

By: Representative Snowden

To: Judiciary B

HOUSE BILL NO. 837

1 AN ACT TO AMEND SECTION 97-23-103, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE CONTRACTORS, RESIDENTIAL BUILDERS AND RESIDENTIAL
3 REMODELERS TO INFORM CUSTOMERS OF THE HOME REPAIR FRAUD LAW; TO
4 PROVIDE CIVIL PENALTIES FOR FAILURE TO DO SO; TO AMEND SECTION
5 85-7-131, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A LIEN IS
6 UNENFORCEABLE FOR FAILURE TO NOTIFY CUSTOMERS OF THE HOME REPAIR
7 FRAUD LAW; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 97-23-103, Mississippi Code of 1972, is
10 amended as follows:

11 97-23-103. (1) As used in this section, unless the context
12 clearly requires otherwise:

13 (a) "Home repair" means the fixing, replacing,
14 altering, converting, modernizing, improving of or the making of
15 an addition to any real property primarily designed or used as a
16 residence.

17 (i) Home repair shall include the construction,
18 installation, replacement or improvement of driveways, swimming
19 pools, porches, kitchens, chimneys, chimney liners, garages,
20 fences, fallout shelters, central air conditioning, central
21 heating, boilers, furnaces, hot water heaters, electrical wiring,
22 sewers, plumbing fixtures, storm doors, storm windows, awnings and
23 other improvements to structures within the residence or upon the
24 land adjacent thereto.

25 (ii) Home repair shall not include the sale,
26 installation, cleaning or repair of carpets; the sale of goods or
27 materials by a merchant who does not directly or through a
28 subsidiary perform any work or labor in connection with the
29 installation or application of the goods or materials; the repair,

30 installation, replacement or connection of any home appliance,
31 including, but not limited to, disposals, refrigerators, ranges,
32 garage door openers, television antennas, washing machines,
33 telephones or other home appliances when the person replacing,
34 installing, repairing or connecting such home appliance is an
35 employee or agent of the merchant that sold the home appliance; or
36 landscaping.

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

39 (c) "Residence" means a single or multiple family
40 dwelling, including, but not limited to, a single family home,
41 apartment building, condominium, duplex, townhouse or mobile home
42 which is used or intended to be used by its occupants as their
43 dwelling place.

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

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

48 (i) Misrepresents a material fact relating to the
49 terms of the contract or agreement or the preexisting or existing
50 condition of any portion of the property involved, or creates or
51 confirms another's impression which is false and which he does not
52 believe to be true, or promises performance which he does not
53 intend to perform or knows will not be performed;

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

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

59 (iv) Uses deception, coercion or force to obtain
60 the victim's consent to modification of the terms of the original
61 contract or agreement;

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

64 (c) Misrepresents himself or another to be an employee
65 or agent of any unit of the federal, state or municipal government
66 or any other governmental unit, or an employee or agent of any
67 public utility, with the intent to cause a person to enter into,
68 with himself or another, any contract or agreement for home
69 repair.

70 (3) Intent and knowledge shall be determined by an
71 evaluation of all circumstances surrounding a transaction and the
72 determination shall not be limited to the time of contract or
73 agreement.

74 (4) Substantial performance shall not include work performed
75 in a manner of little or no value or work that fails to comply
76 with the appropriate municipal, county, state or federal
77 regulations or codes.

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

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

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

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

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

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

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

99 (6) In addition to any other sentence it may impose, the
100 court shall order that the defendant shall make restitution to the
101 victim, either within a specified period of time or in specified
102 installments. The order shall not be enforceable during the
103 period of imprisonment unless the court expressly finds that the
104 defendant has assets to pay the amounts ordered at the time of
105 sentencing. Intentional refusal to obey the restitution order or
106 a failure by a defendant to make a good faith effort to make such
107 restitution may be considered a violation of the defendant's
108 probation and may be cause for revocation of his probation or
109 suspension of sentence.

