MISSISSIPPI LEGISLATURE REGULAR SESSION 2015

By: Representative Haney To: Judiciary A

HOUSE BILL NO. 1256

AN ACT TO AMEND SECTION 63-17-159, MISSISSIPPI CODE OF 1972, TO REVISE THE MANNER IN WHICH A CONSUMER'S REASONABLE ALLOWANCE FOR USE OF THE MOTOR VEHICLE IS CALCULATED; AND FOR RELATED PURPOSES.

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

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

63-17-159. (1) If the manufacturer or its agent cannot conform the motor vehicle to any applicable express warranty by repairing or correcting any default or condition which impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall give the consumer the option of having the manufacturer either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a

replacement or refund of the motor vehicle occurs. * * * A reasonable allowance for use shall be calculated at a rate of Twenty Cents (20¢)per mile for each mile the motor vehicle has been driven by the consumer before the consumer first reported, to the manufacturer or its agent, any default or condition that impairs the use, market value or safety of the motor vehicle that cannot be conformed to any applicable express warranty by repair or correction within a reasonable number of attempts. Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

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

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

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

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

(d) Any other affirmative defense allowed by law.

(3) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if within the terms, conditions or limitations of the express warranty, or during the period of one

(1) year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, either:

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

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

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

(5) The manufacturer shall provide a list of the manufacturer's zone or regional service office addresses in the owner's manual provided with the motor vehicle. It shall be the responsibility of the consumer or his representative, prior to availing himself of the provisions of this section, to give

written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility to conform the vehicle to the express warranty. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall have ten (10) working days to conform the motor vehicle to the express warranty. Upon notification from the consumer that the vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with Section 63-17-163, and provide the consumer with a copy of the provisions of Section 63-17-151 et seq. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If the manufacturer fails to notify the consumer of the availability of this informal dispute settlement procedure, the requirements of Section 63-17-163 shall not apply.

(6) Any action brought under Section 63-17-151 et seq. shall be commenced within one (1) year following expiration of the terms, conditions or limitations of the express warranty, or within eighteen (18) months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or, if a consumer resorts to an informal dispute settlement

procedure as provided in Section 63-17-151 et seq., within ninety (90) days following the final action of the panel.

(7) If a consumer finally prevails in any action brought under Section 63-17-151 et seq., the court may allow him to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

SECTION 2. This act shall take effect and be in force from and after July 1, 2015.