

By: Representative Blackmon

To: Judiciary B

HOUSE BILL NO. 1121
(As Sent to Governor)

1 AN ACT TO REVISE THE THRESHOLD FOR PETIT AND GRAND LARCENY
2 AND SIMILAR CRIMES; TO AMEND SECTION 97-17-41, MISSISSIPPI CODE OF
3 1972, TO REVISE THE VALUE AND PENALTIES FOR GRAND LARCENY; TO
4 AMEND SECTION 97-17-42, MISSISSIPPI CODE OF 1972, TO REVISE
5 LARCENY OF MOTOR VEHICLES; TO AMEND SECTION 97-17-43, MISSISSIPPI
6 CODE OF 1972, TO REVISE THE VALUE AND PENALTIES FOR PETIT LARCENY;
7 TO AMEND SECTION 97-17-70, MISSISSIPPI CODE OF 1972, TO REVISE THE
8 VALUE AND PENALTIES FOR RECEIVING STOLEN PROPERTY; TO AMEND
9 SECTION 97-19-39, MISSISSIPPI CODE OF 1972, TO CONFORM FALSE
10 PRETENSE TO SUCH VALUE AND PENALTIES; TO AMEND SECTION 97-21-33,
11 MISSISSIPPI CODE OF 1972, TO CONFORM FORGERY TO SUCH VALUE AND
12 PENALTIES; TO AMEND SECTION 97-23-19, MISSISSIPPI CODE OF 1972, TO
13 CONFORM EMBEZZLEMENT TO SUCH VALUE AND PENALTIES; TO AMEND SECTION
14 97-23-93, MISSISSIPPI CODE OF 1972, TO REVISE THE VALUE AND
15 PENALTIES FOR SHOPLIFTING; TO REPEAL SECTION 99-19-17, MISSISSIPPI
16 CODE OF 1972, WHICH PROVIDES FOR SENTENCING FOR EMBEZZLEMENT BASED
17 ON THE VALUE OF THE PROPERTY AS PETIT LARCENY; TO CREATE THE
18 OFFENSE OF HOME REPAIR FRAUD; TO ENACT EXCEPTIONS; TO ENACT
19 DEFINITIONS; TO PRESCRIBE THE ELEMENTS OF THE OFFENSE AND THE
20 PUNISHMENT THEREFOR; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 97-17-41, Mississippi Code of 1972, is
23 amended as follows:

24 97-17-41. (1) * * * Every person who shall be convicted of
25 taking and carrying away, feloniously, the personal property of
26 another, of the value of Five Hundred Dollars (\$500.00) or more,
27 shall be guilty of grand larceny, and shall be imprisoned in the
28 Penitentiary for a term not exceeding ten (10) years; or shall be
29 fined not more than Ten Thousand Dollars (\$10,000.00), or both.

30 (2) Every person who shall be convicted of taking and
31 carrying away, feloniously, the property of a church, synagogue,
32 temple or other established place of worship, of the value of Five
33 Hundred Dollars (\$500.00) or more, shall be guilty of grand
34 larceny, and shall be imprisoned in the Penitentiary for a term
35 not exceeding ten (10) years, or shall be fined not more than Ten
36 Thousand Dollars (\$10,000.00), or both.



37 * * *

38 **SECTION 2.** Section 97-17-42, Mississippi Code of 1972, is
39 amended as follows:

40 97-17-42. (1) Any person who shall, willfully and without
41 authority, take possession of or take away a motor vehicle
42 belonging to another, and any person who knowingly shall aid and
43 abet in such taking possession or taking away, shall be guilty of
44 a felony and shall be punished by commitment to the Department of
45 Corrections for not more than five (5) years.

46 (2) Any person convicted under this section who causes
47 damage to any motor vehicle shall be ordered by the court to pay
48 restitution to the owner or owners of any such motor vehicle.

49 (3) This section shall not apply to the enforcement of a
50 security interest in a motor vehicle.

51 (4) Any person who shall be convicted for a second or
52 subsequent offense of taking and carrying away, feloniously, a
53 motor vehicle which is the personal property of another, of any
54 value, shall be guilty of grand larceny, and shall be imprisoned
55 in the Penitentiary for a term not exceeding ten (10) years or
56 shall be fined not more than Ten Thousand Dollars (\$10,000.00), or
57 both.

58 **SECTION 3.** Section 97-17-43, Mississippi Code of 1972, is
59 amended as follows:

60 97-17-43. (1) If any person shall feloniously take, steal
61 and carry away any personal property of another under the value of
62 Five Hundred Dollars (\$500.00), he shall be guilty of petit
63 larceny and, upon conviction, shall be punished by imprisonment in
64 the county jail not exceeding six (6) months or by fine not
65 exceeding One Thousand Dollars (\$1,000.00), or both.

