

By: Simpson

To: Transportation

## HOUSE BILL NO. 1481

1 AN ACT TO AMEND THE PROVISIONS OF THE MISSISSIPPI MOTOR  
2 VEHICLE COMMISSION LAW; TO CREATE NEW SECTION 63-17-109,  
3 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE EVENT OF THE  
4 PROPOSED SALE OR TRANSFER OF A MOTOR VEHICLE DEALERSHIP AND THE  
5 FRANCHISE AGREEMENT FOR SUCH DEALERSHIP CONTAINS A RIGHT OF FIRST  
6 REFUSAL FOR THE MANUFACTURER OR DISTRIBUTOR, THE MANUFACTURER OR  
7 DISTRIBUTOR MUST MEET CERTAIN REQUIREMENTS IN ORDER TO EXERCISE  
8 SUCH RIGHT OF FIRST REFUSAL; TO PROVIDE THAT SUCH REQUIREMENTS  
9 SHALL NOT APPLY IN CERTAIN CIRCUMSTANCES; TO PROVIDE THAT IF THE  
10 MANUFACTURER OR DISTRIBUTOR EXERCISES ITS RIGHT OF FIRST REFUSAL,  
11 THE MANUFACTURER OR DISTRIBUTOR SHALL PAY THE REASONABLE EXPENSES  
12 INCURRED BY THE PROPOSED OWNER PRIOR TO THE EXERCISE OF THE RIGHT  
13 OF FIRST REFUSAL IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR  
14 THE PROPOSED SALE OF THE DEALERSHIP; TO PROVIDE THAT THE MOTOR  
15 VEHICLE DEALER SHALL NOT HAVE ANY LIABILITY TO ANY PERSON AS A  
16 RESULT OF A MANUFACTURE OR DISTRIBUTOR EXERCISING ITS RIGHT OF  
17 FIRST REFUSAL; TO CREATE NEW SECTION 63-17-111, MISSISSIPPI CODE  
18 OF 1972, TO PROVIDE THAT, NOTWITHSTANDING THE TERMS OF A FRANCHISE  
19 AGREEMENT, THE OWNER OF A MOTOR VEHICLE DEALERSHIP MAY APPOINT A  
20 SUCCESSOR BY A WRITTEN AGREEMENT TO SUCCEED IN THE OWNERSHIP OF  
21 THE DEALERSHIP UPON THE DEATH OR INCAPACITY OF THE OWNER; TO  
22 PROVIDE THAT A MANUFACTURER OR DEALER SHALL HONOR THE SUCCESSION  
23 UNLESS GOOD CAUSE EXISTS TO REFUSE TO HONOR THE SUCCESSION; TO  
24 PROVIDE A PROCEDURE TO REFUSE TO HONOR THE SUCCESSION; TO CREATE  
25 NEW SECTION 63-17-113, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A  
26 MANUFACTURER OR DISTRIBUTOR OF MOTOR VEHICLES THAT DIRECTLY OR  
27 INDIRECTLY OWNS OR OPERATES A NEW MOTOR VEHICLE DEALERSHIP SHALL  
28 NOT DISCRIMINATE AGAINST ANY OTHER MOTOR VEHICLE DEALER IN THE  
29 SAME LINE OR MAKE IN ANY MATTER GOVERNED BY THE FRANCHISE  
30 AGREEMENT; TO CREATE NEW SECTION 63-17-115, MISSISSIPPI CODE OF  
31 1972, TO PROVIDE THAT ANY WARRANTY OR SALES INCENTIVE AUDITS OF A  
32 MOTOR VEHICLE RECORDS MUST BE CONDUCTED WITHIN A CERTAIN AMOUNT OF  
33 TIME AFTER THE PAYMENT OF THE DISPUTED CLAIM; TO PROVIDE THAT NO  
34 CLAIM WHICH HAS BEEN APPROVED AND PAID MAY BE CHARGED BACK TO THE  
35 MOTOR VEHICLE DEALER UNLESS IT CAN BE SHOWN BY CLEAR AND  
36 CONVINCING EVIDENCE THAT THE CLAIMS WERE FALSE OR FRAUDULENT, THE  
37 REPAIRS WERE NOT PROPERLY MADE OR WERE UNNECESSARY, OR THE DEALER  
38 FAILED TO SUBSTANTIATE THE CLAIM; TO CREATE NEW SECTION 63-17-117,  
39 MISSISSIPPI CODE OF 1972, TO GIVE MOTOR VEHICLE DEALERS A CAUSE OF  
40 ACTION AGAINST A MANUFACTURER OR DEALER BECAUSE OF LOSSES DUE TO A  
41 VIOLATION BY THE MANUFACTURER OR DEALER OF THE MISSISSIPPI MOTOR  
42 VEHICLE COMMISSION LAW; TO CREATE NEW SECTION 63-17-119,  
43 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE VENUE FOR ANY  
44 PROCEEDING ARISING FROM THE FRANCHISE AGREEMENT SHALL BE THE STATE  
45 OF MISSISSIPPI; TO CREATE NEW SECTION 63-17-121, MISSISSIPPI CODE  
46 OF 1972, TO LIMIT THE AMOUNT OF TIME THAT A MANUFACTURER MAY OWN  
47 AN INTEREST IN A FRANCHISED MOTOR VEHICLE DEALER; TO PROVIDE  
48 CERTAIN EXCEPTIONS TO SUCH LIMITATIONS; TO AMEND SECTION 63-17-55,  
49 MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND  
50 SECTION 63-17-73, MISSISSIPPI CODE OF 1972, TO PROHIBIT

