

By: Senator(s) Jackson (32nd)

To: Judiciary, Division A

SENATE BILL NO. 2897

1 AN ACT TO CODIFY SECTION 63-21-38, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT TRANSFER WITHOUT NOTICE OF ANY VEHICLE RETURNED UNDER
3 THE LEMON LAWS; TO CODIFY SECTION 75-24-29, MISSISSIPPI CODE OF
4 1972, TO REQUIRE NOTICE THEREOF TO ALL FUTURE TRANSFEREES; TO
5 AMEND SECTIONS 63-17-159 AND 63-21-71, MISSISSIPPI CODE OF 1972,
6 IN CONFORMITY; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** The following provision shall be codified as

9 Section 63-21-38, Mississippi Code of 1972:

10 63-21-38. In every sale or transfer of a motor vehicle
11 returned to the manufacturer or its agent under the provisions of
12 Section 63-17-151 et seq., a similar statute of another state, or
13 as the result of a legal action or an informal dispute settlement
14 procedure, the certificate of title to the motor vehicle shall
15 thereafter indicate conspicuously the following information:
16 LEMON BUY-BACK. The notice required by this section shall
17 continue to appear on each certificate of title issued as a result
18 of any subsequent sale or transfer of that motor vehicle.

19 **SECTION 2.** The following provision shall be codified as

20 Section 75-24-29, Mississippi Code of 1972:

21 75-24-29. Every transferor of a vehicle subject to the
22 requirements of the Motor Vehicle Warranty Enforcement Law, being
23 Section 63-17-151 et seq., a similar statute of another state, or
24 as the result of a legal action or an informal dispute settlement
25 procedure who has received notice of the vehicle's nonconformity
26 to its warranty, shall deliver the notice with the vehicle to the
27 next transferee, purchaser or lessee or else may be required to
28 repurchase the vehicle at the full purchase price plus all fees,

29 taxes and costs incurred for goods and services which were
30 included in the subsequent transaction.

31 **SECTION 3.** Section 63-17-159, Mississippi Code of 1972, is
32 amended as follows:

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

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

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

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

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

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

61 (3) It shall be presumed that a reasonable number of
62 attempts have been undertaken to conform a motor vehicle to the
63 applicable express warranties if within the terms, conditions or
64 limitations of the express warranty, or during the period of one
65 (1) year following the date of original delivery of the motor
66 vehicle to a consumer, whichever expires earlier, either:

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

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

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

85 (5) The manufacturer shall provide a list of the
86 manufacturer's zone or regional service office addresses in the
87 owner's manual provided with the motor vehicle. It shall be the
88 responsibility of the consumer or his representative, prior to
89 availing himself of the provisions of this section, to give
90 written notification to the manufacturer of the need for the
91 repair of the nonconformity, in order to allow the manufacturer an
92 opportunity to cure the alleged defect. The manufacturer shall
93 immediately notify the consumer of a reasonably accessible repair

94 facility to conform the vehicle to the express warranty. After
95 delivery of the vehicle to the designated repair facility by the
96 consumer, the manufacturer shall have ten (10) working days to
97 conform the motor vehicle to the express warranty. Upon
98 notification from the consumer that the vehicle has not been
99 conformed to the express warranty, the manufacturer shall inform
100 the consumer if an informal dispute settlement procedure has been
101 established by the manufacturer in accordance with Section
102 63-17-163, and provide the consumer with a copy of the provisions
103 of Section 63-17-151 et seq. However, if prior notice by the
104 manufacturer of an informal dispute settlement procedure has been
105 given, no further notice is required. If the manufacturer fails
106 to notify the consumer of the availability of this informal
107 dispute settlement procedure, the requirements of Section
108 63-17-163 shall not apply.

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

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

124 (8) (a) In every sale or transfer of a motor vehicle
125 returned to the manufacturer or its agent under the provisions of
126 Section 63-17-151 et seq., a similar statute of another state, or

127 as the result of a legal action or an informal dispute settlement
128 procedure, the manufacturer or its agent must disclose in writing
129 to a subsequent purchaser the fact that the motor vehicle was
130 returned and the nature of the nonconformity to the vehicle
131 warranty, and the title to that vehicle shall conform to the
132 requirements of Section 63-21-38.

133 (b) Any person who transfers or attempts to transfer a
134 motor vehicle in violation of this subsection (8) or who fails to
135 deliver to the buyer the written notice required shall be subject
136 to a fine of not more than Seven Thousand Five Hundred Dollars
137 (\$7,500.00) for each violation.

138 (c) Any subsequent transferor of a vehicle subject to
139 the requirements of this section who has received the required
140 notice shall deliver the notice with the vehicle to the next
141 transferee, purchaser or lessee or else may be required to
142 repurchase the vehicle at the full purchase price plus all fees,
143 taxes and costs incurred for goods and services which were
144 included in the subsequent transaction.

145 **SECTION 4.** Section 63-21-71, Mississippi Code of 1972, is
146 amended as follows:

147 63-21-71. Except as otherwise provided in this chapter, it
148 is a misdemeanor for any person to violate any of the provisions
149 of this chapter unless such violation is by the law of this state
150 declared to be a felony.

151 Every person convicted of a misdemeanor for the violation of
152 any of the provisions of this chapter shall be punished by a fine
153 of not more than Five Hundred Dollars (\$500.00), or by
154 imprisonment for not more than six (6) months, or by both such
155 fine and imprisonment.

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