

By: Senator(s) Flowers

To: Business and Financial
Institutions

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2638

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 PROVIDE THAT WRITTEN NOTICE
4 OF A DEFECT SHALL BE MADE WITHIN 90 DAYS AFTER KNOWLEDGE OF THE
5 DEFECT; TO AMEND SECTION 83-58-17, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE A STATUTORY REMEDY FOR DAMAGES ARISING FROM VIOLATIONS OF
7 THE NEW HOME WARRANTY LAW; AND FOR RELATED PURPOSES.

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

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

11 83-58-5. (1) Subject to the exclusions provided in this
12 section, every builder warrants the following to the owner:

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

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

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

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

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

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

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

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

42 (iii) Failure by the owner to give written notice
43 by registered or certified mail to the builder of any defect
44 within the time provided in Section 83-58-7.

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

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

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

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

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

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

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

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

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

67 (j) Mold or mold damage.

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

70 (l) Failure of the builder to complete construction of
71 the home.

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

76 (n) Consequential damages.

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

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

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

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

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

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

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

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

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