

By: Senator(s) Jackson

To: Business and Financial  
Institutions

SENATE BILL NO. 2975

1 AN ACT TO AMEND SECTION 73-59-13, MISSISSIPPI CODE OF 1972,  
2 TO AUTHORIZE THE STATE BOARD OF CONTRACTORS TO SEND AN INSPECTOR  
3 EMPLOYED BY A GOVERNING AUTHORITY OF ANY COUNTY OR MUNICIPALITY OR  
4 BY THE FEDERAL GOVERNMENT TO INSPECT RESIDENTIAL BUILDINGS WHICH  
5 ARE THE SUBJECT OF COMPLAINTS FILED WITH THE BOARD; AND FOR  
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 73-59-13, Mississippi Code of 1972, is  
9 amended as follows:

10 73-59-13. (1) The board, upon satisfactory proof and in  
11 accordance with the provisions of this chapter and the regulations  
12 of the board pertaining thereto, is authorized to take the  
13 disciplinary actions provided for in this section against any  
14 person for any of the following reasons:

15 (a) Violating any of the provisions of this chapter or  
16 the rules or regulations of the board pertaining to the work of  
17 residential building or residential improvement;

18 (b) Fraud, deceit or misrepresentation in obtaining a  
19 license;

20 (c) Gross negligence or misconduct;

21 (d) Engaging in work of residential building or  
22 residential improvement on an expired license or while under  
23 suspension or revocation of license unless the suspension or  
24 revocation be abated in accordance with this chapter;

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

26 (f) Failing to maintain workers' compensation  
27 insurance, if applicable; or

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



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

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

41 The board shall send a certified or licensed inspector, or an  
42 inspector employed as such by a governing authority of any county  
43 or municipality or by the federal government, to inspect the  
44 building or structure which is the subject of a complaint or the  
45 board may use a county certified building inspector from the  
46 county where the building or structure is located to inspect the  
47 building or structure which is the subject of a complaint. The  
48 report of the inspector shall be used in the investigation and the  
49 determination of the board. The provisions above shall only apply  
50 to hearings.

51 No disciplinary action may be taken until the accused has  
52 been furnished both a statement of the charges against him and  
53 notice of the time and place of the hearing thereon, which shall  
54 be personally served on such accused or mailed by certified mail,  
55 return receipt requested, to the last known business or residence  
56 address of the accused not less than thirty (30) days prior to the  
57 date fixed for the hearing. The complaining party shall be  
58 notified of the place and time of the hearing by mail to the last  
59 known business or residence address of the complaining party not  
60 less than thirty (30) days prior to the date fixed for the  
61 hearing.



62           (3) At any hearing held hereunder, the board shall have the  
63 power to subpoena witnesses and compel their attendance and may  
64 also require the production of books, papers, documents or other  
65 materials which may be pertinent to the proceedings. The board  
66 may designate or secure a hearing officer to conduct the hearing.  
67 All evidence shall be presented under oath, which may be  
68 administered by any member of the board, and thereafter the  
69 proceedings may, if necessary, be transcribed in full by a court  
70 reporter and filed as part of the record in the case. Copies of  
71 such transcriptions may be provided to any party to the  
72 proceedings at a price reflecting actual cost, to be fixed by the  
73 board.

74           All witnesses who are subpoenaed and appear in any  
75 proceedings before the board shall receive the same fees and  
76 mileage as allowed by law to witnesses in county, circuit and  
77 chancery court pursuant to Section 25-7-47, Mississippi Code of  
78 1972, and all such fees shall be taxed as part of the costs in the  
79 case.

80           When, in any proceeding before the board, any witness shall  
81 fail or refuse to attend upon subpoena issued by the board, shall  
82 refuse to testify, or shall refuse to produce any books and papers  
83 the production of which is called for by the subpoena, the  
84 attendance of such witness and the giving of his testimony and the  
85 production of the books and papers shall be enforced by any court  
86 of competent jurisdiction of this state in the manner provided for  
87 the enforcement of attendance and testimony of witnesses in civil  
88 cases in the courts of this state.

