

SECOND REGULAR SESSION

# SENATE BILL NO. 862

91ST GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DePASCO.

Pre-filed January 2, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3617S.011

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## AN ACT

To amend chapter 324, RSMo, by adding thereto nineteen new sections relating to the licensing of home builders, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 324, RSMo, is amended by adding thereto nineteen new sections, to be known as sections 324.550, 324.552, 324.554, 324.556, 324.558, 324.560, 324.562, 324.564, 324.566, 324.568, 324.570, 324.572, 324.574, 324.576, 324.578, 324.580, 324.582, 324.584 and 324.586, to read as follows:

**324.550. As used in sections 324.550 to 324.586, unless the context clearly indicates otherwise, the following terms shall mean:**

- (1) "Board", the home builders licensure board;**
- (2) "Contracting", except as exempted in sections 324.550 to 324.586, engaging in residential and private dwelling construction business as a contractor;**
- (3) "Dwelling", a single unit providing complete independent residential living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation;**
- (4) "Home builders licensure board", the board created pursuant to sections 324.550 to 324.586 to regulate the home building and residential construction industry;**
- (5) "Inactive license", a license issued at the request of a licensee, or a building official or a building inspector, which is renewable, but which is not currently valid;**
- (6) "License", a new license or a renewal license issued by the board pursuant to sections 324.550 to 324.586;**
- (7) "Licensee", a holder of a certificate issued pursuant to sections 324.550 to**

**324.586;**

**(8) "Person", any natural person, limited or general partnership, corporation, association, limited liability company, or other legal entity, or any combination thereof;**

**(9) "Residential home builder or contractor", one who constructs a residential building or structure for sale or who, for a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction, of any building or structure which is not over three floors in height and which does not have more than four units in an apartment complex, or the repair, improvement, or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars. Nothing in sections 324.550 to 324.586 shall prevent any person from performing these acts on his or her own residence or on his or her other real estate holdings. Anyone who engages or offers to engage in such undertaking in this state shall be deemed to have engaged in the business of residential home building;**

**(10) "Structure", a residence, including a site-built home, a modular home constructed off-site, a condominium, a duplex or multi-unit residential building consisting of four dwelling units or less.**

**324.552. 1. There is established within the division of professional registration the "Home Builders Licensure Board". The board shall consist of seven members to be appointed by the governor with the advice and consent of the senate.**

**2. The governor shall appoint four members who have at least five years' experience in residential construction. All members shall be bona fide residents of the state of Missouri. Two of the four residential construction members shall be appointed from a list of at least ten names submitted by the statewide trade organization that represents the residential construction industry. One member shall be a building official or inspector currently employed by a city, county, or state governmental entity and actively engaged in inspecting or regulating residential construction in this state. Two members shall be consumer members of the general public not employed by or affiliated with a licensee pursuant to sections 324.550 to 324.586, and who have no spouse or immediate family member employed by or affiliated with a licensee pursuant to sections 324.550 to 324.586.**

**3. Members of the board shall serve three-year terms. Each board member shall serve until his or her successor shall be duly appointed and qualified.**

**4. The board shall meet at such other times as the chair may designate; provided however, that the board shall meet within thirty days after appointment for the purpose of organizing and transacting such business as may properly come before**

**it. Four members shall constitute a quorum at all meetings. The secretary of the board shall keep such records of each meeting as shall be required by the board.**

**324.554. The division of professional registration shall provide staff and administrative support for the board as provided in section 620.010, RSMo.**

**324.556. The board may:**

- (1) Issue, modify, suspend and revoke residential building contractor's licenses;**
- (2) Establish qualifications for residential building contractor's licenses;**
- (3) Enforce sections 324.550 to 324.586 and the board's regulations;**
- (4) Issue regulations necessary for the implementation of sections 324.550 to 324.586;**
- (5) Levy civil penalties in the amounts prescribed in section 324.572; and**
- (6) Issue orders of abatement and seek any other civil remedies which are available to the board.**

**324.558. No person shall act as a residential building contractor after January 1, 2003, unless licensed by the board or exempted from licensure pursuant to sections 324.550 to 324.586.**

**324.560. 1. All residential home builders shall be required to be licensed by the home builders licensure board annually.**