51 MANUFACTURERS OR DISTRIBUTORS FROM REQUIRING OR CONDITIONING THE  
52 RENEWAL OR EXTENSION OF A FRANCHISE THAT THE DEALER RENOVATE HIS  
53 BUILDING OR CONSTRUCT A NEW ONE UNLESS CERTAIN CONDITIONS ARE MET;  
54 TO PROHIBIT MANUFACTURER OR DISTRIBUTOR FROM PROHIBITING A DEALER  
55 FROM ACQUIRING ANOTHER LINE OF MOTOR VEHICLES IF THE DEALER  
56 REMAINS IN SUBSTANTIAL COMPLIANCE WITH THE REASONABLE FACILITIES  
57 REQUIREMENTS OF THE MANUFACTURER OR DISTRIBUTOR; TO PROHIBIT THE  
58 MANUFACTURER OR DISTRIBUTOR FROM REFUSING TO SELL TO ALL DEALERS  
59 IN A LINE OR MAKE EVERY MOTOR VEHICLE SOLD OR OFFERED FOR SALE  
60 UNDER THE FRANCHISE AGREEMENT; TO PROVIDE THAT A MANUFACTURER OR  
61 DEALER SHALL NOT REQUIRE A DEALER TO ADHERE TO PERFORMANCE  
62 STANDARDS THAT ARE NOT APPLIED UNIFORMLY TO SIMILARLY SITUATED  
63 MOTOR VEHICLE DEALERS; TO AMEND SECTION 63-17-75, MISSISSIPPI CODE  
64 OF 1972, TO REQUIRE THAT NEW APPLICATIONS FOR LICENSES AS A MOTOR  
65 VEHICLE DEALER SHALL BE ACCOMPANIED BY A SURETY BOND; TO AMEND  
66 SECTION 63-17-51, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE  
67 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

68

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

70 SECTION 1. The following shall be codified as Section

71 63-17-109, Mississippi Code of 1972:

72 63-17-109. (1) In the event of a proposed sale or transfer  
73 of a dealership and the franchise agreement for such dealership  
74 contains a right of first refusal in favor of the manufacturer or  
75 distributor, notwithstanding the terms of the franchise agreement,  
76 the manufacturer or distributor shall be permitted to exercise a  
77 right of first refusal to acquire the dealership only if all of  
78 the following requirements are met:

79 (a) The manufacturer or distributor sends by certified  
80 mail, return receipt requested, or any other reliable means of  
81 communication, notice of its intent to exercise its right of first  
82 refusal within sixty (60) days of receipt of the completed  
83 proposal for the proposed sale or transfer.

84 (b) The exercise of the right of first refusal will  
85 result in the motor vehicle dealer receiving consideration, terms  
86 and conditions that are either the same as or greater than that  
87 for which such dealer has contracted for in connection with the  
88 proposed transaction;

89 (2) The provisions of subsection (1) of this section shall  
90 not apply to a transaction involving one (1) of the following:

91 (a) A designated family member or members, including

92 the spouse, child or grandchild, spouse of a child or grandchild,  
93 brother, sister or parent of the dealer-operator, or one or more  
94 motor vehicle dealer owners;

95 (b) A manager employed by the motor vehicle dealer in  
96 the dealership during the previous five (5) years that is  
97 otherwise qualified as a dealer-operator;

98 (c) A partnership or corporation controlled by any of  
99 the family members of the dealer-operator;

100 (d) A trust arrangement established or to be  
101 established for the purpose of allowing the new motor vehicle  
102 dealer to continue to qualify as such pursuant to the  
103 manufacturer's or distributor's standards, or provides for the  
104 succession of the franchise agreement to designated family members  
105 or qualified management in the event of the death or incapacity of  
106 the dealer-operator or its principal owner or owners.

107 (3) (a) The manufacturer or distributor shall pay the  
108 reasonable expenses, including attorney's fees which do not exceed  
109 the usual, customary, and reasonable fees charged for similar work  
110 done for other clients, incurred by the proposed owner prior to  
111 the exercise of the right of first refusal in negotiating and  
112 implementing the contract for the proposed sale of the dealership.

113 Such expenses and attorney's fees shall be paid to the proposed  
114 new owner at the time of the closing of the sale at which the  
115 manufacturer or distributor exercises its right of first refusal.

116 (b) No payment of such expenses and attorney's fees  
117 shall be required if the person claiming reimbursement has not  
118 submitted or caused to be submitted an accounting of those  
119 expenses within thirty (30) days after the receipt of the  
120 manufacturer's or distributor's written request for such an  
121 accounting. A manufacturer or distributor may request such an  
122 accounting before exercising its right of first refusal.

123 (4) The motor vehicle dealer shall not have any liability to  
124 any person as a result of a manufacturer or distributor exercising

125 its right of first refusal and the manufacturer or distributor  
126 shall assume the defense of the selling motor vehicle dealer for  
127 any claims by the proposed owner arising from the exercise of the  
128 right of first refusal.

129 SECTION 2. The following shall be codified as Section  
130 63-17-111, Mississippi Code of 1972:

131 63-17-111. (1) Notwithstanding the terms of any franchise  
132 agreement, any dealer-operator may appoint by will, or other  
133 written instrument, a designated successor to succeed in the  
134 ownership of the dealer-operator in the dealership upon the death  
135 or incapacity of the dealer-operator.

136 (2) Unless good cause exists for the refusal to honor the  
137 succession on the part of the manufacturer or distributor, any  
138 designated successor of a deceased or incapacitated  
139 dealer-operator of a dealership may succeed to the ownership of  
140 the motor vehicle dealership under the existing franchise  
141 agreement if:

142 (a) The designated successor gives the manufacturer or  
143 distributor written notice of his or her intention to succeed to  
144 the ownership of the motor vehicle dealership within sixty (60)  
145 days after the dealer-operator's death or incapacity; and

146 (b) The designated successor agrees to be bound by all  
147 the terms and conditions of the franchise agreement.

