

By: Little

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2475

1 AN ACT TO AMEND THE PROVISIONS OF THE MISSISSIPPI MOTOR
2 VEHICLE COMMISSION LAW; TO CREATE SECTION 63-17-80, MISSISSIPPI
3 CODE OF 1972, TO REQUIRE A LICENSE FOR MOTOR VEHICLE LESSORS; TO
4 CREATE NEW SECTION 63-17-109, MISSISSIPPI CODE OF 1972, TO PROVIDE
5 THAT IN THE EVENT OF THE PROPOSED SALE OR TRANSFER OF A MOTOR
6 VEHICLE DEALERSHIP AND THE FRANCHISE AGREEMENT FOR SUCH DEALERSHIP
7 CONTAINS A RIGHT OF FIRST REFUSAL FOR THE MANUFACTURER OR
8 DISTRIBUTOR, THE MANUFACTURER OR DISTRIBUTOR MUST MEET CERTAIN
9 REQUIREMENTS IN ORDER TO EXERCISE SUCH RIGHT OF FIRST REFUSAL; TO
10 PROVIDE THAT SUCH REQUIREMENTS SHALL NOT APPLY IN CERTAIN
11 CIRCUMSTANCES; TO PROVIDE THAT IF THE MANUFACTURER OR DISTRIBUTOR
12 EXERCISES ITS RIGHT OF FIRST REFUSAL, THE MANUFACTURER OR
13 DISTRIBUTOR SHALL PAY THE REASONABLE EXPENSES INCURRED BY THE
14 PROPOSED OWNER PRIOR TO THE EXERCISE OF THE RIGHT OF FIRST REFUSAL
15 IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE
16 OF THE DEALERSHIP; TO PROVIDE THAT THE MOTOR VEHICLE DEALER SHALL
17 NOT HAVE ANY LIABILITY TO ANY PERSON AS A RESULT OF A MANUFACTURE
18 OR DISTRIBUTOR EXERCISING ITS RIGHT OF FIRST REFUSAL; TO CREATE
19 NEW SECTION 63-17-111, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT,
20 NOTWITHSTANDING THE TERMS OF A FRANCHISE AGREEMENT, THE OWNER OF A
21 MOTOR VEHICLE DEALERSHIP MAY APPOINT A SUCCESSOR BY A WRITTEN
22 AGREEMENT TO SUCCEED IN THE OWNERSHIP OF THE DEALERSHIP UPON THE
23 DEATH OR INCAPACITY OF THE OWNER; TO PROVIDE THAT A MANUFACTURER
24 OR DEALER SHALL HONOR THE SUCCESSION UNLESS GOOD CAUSE EXISTS TO
25 REFUSE TO HONOR THE SUCCESSION; TO PROVIDE A PROCEDURE TO REFUSE
26 TO HONOR THE SUCCESSION; TO CREATE NEW SECTION 63-17-113,
27 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE MODIFICATION OF A
28 FRANCHISE AGREEMENT WITHOUT 60 DAYS' NOTICE; TO REQUIRE GOOD CAUSE
29 TO BE SHOWN TO THE COMMISSION; TO PROVIDE THAT THE SALE OF OTHER
30 LINES OR MAKES OF MOTOR VEHICLES SHALL NOT BE GOOD CAUSE FOR
31 TERMINATION OF FRANCHISE AGREEMENT; TO CREATE NEW SECTION
32 63-17-115, MISSISSIPPI CODE OF 1972, TO PROHIBIT MANUFACTURERS OR
33 DISTRIBUTORS FROM OWNING DEALERSHIPS; TO PROVIDE EXCEPTIONS
34 THERETO; TO CREATE NEW SECTION 63-17-117, MISSISSIPPI CODE OF
35 1972, TO PROVIDE THAT ANY WARRANTY OR SALES INCENTIVE AUDITS OF A
36 MOTOR VEHICLE RECORDS MUST BE CONDUCTED WITHIN A CERTAIN AMOUNT OF
37 TIME AFTER THE PAYMENT OF THE DISPUTED CLAIM; TO PROVIDE THAT NO
38 CLAIM WHICH HAS BEEN APPROVED AND PAID MAY BE CHARGED BACK TO THE
39 MOTOR VEHICLE DEALER UNLESS IT CAN BE SHOWN BY A PREPONDERANCE OF
40 THE EVIDENCE THAT THE CLAIMS WERE FALSE OR FRAUDULENT, THE REPAIRS
41 WERE NOT PROPERLY MADE OR WERE UNNECESSARY, OR THE DEALER FAILED
42 TO SUBSTANTIATE THE CLAIM; TO CREATE NEW SECTION 63-17-119,
43 MISSISSIPPI CODE OF 1972, TO PROHIBIT MANUFACTURERS OR
44 DISTRIBUTORS FROM SELLING NEW MOTOR VEHICLES EXCEPT THROUGH A
45 DEALER HOLDING A FRANCHISE FOR THE LINE OR MAKE OF SUCH NEW MOTOR
46 VEHICLE; TO CREATE NEW SECTION 63-17-121, MISSISSIPPI CODE OF
47 1972, TO GIVE MOTOR VEHICLE DEALERS A CAUSE OF ACTION FOR
48 VIOLATIONS OF THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW BY
49 MANUFACTURERS OR DEALERS; TO PROVIDE THAT THE VENUE FOR ANY
50 PROCEEDING ARISING FROM THE FRANCHISE AGREEMENT SHALL BE THE STATE

