

By: Representative Formby

To: Insurance

HOUSE BILL NO. 1454

1 AN ACT TO AMEND SECTIONS 83-54-5, 83-54-9 AND 83-54-19,  
 2 MISSISSIPPI CODE OF 1972, TO REGULATE THE PLACEMENT OF AUTO  
 3 LIABILITY INSURANCE BY A CREDITOR PURSUANT TO A CREDIT AGREEMENT  
 4 AS A RESULT OF THE DEBTOR'S FAILURE TO COMPLY WITH THE MOTOR  
 5 VEHICLE SAFETY-RESPONSIBILITY LAW; TO AMEND SECTION 83-54-25,  
 6 MISSISSIPPI CODE OF 1972, TO REVISE THE DISCLOSURE REQUIREMENTS A  
 7 CREDITOR SHALL MAKE BEFORE PURCHASING THE INSURANCE; AND FOR  
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 83-54-5, Mississippi Code of 1972, is  
 11 amended as follows:

12 83-54-5. As used in this chapter, unless the context  
 13 otherwise requires:

14 (a) "Actual cash value (ACV)" means the cost of  
 15 replacing damaged or destroyed property with comparable new  
 16 property, minus depreciation and obsolescence.

17 (b) "Blanket insurance" means insurance that provides  
 18 coverage on collateral as defined in a policy issued to a  
 19 creditor, without specifically listing the collateral covered.

20 (c) "Collateral" means personal property that is  
 21 pledged as security for the satisfaction of a debt.

22 (d) "Credit agreement" means the written document that  
 23 sets forth the terms of the credit transaction and includes the  
 24 security agreement.

25 (e) "Credit transaction" means a transaction by the  
 26 terms of which the repayment of money loaned or credit commitment  
 27 made, or payment of goods, services or properties sold or leased,  
 28 is to be made at a future date or dates.

29 (f) "Creditor" means the lender of money or vendor or  
 30 lessor of goods, services, property, rights or privileges for

31 which payment is arranged through a credit transaction, or any  
32 successor to the right, title or interest of a lender, vendor or  
33 lessor.

34 (g) "Creditor-placed insurance" means:

35 (i) Property insurance that is purchased  
36 unilaterally by the creditor, who is the named insured, subsequent  
37 to the date of the credit transaction, providing coverage against  
38 loss, expense or damage to collateralized personal property as a  
39 result of fire, theft, collision or other risks of loss that would  
40 either impair a creditor's interest or adversely affect the value  
41 of collateral covered by limited dual interest insurance. It is  
42 purchased according to the terms of the credit agreement as a  
43 result of the debtor's failure to provide required physical damage  
44 insurance, with the cost of the coverage being charged to the  
45 debtor. It shall be either single interest insurance or limited  
46 dual interest insurance; or

47 (ii) Liability insurance that is purchased  
48 unilaterally by the creditor, subsequent to the date of the credit  
49 transaction, providing coverage that is in compliance with the  
50 limits required by Section 63-15-3(j). It is purchased according  
51 to the terms of the credit agreement as a result of the debtor's  
52 failure to comply with the Motor Vehicle Safety-Responsibility  
53 Law, Section 63-15-3 et seq., with the cost of the coverage being  
54 charged to the debtor.

55 (h) "Debtor" means the borrower of money or a purchaser  
56 or lessee of goods, services, property, rights or privileges for  
57 which payment is arranged through a credit transaction.

58 (i) "Insurance tracking" means monitoring evidence of  
59 insurance on collateralized credit transactions to determine  
60 whether insurance required by the credit agreement has lapsed, and  
61 communicating with debtors concerning the status of insurance  
62 coverage.

63           (j) "Insurer" means an insurance company, association  
64 or exchange authorized to issue insurance policies in the State of  
65 Mississippi.

66           (k) "Lapse" means that the insurance coverage required  
67 by the credit agreement is not in force.

68           (l) "Limited dual interest insurance" means insurance  
69 purchased by the creditor to insure its interest in the collateral  
70 securing the debtor's credit transaction. This insurance waives  
71 the three (3) conditions for loss payment under single interest  
72 insurance and extends coverage on the collateral while in the  
73 possession of the debtor.

74           (m) "Loss ratio" means the ratio of incurred losses to  
75 earned premium.

76           (n) "Net debt" means the amount necessary to liquidate  
77 the remaining debt in a single lump-sum payment, excluding all  
78 unearned interest and other unearned charges.

