

By: Senator(s) Chaney, Burton, Dearing, King To: Insurance

SENATE BILL NO. 2436

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.