

By: Senator(s) Woodfield

To: Business and
Financial
Institutions

SENATE BILL NO. 2886
(As Sent to Governor)

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 IF THE FINANCE CHARGE RATE ASSOCIATED WITH THE LEASE CONTRACT DOES
9 NOT EXCEED THE LIMITATIONS FOR MOTOR VEHICLE PURCHASES; AND FOR
10 RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (e) The amount of official fees;

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

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

58 (h) The amount of the finance charge;

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

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

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

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

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

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

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

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

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

129 (4) Notwithstanding the foregoing and any other provision of
130 law to the contrary, any borrower or debtor may contract for and
131 agree to pay a finance charge which will result in a yield not to
132 exceed the greater of ten percent (10%) per annum or five percent
133 (5%) per annum above the index of market yields of the Monthly

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

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

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

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

167 items that are capitalized or amortized during the lease term, may
168 be included in a lease for a motor vehicle, provided that the rate
169 of finance charge associated with the lease contract does not at
170 any time exceed the finance charge limitations specified in
171 Section 63-19-43.

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