148 (3) The manufacturer or distributor may request, and the  
149 designated successor shall provide promptly upon such request,  
150 personal and financial data reasonably necessary to determine  
151 whether the succession should be honored.

152 (4) (a) If the manufacturer or distributor believes that  
153 good cause exists for refusing to honor the succession of a  
154 deceased or incapacitated dealer, the manufacturer or distributor  
155 shall, not more than sixty (60) days following receipt of the  
156 notice of the designated successor's intent to succeed and receipt  
157 of such personal and financial data, serve upon the designated

158 successor notice of its refusal to honor the proposed succession  
159 and of its intent to terminate the existing franchise with the  
160 dealer-operator not earlier than six (6) months from the date such  
161 notice of refusal is served.

162 (b) Such notice shall state the specific grounds for  
163 the refusal to honor the succession.

164 (c) If such notice is not timely served upon the  
165 designated successor, the franchise agreement shall continue in  
166 effect subject to termination only as otherwise provided by the  
167 Mississippi Motor Vehicle Commission Law.

168 (5) In determining whether good cause for the refusal to  
169 honor the succession exists, the manufacturer or distributor has  
170 the burden of proving that the designated successor is not of good  
171 moral character or does not otherwise meet the manufacturer's or  
172 distributor's reasonable standards for a dealer-operator.

173 (6) If a manufacturer or distributor refuses to honor the  
174 succession to the ownership interest of a deceased or  
175 incapacitated dealer-operator for good cause, the manufacturer or  
176 distributor shall allow the designated successor a reasonable  
177 period of time, which shall not be less than six (6) months, in  
178 which to consummate the sale of the dealership.

179 SECTION 3. The following shall be codified as Section  
180 63-17-113, Mississippi Code of 1972:

181 63-17-113. A manufacturer or distributor of motor vehicles  
182 that directly or indirectly owns or operates a new motor vehicle  
183 dealership, in whole or in part, shall not discriminate against  
184 any other motor vehicle dealer in the same line or make in any  
185 matter governed by the franchise agreement, including, but not  
186 limited to:

187 (a) The sale, allocation, or availability of motor  
188 vehicles and other manufacturer or distributor products;

189 (b) Promotional or advertising allowances;

190 (c) Personnel training;

- 191           (d) The opportunity to perform warranty work; or  
192           (e) The implementation of dealer programs or benefits.

193           SECTION 4. The following shall be codified as Section  
194 63-17-115, Mississippi Code of 1972:

195           63-17-115. (1) Notwithstanding the terms of any franchise  
196 agreement, warranty and sales incentive audits of a motor vehicle  
197 dealer's records may be conducted by the manufacturer or  
198 distributor. Any audit for warranty parts or service compensation  
199 shall be performed within the twelve-month period immediately  
200 following the date of the payment of the disputed claim by the  
201 manufacturer or distributor. Any audit for sales incentives,  
202 service incentives, rebates, or other forms of incentive  
203 compensation shall be performed within the eighteen-month period  
204 immediately following the date of the payment of the disputed  
205 claim by the manufacturer or distributor.

206           (2) No claim which has been approved and paid may be charged  
207 back to the motor vehicle dealer unless it can to shown by clear  
208 and convincing evidence that the claim was false or fraudulent,  
209 that the repairs were not properly made or were unnecessary to  
210 correct the defective conditions under generally accepted  
211 standards of workmanship, or that the motor vehicle dealer failed  
212 to reasonably substantiate the repair.

213           (3) A manufacturer or distributor shall not deny a claim  
214 based solely on a motor vehicle dealer's incidental failure to  
215 comply with a specific claim processing requirement that results  
216 in a clerical error or other administrative technicality.

217           (4) Limitations on warranty parts, service compensation,  
218 sales incentive audits, rebates, or other forms of incentive  
219 compensation, chargebacks for warranty parts or service  
220 compensation, and service incentives and chargebacks for sales  
221 compensation only, shall not be effective in the case of  
222 intentionally false or fraudulent claims.

223           SECTION 5. The following shall be codified as Section

224 63-17-117, Mississippi Code of 1972:

225 63-17-117. Notwithstanding any provision of a franchise  
226 agreement to the contrary, if any motor vehicle dealer or  
227 dealer-operator incurs pecuniary loss due to a violation of the  
228 Mississippi Motor Vehicle Commission Law by a manufacturer or  
229 distributor, the motor vehicle dealer or dealer-operator may bring  
230 suit in a court of competent jurisdiction and recover damages,  
231 together with costs, including reasonable attorney's fees.

232 SECTION 6. The following shall be codified as Section  
233 63-17-119, Mississippi Code of 1972:

234 63-17-119. Venue for any proceeding arising from the  
235 franchise agreement shall be in Mississippi and shall be  
236 consistent with Mississippi law. It is the public policy of this  
237 state that venue provided for in this section may not be modified  
238 by contract. Any provision contained in the franchise agreement  
239 that requires arbitration or litigation to be conducted outside  
240 the State of Mississippi shall be void and unenforceable.

241 SECTION 7. The following shall be codified as Section  
242 63-17-121, Mississippi Code of 1972:

243 63-17-121. (1) In addition to the meaning given to the term  
244 "manufacturer" in Section 63-17-55, for purposes of this section  
245 such term includes:

246 (a) A factory representative; or

247 (b) A person or entity who is affiliated with a  
248 manufacturer or factory representative or who, directly or  
249 indirectly through an intermediary, is controlled by, or is under  
250 common control with, the manufacturer. For purposes of this  
251 paragraph, a person or entity is controlled by a manufacturer if  
252 the manufacturer has the authority directly or indirectly, by law  
253 or by agreement of the parties, to direct or influence the  
254 management and policies of the person or entity.

