law, be liable for an
276 administrative fine not to exceed One Thousand Dollars (\$1,000.00)
277 for a first offense and not to exceed Five Thousand Dollars
278 (\$5,000.00) for a second or subsequent offense as determined by
279 the commission.

280 (2) The commission has the authority and power to
281 investigate any and all unlicensed activity.

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

284 (4) After October 1, 2002, no person licensed under this act
285 shall offer to perform or perform inspection services on new
286 construction for a fee without having first obtained a residential
287 home builders license from the Mississippi Board of Contractors
288 and certification by the Southern Building Code Congress or any
289 other national professional code organization.

290 **SECTION 15.** The commission shall charge and collect
291 appropriate fees for its services under this chapter. The fees
292 charged shall not exceed the amounts indicated below and shall be
293 set by the board.

294 **LICENSURE FEES:**



295 Application and examination.....\$175.00
296 Initial and renewal license.....\$325.00
297 Delinquent renewal penalty.....100% of renewal fee

298 **SERVICES:**

299 For each change of address.....\$25.00
300 For each duplicate license.....\$25.00
301 To change status as a licensee from active to inactive.\$25.00
302 For each bad check received by the commission.....\$25.00

303 All fees charged and collected under this chapter shall be
304 paid by the commission at least once a week, accompanied by a
305 detailed statement thereof, to the credit of the fund known as the
306 "Home Inspector License Fund," hereby created in the State
307 Treasury. All monies which are collected under this chapter shall
308 be paid into and credited to such fund for the use of the board in
309 carrying out the provisions of the chapter including the payment
310 of salaries and expenses, printing an annual directory of
311 licensees, and for educational purposes. All interest earned on
312 the Home Inspector License Fund shall be retained by the board for
313 purposes consistent with this chapter. The commission shall
314 submit a monthly statement to the board detailing any expenses
315 which it bears as a share in the expense of administering this
316 chapter, for which expenses it shall be reimbursed in the amount
317 approved by the board. The commission shall prepare an annual
318 statement of income and expenses related to its regulatory related
319 administrative function.

320 **SECTION 16.** The commission may refuse to issue or to renew
321 or may revoke or suspend a license or may place on probation,
322 censure, reprimand, or take other disciplinary action with regard
323 to any license issued under this act, including the issuance of
324 fines for each violation, for any one (1) or combination of the
325 following causes:

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



- 328 (b) Violation of terms of license probation;
- 329 (c) Conviction of a felony or making a plea of guilty
330 or nolo contendere within five (5) years prior to the date of
331 application;
- 332 (d) Operating without adequate insurance coverage
333 required for licensees; and
- 334 (e) Fraud in the procurement or performance of a
335 contract to conduct a home inspection.

336 **SECTION 17.** (1) The commission may investigate the actions
337 of an applicant or of a person holding or claiming to hold a
338 license upon complaint in writing of any person setting forth
339 facts which, if proved, would constitute a violation of this act
340 or rules promulgated hereunder.

341 (2) Whenever it appears to the commission that any person
342 has engaged or is about to engage in any act or practice
343 constituting a violation of any provision of this act or any rule
344 or order hereunder, they may, in their discretion, seek any or all
345 of the following remedies:

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

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

357 (3) With the exception of actions authorized by subsection
358 (2)(a) and (b) above, the commission shall, before taking any
359 disciplinary action that it may deem proper with regard to a
360 license, at least twenty (20) days prior to the date set for a



361 hearing, notify the applicant or licensee in writing of any
362 charges made and the time and place for a hearing of the charges.
363 Such written notice may be served by personal delivery or
364 certified or registered mail at the licensee's last known address
365 as reflected on their licensing application.

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

369 **SECTION 18.** (1) Upon the revocation or suspension of a
370 license, the licensee shall immediately surrender the license to
371 the commission. If the licensee fails to do so, the commission
372 shall have the right to seize the license.

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

376 **SECTION 19.** The commission shall maintain a roster of names
377 and addresses of all licenses and of all persons whose licenses
378 have been suspended or revoked. This roster shall be published on
379 a web site designated by the commission. All licensees under this
380 act shall inform the commission of any change in their business or
381 home address.

382 **SECTION 20.** A person already engaged in the business of
383 performing home inspections on July 1, 2002, is allowed ninety
384 (90) days from July 1, 2002, to comply with the provisions of this
385 act for the purpose of qualifying to perform home inspections.
386 Such person will qualify for a license without being required to
387 take an examination if he can document to the satisfaction of the
388 commission that he has conducted not less than twenty (20)
389 fee-paid home inspections in the previous twelve (12) months or
390 one hundred (100) fee-paid home inspections over his career or
391 that he has received certification as a home inspector from a
392 nationally recognized education center in a curriculum approved by



393 the United States Department of Housing and Urban Development and
394 the United States Department of Education.

395 **SECTION 21.** The information contained in or filed with any
396 registration application or renewal application is subject to
397 public disclosure. Information in the possession of, submitted to
398 or obtained by the commission in connection with any investigation
399 or examination under this act shall be confidential and exempt
400 from the requirements of the Mississippi Public Records Act of
401 1983. No such information may be disclosed by the commission or
402 its employees unless necessary or appropriate in connection with a
403 particular investigation or proceeding under this act or for any
404 law enforcement purpose, in the absence of an order of a court of
405 competent jurisdiction requiring such disclosure.

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

410 **SECTION 23.** The board may employ legal counsel to represent
411 it in any proceedings when legal counsel is required.

412 **SECTION 24.** This act shall take effect and be in force from
413 and after July 1, 2002.