66 (2) If any person shall feloniously take, steal and carry
67 away any property of a church, synagogue, temple or other
68 established place of worship under the value of Five Hundred
69 Dollars (\$500.00), he shall be guilty of petit larceny and, upon



70 conviction, shall be punished by imprisonment in the county jail
71 not exceeding one (1) year or by fine not exceeding Two Thousand
72 Dollars (\$2,000.00), or both.

73 (3) Any person who leaves the premises of an establishment
74 at which motor fuel offered for retail sale was dispensed into the
75 fuel tank of a motor vehicle by driving away in that motor vehicle
76 without having made due payment or authorized charge for the motor
77 fuel so dispensed, with intent to defraud the retail
78 establishment, shall be guilty of petit larceny and punished as
79 provided in subsection (1) of this section and, upon any second or
80 subsequent such offense, the driver's license of the person shall
81 be suspended as follows:

82 (a) The person shall submit the driver's license to the
83 court upon conviction and the court shall forward the driver's
84 license to the Department of Public Safety.

85 (b) The first suspension of a driver's license under
86 this subsection shall be for a period of six (6) months.

87 (c) A second or subsequent suspension of a driver's
88 license under this subsection shall be for a period of one (1)
89 year.

90 (d) At the expiration of the suspension period, and
91 upon payment of a restoration fee of Twenty-five Dollars (\$25.00),
92 the suspension shall terminate and the Department of Public Safety
93 shall return the person's driver's license to the person. The
94 restoration fee shall be in addition to the fees provided for in
95 Title 63, Chapter 1, and shall be deposited into the State General
96 Fund in accordance with Section 45-1-23.

97 **SECTION 4.** Section 97-17-70, Mississippi Code of 1972, is
98 amended as follows:

99 97-17-70. (1) A person commits the crime of receiving
100 stolen property if he intentionally possesses, receives, retains
101 or disposes of stolen property knowing that it has been stolen or
102 having reasonable grounds to believe it has been stolen, unless



103 the property is possessed, received, retained or disposed of with
104 intent to restore it to the owner.

105 (2) The fact that the person who stole the property has not
106 been convicted, apprehended or identified is not a defense to a
107 charge of receiving stolen property.

108 (3) Any person who shall be convicted of receiving stolen
109 property which exceeds Five Hundred Dollars (\$500.00) in value
110 shall be committed to the custody of the State Department of
111 Corrections for a term not exceeding ten (10) years or by a fine
112 of not more than Ten Thousand Dollars (\$10,000.00), or both.

113 (4) Any person who shall be convicted of receiving stolen
114 property which does not exceed Five Hundred Dollars (\$500.00) in
115 value shall be punished by imprisonment for not more than six (6)
116 months or by a fine of not more than One Thousand Dollars
117 (\$1,000.00), or both.

118 **SECTION 5.** Section 97-19-39, Mississippi Code of 1972, is
119 amended as follows:

120 97-19-39. (1) Every person who, with intent to cheat or
121 defraud another, shall designedly, by color of any false token or
122 writing, or by another false pretense, obtain the signature of any
123 person to any written instrument, or obtain from any person any
124 money, personal property, or valuable thing, with a value of less
125 than Five Hundred Dollars (\$500.00), upon conviction thereof,
126 shall be guilty of a misdemeanor and punished by
127 imprisonment * * * in the county jail not exceeding six (6)
128 months, and by fine not exceeding One Thousand Dollars
129 (\$1,000.00).

130 (2) Every person, who with intent to cheat or defraud
131 another, shall designedly, by color of any false token or writing,
132 or by another false pretense, obtain the signature of any person
133 to any written instrument, or obtain from any person any money,
134 personal property, or valuable thing, with a value of Five Hundred
135 Dollars (\$500.00) or more, upon conviction thereof shall be guilty



136 of a felony and punished by imprisonment in the State Penitentiary
137 not exceeding ten (10) years, and by a fine not exceeding Ten
138 Thousand Dollars (\$10,000.00).

139 **SECTION 6.** Section 97-21-33, Mississippi Code of 1972, is
140 amended as follows:

141 97-21-33. Persons convicted of forgery shall be punished by
142 imprisonment in the Penitentiary for a term of not less than two
143 (2) years nor more than ten (10) years, or by a fine of not more
144 than Ten Thousand Dollars (\$10,000.00), or both; provided,
145 however, that when the amount of value involved is less than Five
146 Hundred Dollars (\$500.00) in lieu of the punishment above provided
147 for, the person convicted may be punished by imprisonment in the
148 county jail for a term of not more than six (6) months, or by a
149 fine of not more than One Thousand Dollars (\$1,000.00), or both,
150 within the discretion of the court.

