

By: Representatives Smith (39th), Akins,  
Rogers (14th)

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 722

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 REVISE NOTICE REQUIREMENTS;  
4 TO AMEND SECTION 83-58-17, MISSISSIPPI CODE OF 1972, TO REVISE  
5 REMEDIES; AND FOR RELATED PURPOSES.

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

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

9 83-58-5. (1) Subject to the exclusions provided in this  
10 section, every builder warrants the following to the owner:

11 (a) One (1) year following the warranty commencement  
12 date, the home will be free from any defect due to noncompliance  
13 with the building standards.

14 (b) Six (6) years following the warranty commencement  
15 date, the home will be free from major structural defects due to  
16 noncompliance with the building standards.

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

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

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

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

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

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

40         \* \* \*

41                 (iii) 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                 (iv) Dampness, condensation, or other damage due  
46 to 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, or any  
52 employee, agent or subcontractor of the builder.

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

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

57           (h) Loss or damage resulting from war, accident, riot  
58 and civil commotion, water escape, falling objects, aircraft,  
59 vehicles, acts of God, lightning, windstorm, hail, flood, mud  
60 slide, earthquake, volcanic eruption, wind driven water, and

61 changes in the level of the underground water table which are not  
62 reasonably foreseeable.

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

64 (j) Mold or mold damage.

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

67 (l) Failure of the builder to complete construction of  
68 the home.

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

73 (n) Consequential damages.

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

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

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

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

89 83-58-7. Before undertaking any repair himself or  
90 instituting any action for breach of warranty, the owner shall  
91 give the builder written notice, within ninety (90) days after  
92 knowledge of the defect, by registered or certified mail, advising  
93 him of the defect and giving the builder a reasonable opportunity

94 to repair the defect. The builder shall give the owner written  
95 notice of the requirements of this chapter at the time of closing.  
96 If the builder does not provide such notice, the warranties  
97 provided in this chapter shall be extended for a period of time  
98 equal to the time between the warranty commencement date and date  
99 notice was given.

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

102       83-58-17. If a builder violates any of the provisions of  
103 this chapter by failing to perform as required by the warranties  
104 provided in this chapter, any affected owner shall have a cause of  
105 action against the builder for actual damages, including attorney  
106 fees and court cost, arising out of the violations. The damages  
107 with respect to a single warranty defect shall not exceed the  
108 reasonable cost of repair or replacement necessary to cure the  
109 defect, and damages with respect to all warranty defects in the  
110 home shall not exceed the original purchase price of the home or  
111 the fair market value of the home, whichever is greater.

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