51 OF MISSISSIPPI; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF
52 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 63-17-73,
53 MISSISSIPPI CODE OF 1972, TO PROHIBIT MANUFACTURERS OR
54 DISTRIBUTORS FROM REQUIRING OR CONDITIONING THE RENEWAL OR
55 EXTENSION OF A FRANCHISE THAT THE DEALER RENOVATE HIS BUILDING OR
56 CONSTRUCT A NEW ONE UNLESS CERTAIN CONDITIONS ARE MET; TO PROHIBIT
57 MANUFACTURER OR DISTRIBUTOR FROM PROHIBITING A DEALER FROM
58 ACQUIRING ANOTHER LINE OF MOTOR VEHICLES IF THE DEALER REMAINS IN
59 SUBSTANTIAL COMPLIANCE WITH THE REASONABLE FACILITIES REQUIREMENTS
60 OF THE MANUFACTURER OR DISTRIBUTOR; TO PROHIBIT THE MANUFACTURER
61 OR DISTRIBUTOR FROM REFUSING TO SELL TO ALL DEALERS IN A LINE OR
62 MAKE EVERY MOTOR VEHICLE SOLD OR OFFERED FOR SALE UNDER THE
63 FRANCHISE AGREEMENT; TO PROVIDE THAT A MANUFACTURER OR DEALER
64 SHALL NOT REQUIRE A DEALER TO ADHERE TO PERFORMANCE STANDARDS THAT
65 ARE NOT APPLIED UNIFORMLY TO SIMILARLY SITUATED MOTOR VEHICLE
66 DEALERS; TO AMEND SECTION 63-17-75, MISSISSIPPI CODE OF 1972, TO
67 REQUIRE THAT NEW APPLICATIONS FOR LICENSES AS A MOTOR VEHICLE
68 DEALER SHALL BE ACCOMPANIED BY A SURETY BOND; TO AMEND SECTION
69 63-17-51, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
70 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

71
72 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

73 SECTION 1. The following provision shall be codified as
74 Section 63-17-80, Mississippi Code of 1972:

75 63-17-80. It is unlawful for a motor vehicle lessor or any
76 agent, employee or representative thereof: (a) to represent and
77 to offer for lease any new motor vehicle in Mississippi without
78 first obtaining a new motor vehicle dealer license, or (b) to
79 lease or offer to lease a new motor vehicle from an unlicensed
80 location.

81 SECTION 2. The following shall be codified as Section
82 63-17-109, Mississippi Code of 1972:

83 63-17-109. (1) In the event of a proposed sale or transfer
84 of a dealership and the franchise agreement for such dealership
85 contains a right of first refusal in favor of the manufacturer or
86 distributor, notwithstanding the terms of the franchise agreement,
87 the manufacturer or distributor shall be permitted to exercise a
88 right of first refusal to acquire the dealership only if all of
89 the following requirements are met:

90 (a) The manufacturer or distributor sends by certified
91 mail, return receipt requested, or any other reliable means of
92 communication, notice of its intent to exercise its right of first

93 refusal within sixty (60) days of receipt of the completed
94 proposal for the proposed sale or transfer.

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

100 (2) The manufacturer's or distributor's right of first
101 refusal shall not apply to a transaction involving one (1) of the
102 following:

103 (a) A designated family member or members, including
104 the spouse, child or grandchild, spouse of a child or grandchild,
105 brother, sister or parent of the dealer-operator, or one or more
106 motor vehicle dealer owners;

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

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

112 (d) A trust arrangement established or to be
113 established for the purpose of allowing the new motor vehicle
114 dealer to continue to qualify as such pursuant to the
115 manufacturer's or distributor's standards, or provides for the
116 succession of the franchise agreement to designated family members
117 or qualified management in the event of the death or incapacity of
118 the dealer-operator or its principal owner or owners.

