

By: Senator(s) Robertson

To: Business and Financial  
Institutions

SENATE BILL NO. 2547

1 AN ACT TO CREATE THE RESIDENTIAL BUILDERS NOTICE AND  
 2 OPPORTUNITY TO CURE ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR  
 3 THE DISMISSAL WITHOUT PREJUDICE OF ACTIONS WHICH WERE FILED  
 4 WITHOUT COMPLYING WITH THE PROVISIONS OF THE ACT; TO PROVIDE THAT  
 5 THE ACT SHALL NOT APPLY TO PERSONAL INJURY OR DEATH CLAIMS; TO  
 6 PROVIDE NOTICE AND OPPORTUNITY TO REPAIR REQUIREMENTS PRIOR TO  
 7 FILING AN ACTION AGAINST A CONTRACTOR OR SUBCONTRACTOR ARISING OUT  
 8 OF THE CONSTRUCTION OF A DWELLING; TO REQUIRE A WRITTEN RESPONSE  
 9 TO THE CLAIMANT; TO PROVIDE THAT CLAIMANTS MAY NOT AMEND THEIR  
 10 LIST OF DEFECTS WITHOUT PROVIDING ADDITIONAL NOTICE AND  
 11 OPPORTUNITY TO REPAIR TO CONTRACTORS; TO LIMIT THE DAMAGES WHICH  
 12 MAY BE RECOVERED BY A CLAIMANT WHO UNREASONABLY REJECTS A  
 13 CONTRACTOR'S OFFER TO REPAIR THE DEFECT OR TO OTHERWISE COMPENSATE  
 14 THE CLAIMANT; TO PROVIDE THAT UPON ENTERING INTO A CONTRACT FOR  
 15 SALE OF A DWELLING, NOTICE OF THE CONTRACTOR'S RIGHT TO CURE  
 16 CONSTRUCTION DEFECTS SHALL BE GIVEN TO THE OWNER OF THE DWELLING;  
 17 TO PROVIDE THAT HOMEOWNERS ASSOCIATIONS SHALL RECEIVE APPROVAL OF  
 18 EITHER THEIR BOARD OF DIRECTORS, AFFECTED UNIT OWNERS OR MAJORITY  
 19 OF ITS MEMBERS BEFORE COMMENCING CIVIL ACTIONS AGAINST  
 20 CONTRACTORS; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** This act may be cited as the "Residential  
 23 Builders Notice and Opportunity to Cure Act."

24 **SECTION 2.** As used in this act, unless the context requires  
 25 otherwise:

26 (a) "Action" means any civil lawsuit or action or  
 27 arbitration proceeding for damages or indemnity asserting a claim  
 28 for injury or loss to a dwelling or personal property caused by an  
 29 alleged defect arising out of or related to the design,  
 30 construction, condition or sale of the dwelling or a remodel of a  
 31 dwelling.

32 (b) "Claimant" means a residential homeowner, including  
 33 a subsequent purchaser, or homeowner association who asserts a  
 34 claim against a general contractor or a subcontractor concerning a  
 35 defect in the design, construction, condition or sale of a  
 36 dwelling or in the remodel of a dwelling.



37           (c) "Construction defect" means a deficiency in, or a  
38 loss or damage arising out of, the design, specifications,  
39 surveying, planning, supervision or construction of residential  
40 improvements that results from any of the following:

41           (i) Defective material, products or components  
42 used in the construction of residential improvements.

43           (ii) Violation of the applicable building codes in  
44 effect at the time of construction of residential improvements.

45           (iii) Failure of the design of residential  
46 improvements to meet the applicable standards of care in the  
47 residential construction industry at the time of governmental  
48 approval of the design and/or construction of the residential  
49 improvements.

50           (iv) Failure to construct residential improvements  
51 in accordance with accepted trade standards for good and  
52 workmanlike construction at the time of construction. (Compliance  
53 with the applicable codes in effect at the time of construction  
54 shall conclusively establish construction in accordance with  
55 accepted trade standards for good and workmanlike construction,  
56 with respect to all matters specified in those codes).

57           (d) "Contractor" means any person, firm, partnership,  
58 corporation, association or other organization that is engaged in  
59 the business of designing, developing, constructing, remodeling  
60 and/or repairing residential dwellings.

61           (e) "Design professional" means a person licensed in  
62 the state as an architect, interior designer, landscape architect,  
63 engineer or surveyor.

64           (f) "Dwelling" means a single-family residence, duplex  
65 or multifamily structure designed for residential use in which  
66 title to each individual residence, duplex or unit is transferred  
67 to the owner. A dwelling includes all of the systems, other  
68 components and improvements that are part of a residential  
69 dwelling at the time of construction.



70 (g) "Service" means personal service or delivery by  
71 certified mail, return receipt requested, to the last known  
72 address of the addressee.

73 (h) "Subcontractor" means a contractor who performs  
74 work on behalf of another contractor in the construction of a  
75 dwelling.

76 (i) "Supplier" means a person who provides materials,  
77 equipment or other supplies for the construction of a dwelling.

