

By: Senator(s) Thames

To: Business and Financial
Institutions

SENATE BILL NO. 2706

1 AN ACT TO AMEND SECTION 83-58-5, MISSISSIPPI CODE OF 1972, TO
2 EXTEND BUILDERS' WARRANTIES TO OWNERS OF NEW HOMES UNDER THE NEW
3 HOME WARRANTY ACT; AND FOR RELATED PURPOSES.

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

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

7 83-58-5. (1) Subject to the exclusions provided in this
8 section, every builder warrants the following to the owner:

9 (a) Two (2) years following the warranty commencement
10 date, the home will be free from any defect due to noncompliance
11 with the building standards.

12 (b) Ten (10) years following the warranty commencement
13 date, the home will be free from major structural defects due to
14 noncompliance with the building standards.

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

17 (a) Defects in outbuildings including detached garages
18 and detached carports, except outbuildings which contain the
19 plumbing, electrical, heating, cooling, or ventilation systems
20 serving the home; swimming pools and other recreational
21 facilities; driveways; walkways; patios; boundary walls; retaining
22 walls; bulkheads; fences; landscaping, including sodding, seeding,
23 shrubs, trees, and planting; off-site improvements including
24 streets, roads, drainage, and utilities or any other improvements
25 not a part of the home itself.

26 (b) Damage to real property which is not part of the
27 home covered by the warranty and which is not included in the
28 purchase price of the home.

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

31 (i) Negligence, improper maintenance, or improper
32 operation by anyone other than the builder or any employee, agent,
33 or subcontractor of the builder.

34 (ii) Failure by anyone other than the builder or
35 any employee, agent, or subcontractor of the builder to comply
36 with the warranty requirements of manufacturers of appliances,
37 equipment, or fixtures.

38 (iii) Failure by the owner to give written notice
39 by registered or certified mail to the builder of any defect
40 within a reasonable time.

41 (iv) Any change, alteration, or addition made to
42 the home by anyone after the initial occupancy by the owner,
43 except any change, alteration, or addition performed by the
44 builder, or any employee, agent, or subcontractor of the builder.

45 (v) Dampness, condensation, or other damage due to
46 the failure of the owner to maintain adequate ventilation or
47 drainage.

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

50 (e) Any defect in, or any defect caused by, materials
51 or work supplied by anyone other than the builder.

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

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

56 (h) Loss or damage resulting from war, accident, riot
57 and civil commotion, water escape, falling objects, aircraft,
58 vehicles, acts of God, lightning, windstorm, hail, flood, mud

59 slide, earthquake, volcanic eruption, wind driven water, and
60 changes in the level of the underground water table which are not
61 reasonably foreseeable.

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

63 (j) Any condition which does not result in actual
64 physical damage to the home.

65 (k) Failure of the builder to complete construction of
66 the home.

67 (l) Any defect not reported in writing by registered or
68 certified mail to the builder or insurance company, as
69 appropriate, prior to the expiration of the period of coverage of
70 that defect plus thirty (30) days.

71 (m) Consequential damages.

72 (n) Any loss or damage to a home caused by soil
73 conditions or soil movement if the home is constructed on land
74 owned by the initial purchaser and the builder obtains a written
75 waiver from the initial purchaser for any loss or damage caused by
76 soil conditions or soil movement.

77 (o) Any defect in an electrical, plumbing, heating, air
78 conditioning, or similar fixture not manufactured by the builder
79 for which the manufacturer provides a warranty regardless of
80 duration.

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

85 **SECTION 2.** This act shall take effect and be in force from
86 and after July 1, 2004.