

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

To: Judiciary B

HOUSE BILL NO. 722

1 AN ACT TO AMEND SECTION 83-58-5, MISSISSIPPI CODE OF 19072,
2 TO 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 (iii) Failure by the owner to give written notice
41 by registered or certified mail to the builder of any defect
42 within the time provided in Section 83-58-7.

43 (iv) Any change, alteration, or addition made to
44 the home by anyone after the initial occupancy by the owner,
45 except any change, alteration, or addition performed by the
46 builder, or any employee, agent, or subcontractor of the builder.

47 (v) Dampness, condensation, or other damage due to
48 the failure of the owner to maintain adequate ventilation or
49 drainage.

50 (d) Any loss or damage which the owner has not taken
51 timely action to minimize.

52 (e) Any defect in, or any defect caused by, materials
53 or work supplied by anyone other than the builder.

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

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

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

61 slide, earthquake, volcanic eruption, wind driven water, and
62 changes in the level of the underground water table which are not
63 reasonably foreseeable.

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

65 (j) Mold or mold damage.

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

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

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

74 (n) Consequential damages.

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

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

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

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

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

94 him of all defects and giving the builder a reasonable opportunity
95 to repair the defect. The builder shall give the owner written
96 notice of the requirements of this chapter at the time of closing.

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

99 83-58-17. If a builder violates any of the provisions of
100 this chapter by failing to perform as required by the warranties
101 provided in this chapter, any affected owner shall have a cause of
102 action against the builder for actual damages, including attorney
103 fees and court cost, arising out of the violations. The damages
104 with respect to a single defect shall not exceed the reasonable
105 cost of repair or replacement necessary to cure the defect, and
106 damages with respect to all defects in the home shall not exceed
107 the original purchase price of the home.

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