119 (3) (a) The manufacturer or distributor shall pay the
120 reasonable expenses, including attorneys' fees which do not exceed
121 the usual, customary, and reasonable fees charged for similar work
122 done for other clients, incurred by the proposed owner prior to
123 the exercise of the right of first refusal in negotiating and
124 implementing the contract for the proposed sale of the dealership.

125 Such expenses and attorney's fees shall be paid to the proposed

126 new owner at the time of the closing of the sale at which the
127 manufacturer or distributor exercises its right of first refusal.

128 (b) No payment of such expenses and attorney's fees
129 shall be required if the person claiming reimbursement has not
130 submitted or caused to be submitted an accounting of those
131 expenses within thirty (30) days after the receipt of the
132 manufacturer's or distributor's written request for such an
133 accounting. A manufacturer or distributor may request such an
134 accounting before exercising its right of first refusal.

135 (4) If the selling dealer discloses the manufacturer's right
136 of first refusal to the proposed owner in writing, the motor
137 vehicle dealer shall not have any liability to any person as a
138 result of a manufacturer or distributor exercising its right of
139 first refusal and the manufacturer or distributor shall assume the
140 defense of the selling motor vehicle dealer for any claims by the
141 proposed owner arising from the exercise of the right of first
142 refusal.

143 SECTION 3. The following shall be codified as Section
144 63-17-111, Mississippi Code of 1972:

145 63-17-111. (1) Notwithstanding the terms of any franchise
146 agreement, any dealer-operator may appoint by will, or other
147 written instrument, a designated successor to succeed in the
148 ownership of the dealer-operator in the dealership upon the death
149 or incapacity of the dealer-operator.

150 (2) Unless good cause exists for the refusal to honor the
151 succession on the part of the manufacturer or distributor, any
152 designated successor of a deceased or incapacitated
153 dealer-operator of a dealership may succeed to the ownership of
154 the motor vehicle dealership under the existing franchise
155 agreement if:

156 (a) The designated successor gives the manufacturer or
157 distributor written notice of his or her intention to succeed to
158 the ownership of the motor vehicle dealership within sixty (60)

159 days after the dealer-operator's death or incapacity; and

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

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

166 (4) (a) If the manufacturer or distributor believes that
167 good cause exists for refusing to honor the succession of a
168 deceased or incapacitated dealer, the manufacturer or distributor
169 may, not more than sixty (60) days following receipt of the notice
170 of the designated successor's intent to succeed and receipt of
171 such personal and financial data, serve upon the designated
172 successor notice of its refusal to honor the proposed succession
173 and of its intent to terminate the existing franchise with the
174 dealer-operator not earlier than six (6) months from the date such
175 notice of refusal is served.

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

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

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

187 (6) If a manufacturer or distributor refuses to honor the
188 succession to the ownership interest of a deceased or
189 incapacitated dealer-operator for good cause, the manufacturer or
190 distributor shall allow the designated successor a reasonable
191 period of time, which shall not be less than six (6) months, in

192 which to consummate the sale of the dealership.

193 SECTION 4. The following shall be codified as Section
194 63-17-113, Mississippi Code of 1972:

195 63-17-113. (1) No person shall modify a franchise agreement
196 during the term of such agreement or upon its renewal if the
197 modification substantially and adversely affects the motor vehicle
198 dealer's rights, obligations, investment, or return on investment
199 without giving sixty (60) days' written notice of the proposed
200 modification to the motor vehicle dealer and without showing good
201 cause to the commission.

202 (2) Notwithstanding any agreement, the following alone shall
203 not constitute good cause for the termination, cancellation or
204 nonrenewal of a franchise agreement: The fact that the new motor
205 vehicle dealer owns, has an investment in, participates in the
206 management of or holds a franchise agreement for the sale or
207 service of another make or line of new motor vehicles, or that the
208 new motor vehicle dealer has established another make or line of
209 new motor vehicles or service in the same dealership facilities as
210 the manufacturer or distributor prior to the effective date of
211 this law, or is approved in writing by the manufacturer or
212 distributor.

213 SECTION 5. The following shall be codified as Section
214 63-17-115, Mississippi Code of 1972:

215 63-17-115. A manufacturer or distributor shall not own,
216 operate or control a new motor vehicle dealership, or own, operate
217 or control a facility for performance of motor vehicle warranty
218 service work. It is not a violation of this section for a
219 manufacturer or distributor to own, operate or control a new motor
220 vehicle dealership or a motor vehicle warranty service facility:

221 (a) For a period of time not to exceed twelve (12)
222 months during the transition from one dealer to another dealer if
223 the dealership or warranty service repair facility is for sale at
224 a reasonable price and on reasonable terms and conditions to an

225 independent qualified buyer. On showing by a manufacturer or
226 distributor of good cause, the commission may extend the time
227 limit set forth above; extensions may be granted for periods of up
228 to twelve (12) months; or

229 (b) In a bona fide relationship with an independent
230 person who is required to make a significant investment in the new
231 motor vehicle dealership or warranty service repair facility under
232 a plan to acquire full ownership of the dealership within a
233 reasonable time and under reasonable terms and conditions.

