

# House Bill 848

*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 MISSISSIPPI REAL ESTATE COMMISSION; TO CREATE A HOME INSPECTOR REGULATORY 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 FEE REQUIREMENTS FOR HOME INSPECTORS LICENSE AND CREATE THE HOME INSPECTORS LICENSE FUND; TO PROVIDE FOR DISCIPLINARY PROCEEDINGS; TO REQUIRE THE MISSISSIPPI REAL ESTATE COMMISSION 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; TO AUTHORIZE THE BOARD TO EMPLOY LEGAL COUNSEL WHEN NECESSARY; AND FOR RELATED PURPOSES.*

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

SECTION 1. The following words shall have the meaning ascribed in this section 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.

(d) "Home inspector" means any person, who for compensation, conducts a home inspection.

(e) "Board" means the Home Inspector Regulatory Board that is created pursuant to the provisions of this chapter.

(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) "Commission" means the Mississippi Real Estate Commission as established under Section 73-35-5, Mississippi Code of 1972.

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

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

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

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

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

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

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

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

(h) Develop the application and license forms;

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

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

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

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

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

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

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

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

(c) Conduct investigations, subpoena individuals and records, administer oaths, take testimony and receive evidence and to do all other things necessary and proper to discipline a person licensed under this act and to enforce this act. 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 commission, may issue to this person an order requiring him to appear before the commission, 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.

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

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

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

(2) The members of the commission and board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning, a home inspector licensed pursuant to this chapter, provided that such action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the commission and board under this chapter.

SECTION 5. (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 commission.

(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.

SECTION 6. (1) An application for an original license shall be made in writing to the commission on forms as the commission 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 may include field work as prescribed by the commission;

(d) Have passed an examination as prescribed by the commission; 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 commission must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The commission 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 7. (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 commission.

(3) Insurance coverage limits shall be no less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for general liability and no less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for errors and omissions, per occurrence.

SECTION 8. (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 three (3) years after the date a home inspection is 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 9. (1) A licensed home inspector is required to follow the Standards of Practice and Code of Ethics as adopted and published by the commission.

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

SECTION 10. 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 board: 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, a licensed appraiser or a home builder.

SECTION 11. A license under this act shall expire two (2) years after its date of issuance. The commission 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 12. (1) Each person who applies for renewal of his license shall successfully complete home inspector continuing education courses approved by the commission at the rate of twenty (20) 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 commission pursuant to rule with the recommendation of the regulatory board.

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

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

SECTION 13. A home inspector license may be issued to a home inspector from another state who satisfies one 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, or (b) has passed the examination offered by the American Society of Home Inspectors or the National Association of Home Inspectors.

SECTION 14. (1) On or after July 1, 2001, 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 commission.

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

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

(4) After October 1, 2001, no person licensed under this act shall offer to perform or perform inspection services on new construction for a fee without having first obtained a residential home builders license from the Mississippi Board of Contractors and certification by the Southern Building Code Congress or any other national professional code organization.

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

**LICENSURE FEES:**

Application and examination.....\$175.00

Initial and renewal license.....\$325.00

Delinquent renewal penalty.....100% of renewal fee

**SERVICES:**

For each change of address.....\$25.00

For each duplicate license.....\$25.00

To change status as a licensee from active to inactive.\$25.00

For each bad check received by the commission.....\$25.00

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

SECTION 16. The commission 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 commission'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. (1) The commission 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 commission 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, they may, in their 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 commission 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 commission shall, after a hearing, issue an order either issuing, renewing, refusing to issue or renew, reinstating, or revoking the license.

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

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

SECTION 19. The commission 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 published on a web site designated by the commission. All licensees under this act shall inform the commission of any change in their business or home address.

SECTION 20. A person already engaged in the business of performing home inspections on July 1, 2001, is allowed ninety (90) days from July 1, 2001, to comply with the provisions of this act for the 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 commission that he has conducted not less than twenty (20) fee-paid home inspections in the previous twelve (12) months or one hundred (100) fee-paid home inspections over his career or that he has received certification as a home inspector from a nationally recognized education center in a curriculum approved by the United States Department of Housing and Urban Development and the United States Department of Education.

SECTION 21. 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 commission 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 commission or its 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. 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. The board may employ legal counsel to represent it in any proceedings when legal counsel is required.

SECTION 24. This act shall take effect and be in force from and after July 1, 2001.

Passed State Senate  
March 26, 2001

Passed House of Representatives  
March 26, 2001

APPROVED BY THE GOVERNOR

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GOVERNOR