255 (2) Except as provided by this section, a manufacturer or  
256 distributor may not directly or indirectly:

- 257 (a) Own an interest in a dealer or dealership;  
258 (b) Operate or control a dealer or dealership; or  
259 (c) Act in the capacity of a dealer.

260 (3) A manufacturer or distributor may own an interest in a  
261 franchised dealer, or otherwise control a dealership, for a period  
262 not to exceed twelve (12) months from the date the manufacturer or  
263 distributor acquires the dealership if:

- 264 (a) The person from whom the manufacturer or  
265 distributor acquired the dealership was a franchised dealer, and  
266 (b) The dealership is for sale by the manufacturer or  
267 distributor at a reasonable price and on reasonable terms and  
268 conditions.

269 (4) For the purpose of broadening the diversity of its  
270 dealer body and enhancing opportunities for qualified persons who  
271 are part of a group who have historically been under represented  
272 in its dealers, or who are qualified persons who lack the  
273 resources to purchase a dealership outright, but for no other  
274 purpose, a manufacturer or distributor may temporarily own an  
275 interest in a dealership, if the manufacturer's or distributor's  
276 participation in the dealership is in a bona fide relationship  
277 with the franchised dealer and the franchised dealer:

- 278 (a) Has made a significant investment in the  
279 dealership, subject to loss;  
280 (b) Has an ownership interest in the dealership; and  
281 (c) Operates the dealership under a plan to acquire  
282 full ownership of the dealership within a reasonable time and  
283 under reasonable terms and conditions.

284 (5) On a showing by a manufacturer or distributor of good  
285 cause, the commission may extend the time limit set forth in  
286 subsection (3) of this section. An extension under this  
287 subsection shall not exceed twelve (12) months. An application  
288 for an extension after the first extension is granted is subject  
289 to protest by a dealer of the same line or make whose dealership



290 is located in the same county as, or within fifteen (15) miles of,  
291 the dealership owned or controlled by the manufacturer or  
292 distributor.

293 (6) Notwithstanding any other provision of this section, a  
294 person who, on June 7, 1995, held both a motor home dealer's  
295 license and a motor home manufacturer's license issued under the  
296 Mississippi Motor Vehicle Commission Law may:

297 (a) Hold both a motor home dealer's license and a motor  
298 home manufacturer's license; and

299 (b) Operate as both a manufacturer and dealer of motor  
300 homes but of no other type of vehicle.

301 SECTION 8. Section 63-17-55, Mississippi Code of 1972, is  
302 amended as follows:[WAN1]

303 63-17-55. The following words, terms and phrases, when used  
304 in the Mississippi Motor Vehicle Commission Law, shall have the  
305 meanings respectively ascribed to them in this section, except  
306 where the context clearly indicates a different meaning:

307 (a) "Motor vehicle" means any motor-driven vehicle of  
308 the sort and kind required to have a Mississippi road or bridge  
309 privilege license, and shall include, but not be limited to,  
310 motorcycles.

311 (b) "Motor vehicle dealer" means any person, firm,  
312 partnership, copartnership, association, corporation, trust or  
313 legal entity, not excluded by subsection (c) of this section, who  
314 holds a bona fide contract or franchise in effect with a  
315 manufacturer, distributor or wholesaler of new motor vehicles, and  
316 a license under the provisions of the Mississippi Motor Vehicle  
317 Commission Law, and such duly franchised and licensed motor  
318 vehicle dealers shall be the sole and only persons, firms,  
319 partnerships, copartnerships, associations, corporations, trusts  
320 or legal entities entitled to sell and publicly or otherwise  
321 solicit and advertise for sale new motor vehicles as such.

322 (c) The term "motor vehicle dealer" does not include:

323 (i) Receivers, trustees, administrators,  
324 executors, guardians or other persons appointed by or acting under  
325 judgment, decree or order of any court; or

326 (ii) Public officers while performing their duties  
327 as such officers; or

328 (iii) Employees of persons, corporations or  
329 associations enumerated in subsection (c)(i) of this section when  
330 engaged in the specific performance of their duties as such  
331 employees.

332 (d) "New motor vehicle" means a motor vehicle which has  
333 not been previously sold to any person except a distributor or  
334 wholesaler or motor vehicle dealer for resale.

335 (e) "Ultimate purchaser" means, with respect to any new  
336 motor vehicle, the first person, other than a motor vehicle dealer  
337 purchasing in his capacity as such dealer, who in good faith  
338 purchases such new motor vehicle for purposes other than for  
339 resale.

340 (f) "Retail sale" or "sale at retail" means the act or  
341 attempted act of selling, bartering, exchanging, or otherwise  
342 disposing of a new motor vehicle to an ultimate purchaser for use  
343 as a consumer.

344 (g) "Motor vehicle salesman" means any person who is  
345 employed as a salesman by a motor vehicle dealer whose duties  
346 include the selling or offering for sale of new motor vehicles.

347 (h) "Commission" means the Mississippi Motor Vehicle  
348 Commission.

349 (i) "Manufacturer" means any person, firm, association,  
350 corporation or trust, resident or nonresident, who manufactures or  
351 assembles new motor vehicles.

352 (j) "Distributor" or "wholesaler" means any person,  
353 firm, association, corporation or trust, resident or nonresident,  
354 who in whole or in part sells or distributes new motor vehicles to  
355 motor vehicle dealers, or who maintains distributor

356 representatives.

357           (k) "Factory branch" means a branch or division office  
358 maintained by a person, firm, association, corporation or trust  
359 who manufactures or assembles new motor vehicles for sale to  
360 distributors or wholesalers, to motor vehicle dealers, or for  
361 directing or supervising, in whole or in part, its  
362 representatives.

363           (l) "Distributor branch" means a branch or division  
364 office similarly maintained by a distributor or wholesaler for the  
365 same purposes a factory branch or division is maintained.