234 SECTION 6. The following shall be codified as Section
235 63-17-117, Mississippi Code of 1972:

236 63-17-117. (1) Notwithstanding the terms of any franchise
237 agreement, warranty and sales incentive audits of a motor vehicle
238 dealer's records may be conducted by the manufacturer or
239 distributor. Any audit for warranty parts or service compensation
240 shall be performed within the eighteen-month period immediately
241 following the date of the payment of the disputed claim by the
242 manufacturer or distributor. Any audit for sales incentives,
243 service incentives, rebates, or other forms of incentive
244 compensation shall be performed within the twenty-four-month
245 period immediately following the date of the payment of the
246 disputed claim by the manufacturer or distributor.

247 (2) No claim which has been approved and paid may be charged
248 back to the motor vehicle dealer unless it can be shown by a
249 preponderance of the evidence that the claim was false or
250 fraudulent, that the repairs were not properly made or were
251 unnecessary to correct the defective conditions under generally
252 accepted standards of workmanship, or that the motor vehicle
253 dealer failed to reasonably substantiate the repair in accordance
254 with the manufacturer's or distributor's reasonable written claim
255 requirement.

256 (3) A manufacturer or distributor shall not deny a claim
257 based solely on a motor vehicle dealer's incidental failure to

258 comply with a specific claim processing requirement that results
259 in a clerical error or other administrative technicality.

260 (4) Limitations on warranty parts, service compensation,
261 sales incentive audits, rebates, or other forms of incentive
262 compensation, chargebacks for warranty parts or service
263 compensation, and service incentives and chargebacks for sales
264 compensation only, shall not be effective in the case of
265 intentionally false or fraudulent claims.

266 SECTION 7. The following shall be codified as Section
267 63-17-119, Mississippi Code of 1972:

268 63-17-119. No manufacturer or distributor shall deliver
269 directly to any retail consumer in this state, except through a
270 new motor vehicle dealer holding a franchise for the line or make
271 that includes such new motor vehicle. This section shall not
272 apply to manufacturer or distributor sales of new motor vehicles
273 to the employees, family members of employees, qualified vendors,
274 not-for-profit organizations, fleets or federal, state or local
275 government. This subsection shall not preclude a manufacture or
276 distributor from establishing a program to sell or offer to sell
277 new vehicles through participating dealers.

278 SECTION 8. The following shall be codified as Section
279 63-17-121, Mississippi Code of 1972:

280 63-17-121. (1) Notwithstanding any provision of a franchise
281 agreement to the contrary, if any motor vehicle dealer or
282 dealer-operator incurs pecuniary loss due to a violation of the
283 Mississippi Motor Vehicle Commission Law by a manufacturer or
284 distributor, the motor vehicle dealer or dealer-operator may bring
285 suit in a court of competent jurisdiction and recover damages,
286 together with costs, including reasonable attorneys' fees.

287 (2) Venue for any proceeding arising from the franchise
288 agreement shall be in Mississippi and shall be consistent with
289 Mississippi law. It is the public policy of this state that venue
290 provided for in this section may not be modified by contract. Any

291 provision contained in the franchise agreement that requires
292 arbitration or litigation to be conducted outside the State of
293 Mississippi shall be void and unenforceable.

294 SECTION 9. Section 63-17-55, Mississippi Code of 1972, is
295 amended as follows:[WAN1]

296 63-17-55. The following words, terms and phrases, when used
297 in the Mississippi Motor Vehicle Commission Law, shall have the
298 meanings respectively ascribed to them in this section, except
299 where the context clearly indicates a different meaning:

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

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

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

316 (i) Receivers, trustees, administrators,
317 executors, guardians or other persons appointed by or acting under
318 judgment, decree or order of any court; or

319 (ii) Public officers while performing their duties
320 as such officers; or

321 (iii) Employees of persons, corporations or
322 associations enumerated in subsection (c)(i) of this section when
323 engaged in the specific performance of their duties as such

324 employees.

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

328 (e) "Ultimate purchaser" means, with respect to any new
329 motor vehicle, the first person, other than a motor vehicle dealer
330 purchasing in his capacity as such dealer, who in good faith
331 purchases such new motor vehicle for purposes other than for
332 resale.

