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Chapter No. 433
11/SS01/R856
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SENATE BILL NO. 2538

Originated in Senate *Jeanne D'Amico* Secretary

SENATE BILL NO. 2538

AN ACT TO REENACT SECTIONS 73-59-1 THROUGH 73-59-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSING AND REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS; TO REENACT SECTIONS 31-3-3 AND 31-3-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE STATE BOARD OF CONTRACTORS AND PROVIDE FOR THE ORGANIZATION AND ADMINISTRATION OF THE BOARD; TO AMEND SECTION 14, CHAPTER 345, LAWS OF 2000, AS AMENDED BY SECTION 13, CHAPTER 375, LAWS OF 2005, AS AMENDED BY SECTION 13, CHAPTER 556, LAWS OF 2009, TO EXTEND THE REPEALER REGARDING THE LICENSING AND REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS AND THE STATE BOARD OF CONTRACTORS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 73-59-1, Mississippi Code of 1972, is reenacted as follows:

73-59-1. For the purposes of this chapter, the following words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation, partnership or individual who constructs a building or structure for sale for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the cost of the undertaking exceeds Fifty Thousand Dollars (\$50,000.00).

(c) "Remodeler" means any corporation, partnership or individual who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction,

or superintending of the construction, of improvements to an existing residence when the cost of the improvements exceeds Ten Thousand Dollars (\$10,000.00).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

SECTION 2. Section 73-59-3, Mississippi Code of 1972, is reenacted as follows:

73-59-3. (1) Except as otherwise provided in Section 73-59-15 or Section 33-1-39, persons who perform residential construction or residential improvement shall be licensed by the board annually, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the board:

(a) Proof of workers' compensation insurance, if applicable;

(b) A federal employment identification number or social security number.

(2) The board shall not require liability insurance to be licensed under this chapter but if a licensee has liability insurance it shall be reflected on the certificate of licensure.

(3) The board shall issue or renew a license to a residential builder or remodeler upon payment to the board of the license fee. The initial license fee shall be Fifty Dollars (\$50.00). The license fee may thereafter be increased or decreased by the board and cannot exceed One Hundred Dollars (\$100.00); however, the receipts from fees collected by the board shall be no greater than the amount required to pay all costs and expenses incurred by the board in enforcing the provisions of this chapter. Twenty-five Dollars (\$25.00) of the fee required by this section which is assessed to residential builders licensed under

the provisions of Section 73-59-1 et seq. shall be deposited to the Construction Education Fund created pursuant to Section 31-3-14 and shall be distributed to the Mississippi Housing Institute. The remaining fees collected under this chapter shall be deposited into the special fund in the State Treasury known as the "State Board of Contractors Fund" created pursuant to Section 31-3-17 and shall be used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive secretary of the board and countersigned by the chairman or vice chairman of the board.

(4) Except as provided in Section 33-1-39, the license shall expire on the last day of the twelfth month following its issuance or renewal and shall become invalid unless renewed. The board may notify by mail or e-mail every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. To receive notification by e-mail, a licensee must notify the board of his desire to receive notification by e-mail and provide an e-mail address. Such notice may be mailed or e-mailed within thirty (30) days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal is effected within one hundred twenty (120) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge of not more than Twenty-five Dollars (\$25.00).

(5) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

SECTION 3. Section 73-59-5, Mississippi Code of 1972, is reenacted as follows:

73-59-5. Any corporation, partnership or individual seeking to be licensed and examined under this chapter shall file with the board at least thirty (30) days prior to the next meeting of the board a written application on such form as may be prescribed by the board. Such application shall be accompanied by the payment of the license fee. If the application sufficiently contains the information required pursuant to this chapter, the applicant shall be examined by the board at its next meeting using a uniform written examination prescribed by the board. The board shall administer an oral examination to applicants who are unable to take the written examination. In addition, the board, in examining such applicant, shall consider the following:

- (a) Experience;
- (b) Complaints; and
- (c) Other pertinent information the board may require.

If, as a result of the examination, the board finds that the applicant is qualified to engage in residential construction or residential improvement in Mississippi, the applicant shall be issued a license. Any applicant rejected by the board shall be given the opportunity to be reexamined at the next regularly scheduled examination date after a new application has been filed and the license fee has again been paid.

