

By: Representative Fillingane

To: Judiciary A

HOUSE BILL NO. 734

1 AN ACT TO AMEND SECTION 63-17-159, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE METHOD OF DETERMINING MILEAGE FOR A REASONABLE
3 ALLOWANCE UNDER THE MOTOR VEHICLE WARRANTY ENFORCEMENT ACT; AND
4 FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 63-17-159, Mississippi Code of 1972, is
7 amended as follows:

8 63-17-159. (1) If the manufacturer or its agent cannot
9 conform the motor vehicle to any applicable express warranty by
10 repairing or correcting any default or condition which impairs the
11 use, market value, or safety of the motor vehicle to the consumer
12 after a reasonable number of attempts, the manufacturer shall give
13 the consumer the option of having the manufacturer either replace
14 the motor vehicle with a comparable motor vehicle acceptable to
15 the consumer, or take title of the vehicle from the consumer and
16 refund to the consumer the full purchase price, including all
17 reasonably incurred collateral charges, less a reasonable
18 allowance for the consumer's use of the vehicle. The subtraction
19 of a reasonable allowance for use shall apply when either a
20 replacement or refund of the motor vehicle occurs. A reasonable
21 allowance for use shall be determined by usual and customary
22 mileage used by dealers in leases not to exceed fifteen thousand
23 (15,000) miles per year. Refunds shall be made to the consumer
24 and lienholder of record, if any, as their interests may appear.

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

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

29 (b) A nonconformity is the result of abuse, neglect or
30 unauthorized modifications or alterations of a motor vehicle by a
31 consumer;

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

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

35 (3) It shall be presumed that a reasonable number of
36 attempts have been undertaken to conform a motor vehicle to the
37 applicable express warranties if within the terms, conditions or
38 limitations of the express warranty, or during the period of one
39 (1) year following the date of original delivery of the motor
40 vehicle to a consumer, whichever expires earlier, either:

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

44 (b) The vehicle is out of service by reason of repair
45 of the nonconformity by the manufacturer or its agent for a
46 cumulative total of fifteen (15) or more working days, exclusive
47 of downtime for routine maintenance as prescribed by the owner's
48 manual, since the delivery of the vehicle to the consumer. The
49 fifteen-day period may be extended by any period of time during
50 which repair services are not available to the consumer because of
51 conditions beyond the control of the manufacturer or its agent.

52 (4) The terms, conditions or limitations of the express
53 warranty, or the period of one (1) year following the date of
54 original delivery of the motor vehicle to a consumer, whichever
55 expires earlier, may be extended if the motor vehicle warranty
56 problem has been reported but has not been repaired by the
57 manufacturer or its agent by the expiration of the applicable time
58 period.

59 (5) The manufacturer shall provide a list of the
60 manufacturer's zone or regional service office addresses in the
61 owner's manual provided with the motor vehicle. It shall be the

62 responsibility of the consumer or his representative, prior to
63 availing himself of the provisions of this section, to give
64 written notification to the manufacturer of the need for the
65 repair of the nonconformity, in order to allow the manufacturer an
66 opportunity to cure the alleged defect. The manufacturer shall
67 immediately notify the consumer of a reasonably accessible repair
68 facility to conform the vehicle to the express warranty. After
69 delivery of the vehicle to the designated repair facility by the
70 consumer, the manufacturer shall have ten (10) working days to
71 conform the motor vehicle to the express warranty. Upon
72 notification from the consumer that the vehicle has not been
73 conformed to the express warranty, the manufacturer shall inform
74 the consumer if an informal dispute settlement procedure has been
75 established by the manufacturer in accordance with Section
76 63-17-163, and provide the consumer with a copy of the provisions
77 of Section 63-17-151 et seq. However, if prior notice by the
78 manufacturer of an informal dispute settlement procedure has been
79 given, no further notice is required. If the manufacturer fails
80 to notify the consumer of the availability of this informal
81 dispute settlement procedure, the requirements of Section
82 63-17-163 shall not apply.

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

91 (7) If a consumer finally prevails in any action brought
92 under Section 63-17-151 et seq., the court may allow him to
93 recover as part of the judgment a sum equal to the aggregate
94 amount of costs and expenses, including attorney's fees based on

95 actual time expended, determined by the court to have been
96 reasonably incurred by the plaintiff for or in connection with the
97 commencement and prosecution of such action.

98 **SECTION 2.** This act shall take effect and be in force from
99 and after July 1, 2004.