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

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

340 (h) "Commission" means the Mississippi Motor Vehicle
341 Commission.

342 (i) "Manufacturer" means any person, firm, association,
343 corporation or trust, resident or nonresident, who manufactures or
344 assembles new motor vehicles.

345 (j) "Distributor" or "wholesaler" means any person,
346 firm, association, corporation or trust, resident or nonresident,
347 who in whole or in part sells or distributes new motor vehicles to
348 motor vehicle dealers, or who maintains distributor
349 representatives.

350 (k) "Factory branch" means a branch or division office
351 maintained by a person, firm, association, corporation or trust
352 who manufactures or assembles new motor vehicles for sale to
353 distributors or wholesalers, to motor vehicle dealers, or for
354 directing or supervising, in whole or in part, its
355 representatives.

356 (l) "Distributor branch" means a branch or division

357 office similarly maintained by a distributor or wholesaler for the
358 same purposes a factory branch or division is maintained.

359 (m) "Factory representative" means a representative
360 employed by a person, firm, association, corporation or trust who
361 manufactures or assembles new motor vehicles, or by a factory
362 branch, for the purpose of making or promoting the sale of his,
363 its or their new motor vehicles, or for supervising or contacting
364 his, its or their dealers or prospective dealers.

365 (n) "Distributor representative" means a representative
366 similarly employed by a distributor, distributor branch, or
367 wholesaler.

368 (o) "Person" means and includes, individually and
369 collectively, individuals, firms, partnerships, co-partnerships,
370 associations, corporations and trusts, or any other forms of
371 business enterprise, or any legal entity.

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

380 (q) "Coerce" means the failure to act in good faith in
381 performing or complying with any terms or provisions of the
382 franchise or agreement. However, recommendation, exposition,
383 persuasion, urging or argument shall not be deemed to constitute a
384 lack of good faith.

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

388 (s) "Motor vehicle lessor" means any person, not
389 excluded by subsection (c) of this section, engaged in the motor

390 vehicle leasing or rental business.

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

400 (u) "Auto auction" means (i) any person who provides a
401 place of business or facilities for the wholesale exchange of
402 motor vehicles by and between duly licensed motor vehicle dealers,
403 (ii) any motor vehicle dealer licensed to sell used motor vehicles
404 selling motor vehicles using an auction format but not on
405 consignment, or (iii) any person who provides the facilities for
406 or is in the business of selling in an auction format motor
407 vehicles.

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

411 (w) "Dealer-operator" means the individual designated
412 in the franchise agreement as the operator of the motor vehicle
413 dealership.

414 (x) "Franchise" or "franchise agreement" means a
415 written contract or agreement between a motor vehicle dealer and a
416 manufacturer or its distributor or factory branch by which the
417 motor vehicle dealer is authorized to engage in the business of
418 selling or leasing the specific makes, models or classifications
419 of new motor vehicles marketed or leased by the manufacturer and
420 designated in the agreement or any addendum to such agreement.

421 SECTION 10. Section 63-17-73, Mississippi Code of 1972, is
422 amended as follows:[WAN2]

423 63-17-73. (1) It is unlawful and a misdemeanor:

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

439 (b) For a motor vehicle dealer or a motor vehicle
440 salesman:

441 1. To require a purchaser of a new motor vehicle,
442 as a condition of sale and delivery thereof, to also purchase
443 special features, appliances, equipment, parts or accessories not
444 desired or requested by the purchaser. However, this prohibition
445 shall not apply as to special features, appliances, equipment,
446 parts or accessories which are already installed on the car when
447 received by the dealer.

448 2. To represent and sell as a new motor vehicle
449 any motor vehicle which has been used and operated for
450 demonstration purposes or which is otherwise a used motor vehicle.

451 3. To resort to or use any false or misleading
452 advertisement in connection with his business as such motor
453 vehicle dealer or motor vehicle salesman.

454 (c) For a manufacturer, a distributor, a wholesaler, a
455 distributor branch or division, a factory branch or division, or a

456 wholesaler branch or division, or officer, agent or other
457 representative thereof, to coerce, or attempt to coerce, any motor
458 vehicle dealer:

459 1. To order or accept delivery of any motor
460 vehicle or vehicles, appliances, equipment, parts or accessories
461 therefor, or any other commodity or commodities which shall not
462 have been voluntarily ordered by said motor vehicle dealer.

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

467 3. To order for any person any parts, accessories,
468 equipment, machinery, tools, appliances, or any commodity
469 whatsoever.