366           (m) "Factory representative" means a representative  
367 employed by a person, firm, association, corporation or trust who  
368 manufactures or assembles new motor vehicles, or by a factory  
369 branch, for the purpose of making or promoting the sale of his,  
370 its or their new motor vehicles, or for supervising or contacting  
371 his, its or their dealers or prospective dealers.

372           (n) "Distributor representative" means a representative  
373 similarly employed by a distributor, distributor branch, or  
374 wholesaler.

375           (o) "Person" means and includes, individually and  
376 collectively, individuals, firms, partnerships, copartnerships,  
377 associations, corporations and trusts, or any other forms of  
378 business enterprise, or any legal entity.

379           (p) "Good faith" means the duty of each party to any  
380 franchise, and all officers, employees or agents thereof, to act  
381 in a fair and equitable manner toward each other so as to  
382 guarantee the one party freedom from coercion, intimidation or  
383 threats of coercion or intimidation from the other party.  
384 However, recommendation, endorsement, exposition, persuasion,  
385 urging or argument shall not be deemed to constitute a lack of  
386 good faith.

387           (q) "Coerce" means the failure to act in good faith in  
388 performing or complying with any terms or provisions of the

389 franchise or agreement. However, recommendation, exposition,  
390 persuasion, urging or argument shall not be deemed to constitute a  
391 lack of good faith.

392 (r) "Special tools" are those which a dealer was  
393 required to purchase by the manufacturer or distributor for  
394 service on that manufacturer's product.

395 (s) "Motor vehicle lessor" means any person, not  
396 excluded by subsection (c) of this section, engaged in the motor  
397 vehicle leasing or rental business.

398 (t) "Specialty vehicle" means a motor vehicle  
399 manufactured by a second stage manufacturer by purchasing motor  
400 vehicle components, e.g. frame and drive train, and completing the  
401 manufacturer of finished motor vehicles for the purpose of resale  
402 with the primary manufacturer warranty unimpaired, to a limited  
403 commercial market rather than the consuming public. Specialty  
404 vehicles include garbage trucks, ambulances, fire trucks, buses,  
405 limousines, hearses and other similar limited purpose vehicles as  
406 the commission may by regulation provide.

407 (u) "Auto auction" means (i) any person who provides a  
408 place of business or facilities for the wholesale exchange of  
409 motor vehicles by and between duly licensed motor vehicle dealers,  
410 (ii) any motor vehicle dealer licensed to sell used motor vehicles  
411 selling motor vehicles using an auction format but not on  
412 consignment, or (iii) any person who provides the facilities for  
413 or is in the business of selling in an auction format motor  
414 vehicles.

415 (v) "Motor home" means a motor vehicle that is designed  
416 and constructed primarily to provide temporary living quarters for  
417 recreational, camping or travel use.

418 (w) "Dealer-operator" means the individual designated  
419 in the franchise agreement as the operator of the motor vehicle  
420 dealership.

421 (x) "Franchise" or "franchise agreement" means a

422 written contract or agreement between a motor vehicle dealer and a  
423 manufacturer or its distributor or factory branch by which the  
424 motor vehicle is authorized to engage in the business of selling  
425 or leasing the specific makes, models or classifications of new  
426 motor vehicles marketed or leased by the manufacturer and  
427 designated in the agreement or any addendum to such agreement.

428 SECTION 9. Section 63-17-73, Mississippi Code of 1972, is  
429 amended as follows:[WAN2]

430 63-17-73. (1) It is unlawful and a misdemeanor:

431 (a) For any person, firm, association, corporation or  
432 trust to engage in business as, or serve in the capacity of, or  
433 act as a motor vehicle dealer, motor vehicle salesman,  
434 manufacturer, distributor, wholesaler, factory branch or division,  
435 distributor branch or division, wholesaler branch or division,  
436 factory representative or distributor representative, as such, in  
437 this state without first obtaining a license therefor as provided  
438 in the Mississippi Motor Vehicle Commission Law, regardless of  
439 whether or not said person, firm, association, corporation or  
440 trust maintains or has a place or places of business in this  
441 state. Any person, firm, association, corporation or trust  
442 engaging, acting, or serving in more than one of said capacities  
443 or having more than one place where such business is carried on or  
444 conducted shall be required to obtain and hold a current license  
445 for each capacity and place of business.

446 (b) For a motor vehicle dealer or a motor vehicle  
447 salesman:

448 1. To require a purchaser of a new motor vehicle,  
449 as a condition of sale and delivery thereof, to also purchase  
450 special features, appliances, equipment, parts or accessories not  
451 desired or requested by the purchaser. However, this prohibition  
452 shall not apply as to special features, appliances, equipment,  
453 parts or accessories which are already installed on the car when  
454 received by the dealer.

455                   2. To represent and sell as a new motor vehicle  
456 any motor vehicle which has been used and operated for  
457 demonstration purposes or which is otherwise a used motor vehicle.

458                   3. To resort to or use any false or misleading  
459 advertisement in connection with his business as such motor  
460 vehicle dealer or motor vehicle salesman.

461                   (c) For a manufacturer, a distributor, a wholesaler, a  
462 distributor branch or division, a factory branch or division, or a  
463 wholesaler branch or division, or officer, agent or other  
464 representative thereof, to coerce, or attempt to coerce, any motor  
465 vehicle dealer:

466                   1. To order or accept delivery of any motor  
467 vehicle or vehicles, appliances, equipment, parts or accessories  
468 therefor, or any other commodity or commodities which shall not  
469 have been voluntarily ordered by said motor vehicle dealer.

470                   2. To order or accept delivery of any motor  
471 vehicle with special features, appliances, accessories or  
472 equipment not included in the list price of said motor vehicles as  
473 publicly advertised by the manufacturer thereof.