The board shall make and preserve a record of each examination of an applicant and the findings of the board pertaining to such examination. A certified copy of such record, omitting confidential test questions, shall be furnished to the applicant so requesting such record upon the payment of a fee to

the board that reasonably reflects the cost of furnishing such record to the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

Each application for a license under this chapter shall reveal any other states in which the applicant or any partner or business associate of the applicant is licensed and whether the applicant, partner or business associate has had a license revoked or suspended in any other state. If the applicant fails to provide this information, the board may deny or revoke the applicant's license. If the applicant has had a license revoked in another state, the board may deny the application for a license in this state.

SECTION 4. Section 73-59-7, Mississippi Code of 1972, is reenacted as follows:

73-59-7. In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the board, upon application, may issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed residential builders or remodelers. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the board or until a contract to build or remodel entered into during the period of the emergency license has been completed.

Within five (5) days of any applicant beginning work as a residential builder or remodeler under this section, the employer or person contracting with such person shall certify to the board such application without being deemed in violation of this chapter, provided that the board, after notice and hearing, may take disciplinary action or revoke the emergency license upon

grounds as otherwise contained in this chapter providing for such disciplinary action or revocation of a residential builder's or remodeler's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars (\$50.00) as determined by the board and shall be due and payable at the time of the issuance of such emergency license.

SECTION 5. Section 73-59-9, Mississippi Code of 1972, is reenacted as follows:

73-59-9. (1) Any residential builder who undertakes or attempts to undertake the business of residential construction without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(2) Any remodeler who undertakes or attempts to undertake the business of residential improvement without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(3) A residential builder or remodeler who does not have the license provided by this chapter may not bring any action, either at law or in equity, to enforce any contract for residential building or remodeling or to enforce a sales contract.

SECTION 6. Section 73-59-11, Mississippi Code of 1972, is reenacted as follows:

73-59-11. The board shall have the following additional duties for the purposes of this chapter:

(a) To conduct thorough investigations of all applicants seeking a license or licensees seeking renewal of their licenses and of all complaints filed with the board concerning the performance of a residential builder.

(b) To obtain information concerning the responsibility of any applicant for a license or of a licensee. Such information may be obtained by investigation, by hearings, or by any other reasonable and lawful means. The board shall keep such information appropriately filed.

(c) To maintain a list of residential builders and remodelers to whom licenses are issued, refused, revoked or suspended, which list shall be available to any interested person.

(d) To prepare annually a complete roster that shows all the names and places of business of the residential builders and remodelers licensed by the board during the preceding year and to forward a copy of the roster to each municipality and county in the state and to file the roster with the Secretary of State.

(e) To take disciplinary actions pursuant to the provisions of Section 73-59-13.

(f) To adopt rules and regulations governing disciplinary actions and the conduct of its hearings and to adopt such other rules and regulations as the board finds necessary for the proper administration of this chapter.

The holder of a valid license shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed

immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

SECTION 7. Section 73-59-13, Mississippi Code of 1972, is reenacted as follows:

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

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

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

(c) Gross negligence or misconduct;

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

(e) Loaning a license to an unlicensed person;

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

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

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

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not

frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to such charges.

The board shall send a certified inspector to inspect the building or structure which is the subject of a complaint or the board may use a county certified building inspector from the county where the building or structure is located to inspect the building or structure which is the subject of a complaint. The report of the inspector shall be used in the investigation and the determination of the board. The provisions above shall only apply to hearings.

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

(3) At any hearing held hereunder, the board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents or other materials which may be pertinent to the proceedings. The board may designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by a court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the

proceedings at a price reflecting actual cost, to be fixed by the board.

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

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

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

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward to the last known business or residence address of the accused, by certified mail, return receipt requested, a written statement of the decision of the board.

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

- (a) Issue a public or private reprimand;
- (b) Suspend or revoke the license of the accused; or

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

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

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

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that such party shall not further violate either the laws of the State of Mississippi pertaining to the practice of residential construction or residential remodeling or the bylaws, rules or regulations promulgated by the board.

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

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceedings, civil or

criminal, concerning the same violation or violations except as provided in this section.

