

By: Senator(s) Moffatt

To: Judiciary

SENATE BILL NO. 2074

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 THEREFOR; AND FOR RELATED PURPOSES.

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

5 SECTION 1. (1) As used in this section, unless the context
6 clearly requires otherwise:

7 (a) "Home repair" means the fixing, replacing,
8 altering, converting, modernizing, improving of or the making of an
9 addition to any real property primarily designed or used as a
10 residence.

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

19 (ii) Home repair shall not include the sale,
20 installation, cleaning or repair of carpets; the sale of goods or
21 materials by a merchant who does not directly or through a
22 subsidiary perform any work or labor in connection with the
23 installation or application of the goods or materials; the repair,
24 installation, replacement or connection of any home appliance
25 including, but not limited to, disposals, refrigerators, ranges,
26 garage door openers, television antennas, washing machines,
27 telephones or other home appliances when the person replacing,

28 installing, repairing or connecting such home appliance is an
29 employee or agent of the merchant that sold the home appliance; or
30 landscaping.

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

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

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

40 (a) Enters into an agreement or contract, written or
41 oral, with a person for home repair, and he knowingly:

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

48 (ii) Uses or employs any deception, false pretense
49 or false promises in order to induce, encourage or solicit such
50 person to enter into any contract or agreement;

51 (iii) Misrepresents or conceals either his real
52 name, the name of his business or his business address; or

53 (iv) Uses deception, coercion or force to obtain
54 the victim's consent to modification of the terms of the original
55 contract or agreement;

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

58 (c) Misrepresents himself or another to be an employee
59 or agent of any unit of the federal, state or municipal government
60 or any other governmental unit, or an employee or agent of any

61 public utility, with the intent to cause a person to enter into,
62 with himself or another, any contract or agreement for home repair.

63 (4) Intent and knowledge shall be determined by an
64 evaluation of all circumstances surrounding a transaction and the
65 determination shall not be limited to the time of contract or
66 agreement.

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

71 (6) Violation of this section shall be punished as follows:

72 (a) By imprisonment in the custody of the Department of
73 Corrections not to exceed two (2) years when the amount of the
74 fraud is more than One Thousand Dollars (\$1,000.00) but less than
75 Five Thousand Dollars (\$5,000.00).

76 (b) By imprisonment in the custody of the Department of
77 Corrections not to exceed five (5) years when the amount of the
78 fraud is Five Thousand Dollars (\$5,000.00) or more, but less than
79 Ten Thousand Dollars (\$10,000.00).

80 (c) By imprisonment in the custody of the Department of
81 Corrections not to exceed ten (10) years when the amount of the
82 fraud is Ten Thousand Dollars (\$10,000.00) or more.

83 (d) As a misdemeanor punishable by imprisonment in the
84 county jail for not more than six (6) months when the amount of the
85 fraud is One Thousand Dollars (\$1,000.00) or less.

86 (3) In addition to any other sentence it may impose, the
87 court shall order that the defendant shall make restitution to the
88 victim, either within a specified period of time or in specified
89 installments. The order shall not be enforceable during the period
90 of imprisonment unless the court expressly finds that the defendant
91 has assets to pay the amounts ordered at the time of sentencing.
92 Intentional refusal to obey the restitution order or a failure by a
93 defendant to make a good faith effort to make such restitution may

94 be considered a violation of the defendant's probation and may be
95 cause for revocation of his probation or suspension of sentence.

96 SECTION 2. This act shall take effect and be in force from
97 and after July 1, 2001.