79           (o) "Producer" means a person who receives a commission  
80 for insurance placed or written or who, on behalf of an insurer or  
81 creditor, solicits, negotiates, effects, procures, delivers,  
82 renews, continues or binds policies of insurance to which this  
83 chapter applies, except a regular salaried officer, employee or  
84 other representative of an insurer who devotes substantially all  
85 working time to activities other than those specified here and who  
86 receives no compensation that is directly dependent on the amount  
87 of insurance business written, and except a regular salaried  
88 officer or employee of a creditor who receives no compensation  
89 that is directly dependent on the amount of insurance effected or  
90 procured.

91           (p) "Single interest insurance" means insurance  
92 purchased by the creditor to insure its interest in the collateral  
93 securing a debtor's credit transaction. Three (3) conditions must  
94 be met for payment of loss under the policy:

95                   (i) The debtor has defaulted in payment;

96 (ii) The creditor has legally repossessed the  
97 collateral, unless collateral has been stolen from the debtor; and

98 (iii) The creditor has suffered an impairment of  
99 interest.

100 (q) "Commissioner" means the Commissioner of Insurance.

101 **SECTION 2.** Section 83-54-9, Mississippi Code of 1972, is  
102 amended as follows:

103 83-54-9. (1) Premiums for creditor-placed property  
104 insurance coverage as defined in Section 83-54-5(g)(i) may be  
105 calculated based on:

106 (a) An amount not exceeding the net debt even though  
107 the coverage may limit the insurer's liability to the net debt,  
108 actual cash value or cost of repair; or

109 (b) Other premium calculation methods that more closely  
110 reflect the exposure of each item insured and approximate the  
111 premium calculation method of the coverage required by the credit  
112 agreement.

113 (2) An insurer shall not write creditor-placed insurance for  
114 which the premium rate differs from that determined by the  
115 schedules of the insurer on file and approved by the commissioner.  
116 The premium or amount charged to the debtor for creditor-placed  
117 insurance shall not exceed the premiums charged by the insurer,  
118 computed at the time the charge to the debtor is determined.

119 (3) A method of billing insurance charges to the debtor on  
120 closed-end credit transactions that creates a balloon payment at  
121 the end of the credit transaction or extends the credit  
122 transaction's maturity date is prohibited, unless specifically  
123 disclosed at the time of the origination of the credit agreement.

124 **SECTION 3.** Section 83-54-19, Mississippi Code of 1972, is  
125 amended as follows:

126 83-54-19. (1) In the event of a loss under a  
127 creditor-placed property insurance policy as defined in Section  
128 83-54-5(g)(i), the insurer shall pay, at a minimum, the least of

129 the following, the value of which shall be determined as of the  
130 date of loss and shall be reduced by any payments to the creditor  
131 or debtor recovered from a third party:

132 (a) The cost to repair the collateral, less any  
133 applicable deductible;

134 (b) The actual cash value of the collateral, less any  
135 applicable deductible;

136 (c) The net debt, less any applicable deductible; or

137 (d) If single interest insurance is provided, the  
138 amount by which the creditor's interest is impaired.

139 (2) The net debt or actual cash value amounts in subsection  
140 (1) may be reduced by the value of salvage if the insurer does not  
141 take possession of the insured property. This does not preclude  
142 the borrower's right to retain possession of the damaged  
143 collateral, if desired.

144 (3) In the event of a loss under a creditor-placed property  
145 insurance policy as defined in Section 83-54-5(g)(i), no  
146 subrogation shall run against the debtor from the insurer.

147 (4) Whenever a claim is made on a creditor-placed property  
148 insurance policy as defined in Section 83-54-5(g)(i), the insurer  
149 shall furnish to the creditor a written statement of the loss  
150 explaining the settlement amount and the method of settlement, and  
151 the creditor shall furnish this information to the debtor.

152 (5) A creditor or insurer may not abandon salvage to a  
153 towing or storage facility in lieu of payment of storage fees  
154 without the consent of the facility and the claimant. The insurer  
155 shall be responsible for the payment of towing and storage charges  
156 for a covered loss occurrence from the time the claim is reported  
157 to the insurer in accordance with the terms of the policy to the  
158 time the claim is paid. After the claim is paid, the debtor shall  
159 be responsible for the payment of any towing or storage charges.

