

By: Senator(s) Woodfield

To: Business and
Financial
Institutions

SENATE BILL NO. 2886
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 63-19-31, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A MOTOR VEHICLE RETAIL INSTALLMENT CONTRACT SHALL
3 INCLUDE THE AMOUNT, IF ANY, ACTUALLY PAID OR TO BE PAID BY THE
4 SELLER PURSUANT TO AN AGREEMENT WITH THE BUYER TO DISCHARGE A
5 SECURITY INTEREST, LIEN OR LEASE INTEREST ON PROPERTY TRADED IN;
6 TO AMEND SECTION 75-17-1, MISSISSIPPI CODE OF 1972, TO PROVIDE
7 THAT NEGATIVE EQUITY MAY BE CAPITALIZED IN A MOTOR VEHICLE LEASE
8 AND IS NOT SUBJECT TO ANY USURY/INTEREST OR LOAN LAWS; AND FOR
9 RELATED PURPOSES.

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

11 SECTION 1. Section 63-19-31, Mississippi Code of 1972, is
12 amended as follows:

13 63-19-31. (1) (a) A retail installment contract shall be
14 in writing, shall be signed by both the buyer and the seller, and
15 shall be completed as to all essential provisions prior to the
16 signing of the contract by the buyer.

17 (b) The printed portion of the contract, other than
18 instructions for completion, shall be in at least eight point
19 type. The contract shall contain in a size equal to at least ten
20 point bold type:

21 (i) A specific statement that liability insurance
22 coverage for bodily injury and property damage caused to others is
23 not included, if that is the case; and

24 (ii) The following notice: "Notice to the Buyer:
25 1. Do not sign this contract before you read it or if it
26 contains any blank spaces. 2. You are entitled to an exact copy
27 of the contract you sign."

28 (c) The seller shall deliver to the buyer, or mail to
29 him at his address shown on the contract, a copy of the contract

30 signed by the seller. Until the seller does so, a buyer who has
31 not received delivery of the motor vehicle shall have the right to
32 rescind his agreement and to receive a refund of all payments made
33 and return of all goods traded in to the seller on account of or
34 in contemplation of the contract, or if such goods cannot be
35 returned, the value thereof. Any acknowledgment by the buyer of
36 the delivery of a copy of the contract shall be in a size equal to
37 at least ten point bold type and, if contained in the contract,
38 shall appear directly above the buyer's signature.

39 (d) The contract shall contain the names of the seller
40 and the buyer, the place of business of the seller, the residence
41 or place of business of the buyer as specified by the buyer and a
42 description of the motor vehicle including its make, year model,
43 model and identification numbers or marks.

44 (2) The contract shall contain the following items:

45 (a) The cash sale price of the motor vehicle;

46 (b) The amount of the buyer's down payment, and whether
47 made in money or goods, or partly in money and partly in goods;

48 (c) The difference between items (a) and (b);

49 (d) The amount, if any, included for insurance and
50 other benefits specifying the types of coverage and benefits;

51 (e) The amount of official fees;

52 (f) The amount, if any, actually paid or to be paid by
53 the seller pursuant to an agreement with the buyer to discharge a
54 security interest, lien or lease interest on property traded in;

55 (g) The principal balance, which is the sum of items
56 (c), (d), and (e);

57 (h) The amount of the finance charge;

58 (i) The time balance, which is the sum of items (f) and
59 (g), payable in installments by the buyer to the seller, the
60 number of installments, the amount of each installment and the due
61 date or period thereof.

62 The above items need not be stated in the sequence or order
63 set forth. Additional items may be included to explain the
64 calculations involved in determining the stated time balance to be
65 paid by the buyer. Notwithstanding any provision of this chapter
66 to the contrary, in any contract evidencing the sale of a

67 commercial vehicle, the statement of the amount of the finance
68 charge (item (g) hereof) and the amount of each installment (item
69 (h) hereof) may be calculated using the finance charge rate
70 applicable to the transaction as of the date of execution of the
71 contract, notwithstanding the fact that such finance charge rate
72 may increase or decrease over the term of the contract according
73 to any formula or index set forth in the contract; provided,
74 however, that under no circumstances may the variable rate under
75 such contract at any time exceed the finance charge limitations
76 found in Section 63-19-43, of this chapter.

77 (3) No retail installment contract shall be signed by any
78 party thereto when it contains blank spaces to be filled in after
79 it has been signed except that, if delivery of the motor vehicle
80 is not made at the time of the execution of the contract, the
81 identifying numbers or marks of the motor vehicle or similar
82 information and the due date of the first installment may be
83 inserted in the contract after its execution. The buyer's written
84 acknowledgment, conforming to the requirements of subdivision (c)
85 of subsection (1) of this section, of delivery of a copy of a
86 contract shall be conclusive proof of such delivery, that the
87 contract when signed did not contain any blank spaces except as
88 herein provided, and of compliance with Sections 63-19-31 to
89 63-19-41 in any action or proceeding by or against the holder of
90 the contract.