**2. The board shall issue a license upon the applicant's payment of the examination fee and annual license fee, if the board, as a result of examining the applicant, has determined that he or she is qualified to engage in residential building and has obtained an executed bond with a surety approved by the board in the sum of one hundred thousand dollars, or proof of financial responsibility acceptable to the board.**

**3. All licenses shall be issued or renewed upon the payment to the board of the annual license fee. The annual license fee shall be set by the board by rule after it considers its cost of operation. The annual fee may be increased or decreased by the board but in no event shall the board set the annual fee at an amount which would not provide sufficient revenues to pay all the salaries, costs, and expenses incurred by the board in enforcing the provisions of sections 324.550 to 324.586. The board may charge application processing fees, inactive license fees, and late fees.**

**4. The board may, upon request in writing, refund fees, except the application processing fee, paid by an applicant who is denied a license or who fails to complete the application process. No fees shall be refunded to a licensee as a result of a license revocation. The annual license fee shall be for a period of twelve months.**

**324.562. 1. Unless otherwise exempted, no person or entity shall be licensed as a residential builder unless the individual, or a qualifying party for an entity has**

passed the examination required by the board.

2. A residential builder's license may be granted without examination to those builders who are licensed in good standing in other states which are deemed by the board to have comparable exams.

324.564. The "Home Builders Licensure Fund" is hereby created in the state treasury. All fees collected by the board shall be placed in the home builders licensure board fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the general revenue fund. Interest accruing to the fund shall remain with the fund. The home builders licensure fund may not be supported by appropriations of state funds. All funds deposited shall be used only for the administration and enforcement of sections 324.550 to 324.586.

324.566. Sections 324.550 to 324.586 shall not apply to:

(1) Any employee of a licensee who does not hold himself or herself out for hire or engage in contracting, except as such employee of a licensee;

(2) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment;

(3) Licensed real estate agents operating within the scope of their respective licenses on behalf of clients;

(4) Owners of property when acting as their own contractor and providing all material supervision themselves, when building or improving one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale;

(5) The provisions of sections 324.550 to 324.586 do not apply to mobile homes and shall not in any way change or interfere with the duties, responsibilities and operations of the Missouri manufactured housing commission as defined in chapter 700, RSMo.

324.568. 1. Any residential home builder who desires to receive a new or renew a license pursuant to sections 324.550 to 324.586 shall file with the board a written application on a form prescribed by the board. Such application shall be accompanied by the payment of the annual license fee required by the board. After the board accepts the application the applicant may be examined by the board at its next meeting. The board in examining the applicant shall consider the following qualifications of the applicant:

(1) Experience;

(2) Ability;

**(3) Character;**

**(4) Business-related financial condition:**

**(a) The board may require a financial statement on a form prescribed by the board and a public records search directly from a credit reporting agency;**

**(b) The board may require a positive net worth or other evidence of business-related financial condition sufficient to reasonably satisfy the board of the applicant's financial responsibility;**

**(c) The board may require that business-related judgments, judgment liens, and other perfected liens, must be satisfied and released. The application and renewal forms for all licenses issued by the board shall require the applicant to list any outstanding judgments issued against him or her for the past ten years. Any information obtained by the board pursuant to this subdivision relating to the financial condition of an applicant shall not be public information;**

**(5) Ability and willingness to serve the public and conserve the public health and safety; and**

**(6) Any other pertinent qualifications the board may require.**

**2. If the board finds the applicant qualified to engage in residential home building in this state, the applicant shall be issued a license. An applicant rejected by the board shall be given an opportunity to be reexamined after a new application has been filed and an additional application fee paid. A record shall be made and preserved by the board of each examination and the findings of the board pertaining to the examination. A copy of the record shall be made available to any applicant requesting it upon the payment of a reasonable fee for reproduction of same to the board.**

**3. Any licensee who desires to receive an inactive license shall file with the board a written application for an inactive license on a form prescribed by the board prior to the expiration of his or her current license. The application shall be accompanied by the payment of the annual inactive license fee required by the board. No act for which a license is required may be performed under an inactive license. In the event a person holding a current inactive license applies for a license, he or she may rely upon his or her inactive license as evidence of the experience and ability requirements for licensure pursuant to subsection 1 of this section.**

**324.570. 1. The board is hereby authorized, when complaints, examinations or inspection of a home builder discloses to the board that a home builder has committed fraud or deceit in obtaining a license or has been guilty of gross negligence, incompetence or misconduct in the practice of residential home building, to file a complaint with the administrative hearing commission pursuant to chapter 621,**

