

By: Senator(s) Flowers

To: Business and Financial  
Institutions

SENATE BILL NO. 2638  
(As Passed the Senate)

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, except in cases where the  
68 builder's negligence was the proximate cause of the mold or mold  
69 damage.

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

72 (l) Failure of the builder to complete construction of  
73 the home.

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

78 (n) Consequential damages.

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

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

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

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

94 83-58-7. Before undertaking any repair himself or  
95 instituting any action for breach of warranty, the owner shall

96 give the builder written notice, within ninety (90) days after  
97 knowledge of the defect, by registered or certified mail, advising  
98 him of all defects and giving the builder a reasonable opportunity  
99 to repair the defect. The builder shall give the owner written  
100 notice of the requirements of this chapter at the time of closing.

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

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

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