78 **SECTION 3.** If a claimant files a civil action against anyone  
79 or entity who designed, planned, developed, remodeled, repaired or  
80 constructed their residential dwelling, without first complying  
81 with the provisions of this act, on application by any defendant  
82 in or to the action, the court shall dismiss the action, without  
83 prejudice, and the action may not be refiled until the claimant  
84 has complied with the notice requirements of this act.

85 **SECTION 4.** Nothing in this act shall apply to actions  
86 arising out of claims for personal injury or death.

87 **SECTION 5.** (1) In every civil action brought against a  
88 contractor or subcontractor arising out of the construction of a  
89 dwelling, the claimant shall, no later than ninety (90) days prior  
90 to filing an action, serve written notice of claim on the  
91 contractor, by certified mail, return receipt requested. The  
92 notice of claim shall state that the owner/claimant of the  
93 residence asserts a construction defect claim and the notice of  
94 claim shall describe the claim or claims in reasonable detail  
95 sufficient to determine the general nature of any alleged  
96 construction defects and a description of the results of the  
97 defects, if known.

98 (2) Within fifteen (15) days after the initial service of  
99 the notice of claim required in subsection (1), the general  
100 contractor or subcontractor shall forward a copy of the notice to  
101 each subcontractor, supplier and design professional who were  
102 involved in any manner and to any extent in the design, planning,



103 construction or repair of the residential dwelling and believed to  
104 be responsible for a defect specified in the notice and include  
105 with the notice the specific defect for which the contractor  
106 believes the subcontractor, supplier or design professional is  
107 responsible.

108 (3) On the request of the contractor, subcontractor,  
109 supplier or design professional who has received a notice pursuant  
110 to subsection (1) or subsection (2) of this section, the claimant  
111 shall provide to the contractor, subcontractor, supplier or design  
112 professional any evidence that depicts the nature and cause of the  
113 defect and the nature and extent of repairs necessary to remedy  
114 the defect, including expert reports, photographs, and videotapes,  
115 if that evidence would be discoverable under the Mississippi Rules  
116 of Civil Procedure.

117 (4) Within thirty (30) days after service of the notice of  
118 claim by claimant required in subsection (1) or subsection (2),  
119 each contractor, subcontractor, supplier or design professional  
120 that has received a notice of claim shall serve a written response  
121 on the claimant by registered mail or personal service. The  
122 written response shall:

123 (a) Offer to compromise and settle the claim by  
124 monetary payment without inspection; or

125 (b) Propose to inspect the dwelling that is the subject  
126 of the claim and propose to remedy the defect; or

127 (c) State that the contractor, subcontractor, supplier  
128 or design professional disputes the claim and will neither remedy  
129 the alleged construction defect nor compromise and settle the  
130 claim.

131 (5) If the contractor, subcontractor, supplier or design  
132 professional disputes the claim (pursuant to subsection (4)(c))  
133 and (a) refuses to remedy the alleged construction defect, or (b)  
134 refuses to offer a reasonable compromise and settlement of the  
135 claim, or (c) does not respond to the claimant's notice of claim



136 within the time stated in subsection (4), the claimant may bring a  
137 civil action against the contractor, subcontractor, supplier or  
138 design professional for the claim described in the notice of claim  
139 without further notice.

140 (6) If the claimant rejects the offer made by the  
141 contractor, subcontractor, supplier or design professional to  
142 either remedy the construction defect or to compromise and settle  
143 the claim by monetary payment, the claimant shall serve written  
144 notice of the claimant's rejection on the contractor,  
145 subcontractor, supplier or design professional by certified mail,  
146 return receipt requested. The notice shall include the basis for  
147 the claimant's rejection of the contractor, subcontractor,  
148 supplier or design professional's proposal/offer. After service  
149 of the rejection the claimant may bring an action against the  
150 contractor, subcontractor, supplier or design professional for the  
151 claim described in the initial notice of claim as required under  
152 subsection (1) above, without further notice.

153 (7) If the claimant elects to allow the contractor,  
154 subcontractor, supplier or design professional to remedy the  
155 dwelling in accordance with the contractor, subcontractor,  
156 supplier or design professional's proposal pursuant to subsection  
157 (4)(b), the claimant shall provide the contractor, subcontractor,  
158 supplier or design professional and its contractors or other  
159 agents reasonable access to the claimant's residence during normal  
160 working hours to determine the nature and cause of the alleged  
161 defects and the nature and extent of any repairs or replacements  
162 necessary to remedy the alleged defects, and to remedy the claimed  
163 defect.

164 (8) If a claimant accepts a contractor, subcontractor,  
165 supplier or design professional's offer made pursuant to  
166 subsection (4), and the contractor, subcontractor, supplier or  
167 design professional does not proceed to complete the monetary  
168 payment or remedy the construction defect as agreed to with



169 claimant within the agreed timetable, the claimant may bring an  
170 action against the contractor, subcontractor, supplier or design  
171 professional for the claim described in the initial notice of  
172 claim required by subsections (1) and (2) without further notice.