**RSMo. The complaint shall include the facts which lead the board to conclude that the acts, conduct or condition of the licensee constitute grounds for suspension or revocation.**

**2. If the board concludes that a home builder has committed an act or is engaging in a course of conduct which constitutes a ground for revocation or suspension, the board may file a complaint before the administrative hearing commission pursuant to chapter 621, RSMo, requesting an expedited hearing and specifying the activities which give rise to the proposed revocation or suspension of the home builder's license. Within fifteen days after service of the complaint on a licensee, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged activities of the licensee appear to constitute grounds which justify that the home builder's license be immediately revoked or suspended. The burden of proving that a licensee has engaged in incompetence, gross negligence or misconduct in the practice of residential home building shall be upon the board. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or revoke the license or dismiss the action.**

**3. If the administrative hearing commission grants temporary authority to the board to revoke or suspend the home builder's license, such temporary authority of the board shall become final authority if there is no request by the licensee for a full hearing within thirty days of the preliminary hearing. The administrative hearing commission shall, if requested by the licensee named in the complaint, set a date to hold a full hearing under the provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint filed by the board.**

**4. If the administrative hearing commission dismisses the action filed by the board pursuant to subsection 2 of this section, such dismissal shall not bar the board from initiating a subsequent action on the same grounds.**

**324.572. In addition to any other disciplinary action authorized pursuant to sections 324.550 to 324.586, the board may levy and collect administrative fines for violations of sections 324.550 to 324.586 or the rules or regulations of the board in an amount not to exceed one thousand dollars for each violation.**

**324.574. A complete roster of licensees shall be prepared and published annually by the board.**

**324.576. The board shall annually submit to the governor and the general assembly a report of its transactions for the preceding year. The board shall file with the secretary of state a copy of the report.**

**324.578. The board is authorized to promulgate rules and regulations necessary**

to effectuate the provisions of sections 324.550 to 324.586 and accomplish its work. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

**324.580.** After December 31, 2002, it is the duty of the building official, or other authority charged with the duty, of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county, to refuse to issue a permit for any undertaking which would require a license pursuant to sections 324.550 to 324.586 unless the applicant has furnished evidence that he or she is either licensed as required by this chapter or is exempt from the requirements of sections 324.550 to 324.586. The building official, or other authority charged with the duty of issuing building or similar permits, shall report to the board the name and address of any person who, in his or her opinion, has violated the provisions of sections 324.550 to 324.586. Nothing contained in sections 324.550 to 324.586 shall require a builder to pay license fees for subcontractors who will be or were involved in the construction for which the permit is being obtained as a condition of issuance of a building permit or the issuance of a certificate of occupancy. The builder shall submit to the issuing municipality or county, if requested, a list of the subcontractors with correct physical addresses and phone numbers involved in the construction project within fifteen days of the issuance of the building permit. Should the builder add any subcontractor to the project, the builder will submit the subcontractors name, address and phone number to the municipality or county within three working days of hiring. An updated list of subcontractors shall be furnished by the builder before the issuance of a certificate of occupancy by the municipality.

**324.582. 1.** Any person who undertakes or attempts to undertake the business of residential home building without first having procured a valid home builders' license, pursuant to sections 324.550 to 324.586 or who knowingly presents to, or files false information with the board for the purpose of obtaining the license or who violates any applicable building city ordinance shall be deemed guilty of a class C misdemeanor.

**2.** Upon notice from the board, any person who undertakes or attempts to undertake the business of residential home building without first having procured a

valid license shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the residential home builder, or to the person doing the work, and shall state the conditions under which work may be resumed.

3. A residential home builder may not file a lien, file a claim with the board, or maintain any action either at law or in equity in any court in this state for compensation for the performance of any work on any residential structure or dwelling unless the residential home builder was:

(1) Licensed pursuant to sections 324.550 to 324.586 at the time the residential home builder bid or entered into the contract for the performance of the work unless the bid or contract predated January 1, 2003; and

(2) Licensed continuously while performing the work for which compensation is sought.

4. A court may choose not to apply the provisions of subsection 3 of this section if the court finds that to do so would result in a substantial injustice to the unlicensed home builder.

