

By: Senator(s) Burton

To: Judiciary, Division B

SENATE BILL NO. 2086

1 AN ACT TO AMEND SECTION 99-19-351, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR ENHANCEMENT OF PENALTIES FOR FRAUD AND NONVIOLENT
3 MONETARY CRIMES WHEN COMMITTED AGAINST THE ELDERLY; TO AMEND
4 SECTION 97-23-103, MISSISSIPPI CODE OF 1972, TO REVISE THE
5 PENALTIES FOR HOME REPAIR FRAUD; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 99-19-351, Mississippi Code of 1972, is
8 amended as follows:

9 99-19-351. The penalty for the following listed crimes shall
10 be subject to enhancement as provided in Sections 99-19-351
11 through 99-19-357 if the crime was committed against any victim
12 who is sixty-five (65) years of age or older or who is disabled as
13 described in 42 USCS 12102:

14 (a) Any felony or misdemeanor which is a crime of
15 violence;

16 (b) The crime of burglary or breaking and entering the
17 dwelling of another;

18 (c) Any fraud, whether felony or misdemeanor, committed
19 in violation of Title 97, Chapter 19;

20 (d) Any fraud, whether felony or misdemeanor, committed
21 in violation of Section 97-23-103; or

22 (e) Any nonviolent felony or misdemeanor involving any
23 monetary larceny or other monetary crime.

24 **SECTION 2.** Section 97-23-103, Mississippi Code of 1972, is
25 amended as follows:

26 97-23-103. (1) As used in this section, unless the context
27 clearly requires otherwise:



28 (a) "Home repair" means the fixing, replacing,
29 altering, converting, modernizing, improving of or the making of
30 an addition to any real property primarily designed or used as a
31 residence.

32 (i) Home repair shall include the construction,
33 installation, replacement or improvement of driveways, swimming
34 pools, porches, kitchens, chimneys, chimney liners, garages,
35 fences, fallout shelters, central air-conditioning, central
36 heating, boilers, furnaces, hot water heaters, electrical wiring,
37 sewers, plumbing fixtures, storm doors, storm windows, awnings,
38 carpets and other improvements to structures within the residence
39 or upon the land adjacent thereto.

40 (ii) Home repair shall not include the sale of
41 goods or materials by a merchant who does not directly or through
42 a subsidiary perform any work or labor in connection with the
43 installation or application of the goods or materials; the repair,
44 installation, replacement or connection of any home appliance,
45 including, but not limited to, disposals, refrigerators, ranges,
46 garage door openers, television antennas, washing machines,
47 telephones or other home appliances when the person replacing,
48 installing, repairing or connecting such home appliance is an
49 employee or agent of the merchant that sold the home appliance; or
50 landscaping.

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

53 (c) "Residence" means a single- or multiple-family
54 dwelling, including, but not limited to, a single-family home,
55 apartment building, condominium, duplex, townhouse or mobile home
56 which is used or intended to be used by its occupants as their
57 dwelling place.

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



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

62 (i) Misrepresents a material fact relating to the
63 terms of the contract or agreement or the preexisting or existing
64 condition of any portion of the property involved, or creates or
65 confirms another's impression which is false and which he does not
66 believe to be true, or promises performance which he does not
67 intend to perform or knows will not be performed;

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

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

73 (iv) Uses deception, coercion or force to obtain
74 the victim's consent to modification of the terms of the original
75 contract or agreement;

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

78 (c) Misrepresents himself or another to be an employee
79 or agent of any unit of the federal, state or municipal government
80 or any other governmental unit, or an employee or agent of any
81 public utility, with the intent to cause a person to enter into,
82 with himself or another, any contract or agreement for home
83 repair.

84 (3) Intent and knowledge shall be determined by an
85 evaluation of all circumstances surrounding a transaction and the
86 determination shall not be limited to the time of contract or
87 agreement.

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

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



93 (a) Except as provided in paragraph (d) of this
94 subsection, a first conviction under this section shall be a
95 misdemeanor when the amount of the fraud is less than Five
96 Thousand Dollars (\$5,000.00) and shall be punished by a fine not
97 to exceed One Thousand Dollars (\$1,000.00) or imprisonment in the
98 county jail not to exceed six (6) months, or both.

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

101 (i) As a felony punishable by imprisonment in the
102 custody of the Department of Corrections not to exceed two (2)
103 years when the amount of the fraud is more than One Thousand
104 Dollars (\$1,000.00) but less than Five Thousand Dollars
105 (\$5,000.00).

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

109 (c) Except as provided in paragraph (d) of this
110 subsection, a first or subsequent conviction under this section
111 shall be a felony when the amount of the fraud is over Five
112 Thousand Dollars (\$5,000.00) and shall be punished as follows:

113 (i) By imprisonment in the custody of the
114 Department of Corrections not to exceed five (5) years or a fine
115 not to exceed Ten Thousand Dollars (\$10,000.00) or both when the
116 amount of the fraud is Five Thousand Dollars (\$5,000.00) or more,
117 but less than Ten Thousand Dollars (\$10,000.00).

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

122 (d) If the victim of the fraud is sixty-five (65) years
123 of age or older and the amount of the fraud is One Thousand
124 Dollars (\$1,000.00) or more, a first conviction under this section
125 shall be a felony punishable by imprisonment in the custody of the



126 Department of Corrections not to exceed five (5) years or a fine
127 not to exceed Ten Thousand Dollars (\$10,000.00) or both.

128 (6) In addition to any other sentence it may impose, the
129 court shall order that the defendant shall make restitution to the
130 victim, either within a specified period of time or in specified
131 installments. The order shall not be enforceable during the
132 period of imprisonment unless the court expressly finds that the
133 defendant has assets to pay the amounts ordered at the time of
134 sentencing. Intentional refusal to obey the restitution order or
135 a failure by a defendant to make a good faith effort to make such
136 restitution may be considered a violation of the defendant's
137 probation and may be cause for revocation of his probation or
138 suspension of sentence.

139 **SECTION 3.** This act shall take effect and be in force from
140 and after July 1, 2012.