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

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

The remedies provided under this chapter for any aggrieved applicant shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

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

(13) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the

license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 8. Section 73-59-15, Mississippi Code of 1972, is reenacted as follows:

73-59-15. (1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence, or who acts under the supervision of the owner-occupant who is the general contractor;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to

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Chapter No. 483

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SENATE BILL NO. 2538

Originated in Senate

Jeanne D'Amico

Secretary

SENATE BILL NO. 2538

AN ACT TO REENACT SECTIONS 73-59-1 THROUGH 73-59-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSING AND REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS; TO REENACT SECTIONS 31-3-3 AND 31-3-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE STATE BOARD OF CONTRACTORS AND PROVIDE FOR THE ORGANIZATION AND ADMINISTRATION OF THE BOARD; TO AMEND SECTION 14, CHAPTER 345, LAWS OF 2000, AS AMENDED BY SECTION 13, CHAPTER 375, LAWS OF 2005, AS AMENDED BY SECTION 13, CHAPTER 556, LAWS OF 2009, TO EXTEND THE REPEALER REGARDING THE LICENSING AND REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS AND THE STATE BOARD OF CONTRACTORS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 73-59-1, Mississippi Code of 1972, is reenacted as follows:

73-59-1. For the purposes of this chapter, the following words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation, partnership or individual who constructs a building or structure for sale for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the cost of the undertaking exceeds Fifty Thousand Dollars (\$50,000.00).

(c) "Remodeler" means any corporation, partnership or individual who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction,

or superintending of the construction, of improvements to an existing residence when the cost of the improvements exceeds Ten Thousand Dollars (\$10,000.00).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

SECTION 2. Section 73-59-3, Mississippi Code of 1972, is reenacted as follows:

73-59-3. (1) Except as otherwise provided in Section 73-59-15 or Section 33-1-39, persons who perform residential construction or residential improvement shall be licensed by the board annually, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the board:

(a) Proof of workers' compensation insurance, if applicable;

(b) A federal employment identification number or social security number.

(2) The board shall not require liability insurance to be licensed under this chapter but if a licensee has liability insurance it shall be reflected on the certificate of licensure.

(3) The board shall issue or renew a license to a residential builder or remodeler upon payment to the board of the license fee. The initial license fee shall be Fifty Dollars (\$50.00). The license fee may thereafter be increased or decreased by the board and cannot exceed One Hundred Dollars (\$100.00); however, the receipts from fees collected by the board shall be no greater than the amount required to pay all costs and expenses incurred by the board in enforcing the provisions of this chapter. Twenty-five Dollars (\$25.00) of the fee required by this section which is assessed to residential builders licensed under

the provisions of Section 73-59-1 et seq. shall be deposited to the Construction Education Fund created pursuant to Section 31-3-14 and shall be distributed to the Mississippi Housing Institute. The remaining fees collected under this chapter shall be deposited into the special fund in the State Treasury known as the "State Board of Contractors Fund" created pursuant to Section 31-3-17 and shall be used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive secretary of the board and countersigned by the chairman or vice chairman of the board.

(4) Except as provided in Section 33-1-39, the license shall expire on the last day of the twelfth month following its issuance or renewal and shall become invalid unless renewed. The board may notify by mail or e-mail every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. To receive notification by e-mail, a licensee must notify the board of his desire to receive notification by e-mail and provide an e-mail address. Such notice may be mailed or e-mailed within thirty (30) days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal is effected within one hundred twenty (120) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge of not more than Twenty-five Dollars (\$25.00).

(5) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

SECTION 3. Section 73-59-5, Mississippi Code of 1972, is reenacted as follows:

73-59-5. Any corporation, partnership or individual seeking to be licensed and examined under this chapter shall file with the board at least thirty (30) days prior to the next meeting of the board a written application on such form as may be prescribed by the board. Such application shall be accompanied by the payment of the license fee. If the application sufficiently contains the information required pursuant to this chapter, the applicant shall be examined by the board at its next meeting using a uniform written examination prescribed by the board. The board shall administer an oral examination to applicants who are unable to take the written examination. In addition, the board, in examining such applicant, shall consider the following:

- (a) Experience;
- (b) Complaints; and
- (c) Other pertinent information the board may require.

If, as a result of the examination, the board finds that the applicant is qualified to engage in residential construction or residential improvement in Mississippi, the applicant shall be issued a license. Any applicant rejected by the board shall be given the opportunity to be reexamined at the next regularly scheduled examination date after a new application has been filed and the license fee has again been paid.