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

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



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

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

102 (a) Issue a public or private reprimand;

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

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

109 (6) A monetary penalty assessed and levied under this  
110 section shall be paid to the board upon the expiration of the  
111 period allowed for appeal of such penalties under this section or  
112 may be paid sooner if the guilty party elects. Money collected by  
113 the board under this section shall be deposited to the credit of  
114 the State Board of Contractors' Fund.

115 When payment of a monetary penalty assessed and levied by the  
116 board in accordance with this section is not paid when due, the  
117 board shall have the power to institute and maintain proceedings  
118 in its name for enforcement of payment in the chancery court of  
119 the county of residence of the delinquent party; however, if the  
120 delinquent party is a nonresident of the State of Mississippi,  
121 such proceedings shall be in the Chancery Court of the First  
122 Judicial District of Hinds County, Mississippi.

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



128 the practice of residential construction or residential remodeling  
129 or the bylaws, rules or regulations promulgated by the board.

130 (8) The board shall not assess any of the costs of  
131 disciplinary proceedings conducted pursuant to this section  
132 against the prevailing party.

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

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

140 (11) Any person aggrieved by any order or decision of the  
141 board may appeal within ten (10) days from the date of adjournment  
142 of the session at which the board rendered such order or decision,  
143 and may embody the facts, order and decision in a bill of  
144 exceptions which shall be signed by the person acting as chairman  
145 of the board. The board shall transmit the bill of exceptions to  
146 either the chancery court of the county of residence of the  
147 appellant, or the Chancery Court of the First Judicial District of  
148 Hinds County, at the election of the appellant, and the court or  
149 chancellor shall hear and determine the same either in termtime or  
150 in vacation, on the case as presented by the bill of exceptions,  
151 as an appellant court, and shall affirm or reverse the judgment.  
152 If the judgment be reversed, the chancery court or chancellor  
153 shall render such order or judgment as the board ought to have  
154 rendered, and certify the same to the board; and costs shall be  
155 awarded as in other cases. The board may employ counsel to defend  
156 such appeals, to be paid out of the funds in the State Board of  
157 Contractors' Fund.

158 The remedies provided under this chapter for any aggrieved  
159 applicant shall not be exclusive, but shall be cumulative of and



160 supplemental to any other remedies which he may otherwise have in  
161 law or in equity, whether by injunction or otherwise.

162 (12) Any political subdivision or agency of this state which  
163 receives a complaint against a residential builder or remodeler  
164 shall, in addition to exercising whatever authority such political  
165 subdivision or agency has been given over such complaint, forward  
166 the complaint to the board.

167 (13) In addition to the reasons specified in subsection (1)  
168 of this section, the board shall be authorized to suspend the  
169 license of any licensee for being out of compliance with an order  
170 for support, as defined in Section 93-11-153. The procedure for  
171 suspension of a license for being out of compliance with an order  
172 for support, and the procedure for the reissuance or reinstatement  
173 of a license suspended for that purpose, and the payment of any  
174 fees for the reissuance or reinstatement of a license suspended  
175 for that purpose, shall be governed by Section 93-11-157 or  
176 93-11-163, as the case may be. Actions taken by the board in  
177 suspending a license when required by Section 93-11-157 or  
178 93-11-163 are not actions from which an appeal may be taken under  
179 this section. Any appeal of a license suspension that is required  
180 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
181 with the appeal procedure specified in Section 93-11-157 or  
182 93-11-163, as the case may be, rather than the procedure specified  
183 in this section. If there is any conflict between any provision  
184 of Section 93-11-157 or 93-11-163 and any provision of this  
185 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
186 case may be, shall control.

187 **SECTION 2.** This act shall take effect and be in force from  
188 and after July 1, 2002.