160 **SECTION 4.** Section 83-54-25, Mississippi Code of 1972, is  
161 amended as follows:

162           83-54-25. (1) A creditor shall not impose charges,  
163 including premium costs and related interest and finance charges,  
164 on a debtor for creditor-placed insurance coverage unless adequate  
165 disclosure of the requirement to maintain insurance has been made  
166 to the debtor. Adequate disclosure is accomplished if the  
167 following occurs:

168           (a) The credit agreement sets forth the requirement  
169 that the debtor must maintain insurance on the collateral as  
170 provided for in Section 83-54-21;

171           (b) The creditor makes reasonable efforts to notify the  
172 debtor of the requirement to maintain insurance and allows a  
173 reasonable time for compliance with this requirement;

174           (c) A final notice as required by this chapter is sent  
175 to the debtor; and

176           (d) If creditor-placed insurance coverage is issued, a  
177 copy of the policy or certificate, with disclosure of premium  
178 charged, is sent to the debtor as provided for in Section  
179 83-54-13.

180           (2) After adequate disclosure of the request to maintain  
181 insurance has been made to the debtor as required by this section,  
182 a creditor may proceed to impose charges for creditor-placed  
183 insurance if the debtor fails to provide evidence of insurance. A  
184 creditor may impose charges no earlier than ten (10) calendar days  
185 after sending the final notice. However, the charges can be  
186 retroactive to the date of exposure to loss.

187           (3) Reasonable efforts to notify the debtor are accomplished  
188 if:

189           (a) The creditor mails a notice by first-class mail to  
190 the debtor's last known address as contained in the creditor's  
191 records, stating that the creditor intends to charge the debtor  
192 for creditor-placed insurance coverage on the collateral if the  
193 debtor fails to provide evidence of the property insurance to the  
194 creditor;

195 (b) The creditor allows the debtor at least twenty (20)  
196 calendar days to respond to the notice and provide evidence of  
197 acceptable insurance coverage before sending a final notice; and

198 (c) The creditor sends a final notice in compliance  
199 with this section by first-class mail to the debtor's last known  
200 address as contained in the creditor's records at least ten (10)  
201 calendar days before the cost of insurance is charged to the  
202 debtor by the creditor. Proof of the mailing of the final notice  
203 shall be retained for at least three (3) years following the  
204 expiration or termination of the coverage or as otherwise required  
205 by law. A register of letters shall be deemed sufficient proof to  
206 satisfy this requirement.

207 (4) The initial notice shall be in a form determined by the  
208 creditor to remind the debtor of the requirement to maintain  
209 insurance on the collateral. The final notice shall be as  
210 complete as the following notice, printed in not less than twelve  
211 (12) point type, and modified where necessary to fit the nature of  
212 the credit transaction:

213 "FINAL NOTICE

214 Your credit agreement with us requires you to have  
215 property insurance on the collateral and/or liability  
216 insurance as required by the Motor Vehicle  
217 Safety-Responsibility Law until you pay off your loan.  
218 You have not given us proof that you have the required  
219 insurance \* \* \*. You can ask your insurance company or  
220 agent to give us proof of insurance or you can send us  
221 proof you have property and/or liability insurance as  
222 required in your credit agreement within ten (10)  
223 calendar days after the date this letter was postmarked.  
224 If you do not, we will charge you for the insurance we  
225 buy.

226 You must pay for the \* \* \* insurance we buy. It  
227 may cost more than insurance you can buy on your own.

228 The premium of the insurance we buy may be added to your  
229 loan balance and we may charge you interest on it. You  
230 will be charged interest on the premium at the rate of  
231 \_\_\_\_\_ per annum.

232 \* \* \*

233 We may receive compensation for placing this  
234 insurance, which is included in the cost of coverage  
235 charged to you.

236 The property and/or liability coverage we buy will  
237 start on the date shown in the policy or certificate,  
238 which may go back to the date of the loan or the date  
239 your prior coverage stopped. We will cancel the  
240 insurance we bought for you and give you a refund or  
241 credit of unearned charges if you give us proof you have  
242 bought \* \* \* insurance somewhere else or if you have  
243 paid off the loan."

244 (5) All creditor-placed insurance shall be set forth in an  
245 individual policy or certificate of insurance. Not earlier than  
246 the sending of the final notice nor fifteen (15) days after a  
247 charge is made to the debtor for creditor-placed insurance  
248 coverage, the creditor shall cause a copy of the individual  
249 policy, certificate or other evidence of insurance coverage  
250 evidencing the creditor-placed insurance coverage to be sent,  
251 first-class mail, to the debtor's last known address.

252 (6) A creditor's compliance with or failure to comply with  
253 this chapter shall not be construed to require the creditor to  
254 purchase property insurance coverage on the collateral nor  
255 liability insurance coverage on the debtor, and the creditor shall  
256 not be liable to the debtor or a third party as a result of its  
257 failure to purchase the insurance.

258 **SECTION 5.** This act shall take effect and be in force from  
259 and after July 1, 2005.