151 **SECTION 7.** Section 97-23-19, Mississippi Code of 1972, is
152 amended as follows:

153 97-23-19. If any director, agent, clerk, servant, or officer
154 of any incorporated company, or if any trustee or factor, carrier
155 or bailee, or any clerk, agent or servant of any private person,
156 shall embezzle or fraudulently secrete, conceal, or convert to his
157 own use, or make way with, or secrete with intent to embezzle or
158 convert to his own use, any goods, rights in action, money, or
159 other valuable security, effects, or property of any kind or
160 description which shall have come or been intrusted to his care or
161 possession by virtue of his office, place, or employment, either
162 in mass or otherwise, with a value of Five Hundred Dollars
163 (\$500.00) or more, he shall be guilty of felony embezzlement, and,
164 upon conviction thereof, shall be imprisoned in the Penitentiary
165 not more than ten (10) years, or fined not more than Ten Thousand
166 Dollars (\$10,000.00), or both. If the value of such goods, rights
167 in action, money or other valuable security, effects, or property
168 of any kind is less than Five Hundred Dollars (\$500.00), he shall



169 be guilty of misdemeanor embezzlement, and, upon conviction
170 thereof, shall be imprisoned in the county jail not more than six
171 (6) months, or fined not more than One Thousand Dollars
172 (\$1,000.00), or both.

173 **SECTION 8.** Section 97-23-93, Mississippi Code of 1972, is
174 amended as follows:

175 97-23-93. (1) Any person who shall wilfully and unlawfully
176 take possession of any merchandise owned or held by and offered or
177 displayed for sale by any merchant, store or other mercantile
178 establishment with the intention and purpose of converting such
179 merchandise to his own use without paying the merchant's stated
180 price therefor shall be guilty of the crime of shoplifting and,
181 upon conviction, shall be punished as is provided in this section.

182 (2) The requisite intention to convert merchandise without
183 paying the merchant's stated price for the merchandise is
184 presumed, and shall be prima facie evidence thereof, when such
185 person, alone or in concert with another person, wilfully:

186 (a) Conceals the unpurchased merchandise;

187 (b) Removes or causes the removal of unpurchased
188 merchandise from a store or other mercantile establishment;

189 (c) Alters, transfers or removes any price-marking, any
190 other marking which aids in determining value affixed to the
191 unpurchased merchandise, or any tag or device used in electronic
192 surveillance of unpurchased merchandise;

193 (d) Transfers the unpurchased merchandise from one
194 container to another; or

195 (e) Causes the cash register or other sales recording
196 device to reflect less than the merchant's stated price for the
197 unpurchased merchandise.

198 (3) Evidence of stated price or ownership of merchandise may
199 include, but is not limited to:

200 (a) The actual merchandise or the container which held
201 the merchandise alleged to have been shoplifted; or



202 (b) The content of the price tag or marking from such
203 merchandise; or

204 (c) Properly identified photographs of such
205 merchandise.

206 (4) Any merchant or his agent or employee may testify at a
207 trial as to the stated price or ownership of merchandise.

208 (5) A person convicted of shoplifting merchandise for which
209 the merchant's stated price is less than or equal to Five Hundred
210 Dollars (\$500.00) shall be punished as follows:

211 (a) Upon a first shoplifting conviction the defendant
212 shall be guilty of a misdemeanor and fined not more than One
213 Thousand Dollars (\$1,000.00), or punished by imprisonment not to
214 exceed six (6) months, or by both such fine and imprisonment.

215 (b) Upon a second shoplifting conviction the defendant
216 shall be guilty of a misdemeanor and fined not more than One
217 Thousand Dollars (\$1,000.00) or punished by imprisonment not to
218 exceed six (6) months, or by both such fine and imprisonment.

219 (6) Upon a third or subsequent shoplifting conviction the
220 defendant shall be guilty of a felony and fined not more than Five
221 Thousand Dollars (\$5,000.00), or imprisoned for a term not
222 exceeding five (5) years, or by both such fine and imprisonment.

223 (7) A person convicted of shoplifting merchandise for which
224 the merchant's stated price exceeds Five Hundred Dollars (\$500.00)
225 shall be guilty of a felony and, upon conviction, punished as
226 provided in Section 97-17-41 for the offense of grand larceny.