91 SECTION 2. Section 75-17-1, Mississippi Code of 1972, is
92 amended as follows:

93 75-17-1. (1) The legal rate of interest on all notes,
94 accounts and contracts shall be eight percent (8%) per annum,
95 calculated according to the actuarial method, but contracts may be
96 made, in writing, for payment of a finance charge as otherwise
97 provided by this section or as otherwise authorized by law.

98 (2) Any borrower or debtor may contract for and agree to pay
99 a finance charge for any loan or other extension of credit made

100 directly or indirectly to a borrower or debtor which will result
101 in a yield not to exceed the greater of ten percent (10%) per
102 annum or five percent (5%) per annum above the discount rate,
103 excluding any surcharge thereon, on ninety-day commercial paper in
104 effect at the Federal Reserve bank in the Federal Reserve district
105 where the lender is located, each calculated according to the
106 actuarial method. The rate of finance charge authorized under
107 this subsection (2) shall be known as the "contract rate."

108 (3) Notwithstanding the foregoing and any other provision of
109 law to the contrary, any partnership, joint venture, religious
110 society, unincorporated association, or domestic or foreign
111 corporation, whether organized for profit or nonprofit, may
112 contract for and agree to pay a finance charge which will result
113 in a yield not to exceed the greater of fifteen percent (15%) per
114 annum or five percent (5%) per annum above the discount rate,
115 excluding any surcharge thereon, on ninety-day commercial paper in
116 effect at the Federal Reserve bank in the Federal Reserve district
117 where the lender is located, each calculated according to the
118 actuarial method, on any contract, loan, extension of credit or
119 other obligation under which the principal balance to be repaid
120 shall originally exceed Two Thousand Five Hundred Dollars
121 (\$2,500.00), or on any series of advances of money pursuant to a
122 contract if the aggregate of sums advanced or originally proposed
123 to be advanced shall exceed Two Thousand Five Hundred Dollars
124 (\$2,500.00); and as to any such agreement, the claim or defense of
125 usury by such partnership, joint venture, religious society,
126 unincorporated association, or corporation, or their successors,
127 guarantors, assigns or anyone on their behalf is prohibited.

128 (4) Notwithstanding the foregoing and any other provision of
129 law to the contrary, any borrower or debtor may contract for and
130 agree to pay a finance charge which will result in a yield not to
131 exceed the greater of ten percent (10%) per annum or five percent
132 (5%) per annum above the index of market yields of the Monthly

133 Twenty-Year Constant Maturity Index of Long-Term United States
134 Government Bond Yields, as compiled by the United States Treasury
135 Department, each calculated according to the actuarial method, on
136 any loan, mortgage or advance which is secured by a lien on
137 residential real property or by a lien on stock in a residential
138 cooperative housing corporation where the loan, mortgage or
139 advance is used to finance the acquisition of such stock. The
140 term "residential real property," as used in this subsection,
141 means real estate upon which there is located or to be located a
142 structure or structures designed in whole or in part for
143 residential use, or which comprises or includes one or more
144 apartments, condominium units or other dwelling units.

145 (5) Notwithstanding the foregoing and any other provision of
146 law to the contrary, any borrower or debtor may contract for and
147 agree to pay and any lender or extender of credit may contract for
148 and receive any finance charge agreed to in writing by the
149 parties, notwithstanding that such charge is in excess of that
150 otherwise allowed on any contract, credit sale, obligation or
151 other extension of credit, regardless of the security taken or the
152 purpose of the extension of credit, under which the principal
153 balance to be repaid originally exceeds Two Thousand Dollars
154 (\$2,000.00), or on any series of advances of money pursuant to a
155 contract if the aggregate of sums advanced or originally proposed
156 to be advanced exceeds Two Thousand Dollars (\$2,000.00), or on any
157 extension or renewal thereof; and as to any such agreement, the
158 claim or defense of usury or violation of any law prescribing,
159 limiting or regulating the rate of finance charge by any borrower
160 or debtor, or his successors, guarantors, assigns or anyone on his
161 behalf is prohibited.

162 This subsection (5) shall stand repealed on July 1, 2001.

163 (6) Notwithstanding the foregoing and any other provisions
164 of law to the contrary, the outstanding balance of a prior loan or
165 lease of a motor vehicle used as a trade-in, as well as other

166 items that are capitalized or amortized during the lease term, may
167 be included in a lease for a motor vehicle without regulation
168 under this section or any laws applying to interest, usury, time
169 price differential or loans.

170 SECTION 3. This act shall take effect and be in force from
171 and after July 1, 1999.