

By: Senator(s) Gollott, Carmichael, Dearing, Jackson (11th) To: Judiciary, Division B

SENATE BILL NO. 2800

1 AN ACT TO AMEND SECTION 97-23-103, MISSISSIPPI CODE OF 1972,
2 TO REVISE PENALTIES FOR HOME REPAIR FRAUD; AND FOR RELATED
3 PURPOSES.

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

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

7 97-23-103. (1) As used in this section, unless the context
8 clearly requires otherwise:

9 (a) "Home repair" means the fixing, replacing,
10 altering, converting, modernizing, improving of or the making of
11 an addition to any real property primarily designed or used as a
12 residence.

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

21 (ii) Home repair shall not include the sale,
22 installation, cleaning or repair of carpets; the sale of goods or
23 materials by a merchant who does not directly or through a
24 subsidiary perform any work or labor in connection with the
25 installation or application of the goods or materials; the repair,
26 installation, replacement or connection of any home appliance,
27 including, but not limited to, disposals, refrigerators, ranges,

28 garage door openers, television antennas, washing machines,
29 telephones or other home appliances when the person replacing,
30 installing, repairing or connecting such home appliance is an
31 employee or agent of the merchant that sold the home appliance; or
32 landscaping.

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

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

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

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

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

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

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

55 (iv) Uses deception, coercion or force to obtain
56 the victim's consent to modification of the terms of the original
57 contract or agreement;

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

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

66 (3) Intent and knowledge shall be determined by an
67 evaluation of all circumstances surrounding a transaction and the
68 determination shall not be limited to the time of contract or
69 agreement.

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

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

75 (a) A first conviction under this section shall be a
76 misdemeanor when the amount of the fraud is less than Five
77 Thousand Dollars (\$5,000.00) and shall be punished by a fine not
78 to exceed One Thousand Dollars (\$1,000.00) or imprisonment in the
79 county jail not to exceed six (6) months, or both.

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

82 (i) As a felony punishable by imprisonment in the
83 custody of the Department of Corrections not to exceed two (2)
84 years when the amount of the fraud is more than One Thousand
85 Dollars (\$1,000.00) but less than Five Thousand Dollars
86 (\$5,000.00).

87 * * *

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

91 (c) A first or subsequent conviction under this section
92 shall be a felony when the amount of the fraud is over Five
93 Thousand Dollars (\$5,000.00) and shall be punished as follows:

94 (i) By imprisonment in the custody of the
95 Department of Corrections not to exceed five (5) years or a fine
96 not to exceed Ten Thousand Dollars (\$10,000.00) or both when the
97 amount of the fraud is Five Thousand Dollars (\$5,000.00) or more,
98 but less than Ten Thousand Dollars (\$10,000.00).

99 (ii) By imprisonment in the custody of the
100 Department of Corrections not to exceed ten (10) years or a fine
101 not to exceed Ten Thousand Dollars (\$10,000.00) when the amount of
102 the fraud is Ten Thousand Dollars (\$10,000.00) or more.

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

114 **SECTION 2.** This act shall take effect and be in force from
115 and after July 1, 2006.