

By: Representative Compretta

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1316

1 AN ACT TO AMEND SECTION 97-23-103, MISSISSIPPI CODE OF 1972,
2 TO REVISE PENALTIES FOR HOME REPAIR FRAUD; AND FOR RELATED
3 PURPOSES.

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

5 **SECTION 1.** Section 97-23-103, Mississippi Code of 1972, is
6 amended as follows:

7 97-23-103. (1) As used in this section, unless the context
8 clearly requires otherwise:

9 (a) "Home repair" means the fixing, replacing,
10 altering, converting, modernizing, improving of or the making of
11 an addition to any real property primarily designed or used as a
12 residence.

13 (i) Home repair shall include the construction,
14 installation, replacement or improvement of driveways, swimming
15 pools, porches, kitchens, chimneys, chimney liners, garages,
16 fences, fallout shelters, central air conditioning, central
17 heating, boilers, furnaces, hot water heaters, electrical wiring,
18 sewers, plumbing fixtures, storm doors, storm windows, awnings,
19 carpets and other improvements to structures within the residence
20 or upon the land adjacent thereto.

21 (ii) Home repair shall not include * * * the sale
22 of goods or materials by a merchant who does not directly or
23 through a subsidiary perform any work or labor in connection with
24 the installation or application of the goods or materials; the
25 repair, installation, replacement or connection of any home
26 appliance, including, but not limited to, disposals,
27 refrigerators, ranges, garage door openers, television antennas,

28 washing machines, telephones or other home appliances when the
29 person replacing, installing, repairing or connecting such home
30 appliance is an employee or agent of the merchant that sold the
31 home appliance; or landscaping.

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

34 (c) "Residence" means a single or multiple family
35 dwelling, including, but not limited to, a single family home,
36 apartment building, condominium, duplex, townhouse or mobile home
37 which is used or intended to be used by its occupants as their
38 dwelling place.

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

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

43 (i) Misrepresents a material fact relating to the
44 terms of the contract or agreement or the preexisting or existing
45 condition of any portion of the property involved, or creates or
46 confirms another's impression which is false and which he does not
47 believe to be true, or promises performance which he does not
48 intend to perform or knows will not be performed;

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

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

54 (iv) Uses deception, coercion or force to obtain
55 the victim's consent to modification of the terms of the original
56 contract or agreement;

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

59 (c) Misrepresents himself or another to be an employee
60 or agent of any unit of the federal, state or municipal government

61 or any other governmental unit, or an employee or agent of any
62 public utility, with the intent to cause a person to enter into,
63 with himself or another, any contract or agreement for home
64 repair.

65 (3) Intent and knowledge shall be determined by an
66 evaluation of all circumstances surrounding a transaction and the
67 determination shall not be limited to the time of contract or
68 agreement.

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

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

74 (a) A first conviction under this section shall be a
75 misdemeanor when the amount of the fraud is less than Five
76 Thousand Dollars (\$5,000.00) and shall be punished by a fine not
77 to exceed One Thousand Dollars (\$1,000.00) or imprisonment in the
78 county jail not to exceed six (6) months, or both.

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

81 (i) As a felony punishable by imprisonment in the
82 custody of the Department of Corrections not to exceed two (2)
83 years when the amount of the fraud is more than One Thousand
84 Dollars (\$1,000.00) but less than Five Thousand Dollars
85 (\$5,000.00).

86 * * *

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

90 (c) A first or subsequent conviction under this section
91 shall be a felony when the amount of the fraud is over Five
92 Thousand Dollars (\$5,000.00) and shall be punished as follows:

93 (i) By imprisonment in the custody of the
94 Department of Corrections not to exceed five (5) years or a fine
95 not to exceed Ten Thousand Dollars (\$10,000.00) or both when the
96 amount of the fraud is Five Thousand Dollars (\$5,000.00) or more,
97 but less than Ten Thousand Dollars (\$10,000.00).

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

102 (6) In addition to any other sentence it may impose, the
103 court shall order that the defendant shall make restitution to the
104 victim, either within a specified period of time or in specified
105 installments. The order shall not be enforceable during the
106 period of imprisonment unless the court expressly finds that the
107 defendant has assets to pay the amounts ordered at the time of
108 sentencing. Intentional refusal to obey the restitution order or
109 a failure by a defendant to make a good faith effort to make such
110 restitution may be considered a violation of the defendant's
111 probation and may be cause for revocation of his probation or
112 suspension of sentence.

113 **SECTION 2.** This act shall take effect and be in force from
114 and after its passage.