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

472 (d) For a manufacturer, a distributor, a wholesaler, a
473 distributor branch or division, a factory branch or division, or a
474 wholesaler branch or division, or officer, agent or other
475 representative thereof:

476 1. To refuse to deliver in reasonable quantities
477 and within a reasonable time after receipt of dealer's order to
478 any duly licensed motor vehicle dealer having a franchise or
479 contractual arrangement for the retail sale of new motor vehicles
480 sold or distributed by such manufacturer, distributor, wholesaler,
481 distributor branch or division, factory branch or division or
482 wholesale branch or division, any such motor vehicles as are
483 covered by such franchise or contract specifically publicly
484 advertised by such manufacturer, distributor, wholesaler,
485 distributor branch or division, factory branch or division or
486 wholesale branch or division, to be available for immediate
487 delivery. However, the failure to deliver any motor vehicle shall
488 not be considered a violation of this subsection if such failure

489 be due to acts of God, work stoppages or delays due to strikes or
490 labor difficulties, freight embargoes or other causes over which
491 the manufacturer, distributor, or wholesaler, or any agent
492 thereof, shall have no control.

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

506 3. To terminate or cancel the franchise or selling
507 agreement of any such dealer without due cause. The nonrenewal of
508 a franchise or selling agreement, without due cause, shall
509 constitute an unfair termination or cancellation, regardless of
510 the terms or provisions of such franchise or selling agreement.
511 Such manufacturer, distributor, wholesaler, distributor branch or
512 division, factory branch or division, or wholesaler branch or
513 division, or officer, agent or other representative thereof shall
514 notify a motor vehicle dealer in writing, and forward a copy of
515 such notice to the commission, of the termination or cancellation
516 of the franchise or selling agreement of such dealer at least
517 sixty (60) days before the effective date thereof, stating the
518 specific grounds for such termination or cancellation. Such
519 manufacturer, distributor, wholesaler, distributor branch or
520 division, factory branch or division, or wholesaler branch or
521 division, or officer, agent or other representative thereof shall

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

543 4. To resort to or use any false or misleading
544 advertisement in connection with his or its business as such
545 manufacturer, distributor, wholesaler, distributor branch or
546 division, factory branch or division, or wholesaler branch or
547 division, or officer, agent or other representative thereof.

548 5. To offer to sell or to sell any new motor
549 vehicle to any motor vehicle dealer at a lower actual price
550 therefor than the actual price charged to any other motor vehicle
551 dealer for the same model vehicle similarly equipped or to utilize
552 any device, including but not limited to, sales promotion plans or
553 programs which result in such lesser actual price. The provisions
554 of this subsection shall not apply so long as a manufacturer,

555 distributor or wholesaler, or any agent thereof, offers to sell or
556 sells new motor vehicles to all motor vehicle dealers at the same
557 price. This subsection shall not be construed to prevent the
558 offering of volume discounts if such discounts are equally
559 available to all franchised dealers in this state.

560 The provisions of this subsection shall not apply to sales to
561 a motor vehicle dealer of any motor vehicle ultimately sold,
562 donated or used by said dealer in a driver education program, or
563 to sales to a motor vehicle dealer for resale to any unit of
564 government, federal, state or local.

565 6. To offer to sell or to sell any new motor
566 vehicle to any person, except a wholesaler or distributor, at a
567 lower actual price therefor than the actual price offered and
568 charged to a motor vehicle dealer for the same model vehicle
569 similarly equipped or to utilize any device which results in such
570 lesser actual price.

571 7. To offer to sell or to sell parts and/or
572 accessories to any new motor vehicle dealer for use in his own
573 business for the purpose of repairing or replacing the same or a
574 comparable part or accessory, at a lower actual price therefor
575 than the actual price charged to any other new motor vehicle
576 dealer for similar parts and/or accessories for use in his own
577 business. However, it is recognized that certain motor vehicle
578 dealers operate and serve as wholesalers of parts and accessories
579 to retail outlets, and nothing herein contained shall be construed
580 to prevent a manufacturer, distributor or wholesaler, or any agent
581 thereof, from selling to a motor vehicle dealer who operates and
582 serves as a wholesaler of parts and accessories, such parts and
583 accessories as may be ordered by such motor vehicle dealer for
584 re-sale to retail outlets, at a lower actual price than the actual
585 price charged a motor vehicle dealer who does not operate or serve
586 as a wholesaler of parts and accessories.

587 8. To prevent or attempt to prevent by contract or

588 otherwise any motor vehicle dealer from changing the capital
589 structure of his dealership or the means by or through which he
590 finances the operation of his dealership, provided the dealer at
591 all times meets any capital standards agreed to between the
592 dealership and the manufacturer, distributor or wholesaler,
593 provided such standards are deemed reasonable by the commission.