474                   3. To order for any person any parts, accessories,  
475 equipment, machinery, tools, appliances, or any commodity  
476 whatsoever.

477                   4. To contribute or pay money or anything of value  
478 into any cooperative or other advertising program or fund.

479                   (d) For a manufacturer, a distributor, a wholesaler, a  
480 distributor branch or division, a factory branch or division, or a  
481 wholesaler branch or division, or officer, agent or other  
482 representative thereof:

483                   1. To refuse to deliver in reasonable quantities  
484 and within a reasonable time after receipt of dealer's order to  
485 any duly licensed motor vehicle dealer having a franchise or  
486 contractual arrangement for the retail sale of new motor vehicles  
487 sold or distributed by such manufacturer, distributor, wholesaler,

488 distributor branch or division, factory branch or division or  
489 wholesale branch or division, any such motor vehicles as are  
490 covered by such franchise or contract specifically publicly  
491 advertised by such manufacturer, distributor, wholesaler,  
492 distributor branch or division, factory branch or division or  
493 wholesale branch or division, to be available for immediate  
494 delivery. However, the failure to deliver any motor vehicle shall  
495 not be considered a violation of this subsection if such failure  
496 be due to acts of God, work stoppages or delays due to strikes or  
497 labor difficulties, freight embargoes or other causes over which  
498 the manufacturer, distributor, or wholesaler, or any agent  
499 thereof, shall have no control.

500           2. To coerce, or attempt to coerce any motor  
501 vehicle dealer to enter into any agreement, with such  
502 manufacturer, distributor, wholesaler, distributor branch or  
503 division, factory branch or division, or wholesaler branch or  
504 division, or officer, agent or other representative thereof, or to  
505 do any other act prejudicial to said dealer by threatening to  
506 cancel any franchise or any contractual agreement existing between  
507 such manufacturer, distributor, wholesaler, distributor branch or  
508 division, factory branch or division, or wholesaler branch or  
509 division, and said dealer. However, good faith notice to any  
510 motor vehicle dealer of said dealer's violation of any terms or  
511 provisions of such franchise or contractual agreement shall not  
512 constitute a violation of this subsection.

513           3. To terminate or cancel the franchise or selling  
514 agreement of any such dealer without due cause. The nonrenewal of  
515 a franchise or selling agreement, without due cause, shall  
516 constitute an unfair termination or cancellation, regardless of  
517 the terms or provisions of such franchise or selling agreement.  
518 Such manufacturer, distributor, wholesaler, distributor branch or  
519 division, factory branch or division, or wholesaler branch or  
520 division, or officer, agent or other representative thereof shall

521 notify a motor vehicle dealer in writing, and forward a copy of  
522 such notice to the commission, of the termination or cancellation  
523 of the franchise or selling agreement of such dealer at least  
524 sixty (60) days before the effective date thereof, stating the  
525 specific grounds for such termination or cancellation. Such  
526 manufacturer, distributor, wholesaler, distributor branch or  
527 division, factory branch or division, or wholesaler branch or  
528 division, or officer, agent or other representative thereof shall  
529 notify a motor vehicle dealer in writing, and forward a copy of  
530 such notice to the commission, at least sixty (60) days before the  
531 contractual term of his franchise or selling agreement expires  
532 that the same will not be renewed, stating the specific grounds  
533 for such nonrenewal, in those cases where there is no intention to  
534 renew the same. In no event shall the contractual term of any  
535 such franchise or selling agreement expire, without the written  
536 consent of the motor vehicle dealer involved, prior to the  
537 expiration of at least sixty (60) days following such written  
538 notice. Any motor vehicle dealer who receives written notice that  
539 his franchise or selling agreement is being terminated or  
540 cancelled or who receives written notice that his franchise or  
541 selling agreement will not be renewed, may, within such sixty-day  
542 notice period, file with the commission a verified complaint for  
543 its determination as to whether such termination or cancellation  
544 or nonrenewal is unfair within the purview of the Mississippi  
545 Motor Vehicle Commission Law, and any such franchise or selling  
546 agreement shall continue in effect until final determination of  
547 the issues raised in such complaint notwithstanding anything to  
548 the contrary contained in said law or in such franchise or selling  
549 agreement.

550                   4. To resort to or use any false or misleading  
551 advertisement in connection with his or its business as such  
552 manufacturer, distributor, wholesaler, distributor branch or  
553 division, factory branch or division, or wholesaler branch or



554 division, or officer, agent or other representative thereof.

555                   5. To offer to sell or to sell any new motor  
556 vehicle to any motor vehicle dealer at a lower actual price  
557 therefor than the actual price charged to any other motor vehicle  
558 dealer for the same model vehicle similarly equipped or to utilize  
559 any device, including but not limited to, sales promotion plans or  
560 programs which result in such lesser actual price. The provisions  
561 of this subsection shall not apply so long as a manufacturer,  
562 distributor or wholesaler, or any agent thereof, offers to sell or  
563 sells new motor vehicles to all motor vehicle dealers at the same  
564 price. This subsection shall not be construed to prevent the  
565 offering of volume discounts if such discounts are equally  
566 available to all franchised dealers in this state.

567                   The provisions of this subsection shall not apply to sales to  
568 a motor vehicle dealer of any motor vehicle ultimately sold,  
569 donated or used by said dealer in a driver education program, or  
570 to sales to a motor vehicle dealer for resale to any unit of  
571 government, federal, state or local.

572                   6. To offer to sell or to sell any new motor  
573 vehicle to any person, except a wholesaler or distributor, at a  
574 lower actual price therefor than the actual price offered and  
575 charged to a motor vehicle dealer for the same model vehicle  
576 similarly equipped or to utilize any device which results in such  
577 lesser actual price.