5. Whenever it shall appear to the board that any residential home builder has violated or is about to violate sections 324.550 to 324.586, the board may in its own name petition the circuit court of the county where the violation occurred or is about to occur to issue a temporary restraining order or other appropriate injunctive relief enjoining the violation.

**324.584. 1.** The board is authorized to establish a recovery fund from which an aggrieved party may recover actual economic damages, not including interest and court costs, sustained within this state as the direct result of conduct of a licensee in violation of sections 324.550 to 324.586 or the rules and regulations of the board.

2. Any payments from the recovery fund shall be subject to the following limitations and conditions:

(1) Payments for claims based on judgments or settlements against any one licensee shall not exceed fifty thousand dollars in the aggregate;

(2) Payments for claims arising out of the same transaction shall not exceed fifty thousand dollars in the aggregate;

(3) Payment for any single claimant shall not exceed twenty-five thousand dollars;

(4) The recovery fund shall be liable only to home owners.

3. Each licensee shall, on order of the board, pay a fee of thirty dollars, no more than once a year, per licensee for deposit in the recovery fund. A licensee on inactive status shall not be required to contribute to the recovery fund.

**4. When a complaint is filed which may result in liability for the recovery fund, the complainant shall notify the board in writing, by certified mail, when the action is commenced.**

**5. When the notice is received, the board may enter an appearance, file pleadings and appear at court hearings, defend or take action it deems appropriate either on the behalf and in the name of the defendant or in its own name. The board may seek any appropriate method of judicial review. The board may settle or compromise the claim. Any expenses incurred by the board in defending, satisfying, or settling any claim shall be paid from the recovery fund.**

**6. When a complainant recovers a valid judgment in a court of competent jurisdiction against a licensee, the aggrieved party may, when judgment is final, file a verified claim in the court in which the judgment was entered and, on thirty days written notice to the board, may apply to the court for an order directing payment out of the recovery fund of the amount remaining unpaid on the judgment.**

**7. The court shall proceed on such application forthwith and, on hearing, the complainant shall be required to show that:**

**(1) He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent or a shareholder officer or director of the debtor;**

**(2) He or she has obtained a judgment, as described in this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in such action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties;**

**(3) The following items, if recovered by him or her have been applied to the actual compensatory damages awarded by the court:**

**(a) Any amount recovered from the judgment debtor;**

**(b) Any amount recovered from bonding companies; and**

**(c) Any amount recovered in out-of-court settlements.**

**8. The court shall order the recovery fund to pay the sum it finds due, subject to the provisions and limitations of this section. Should the board pay from the recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the board. The board may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of twelve percent per annum, the amount paid from the recovery fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section. If the balance in**

**the recovery fund is insufficient to satisfy a duly authorized claim or portion of a claim, the board shall, when sufficient money has been deposited in the recovery fund, satisfy the unpaid claims in the order that the claims were filed.**

**9. The sums received by the board, pursuant to the provisions of this section, shall be deposited into the state treasury and held in a special fund to be known as the "Home Builders Recovery Fund", and shall be held in trust for carrying out the purposes of the recovery fund. These sums may be invested by the state treasurer in any investments which are legal under the laws of this state. Any interest or other income from investments of the recovery fund shall be deposited into the recovery fund.**

**10. When, on order of the court, the board has paid from the recovery fund any sum, the board shall be subrogated to all the rights of the judgment creditor, and all his or her rights, title, and interest in the judgment, to the extent of the amount paid from the recovery fund, shall thereby be assigned to the board. Any amount and interest recovered by the board on the judgment shall be deposited to the fund.**

**11. Each licensee shall notify the board within ten days after notice to him or her of the institution of any criminal prosecution against him or her, or of a civil complaint against him or her, if the subject matter of the civil complaint involves a residential home building transaction or involves the goodwill of an existing home building business or licensee. The notification shall be in writing, by certified mail, and must include a copy of the complaint or, if a criminal charge, the specific charge made against him or her together with a copy of any indictment or information making the charges.**

**12. Each licensee shall notify the board in writing by certified mail within ten days after he or she receives the notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a home building transaction or the goodwill of a home building business has resulted in a judgment or been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee such notice.**

**324.586. All home builders subject to the provisions of sections 324.550 to 324.586 must include their license number on all advertising proposals, contracts and invoices displayed in a conspicuous manner.**