The board shall make and preserve a record of each examination of an applicant and the findings of the board pertaining to such examination. A certified copy of such record, omitting confidential test questions, shall be furnished to the applicant so requesting such record upon the payment of a fee to

the board that reasonably reflects the cost of furnishing such record to the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

Each application for a license under this chapter shall reveal any other states in which the applicant or any partner or business associate of the applicant is licensed and whether the applicant, partner or business associate has had a license revoked or suspended in any other state. If the applicant fails to provide this information, the board may deny or revoke the applicant's license. If the applicant has had a license revoked in another state, the board may deny the application for a license in this state.

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Within five (5) days of any applicant beginning work as a residential builder or remodeler under this section, the employer or person contracting with such person shall certify to the board such application without being deemed in violation of this chapter, provided that the board, after notice and hearing, may take disciplinary action or revoke the emergency license upon

grounds as otherwise contained in this chapter providing for such disciplinary action or revocation of a residential builder's or remodeler's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars (\$50.00) as determined by the board and shall be due and payable at the time of the issuance of such emergency license.

SECTION 5. Section 73-59-9, Mississippi Code of 1972, is reenacted as follows:

73-59-9. (1) Any residential builder who undertakes or attempts to undertake the business of residential construction without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(2) Any remodeler who undertakes or attempts to undertake the business of residential improvement without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(3) A residential builder or remodeler who does not have the license provided by this chapter may not bring any action, either at law or in equity, to enforce any contract for residential building or remodeling or to enforce a sales contract.

SECTION 6. Section 73-59-11, Mississippi Code of 1972, is reenacted as follows:

73-59-11. The board shall have the following additional duties for the purposes of this chapter:

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(d) To prepare annually a complete roster that shows all the names and places of business of the residential builders and remodelers licensed by the board during the preceding year and to forward a copy of the roster to each municipality and county in the state and to file the roster with the Secretary of State.

(e) To take disciplinary actions pursuant to the provisions of Section 73-59-13.

(f) To adopt rules and regulations governing disciplinary actions and the conduct of its hearings and to adopt such other rules and regulations as the board finds necessary for the proper administration of this chapter.

The holder of a valid license shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed

immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

SECTION 7. Section 73-59-13, Mississippi Code of 1972, is reenacted as follows:

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

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

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

(c) Gross negligence or misconduct;

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

(e) Loaning a license to an unlicensed person;

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

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

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

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not

frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to such charges.

The board shall send a certified inspector to inspect the building or structure which is the subject of a complaint or the board may use a county certified building inspector from the county where the building or structure is located to inspect the building or structure which is the subject of a complaint. The report of the inspector shall be used in the investigation and the determination of the board. The provisions above shall only apply to hearings.

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

(3) At any hearing held hereunder, the board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents or other materials which may be pertinent to the proceedings. The board may designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by a court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the

proceedings at a price reflecting actual cost, to be fixed by the board.

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

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

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

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward to the last known business or residence address of the accused, by certified mail, return receipt requested, a written statement of the decision of the board.

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

- (a) Issue a public or private reprimand;
- (b) Suspend or revoke the license of the accused; or

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

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

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

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that such party shall not further violate either the laws of the State of Mississippi pertaining to the practice of residential construction or residential remodeling or the bylaws, rules or regulations promulgated by the board.

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

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceedings, civil or

criminal, concerning the same violation or violations except as provided in this section.

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

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

The remedies provided under this chapter for any aggrieved applicant shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

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

(13) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the

license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 8. Section 73-59-15, Mississippi Code of 1972, is reenacted as follows:

73-59-15. (1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence, or who acts under the supervision of the owner-occupant who is the general contractor;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to

residential construction or improvement, when the owner of such construction or improvement is related to such person by consanguinity or direct affinity;

(d) The owners of property who supervise, superintend, oversee, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or maintenance of any building, railroad, excavation, project, development, improvement, plant facility or any other construction undertaking on such property for use by such owner and which will not be for sale, rent, public use or public assembly;

(e) An employee of a licensed residential builder;

(f) A contractor holding a valid license or certificate of responsibility for general construction from the board;

(g) Any nonresident contractor holding a valid license or certificate of responsibility for general construction;

(h) Any person who constructs two (2) single residences or less within a period of one (1) year in any county or municipality which does not require a building permit or any local certification for such construction.