173 (9) If a claimant unreasonably rejects an offer made as  
174 provided by this section or does not permit the contractor,  
175 subcontractor, supplier or design professional a reasonable  
176 opportunity to inspect and repair the defect pursuant to an  
177 accepted offer of settlement, the claimant may not recover an  
178 amount in excess of:

179 (a) The reasonable costs of the offered repairs which  
180 are necessary to cure the construction defect and which are the  
181 responsibility of the contractor, subcontractor, supplier or  
182 design professional; or

183 (b) The amount of the monetary settlement offered by  
184 the contractor, subcontractor, supplier or design professional.

185 (10) Any claimant accepting the offer of the contractor,  
186 subcontractor, supplier or design professional to remedy the  
187 construction defects, shall do so by serving the contractor,  
188 subcontractor, supplier or design professional with a written  
189 notice of acceptance within a reasonable period of time after  
190 receipt of the offer but no later than thirty (30) days after  
191 receipt of the offer. The claimant's notice of acceptance shall  
192 be served on the contractor, subcontractor, supplier or design  
193 professional by certified mail, return receipt requested.

194 (11) A claimant's failure to do any of the following is  
195 admissible in any dwelling civil action filed and creates a  
196 rebuttable presumption that the claimant's damages could have been  
197 mitigated:

198 (a) Allow a reasonable inspection requested by the  
199 contractor, subcontractor, supplier or design professional of any  
200 claimed construction defect.



201 (b) Provide a good faith, written response to a  
202 contractor, subcontractor, supplier or design professional's offer  
203 to repair or remedy any proposed construction defect.

204 (12) Absent good cause, the contractor, subcontractor,  
205 supplier or design professional's failure to respond in good faith  
206 to the claimant's notice pursuant to subsection (1) shall preclude  
207 the contractor, subcontractor, supplier or design professional  
208 from asserting that the claimant did not comply with the  
209 provisions of this act.

210 (13) A claimant's written notice pursuant to subsection (1)  
211 tolls the applicable statute of limitations until ninety (90) days  
212 after the contractor, subcontractor, supplier or design  
213 professional receives the notice.

214 **SECTION 6.** A construction defect which is discovered after a  
215 claimant has provided a contractor with the original claim notice  
216 required in Section 4 of this act, may not be alleged until the  
217 claimant has given the contractor, subcontractor, supplier or  
218 design professional who performed the original construction:

219 (a) Written notice of the alleged defect required by  
220 Section 4 of this act; and

221 (b) A reasonable opportunity to repair the alleged  
222 construction defect in the manner provided in Section 4 of this  
223 act.

224 **SECTION 7.** (1) Upon entering into a contract for sale,  
225 construction or substantial remodeling of a dwelling, the  
226 contractor, subcontractor, supplier or design professional shall  
227 provide notice to the owner of the dwelling of the contractor,  
228 subcontractor, supplier or design professional's right to offer to  
229 cure construction defects before a claimant may commence  
230 litigation against the contractor, subcontractor, supplier or  
231 design professional. Such notice shall be conspicuous and may be  
232 included as part of the underlying contract.



233 (2) The notice required by subsection (1) shall be in  
234 substantially the following form:

235 SENATE BILL NO. 2547, 2003 REGULAR SESSION, CONTAINS  
236 IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A  
237 LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO  
238 CONSTRUCTED YOUR HOME. NINETY (90) DAYS BEFORE YOU FILE YOUR  
239 LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN NOTICE OF  
240 ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
241 YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN  
242 PROFESSIONALS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY  
243 FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE  
244 BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN  
245 PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER  
246 STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO  
247 FILE A LAWSUIT.

248 **SECTION 8.** (1) A homeowner's association may bring an  
249 action to recover damages resulting from construction defects in  
250 any of the units, common elements or limited common elements of  
251 the common-interest community only:

252 (a) If the association first obtains the written  
253 approval of each unit's owner whose unit or interest in the common  
254 elements or limited common elements will be the subject of the  
255 action or claim; or

256 (b) Upon obtaining a majority vote of the members of  
257 the association; or

258 (c) Upon a vote of the board of directors of the  
259 association.

260 (2) When a homeowner association commences an action for or  
261 on behalf of an owner of a unit, the association shall provide  
262 written notice to the owner of each unit at least thirty (30)  
263 calendar days prior to the filing of the civil action.

264 (3) The board of directors of an association may, upon  
265 giving thirty (30) days' prior notice to the units' owners, employ





266 a contractor and such other persons as are necessary to make such  
267 repairs to a unit or common element within the common-interest  
268 community as are required to protect the health, safety and  
269 welfare of the units' owners.

270 **SECTION 9.** Nothing in this act shall be read or constituted  
271 to in any way alter or amend any statutes of limitations which  
272 would otherwise be applicable and/or controlling to actions  
273 arising out of construction deficiencies. Nothing in this act  
274 shall be read or constituted to any way alter or amend the New  
275 Home Warranty Act, Section 83-58-1 et seq.

276 **SECTION 10.** This act shall take effect and be in force from  
277 and after July 1, 2003.