110 (7) All contractors, residential builders and residential
111 remodelers licensed by the State Board of Contractors engaged in a
112 project in which the total cost exceeds Five Thousand Dollars
113 (\$5,000.00) shall provide the customer a written statement
114 advising such customer of the provisions of this section. Failure
115 to provide the written statement shall result in a civil fine as
116 follows:

117 (a) Five Hundred Dollars (\$500.00) for a first offense;

118 (b) One Thousand Dollars (\$1,000.00) for a second
119 offense; and

120 (c) Two Thousand Dollars (\$2,000.00) for a third or
121 subsequent offense.

122 **SECTION 2.** Section 85-7-131, Mississippi Code of 1972, is
123 amended as follows:

124 85-7-131. Every house, building, water well or structure of
125 any kind, and any fixed machinery, gearing or other fixture that

126 may or may not be used or connected therewith, railroad
127 embankment, erected, constructed, altered or repaired, and every
128 subdivision of property or subdivided property which required
129 services, designs or construction in designing or laying out of
130 streets or subdividing or construction of streets, sewerage, water
131 or other utilities to be furnished by the said subdivision or by
132 the various owners or holders or creators of said subdivision or
133 subdivided property or individual lot or lots in connection
134 therewith, whether inside of a municipality or outside thereof,
135 shall be liable for the debt contracted and owing, for labor done
136 or materials furnished, or architectural engineers' and surveyors'
137 or contractors' service rendered about the erection, construction,
138 alteration or repairs thereof; and debt for such services or
139 construction shall be a lien thereon. The architects, engineers,
140 surveyors, laborers, and materialmen and/or contractors who
141 rendered services and constructed the improvements shall have a
142 lien therefor. Further, as to oil and gas wells, the operator
143 thereof shall have such a lien upon the interest of each
144 nonoperator owner of an interest in the mineral leasehold estate
145 for such nonoperator's proportionate part of such labor, material
146 and services rendered by the operator or for the operator's
147 account in behalf of each nonoperator in the drilling, completion,
148 recompletion, reworking or other operations of such oil and gas
149 well. If such house, building, structure, or fixture be in a
150 city, town or village, the lien shall extend to and cover the
151 entire lot of land on which it stands and the entire curtilage
152 thereto belonging; or, if not in a city, town or village, the lien
153 shall extend to and cover one (1) acre of land on which the same
154 may stand, if there be so much, to be selected by the holder of
155 the lien. If the structure be a water well, the lien shall extend
156 only to all pumps, pipes, equipment therein and all water well
157 appurtenances. If the structure be an oil or gas well, the lien
158 shall extend to the nonoperator's interest in the mineral estate

159 and the fixtures and equipment in the producing unit assigned such
160 well by the state oil and gas board. If the structure be a
161 railroad or railroad embankment, the lien shall extend to and
162 cover the entire roadbed and right-of-way, depots and other
163 buildings used or connected therewith. If the services of the
164 architect, surveyor, engineer, laborers, materialmen or of the
165 contractors shall be upon the whole subdivision, the lien shall
166 extend to and cover the entire subdivision; but if a part only of
167 the land is subdivided and laborers', materialmen's, architects',
168 surveyors' or engineers' services are required and contractors are
169 employed, then the lien shall extend to only that portion of said
170 property upon which the services were required or upon which or in
171 connection with which the work was done or the materials were
172 furnished. Such lien shall take effect as to purchasers or
173 encumbrancers for a valuable consideration without notice thereof,
174 only from the time of commencing suit to enforce the lien, or from
175 the time of filing the contract under which the lien arose, or
176 notice thereof, in the office of the clerk of the chancery court,
177 as hereinafter stated; delivery of material to the job is prima
178 facie evidence of its use therein, and use of water from a water
179 well is prima facie evidence of acceptability of well. In the
180 case of oil and gas wells, such lien shall take effect as to
181 purchasers or encumbrancers for a valuable consideration without
182 notice thereof, only from the time of filing notice of such lien
183 as provided by Section 85-7-133.

184 A contractor, residential builder or residential remodeler
185 who is in violation of Section 97-23-103(7) shall not be able to
186 enforce a lien under this section until he complies with the
187 provisions of Section 97-23-103(7).

188 **SECTION 3.** This act shall take effect and be in force from
189 and after July 1, 2006.