594 9. To prevent or attempt to prevent by contract or
595 otherwise any motor vehicle dealer or any officer, partner or
596 stockholder of any motor vehicle dealer from selling or
597 transferring any part of the interest of any of them to any other
598 person or persons or party or parties. However, no dealer,
599 officer, partner or stockholder shall have the right to sell,
600 transfer or assign the franchise or any right thereunder without
601 the consent of the manufacturer, distributor or wholesaler.

602 10. To condition unreasonably the renewal or
603 extension of a franchise on a motor vehicle dealer's substantial
604 renovation of the dealer's place of business or on the
605 construction, purchase, acquisition or rental of a new place of
606 business by the motor vehicle dealer. The manufacturer shall
607 notify the motor vehicle dealer in writing of its intent to impose
608 such a condition within a reasonable time prior to the effective
609 date of the proposed renewal or extension, but in no case less
610 than one hundred eighty (180) days prior to the renewal or
611 extension, and the manufacturer shall demonstrate to the
612 commission the need for such demand in view of the need to service
613 the public and the economic conditions existing in the motor
614 vehicle industry at the time such action would be required of the
615 motor vehicle dealer. As part of any such condition the
616 manufacturer shall offer the motor vehicle dealer a reasonable
617 initial supply and model mix of motor vehicles to meet the sales
618 levels necessary to support the increased overhead incurred by the
619 motor vehicle dealer by reason of such renovation, construction,
620 purchase or rental of a new place of business.

621 11. To require, coerce or attempt to coerce a
622 motor vehicle dealer to refrain from participation in the
623 management of, investment in or the acquisition of any other line
624 of motor vehicles or related products, as long as the motor
625 vehicle dealer maintains a reasonable line of credit for each
626 dealership and the motor vehicle dealer remains in substantial
627 compliance with reasonable facilities requirements of the
628 manufacturer or distributor. The reasonable facilities'
629 requirements may not include any requirement that a motor vehicle
630 dealer establish or maintain exclusive facilities, personnel or
631 display space when the requirements are unreasonable considering
632 current economic conditions and not otherwise justified by
633 reasonable business considerations. The burden of proving by a
634 preponderance of the evidence that the current economic conditions
635 and reasonable business considerations do not justify exclusive
636 facilities is on the dealer.

637 12. To fail or refuse to sell or offer to sell to
638 all motor vehicle dealers in a line make, every motor vehicle sold
639 or offered for sale under the franchise agreement to any motor
640 vehicle dealer of the same line or make; or to unreasonably
641 require a motor vehicle dealer to pay an extra fee, purchase
642 unreasonable advertising displays or any other materials, or to
643 unreasonably require the dealer-operator to remodel, renovate or
644 recondition its existing facilities as a prerequisite to receiving
645 a certain model or series of vehicles. However, the failure to
646 deliver any such motor vehicle shall not be considered a violation
647 of this section if the failure is not arbitrary and is due to a
648 lack of manufacturing capacity or to a strike or labor difficulty,
649 a shortage of materials, a freight embargo or other cause of which
650 the manufacturer or distributor has no control. This provision
651 shall not apply to manufacturers of recreational vehicles.

652 13. To attempt to coerce, or coerce, a motor
653 vehicle dealer to adhere to performance standards that are not

654 applied uniformly to other similarly situated motor vehicle
655 dealers. Any performance standards shall be fair, reasonable,
656 equitable and based upon accurate information. If dealership
657 performance standards are based on a survey, the manufacture or
658 distributor shall establish the objectivity of the survey process
659 and provide this information to any motor vehicle dealer of the
660 same line or make covered by the survey request. Upon request of
661 the dealer, a manufacturer or distributor shall disclose in
662 writing to the dealer a description of how a performance standard
663 or program is designed and all relevant information pertaining to
664 that dealer used in the application of the performance standard or
665 program to that dealer.

666 (2) Concerning any sale of a motor vehicle or vehicles to
667 the State of Mississippi, or to the several counties or
668 municipalities thereof, or to any other political subdivision
669 thereof, no manufacturer, distributor or wholesaler shall offer
670 any discounts, refunds, or any other similar type inducements to
671 any dealer without making the same offer or offers to all other of
672 its dealers within the state. If such inducements above-mentioned
673 are made, the manufacturer, distributor or wholesaler shall give
674 simultaneous notice thereof to all of its dealers within the
675 state.

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

681 (a) A new motor vehicle dealer or agent or employee of
682 such a dealer; or

683 (b) A distributor or an agent or employee of such a
684 distributor.

685 However, an individual shall not be deemed to be a
686 broker if he or she is the owner of the new or used motor vehicle

687 which is the object of the brokering transaction.

