

By: Representative Tullos

To: Judiciary A

HOUSE BILL NO. 762

1 AN ACT TO AMEND SECTION 63-17-163, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT IF A CONSUMER HAS SUBMITTED TO A BINDING
 3 ARBITRATION AGREEMENT REGARDING A REFUND OR REPLACEMENT OF A
 4 NONCONFORMING MOTOR VEHICLE, THE CONSUMER MAY OPT OUT OF THE
 5 ARBITRATION AGREEMENT TO SUBMIT HIS OR HER CLAIM TO AN INFORMAL
 6 DISPUTE SETTLEMENT PROCEDURE ESTABLISHED BY THE MANUFACTURER
 7 BEFORE FILING A SUIT AGAINST THE MANUFACTURER; TO BRING FORWARD
 8 SECTION 63-17-159, MISSISSIPPI CODE OF 1972, WHICH RELATES TO
 9 REFUNDS AND REPLACEMENTS OF NONCONFORMING MOTOR VEHICLES, FOR THE
 10 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 63-17-163, Mississippi Code of 1972, is
 13 amended as follows:

14 63-17-163. If a manufacturer has established an informal
 15 dispute settlement procedure which complies in all respects with
 16 the provisions of 16 C.F.R., Part 703, the provisions of Section
 17 63-17-159 concerning refunds or replacements shall not apply to
 18 any consumer who has not first resorted to such procedure. If the
 19 consumer has submitted to a binding arbitration agreement
 20 regarding a refund or replacement, the consumer may opt out of the
 21 arbitration agreement to submit his or her claim to an informal



22 dispute settlement procedure established by the manufacturer
23 before filing a suit against the manufacturer.

24 **SECTION 2.** Section 63-17-159, Mississippi Code of 1972, is
25 brought forward as follows:

26 63-17-159. (1) If the manufacturer or its agent cannot
27 conform the motor vehicle to any applicable express warranty by
28 repairing or correcting any default or condition which impairs the
29 use, market value, or safety of the motor vehicle to the consumer
30 after a reasonable number of attempts, the manufacturer shall give
31 the consumer the option of having the manufacturer either replace
32 the motor vehicle with a comparable motor vehicle acceptable to
33 the consumer, or take title of the vehicle from the consumer and
34 refund to the consumer the full purchase price, including all
35 reasonably incurred collateral charges, less a reasonable
36 allowance for the consumer's use of the vehicle. The subtraction
37 of a reasonable allowance for use shall apply when either a
38 replacement or refund of the motor vehicle occurs. A reasonable
39 allowance for use shall be that sum of money arrived at by
40 multiplying the number of miles the motor vehicle has been driven
41 by the consumer by Twenty Cents (20¢) per mile. Refunds shall be
42 made to the consumer and lienholder of record, if any, as their
43 interests may appear.

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



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

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

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

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

54 (3) It shall be presumed that a reasonable number of
55 attempts have been undertaken to conform a motor vehicle to the
56 applicable express warranties if within the terms, conditions or
57 limitations of the express warranty, or during the period of one
58 (1) year following the date of original delivery of the motor
59 vehicle to a consumer, whichever expires earlier, either:

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

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



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

78 (5) The manufacturer shall provide a list of the
79 manufacturer's zone or regional service office addresses in the
80 owner's manual provided with the motor vehicle. It shall be the
81 responsibility of the consumer or his representative, prior to
82 availing himself of the provisions of this section, to give
83 written notification to the manufacturer of the need for the
84 repair of the nonconformity, in order to allow the manufacturer an
85 opportunity to cure the alleged defect. The manufacturer shall
86 immediately notify the consumer of a reasonably accessible repair
87 facility to conform the vehicle to the express warranty. After
88 delivery of the vehicle to the designated repair facility by the
89 consumer, the manufacturer shall have ten (10) working days to
90 conform the motor vehicle to the express warranty. Upon
91 notification from the consumer that the vehicle has not been
92 conformed to the express warranty, the manufacturer shall inform
93 the consumer if an informal dispute settlement procedure has been
94 established by the manufacturer in accordance with Section
95 63-17-163, and provide the consumer with a copy of the provisions



96 of Section 63-17-151 et seq. However, if prior notice by the
97 manufacturer of an informal dispute settlement procedure has been
98 given, no further notice is required. If the manufacturer fails
99 to notify the consumer of the availability of this informal
100 dispute settlement procedure, the requirements of Section
101 63-17-163 shall not apply.

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

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

117 **SECTION 3.** This act shall take effect and be in force from
118 and after July 1, 2018.

