

By: Senator(s) Jackson

To: Judiciary

SENATE BILL NO. 2116

1 AN ACT TO AMEND SECTION 63-17-159, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT TRANSFER WITHOUT NOTICE OF ANY VEHICLE RETURNED UNDER
3 THE LEMON LAWS; AND FOR RELATED PURPOSES.

4 SECTION 1. Section 63-17-159, Mississippi Code of 1972, is
5 amended as follows:

6 63-17-159. (1) (a) If the manufacturer or its agent cannot
7 conform the motor vehicle to any applicable express warranty by
8 repairing or correcting any default or condition which impairs the
9 use, market value, or safety of the motor vehicle to the consumer
10 after a reasonable number of attempts, the manufacturer shall give
11 the consumer the option of having the manufacturer either replace
12 the motor vehicle with a comparable motor vehicle acceptable to
13 the consumer, or take title of the vehicle from the consumer and
14 refund to the consumer the full purchase price, including all
15 reasonably incurred collateral charges, less a reasonable
16 allowance for the consumer's use of the vehicle. The subtraction
17 of a reasonable allowance for use shall apply when either a
18 replacement or refund of the motor vehicle occurs. A reasonable
19 allowance for use shall be that sum of money arrived at by
20 multiplying the number of miles the motor vehicle has been driven
21 by the consumer by Twenty Cents (20¢) per mile. Refunds shall be
22 made to the consumer and lienholder of record, if any, as their
23 interests may appear.

24 (b) (i) In every sale or transfer of a motor vehicle
25 returned to the manufacturer under the provisions of Section
26 63-17-159 et seq., a similar statute of another state, or as the

27 result of a legal action or an informal dispute settlement
28 procedure, the manufacturer must disclose in writing to a
29 subsequent purchaser the fact that the motor vehicle was returned
30 and the nature of the nonconformity to the vehicle warranty. The
31 certificate of title to the motor vehicle shall thereafter
32 indicate conspicuously the following information: THIS VEHICLE
33 WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT
34 CONFORM TO ITS WARRANTY AND THE DEFECT OR CONDITION WAS NOT FIXED
35 WITHIN THE TIME PROVIDED BY MISSISSIPPI LAW. The notice required
36 by this paragraph (b) shall continue to appear on each certificate
37 of title issued as a result of any subsequent sale or transfer of
38 that motor vehicle.

39 (ii) Any person who transfers or attempts to
40 transfer a motor vehicle in violation of this paragraph or who
41 fails to deliver to the buyer the written notice required by this
42 paragraph shall be subject to a fine of not more than Seven
43 Thousand Five Hundred Dollars (\$7,500.00) for each violation.

44 (iii) Any subsequent transferor of a vehicle
45 subject to the requirements of this paragraph who has received the
46 required notice shall deliver the notice with the vehicle to the
47 next transferor, purchaser or lessee or else may be required to
48 repurchase the vehicle at the full purchase price including all
49 fees, taxes and costs incurred for goods and services which were
50 included in the subsequent transaction.

51 (2) It shall be an affirmative defense to any claim under
52 Section 63-17-151 et seq. that:

53 (a) An alleged nonconformity does not impair the use,
54 market value or safety of the motor vehicle;

55 (b) A nonconformity is the result of abuse, neglect or
56 unauthorized modifications or alterations of a motor vehicle by a
57 consumer;

58 (c) A claim by a consumer was not filed in good faith;
59 or

60 (d) Any other affirmative defense allowed by law.

61 (3) It shall be presumed that a reasonable number of
62 attempts have been undertaken to conform a motor vehicle to the
63 applicable express warranties if within the terms, conditions or

64 limitations of the express warranty, or during the period of one
65 (1) year following the date of original delivery of the motor
66 vehicle to a consumer, whichever expires earlier, either:

67 (a) Substantially the same nonconformity has been
68 subject to repair three (3) or more times by the manufacturer or
69 its agent and such nonconformity continues to exist; or

70 (b) The vehicle is out of service by reason of repair
71 of the nonconformity by the manufacturer or its agent for a
72 cumulative total of fifteen (15) or more working days, exclusive
73 of downtime for routine maintenance as prescribed by the owner's
74 manual, since the delivery of the vehicle to the consumer. The
75 fifteen-day period may be extended by any period of time during
76 which repair services are not available to the consumer because of
77 conditions beyond the control of the manufacturer or its agent.

78 (4) The terms, conditions or limitations of the express
79 warranty, or the period of one (1) year following the date of
80 original delivery of the motor vehicle to a consumer, whichever
81 expires earlier, may be extended if the motor vehicle warranty
82 problem has been reported but has not been repaired by the
83 manufacturer or its agent by the expiration of the applicable time
84 period.

85 (5) The manufacturer shall provide a list of the
86 manufacturer's zone or regional service office addresses in the
87 owner's manual provided with the motor vehicle. It shall be the
88 responsibility of the consumer or his representative, prior to
89 availing himself of the provisions of this section, to give
90 written notification to the manufacturer of the need for the
91 repair of the nonconformity, in order to allow the manufacturer an
92 opportunity to cure the alleged defect. The manufacturer shall
93 immediately notify the consumer of a reasonably accessible repair
94 facility to conform the vehicle to the express warranty. After
95 delivery of the vehicle to the designated repair facility by the
96 consumer, the manufacturer shall have ten (10) working days to

97 conform the motor vehicle to the express warranty. Upon
98 notification from the consumer that the vehicle has not been
99 conformed to the express warranty, the manufacturer shall inform
100 the consumer if an informal dispute settlement procedure has been
101 established by the manufacturer in accordance with Section
102 63-17-163, and provide the consumer with a copy of the provisions
103 of Section 63-17-151 et seq. However, if prior notice by the
104 manufacturer of an informal dispute settlement procedure has been
105 given, no further notice is required. If the manufacturer fails
106 to notify the consumer of the availability of this informal
107 dispute settlement procedure, the requirements of Section
108 63-17-163 shall not apply.

109 (6) Any action brought under Section 63-17-151 et seq. shall
110 be commenced within one (1) year following expiration of the
111 terms, conditions or limitations of the express warranty, or
112 within eighteen (18) months following the date of original
113 delivery of the motor vehicle to a consumer, whichever is earlier,
114 or, if a consumer resorts to an informal dispute settlement
115 procedure as provided in Section 63-17-151 et seq., within ninety
116 (90) days following the final action of the panel.

117 (7) If a consumer finally prevails in any action brought
118 under Section 63-17-151 et seq., the court may allow him to
119 recover as part of the judgment a sum equal to the aggregate
120 amount of costs and expenses, including attorney's fees based on
121 actual time expended, determined by the court to have been
122 reasonably incurred by the plaintiff for or in connection with the
123 commencement and prosecution of such action.

124 SECTION 2. This act shall take effect and be in force from
125 and after July 1, 1999.