

By: Representative Fillingane

To: Judiciary A;  
Transportation

HOUSE BILL NO. 668

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, 2006.