(2) A person specified in subsection (1)(b) shall not make more than two (2) applications for a permit to construct a single residence or shall not construct more than two (2) single residences within a period of one (1) year. There shall be a rebuttable presumption that such person intends to construct for the purpose of resale, lease, rent or any similar purpose if more than two (2) applications are made for a permit to construct a single residence or if more than two (2) single residences are constructed within a period of one (1) year.

(3) The provisions of this section shall not apply to builders and remodelers who are not domiciled in the State of Mississippi. Builders and remodelers who are not domiciled in the State of Mississippi are not required to be licensed under the

provisions of this chapter if the state in which they are domiciled requires licensing and the licensing state's requirements are at least the equivalent of those requirements provided in this chapter.

SECTION 9. Section 73-59-17, Mississippi Code of 1972, is reenacted as follows:

73-59-17. The building official, or other authority charged with the duty of issuing building or similar permits, of any municipality or county, shall refuse to issue a permit for any undertaking which would classify the applicant as a residential builder or remodeler under this chapter unless the applicant has furnished evidence that he is either licensed as required by this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall also report to the board the name and address of any person who, in his opinion, has violated this chapter by accepting, or contracting to accomplish, work which would classify the person as a residential builder or remodeler under this chapter without a license or acknowledgement.

SECTION 10. Section 73-59-19, Mississippi Code of 1972, is reenacted as follows:

73-59-19. Any residential builder or remodeler licensed pursuant to the provisions of this chapter may, without being required to obtain an additional license under any other law of this state, construct, improve, repair, remodel or renovate any commercial structure, provided the prescribed contract job does not exceed seven thousand five hundred (7,500) square feet.

SECTION 11. Section 31-3-3, Mississippi Code of 1972, is reenacted as follows:

31-3-3. There is hereby created the State Board of Contractors of the State of Mississippi, which shall consist of ten (10) members who shall be appointed by the Governor. All appointments to the board after July 1, 1980, shall be made with

the advice and consent of the Senate. Two (2) road contractors; two (2) building contractors; two (2) residential builders as defined in Section 73-59-1; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor shall compose the board. From and after July 1, 1992, the Governor shall appoint one (1) additional member who shall be a roofing contractor and whose term of office shall be five (5) years. Each member shall be an actual resident of the State of Mississippi and must have been actually engaged in the contracting business for a period of not less than ten (10) years before appointment. The initial terms of the two (2) residential builders shall be for two (2) and four (4) years, respectively, beginning July 1, 1993.

Upon the expiration of the term of office of any member of the board, the Governor shall appoint a new member for a term of five (5) years, such new appointments being made so as to maintain on the board two (2) building contractors; two (2) road contractors; two (2) residential builders; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor; and one (1) roofing contractor. The Governor shall fill any vacancy by appointment, such appointee to serve the balance of the term of the original appointee. The Governor may remove any member of the board for misconduct, incompetency or willful neglect of duty.

In the event the Governor fails to appoint a member of the board within twelve (12) months of the occurrence of the vacancy, such vacancy shall be filled by majority vote of the board, subject to advice and consent of the Senate and the requirements of this section.

SECTION 12. Section 31-3-5, Mississippi Code of 1972, is reenacted as follows:

31-3-5. The board shall be assigned suitable office space at the seat of government and shall elect one (1) of its members as

chairman and one (1) as vice chairman; and each shall perform the usual duties of such offices. The board may adopt a seal. Six (6) members of the board shall constitute a quorum, and a majority vote of those present and voting at any meeting shall be necessary for the transaction of any business coming before the board. Members must be present to cast votes on any and all business. The executive director shall serve as secretary of the board. The board is authorized to employ such personnel as shall be necessary in the performance of its duties including sufficient administrative and clerical staff to process and review applications for certificates of responsibility, to prepare and administer tests therefor, to investigate applications for certificates of responsibility and to inspect work performed by contractors as may be necessary to enforce and carry out the purpose of this chapter.

SECTION 13. Section 14, Chapter 345, Laws of 2000, as amended by Section 13, Chapter 375, Laws of 2005, as amended by Section 13, Chapter 556, Laws of 2009, is amended as follows:

Section 14. This act shall take effect and be in force from and after its passage, and shall stand repealed on July 1, 2015.

SECTION 14. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE SENATE
February 2, 2011



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 4, 2011



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3/16/10

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