

By: Senator(s) Flowers

To: Business and Financial  
Institutions

SENATE BILL NO. 2638  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 83-58-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE BUILDERS' WARRANTIES TO HOMEOWNERS; TO AMEND SECTION  
3 83-58-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WRITTEN NOTICE  
4 OF A DEFECT SHALL BE MADE WITHIN 90 DAYS AFTER KNOWLEDGE OF THE  
5 DEFECT; TO PROVIDE THAT WARRANTIES SHALL BE EXTENDED IF THE  
6 BUILDER DOES NOT PROVIDE NOTICE; TO AMEND SECTION 83-58-17,  
7 MISSISSIPPI CODE OF 1972, TO PROVIDE A STATUTORY REMEDY FOR  
8 DAMAGES ARISING FROM VIOLATIONS OF THE NEW HOME WARRANTY LAW; AND  
9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 83-58-5, Mississippi Code of 1972, is  
12 amended as follows:

13 83-58-5. (1) Subject to the exclusions provided in this  
14 section, every builder warrants the following to the owner:

15 (a) One (1) year following the warranty commencement  
16 date, the home will be free from any defect due to noncompliance  
17 with the building standards.

18 (b) Six (6) years following the warranty commencement  
19 date, the home will be free from major structural defects due to  
20 noncompliance with the building standards.

21 (2) Unless the parties otherwise agree in writing, the  
22 builder's warranty shall exclude the following items:

23 (a) Defects in outbuildings including detached garages  
24 and detached carports, except outbuildings which contain the  
25 plumbing, electrical, heating, cooling or ventilation systems  
26 serving the home; swimming pools and other recreational  
27 facilities; driveways; walkways; patios; boundary walls; retaining  
28 walls; bulkheads; fences; landscaping, including sodding, seeding,  
29 shrubs, trees, and planting; off-site improvements including

30 streets, roads, drainage and utilities or any other improvements  
31 not a part of the home itself.

32 (b) Damage to real property which is not part of the  
33 home covered by the warranty and which is not included in the  
34 purchase price of the home.

35 (c) Any damage to the extent it is caused or made worse  
36 by any of the following:

37 (i) Negligence, improper maintenance or improper  
38 operation by anyone other than the builder or any employee, agent  
39 or subcontractor of the builder.

40 (ii) Failure by anyone other than the builder or  
41 any employee, agent or subcontractor of the builder to comply with  
42 the warranty requirements of manufacturers of appliances,  
43 equipment or fixtures.

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45 (iii) Any change, alteration or addition made to  
46 the home by anyone after the initial occupancy by the owner,  
47 except any change, alteration or addition performed by the  
48 builder, or any employee, agent, or subcontractor of the builder.

49 (iv) Dampness, condensation or other damage due to  
50 the failure of the owner to maintain adequate ventilation or  
51 drainage.

52 (d) Any loss or damage which the owner has not taken  
53 timely action to minimize.

54 (e) Any defect in, or any defect caused by, materials  
55 or work supplied by anyone other than the builder, or any  
56 employee, agent or subcontractor of the builder.

57 (f) Normal wear and tear or normal deterioration.

58 (g) Loss or damage which does not constitute a defect  
59 in the construction of the home by the builder, or any employee,  
60 agent or subcontractor of the builder.

61 (h) Loss or damage resulting from war, accident, riot  
62 and civil commotion, water escape, falling objects, aircraft,

63 vehicles, acts of God, lightning, windstorm, hail, flood, mud  
64 slide, earthquake, volcanic eruption, wind driven water and  
65 changes in the level of the underground water table which are not  
66 reasonably foreseeable.

67 (i) Insect damage and rotting of any kind.

68 (j) Mold or mold damage, except in cases where the  
69 builder's negligence was a proximate or contributing cause of the  
70 mold or mold damage.

71 (k) Any condition which does not result in actual  
72 physical damage to the home.

73 (l) Failure of the builder to complete construction of  
74 the home.

75 (m) Any defect not reported in writing by registered or  
76 certified mail to the builder or insurance company, as  
77 appropriate, prior to the expiration of the period of coverage of  
78 that defect plus thirty (30) days.

79 (n) Consequential damages.

80 (o) Any loss or damage to a home caused by soil  
81 conditions or soil movement if the home is constructed on land  
82 owned by the initial purchaser and the builder obtains a written  
83 waiver from the initial purchaser for any loss or damage caused by  
84 soil conditions or soil movement.

85 (p) Any defect in an electrical, plumbing, heating, air  
86 conditioning or similar fixture not manufactured by the builder  
87 for which the manufacturer provides a warranty regardless of  
88 duration.

89 (3) The provisions of this section establish minimum  
90 required warranties and shall not be waived by the owner or  
91 reduced by the builder, provided the home is a single family  
92 dwelling to be occupied by an owner as his home.

93 **SECTION 2.** Section 83-58-7, Mississippi Code of 1972, is  
94 amended as follows:

95           83-58-7. Before undertaking any repair himself, except  
96 repair to minimize loss or damage as provided in Section  
97 83-58-5(2)(d), or instituting any action under Section 83-58-17,  
98 the owner shall give the builder written notice within ninety (90)  
99 days after knowledge of the defect by registered or certified  
100 mail, advising him of the defects and giving the builder a  
101 reasonable opportunity to repair the defect. The builder shall  
102 give the owner written notice of the requirements of this chapter  
103 at the time of closing. If the builder does not provide such  
104 notice, the warranties provided in this chapter shall be extended  
105 for a period of time equal to the time between the warranty  
106 commencement date and date notice was given.

107           **SECTION 3.** Section 83-58-17, Mississippi Code of 1972, is  
108 amended as follows:

109           83-58-17. (1) If a builder violates any of the provisions  
110 of this chapter by failing to perform as required by the  
111 warranties provided in this chapter, any affected owner shall have  
112 a cause of action against the builder for actual damages,  
113 including attorney fees and court cost, arising out of the  
114 violations.

115           (2) Nothing in this chapter shall prevent the owner from  
116 filing a cause of action based on breach of contract and remedies  
117 attendant to such cause of action.

118           (3) If the owner files a civil action without first  
119 complying with the provisions of this chapter, the court shall  
120 dismiss the action without prejudice, and the action may not be  
121 refiled until the claimant has complied with the notice  
122 requirements of this chapter.

123           **SECTION 4.** This act shall take effect and be in force from  
124 and after July 1, 2004.