

By: Moffatt

To: Judiciary

SENATE BILL NO. 2073

1 AN ACT TO CREATE THE OFFENSE OF HOME REPAIR FRAUD; TO ENACT
2 EXCEPTIONS; TO ENACT DEFINITIONS; TO PRESCRIBE THE ELEMENTS OF THE
3 OFFENSE AND THE PUNISHMENT THEREFORE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. This Act shall be known and may be cited as the
6 "Home Repair Fraud Act." Nothing in this act shall be construed
7 to apply to original construction of single or multiple family
8 residence.

9 SECTION 2. As used in this act, unless the context clearly
10 requires otherwise:

11 (a) "Home repair" means the fixing, replacing,
12 altering, converting, modernizing, improving of or the making of
13 an addition to any real property primarily designed or used as a
14 residence.

15 (i) Home repair shall include the construction,
16 installation, replacement or improvement of driveways, swimming
17 pools, porches, kitchens, chimneys, chimney liners, garages,
18 fences, fallout shelters, central air conditioning, central
19 heating, boilers, furnaces, hot water heaters, electrical wiring,
20 sewers, plumbing fixtures, storm doors, storm windows, awnings and
21 other improvements to structures within the residence or upon the

22 land adjacent thereto.

23 (ii) Home repair shall not include the sale,
24 installation, cleaning or repair of carpets; the sale of goods or
25 materials by a merchant who does not directly or through a
26 subsidiary perform any work or labor in connection with the
27 installation or application of the goods or materials; the repair,
28 installation, replacement or connection of any home appliance
29 including, but not limited to, disposals, refrigerators, ranges,
30 garage door openers, television antennas, washing machines,
31 telephones or other home appliances when the person replacing,
32 installing, repairing or connecting such home appliance is an
33 employee or agent of the merchant that sold the home appliance; or
34 landscaping.

35 (b) "Person" means any individual, partnership,
36 corporation, business, trust or other legal entity.

37 (c) "Residence" means a single or multiple family
38 dwelling, including, but not limited to, a single family home,
39 apartment building, condominium, duplex, townhouse or mobile home
40 which is used or intended to be used by its occupants as their
41 dwelling place.

42 SECTION 3. (1) A person commits the offense of home repair
43 fraud when he knowingly enters into an agreement or contract,
44 written or oral, with a person for home repair, and he knowingly:

45 (a) Misrepresents a material fact relating to the terms
46 of the contract or agreement or the preexisting or existing
47 condition of any portion of the property involved, or creates or
48 confirms another's impression which is false and which he does not
49 believe to be true, or promises performance which he does not
50 intend to perform or knows will not be performed;

51 (b) Uses or employs any deception, false pretense or
52 false promises in order to induce, encourage or solicit such

53 person to enter into any contract or agreement;

54 (c) Enters into an unconscionable agreement or contract
55 requiring payment to the contractor of at least Four Thousand
56 Dollars (\$4,000.00). A contract is unconscionable within the
57 meaning of this act when an unreasonable difference exists between
58 the value of the services, materials and work to be performed and
59 the amount charged for those services, materials and work. For
60 purposes of this section, prima facie evidence shall exist that
61 the contract or agreement is unconscionable if the total payment
62 called for by the contract or agreement is in excess of four (4)
63 times the fair market value for those services, materials and
64 work;

65 (d) Misrepresents or conceals either his real name, the
66 name of his business, or his business address; or

67 (e) Coerces or intimidates such person into paying at
68 least twenty-percent (20%) more than the agreed-upon price for the
69 home repair.

70 (2) A person commits the offense of home repair fraud when
71 he knowingly:

72 (a) Damages the property of a person with the intent to
73 enter into an agreement or contract for home repair; or

74 (b) Misrepresents himself or another to be an employee
75 or agent of any unit of the federal, state or municipal government
76 or any other governmental unit, or an employee or agent of any
77 public utility, with the intent to cause a person to enter into,
78 with himself or another, any contract or agreement for home
79 repair.