227 (8) In determining the number of prior shoplifting
228 convictions for purposes of imposing punishment under this
229 section, the court shall disregard all such convictions occurring
230 more than seven (7) years prior to the shoplifting offense in
231 question.

232 **SECTION 9.** Section 99-19-17, Mississippi Code of 1972, which
233 provides for sentencing for embezzlement based on the value of the
234 property as petit larceny, is repealed.



235 SECTION 10. (1) As used in this section, unless the context
236 clearly requires otherwise:

237 (a) "Home repair" means the fixing, replacing,
238 altering, converting, modernizing, improving of or the making of
239 an addition to any real property primarily designed or used as a
240 residence.

241 (i) Home repair shall include the construction,
242 installation, replacement or improvement of driveways, swimming
243 pools, porches, kitchens, chimneys, chimney liners, garages,
244 fences, fallout shelters, central air conditioning, central
245 heating, boilers, furnaces, hot water heaters, electrical wiring,
246 sewers, plumbing fixtures, storm doors, storm windows, awnings and
247 other improvements to structures within the residence or upon the
248 land adjacent thereto.

249 (ii) Home repair shall not include the sale,
250 installation, cleaning or repair of carpets; the sale of goods or
251 materials by a merchant who does not directly or through a
252 subsidiary perform any work or labor in connection with the
253 installation or application of the goods or materials; the repair,
254 installation, replacement or connection of any home appliance
255 including, but not limited to, disposals, refrigerators, ranges,
256 garage door openers, television antennas, washing machines,
257 telephones or other home appliances when the person replacing,
258 installing, repairing or connecting such home appliance is an
259 employee or agent of the merchant that sold the home appliance; or
260 landscaping.

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

263 (c) "Residence" means a single or multiple family
264 dwelling, including, but not limited to, a single family home,
265 apartment building, condominium, duplex, townhouse or mobile home
266 which is used or intended to be used by its occupants as their
267 dwelling place.



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

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

272 (i) Misrepresents a material fact relating to the
273 terms of the contract or agreement or the preexisting or existing
274 condition of any portion of the property involved, or creates or
275 confirms another's impression which is false and which he does not
276 believe to be true, or promises performance which he does not
277 intend to perform or knows will not be performed;

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

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

283 (iv) Uses deception, coercion or force to obtain
284 the victim's consent to modification of the terms of the original
285 contract or agreement;

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

288 (c) Misrepresents himself or another to be an employee
289 or agent of any unit of the federal, state or municipal government
290 or any other governmental unit, or an employee or agent of any
291 public utility, with the intent to cause a person to enter into,
292 with himself or another, any contract or agreement for home
293 repair.

294 (3) Intent and knowledge shall be determined by an
295 evaluation of all circumstances surrounding a transaction and the
296 determination shall not be limited to the time of contract or
297 agreement.

298 (4) Substantial performance shall not include work performed
299 in a manner of little or no value or work that fails to comply



300 with the appropriate municipal, county, state or federal
301 regulations or codes.

302 (5) Violation of this section shall be punished as follows:

303 (a) A first conviction under this section shall be a
304 misdemeanor and shall be punished by a fine not to exceed One
305 Thousand Dollars (\$1,000.00) or imprisonment in the county jail
306 not to exceed six (6) months, or both.

307 (b) A second or subsequent conviction under this
308 section shall be punished as follows:

309 (i) By imprisonment in the custody of the
310 Department of Corrections not to exceed two (2) years when the
311 amount of the fraud is more than One Thousand Dollars (\$1,000.00)
312 but less than Five Thousand Dollars (\$5,000.00).

313 (ii) By imprisonment in the custody of the
314 Department of Corrections not to exceed five (5) years when the
315 amount of the fraud is Five Thousand Dollars (\$5,000.00) or more,
316 but less than Ten Thousand Dollars (\$10,000.00).

317 (iii) By imprisonment in the custody of the
318 Department of Corrections not to exceed ten (10) years when the
319 amount of the fraud is Ten Thousand Dollars (\$10,000.00) or more.

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

323 (6) In addition to any other sentence it may impose, the
324 court shall order that the defendant shall make restitution to the
325 victim, either within a specified period of time or in specified
326 installments. The order shall not be enforceable during the
327 period of imprisonment unless the court expressly finds that the
328 defendant has assets to pay the amounts ordered at the time of
329 sentencing. Intentional refusal to obey the restitution order or
330 a failure by a defendant to make a good faith effort to make such
331 restitution may be considered a violation of the defendant's



332 probation and may be cause for revocation of his probation or
333 suspension of sentence.

334 **SECTION 11**. This act shall take effect and be in force from
335 and after July 1, 2003.