578                   7. To offer to sell or to sell parts and/or  
579 accessories to any new motor vehicle dealer for use in his own  
580 business for the purpose of repairing or replacing the same or a  
581 comparable part or accessory, at a lower actual price therefor  
582 than the actual price charged to any other new motor vehicle  
583 dealer for similar parts and/or accessories for use in his own  
584 business. However, it is recognized that certain motor vehicle  
585 dealers operate and serve as wholesalers of parts and accessories  
586 to retail outlets, and nothing herein contained shall be construed

587 to prevent a manufacturer, distributor or wholesaler, or any agent  
588 thereof, from selling to a motor vehicle dealer who operates and  
589 serves as a wholesaler of parts and accessories, such parts and  
590 accessories as may be ordered by such motor vehicle dealer for  
591 re-sale to retail outlets, at a lower actual price than the actual  
592 price charged a motor vehicle dealer who does not operate or serve  
593 as a wholesaler of parts and accessories.

594           8. To prevent or attempt to prevent by contract or  
595 otherwise any motor vehicle dealer from changing the capital  
596 structure of his dealership or the means by or through which he  
597 finances the operation of his dealership, provided the dealer at  
598 all times meets any capital standards agreed to between the  
599 dealership and the manufacturer, distributor or wholesaler,  
600 provided such standards are deemed reasonable by the commission.

601           9. To prevent or attempt to prevent by contract or  
602 otherwise any motor vehicle dealer or any officer, partner or  
603 stockholder of any motor vehicle dealer from selling or  
604 transferring any part of the interest of any of them to any other  
605 person or persons or party or parties. However, no dealer,  
606 officer, partner or stockholder shall have the right to sell,  
607 transfer or assign the franchise or any right thereunder without  
608 the consent of the manufacturer, distributor or wholesaler.

609           (e) For a manufacturer or distributor:

610           1. To condition the renewal or extension of a  
611 franchise on a motor vehicle dealer's substantial renovation of  
612 the dealer's place of business or on the construction, purchase,  
613 acquisition, or rental of a new place of business by the motor  
614 vehicle dealer, unless the motor vehicle dealer is notified in  
615 writing of the intent to impose such condition within a reasonable  
616 time prior to the effective date of the proposed renewal or  
617 extension, but in no case less than one hundred eighty (180) days  
618 prior to the renewal or extension and the manufacturer or  
619 distributor demonstrates to the commission the need for such

620 demand in view of the need to service the public and the economic  
621 conditions existing in the motor vehicle industry at the time such  
622 action would be required of the motor vehicle dealer. As a part  
623 of any such condition the manufacturer or distributor shall supply  
624 the motor vehicle dealer with an adequate initial supply and mode  
625 mix of motor vehicles to meet the sales levels necessary to  
626 support the increased overhead incurred by the motor vehicle  
627 dealer by reason of such renovation, construction, purchase or  
628 rental of a new place of business.

629 2. To require, coerce, or attempt to coerce a  
630 motor vehicle dealer to refrain from participation in the  
631 management of, investment in or the acquisition of any other line  
632 of motor vehicles or related products, as long as the motor  
633 vehicle dealer remains in substantial compliance with reasonable  
634 facilities requirements of the manufacturer or distributor. The  
635 reasonable facilities requirement of the manufacturer or  
636 distributor shall not include any requirement that a motor vehicle  
637 dealer establish or maintain exclusive facilities, personnel or  
638 display space when the requirements are unreasonable considering  
639 current economic conditions and not otherwise justified by  
640 reasonable business considerations. The burden of proving by a  
641 preponderance of the evidence that the current economic conditions  
642 and reasonable business considerations justify exclusive  
643 facilities is on the manufacturer or distributor.

644 3. To fail or refuse to sell or offer to sell to  
645 all motor vehicle dealers in a line or make every motor vehicle  
646 sold or offered for sale under the franchise agreement to any  
647 motor vehicle dealer of the same line or make, or to unreasonably  
648 require a motor vehicle dealer to pay an extra fee, purchase  
649 unreasonable advertising displays or any other material, or to  
650 unreasonably require the dealer to remodel, renovate or  
651 recondition its existing facilities as a prerequisite to receiving  
652 a certain model or series of vehicles. However, the failure to

653 deliver any such motor vehicle shall not be considered a violation  
654 of this section if the failure is not arbitrary and is due to a  
655 lack of manufacturing capacity or to a strike or labor difficulty,  
656 a shortage of materials, a freight embargo or other cause over  
657 which the manufacturer or distributor has no control.

658           4. To coerce, or attempt to coerce, a motor  
659 vehicle dealer to adhere to performance standards that are not  
660 applied uniformly to other similarly situated motor vehicle  
661 dealers. Performance standards may be imposed if they are fair,  
662 reasonable, equitable and based upon accurate information. If  
663 performance standards are based upon a survey, the manufacturer or  
664 distributor shall establish the objectivity of the survey process  
665 and provide this information to any motor vehicle dealer of the  
666 same line or make covered by the survey request. Each response to  
667 a survey used by a manufacturer in preparing an evaluation or  
668 performance rating of a motor vehicle dealer shall be made  
669 available to that motor vehicle dealer, or it cannot be used by  
670 the manufacturer or distributor. However, if a customer requests  
671 that the manufacturer or distributor not disclose the customer's  
672 identity to the dealer, the manufacturer may withhold the  
673 customer's identity in providing the survey response to the motor  
674 vehicle dealer, and the manufacturer or distributor may use the  
675 response.

676           (2) Concerning any sale of a motor vehicle or vehicles to  
677 the State of Mississippi, or to the several counties or  
678 municipalities thereof, or to any other political subdivision  
679 thereof, no manufacturer, distributor or wholesaler shall offer  
680 any discounts, refunds, or any other similar type inducements to  
681 any dealer without making the same offer or offers to all other of  
682 its dealers within the state. If such inducements above-mentioned  
683 are made, the manufacturer, distributor or wholesaler shall give  
684 simultaneous notice thereof to all of its dealers within the  
685 state.

