



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 15, 2022

The Honorable Nick Patano
Harrison County Justice Court Judge 5
190 Lameuse Street
Biloxi, Mississippi 39530

Re: Conflict of Statutes

Dear Judge Patano:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

You suggest a conflict exists between Mississippi Code Annotated Section 63-19-43, which limits interest to 28.75% for motor vehicles older than four years, and Section 75-67-181, which, under the Mississippi Consumer Alternative Installment Loan Act, allows up to 59% APR for loans under \$4,000.00 for the purchase of any goods. Your question asks: “Would the more specific statute Section 63-19-43 applying only to loans for motor vehicles be controlling, and limit the interest to 28.75% for used vehicles more than four years old and under \$4,000?”

Brief Response

It is the opinion of this office that there is no conflict between Sections 63-19-43 and 75-67-181.

Applicable Law and Discussion

Your request suggests a conflict between the two statutes, thus potentially implicating the rules of statutory construction. Such rules of statutory construction are applied only “when a statute is ambiguous, has conflicting provisions within it, or conflicts with another statute.” MS AG Op., *Frierson* at *2 (Sept. 8, 2017) (citation omitted). However, when the language of the statute is clear and there is no ambiguity, the rules of statutory construction need not be applied. *Id.* “Without ambiguity, the controlling law of this state requires that the Court look no further than the clear language of the statute and apply it.” MS AG Op., *Frierson* at *2 (Sept. 8, 2017) (quoting *Forman v. Carter*, 269 So. 2d 865 (Miss. 1972) (internal quotations omitted)). In this particular instance, we find no ambiguity or conflict between Sections 63-19-43 and 75-67-181, so we look to the clear language of the statutes to determine their meaning.

Section 63-19-43 is part of the Motor Vehicle Sales Finance Law, which pertains to retail installment contracts, among other things. A retail installment contract is defined as “an agreement entered into in this state pursuant to which the title to or a lien upon the motor vehicle . . . which is the subject of a retail installment transaction is retained or taken . . . as security for the buyer’s obligation.” Miss. Code Ann. § 63-19-3(g). A retail installment contract includes a conditional sales contract. *Id.*

Section 63-19-43 is entitled “Maximum Finance Charge” and states, in pertinent part:

- (1) The maximum finance charge which may be contracted for or received for any purchase money loan or purchase money extension of credit made by any lender or by any licensed retail seller, or by any other entity that is expressly exempt from licensing but expressly subject to compliance with this chapter under the provisions of 63-19-7, in connection with sales or financing of motor vehicles and commercial vehicles, as defined in Section 63-19-3(a) and 63-19-3(b), made under this chapter, may result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

. . .

- (d) Class 4. Any used motor vehicle not in Class 2 or Class 3 and manufactured more than four (4) years prior to the year in which the sale is made -- twenty-eight and seventy-five one-hundredths percent (28.75%) per annum on the unpaid balance.

Section 63-19-7 is referenced in Section 63-19-43 and deals specifically with the licensing and compliance of those engaging in the business of a sales finance company. A “sales finance company” is defined as:

[A] person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes, but is not limited to, a bank, trust company, private banker, industrial bank or investment company, if so engaged.

Miss. Code Ann. § 63-19-3(k). A “retail seller” is a person (individual, partnership, corporation, association, or other group) “who sells a motor vehicle . . . to a retail buyer under or subject to a retail installment contract.” Miss. Code Ann. § 63-19-3(d). A “retail buyer” is a person “who buys a motor vehicle . . . from a retail seller, not for the purpose of resale, and who executes a retail installment contract.” Miss. Code Ann. § 63-19-3(c).

The second statute you ask about regarding financing of a motor vehicle is Section 75-67-181, which is part of the Mississippi Consumer Alternative Installment Act, and states:

In lieu of the interest and charges in Section 75-17-21, on loans of Four Thousand Dollars (\$4,000.00) or less, a licensee may contract and charge a monthly finance charge not to exceed an annual percentage rate, calculated according to the actuarial

method, of fifty-nine percent (59%) per annum on the unpaid balance of the amount financed.

Section 75-17-21 states:

For any *consumer installment loan* that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law makes, the licensee has the option to either lend at the rates and fees under this section or at the rates and charges authorized under Section 75-67-181. Except as provided in Section 75-67-181, but notwithstanding any other provision of law to the contrary, the maximum finance charge which may be contracted for and received for any loan or extension of credit made by a licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.) and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.) may result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

...

(c) Twenty-four percent (24%) per annum for the portion of the unpaid balance of the amount financed in excess of Two Thousand Five Hundred Dollars (\$2,500.00) but not greater than Five Thousand Dollars (\$5,000.00).

(Emphasis added).¹

The two statutes you inquire about pertain to two different types of financing, both of which can be applied to motor vehicles. Section 63-19-43 pertains to retail installment contracts for motor vehicles while Section 75-67-181 pertains to consumer installment loans, regardless of the loan's purpose. In order to determine which statute pertains to the motor vehicle in your particular question, the facts surrounding its purchase and financing must be determined and the appropriate statute applied.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Misty Monroe

Misty Monroe
Special Assistant Attorney General

¹ Unlike Section 63-19-43, Section 75-67-181 does not limit the subject of the loan to motor vehicles or commercial vehicles, but a motor vehicle could be financed under its terms. *See MS AG Op., Napier* at *1 (Nov. 15, 1996)(stating that rates set forth in Section 75-17-21 control all loans made by small loan lenders regardless of the purpose for which the loan was made).