

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2638

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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.

44 * * *

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 * * *.

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

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

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

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

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

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

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

78 (n) Consequential damages.

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

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

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

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

94 83-58-7. Before undertaking any repair himself or
95 instituting any action for breach of warranty, the owner shall
96 give the builder written notice, within ninety (90) days after
97 knowledge of the defect, by registered or certified mail, advising
98 him of the defects and giving the builder a reasonable opportunity
99 to repair the defect. The builder shall give the owner written
100 notice of the requirements of this chapter at the time of closing.
101 If the builder does not provide such notice, the warranties
102 provided in this chapter shall be extended for a period of time
103 equal to the time between the warranty commencement date and date
104 notice was given.

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

107 83-58-17. If a builder violates any of the provisions of
108 this chapter by failing to perform as required by the warranties
109 provided in this chapter, any affected owner shall have a cause of
110 action against the builder for actual damages, including attorney
111 fees and court cost, arising out of the violations. If the owner
112 files a civil action without first complying with the provisions
113 of this act, the court shall dismiss the action without prejudice,
114 and the action may not be refiled until the claimant has complied
115 with the notice requirements of this act.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.