686 (3) It is unlawful to be a broker. For the purpose of this  
687 subsection, "broker" means a person who, for a fee, commission or  
688 other valuable consideration, arranges or offers to arrange a  
689 transaction involving the sale, for purposes other than resale, of  
690 a new motor vehicle, and who is not:

691 (a) A new motor vehicle dealer or agent or employee of  
692 such a dealer; or

693 (b) A distributor or an agent or employee of such a  
694 distributor.

695 However, an individual shall not be deemed to be a  
696 broker if he or she is the owner of the new or used motor vehicle  
697 which is the object of the brokering transaction.

698 SECTION 10. Section 63-17-75, Mississippi Code of 1972, is  
699 amended as follows:[WAN3]

700 63-17-75. (1) Within ninety (90) days after July 1, 1970,  
701 all persons who on July 1, 1970, are engaged in a business or  
702 occupation for which a license is required under the Mississippi  
703 Motor Vehicle Commission Law, shall make application on forms  
704 prescribed by the commission for their respective licenses. All  
705 such persons shall be permitted, without a license, to continue to  
706 engage in the business or occupation for which a license is  
707 applied for until the license is either granted or, in case it is  
708 denied, until the applicant has exhausted or has had an  
709 opportunity to exhaust all of his remedies under Section 63-17-99.  
710 No person not engaged in a business or occupation requiring such  
711 a license on July 1, 1970, shall be permitted to engage in such  
712 business or occupation until he shall have first obtained a  
713 license to engage in such business or occupation.

714 Applications for \* \* \* licenses shall be verified by the oath  
715 or affirmation of the applicants and shall be on forms prescribed  
716 by the commission and furnished to \* \* \* applicants. \* \* \*

717 Applications shall contain such information as the commission  
718 deems necessary to enable it to fully determine the qualifications

719 and eligibility of the several applicants to receive the license  
720 or licenses applied for. The commission shall require that there  
721 be set forth in each \* \* \* application information relating to the  
722 applicant's financial standing, the applicant's business  
723 integrity, whether the applicant has an established place of  
724 business and is primarily engaged in the pursuit, avocation, or  
725 business for which a license or licenses is applied for, and  
726 whether the applicant is able to properly conduct the business for  
727 which a license or licenses is applied for, and such other  
728 pertinent information consistent with the safeguarding of the  
729 public interest and public welfare. Applications for a license as  
730 a motor vehicle dealer shall, in addition to the foregoing, \* \* \*  
731 be accompanied by the filing with the commission of a bona fide  
732 contract or franchise then in effect between the applicant and a  
733 manufacturer, distributor or wholesaler of the new motor vehicle  
734 or vehicles proposed to be dealt in, unless such contract or  
735 franchise has already been filed with the commission in connection  
736 with a previous application made by such applicant, in which event  
737 the applicant shall, in lieu of again filing the contract or  
738 franchise, identify the contract or franchise by appropriate  
739 reference and file all revisions and additions, if any, which have  
740 been made to the contract or franchise. The applicant must  
741 furnish satisfactory evidence that he or it maintains adequate  
742 space in the building or structure wherein his or its established  
743 business is conducted for the display of new motor vehicles, or he  
744 or it will have such facilities within a reasonable time after  
745 receiving a license, and that he or it has or will have adequate  
746 facilities in said building or structure for the repair and  
747 servicing of motor vehicles and the storage of new parts and  
748 accessories for motor vehicles. However, the failure to furnish  
749 the evidence called for in the preceding sentence shall not  
750 constitute sufficient cause for denying a license to any motor  
751 vehicle dealer who on July 1, 1970, was an enfranchised new motor

752 vehicle dealer in this state of a manufacturer, distributor or  
753 wholesaler of new motor vehicles and who continued to be such a  
754 dealer from such date until application was made for a license as  
755 a motor vehicle dealer.

756 (2) New applications for licenses as motor vehicle dealers  
757 shall be accompanied by a surety bond issued by a bonding company  
758 or insurance company authorized to do business in this state, in  
759 the principal sum of Twenty-five Thousand Dollars (\$25,000.00) for  
760 each location; provided, however, that an applicant for licenses  
761 at multiple locations may provide a surety bond in the principal  
762 sum of One Hundred Thousand Dollars (\$100,000.00) to cover all  
763 licensed locations in lieu of a separate bond for each location.  
764 The bond shall be in a form satisfactory to the commission.

765 The bond shall be conditioned upon compliance with the  
766 provisions of the Mississippi Motor Vehicle Commission Law. The  
767 bond shall also be an indemnity for any loss sustained by any  
768 person by reason of the acts of the person bonded when those acts  
769 constitute grounds for the suspension or revocation of such  
770 person's motor vehicle dealer license. The bond shall be executed  
771 in the name of the State of Mississippi for the benefit of any  
772 aggrieved party. The aggregate liability of the surety for any  
773 claimants, regardless of the number of years the bond is in  
774 effect, shall not exceed the principal amount of the bond. The  
775 proceeds of the bond shall be paid upon receipt by the commission  
776 of a final judgment from a Mississippi court of competent  
777 jurisdiction against the principal and in favor of an aggrieved  
778 party.

779 SECTION 11. Section 63-17-51, Mississippi Code of 1972, is  
780 amended as follows:[WAN4]

781 63-17-51. Sections 63-17-51 through 63-17-121 shall be known  
782 and may be cited as the "Mississippi Motor Vehicle Commission  
783 Law."

784 SECTION 12. This act shall take effect and be in force from

785 and after July 1, 2000.