688 SECTION 11. Section 63-17-75, Mississippi Code of 1972, is
689 amended as follows:[LR3]

690 63-17-75. Within ninety (90) days after July 1, 1970, all
691 persons who on July 1, 1970, are engaged in a business or
692 occupation for which a license is required under the Mississippi
693 Motor Vehicle Commission Law shall make application on forms
694 prescribed by the commission for their respective licenses. All
695 such persons shall be permitted, without a license, to continue to
696 engage in the business or occupation for which a license is
697 applied for until the license is either granted or, in case it is
698 denied, until the applicant has exhausted or has had an
699 opportunity to exhaust all of his remedies under Section 63-17-99.
700 No person not engaged in a business or occupation requiring such
701 a license on July 1, 1970, shall be permitted to engage in such
702 business or occupation until he shall have first obtained a
703 license to engage in such business or occupation.

704 Applications for * * * licenses shall be verified by the oath
705 or affirmation of the applicants and shall be on forms prescribed
706 by the commission and furnished to such applicants. Applications
707 shall contain such information as the commission deems necessary
708 to enable it to fully determine the qualifications and eligibility
709 of the several applicants to receive the license or licenses
710 applied for. The commission shall require that there be set forth
711 in each * * * application information relating to the applicant's
712 financial standing, the applicant's business integrity, whether
713 the applicant has an established place of business and is
714 primarily engaged in the pursuit, avocation, or business for which
715 a license or licenses is applied for, and whether the applicant is
716 able to properly conduct the business for which a license or
717 licenses is applied for, and such other pertinent information
718 consistent with the safeguarding of the public interest and public
719 welfare. Applications for license as a motor vehicle dealer

720 shall, in addition to the foregoing, * * * be accompanied by the
721 filing with the commission of a bona fide contract or franchise
722 then in effect between the applicant and a manufacturer,
723 distributor or wholesaler of the new motor vehicle or vehicles
724 proposed to be dealt in, unless such contract or franchise has
725 already been filed with the commission in connection with a
726 previous application made by such applicant, in which event the
727 applicant shall, in lieu of again filing the contract or
728 franchise, identify the contract or franchise by appropriate
729 reference and file all revisions and additions, if any, which have
730 been made to said contract or franchise. The applicant must
731 furnish satisfactory evidence that he or it maintains adequate
732 space in the building or structure wherein his or its established
733 business is conducted for the display of new motor vehicles, or he
734 will have such facilities within a reasonable time after receiving
735 a license, and that he or it has or will have adequate facilities
736 in said building or structure for the repair and servicing of
737 motor vehicles and the storage of new parts and accessories for
738 same. However, the failure to furnish the evidence called for in
739 the preceding sentence shall not constitute sufficient cause for
740 denying a license to any motor vehicle dealer who on July 1, 1970,
741 was an enfranchised new motor vehicle dealer in this state of a
742 manufacturer, distributor or wholesaler of new motor vehicles and
743 who continued to be such a dealer from such date until application
744 was made for a license as a motor vehicle dealer.

745 New applications for licenses as a new motor vehicle dealer
746 shall, in addition to the foregoing, be accompanied by the filing
747 with the commission of a corporate surety bond in the penal sum of
748 Twenty-five Thousand Dollars (\$25,000.00) on a bond form approved
749 by the commission. However, an applicant for licenses at multiple
750 locations may choose to provide a corporate surety bond in the
751 penal sum of One Hundred Thousand Dollars (\$100,000.00) covering
752 all licensed locations of the same capacity in lieu of separate

753 bonds for each location.

754 The bond shall be in effect upon the applicant being licensed
755 and shall be conditioned upon his complying with the provisions of
756 the Mississippi Motor Vehicle Commission Law. The bond shall be
757 an indemnity for any loss sustained by any person by reason of the
758 acts of the person bonded when those acts constitute grounds for
759 the suspension or revocation of license. The bond shall be
760 executed in the name of the State of Mississippi for the benefit
761 of any aggrieved party. The aggregate liability of the surety for
762 any claimants, regardless of the number of years this bond is in
763 force or has been in effect, shall not exceed the amount of the
764 bond. The proceeds of the bond shall be paid upon receipt by the
765 commission of a final judgment from a Mississippi court of
766 competent jurisdiction against the principal and in favor of an
767 aggrieved party.

768 SECTION 12. Section 63-17-51, Mississippi Code of 1972, is
769 amended as follows:[WAN4]

770 63-17-51. Sections 63-17-51 through 63-17-121 shall be known
771 and may be cited as the "Mississippi Motor Vehicle Commission
772 Law."

773 SECTION 13. This act shall take effect and be in force from
774 and after July 1, 2000.