80 (3) For purposes of subsection (1), paragraph (a), it shall

81 be a rebuttable presumption of intent or knowledge that a person
82 promises performance which he does not intend to perform and knows
83 will not be performed when, after no performance or no substantial
84 performance of a contract or agreement for home repair, he fails
85 or refuses to return payments made by the victim and he:

86 (a) Fails to acknowledge or respond to a written demand
87 for commencement or completion of home repair within ten (10) days
88 after such demand is mailed or presented to him by the victim or
89 by the victim's legal representative or by a law enforcement or
90 consumer agency acting on behalf of the victim;

91 (b) Fails to notify the victim in writing of a change
92 of business name or address prior to the completion of the home
93 repair;

94 (c) Makes false statements or representations to the
95 victim to excuse his nonperformance or nonsubstantial performance;

96 (d) Uses deception, coercion or force to obtain the
97 victim's consent to modification of the terms of the original
98 contract or agreement;

99 (e) Fails to employ qualified personnel necessary to
100 perform the home repair;

101 (f) Fails to order or purchase the basic materials
102 required for performance of the home repair;

103 (g) Fails to comply with municipal, county, state or
104 federal regulations or codes relating to the performance of home
105 repair.

106 (4) Intent and knowledge shall be determined by an
107 evaluation of all circumstances surrounding a transaction and the
108 determination shall not be limited to the time of contract or

109 agreement.

110 (5) Substantial performance shall not include work performed
111 in a manner of little or no value or work that fails to comply
112 with the appropriate municipal, county, state or federal
113 regulations or codes.

114 SECTION 4. (1) Violation of paragraph (a) or (b) of
115 subsection (1) of Section 3 of this act shall be a felony when the
116 amount of the contract or agreement is more than One Thousand
117 Dollars (\$1,000.00), a misdemeanor when the amount of the contract
118 or agreement is One Thousand Dollars (\$1,000.00) or less, and a
119 felony for the second or subsequent offense when the amount of the
120 contract or agreement is One Thousand Dollars (\$1,000.00) or less.

121 If two (2) or more contracts or agreements for home repair exceed
122 an aggregate amount of One Thousand Dollars (\$1,000.00) or more
123 and such contracts or agreements are entered into with the same
124 victim by one or more of the defendants as part of or in
125 furtherance of a common fraudulent scheme, design or intention,
126 the violation shall be a felony.

127 (2) Violation of paragraph (c) of subsection (1) of Section
128 3 of this act shall be a felony punishable by imprisonment not to
129 exceed ten (10) years when the amount of the contract or agreement
130 is more than Ten Thousand Dollars (\$10,000.00) and by imprisonment
131 not to exceed five (5) years when the amount of the contract or
132 agreement is Ten Thousand Dollars (\$10,000.00) or less.

133 (3) Violation of paragraph (d) of subsection (1) of Section
134 3 of this act shall be a felony punishable by imprisonment not to
135 exceed five (5) years when the amount of the contract or agreement
136 is more than One Thousand Dollars (\$1,000.00), a misdemeanor when

137 the amount of the contract or agreement is One Thousand Dollars
138 (\$1,000.00) or less, and a felony punishable by imprisonment not
139 to exceed ten (10) years for a second or subsequent offense when
140 the amount of the contract or agreement is One Thousand Dollars
141 (\$1,000.00) or less. If two (2) or more contracts or agreements
142 for home repair exceed an aggregate amount of One Thousand Dollars
143 (\$1,000.00) or more and such contracts or agreements are entered
144 into with the same victim by one or more of the defendants as part
145 of or in furtherance of a common fraudulent scheme, design or
146 intention, the violation shall be a felony.

147 (4) Violation of subsection (2) of Section 3 of this act
148 shall be a felony punishable by imprisonment not to exceed five
149 (5) years.

150 (5) Unless otherwise provided in this act, a felony is
151 punishable by imprisonment not to exceed ten (10) years,
152 imprisonment for a felony being in the custody of the Department
153 of Corrections.

154 SECTION 5. A person commits the offense of aggravated home
155 repair fraud when he commits home repair fraud against a person
156 sixty (60) years of age or older or against a disabled person.
157 Aggravated home repair shall be punishable by imprisonment not to
158 exceed two (2) times the term of imprisonment that would otherwise
159 apply. A defense to aggravated home repair fraud does not exist
160 merely because the accused reasonably believed the victim to be a
161 person less than sixty (60) years of age.

162 SECTION 6. This act shall take effect and be in force from
163 and after July 1, 2000.