

By: Little

To: Finance

SENATE BILL NO. 2475

1 AN ACT TO CREATE SECTION 63-17-80, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE LICENSE FOR MOTOR VEHICLE LESSORS; TO CREATE SECTION
 3 63-17-84, MISSISSIPPI CODE OF 1972, TO REQUIRE A MOTOR VEHICLE
 4 MANUFACTURER TO GIVE REASONABLE NOTICE TO A MOTOR VEHICLE DEALER
 5 IF A MOTOR VEHICLE MANUFACTURER REQUIRES SUBSTANTIAL RENOVATION TO
 6 DEALERSHIP AS A CONDITION TO RENEWING OR EXTENDING DEALER
 7 FRANCHISE; TO GIVE MOTOR VEHICLE MANUFACTURER RIGHT OF FIRST
 8 REFUSAL UNDER CERTAIN CHANGES IN DEALER OWNERSHIP; TO REQUIRE
 9 NOTICE TO DEALER PRIOR TO MODIFICATION OF FRANCHISE AGREEMENT; TO
 10 AUTHORIZE WARRANTY AUDITS; TO AMEND SECTION 63-17-75, MISSISSIPPI
 11 CODE OF 1972, TO REQUIRE SURETY BOND FOR NEW MOTOR VEHICLE
 12 DEALERS; AND FOR RELATED PURPOSES.

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

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

16 63-17-80. It is unlawful for a motor vehicle lessor or any
 17 agent, employee or representative thereof: (a) to represent and
 18 to offer for lease any new motor vehicle in Mississippi without
 19 first obtaining a new motor vehicle dealer license, or (b) to
 20 lease or offer to lease a new motor vehicle from an unlicensed
 21 location.

22 SECTION 2. The following provision shall be codified as
 23 Section 63-17-84, Mississippi Code of 1972:

24 63-17-84. (1) A manufacturer shall not condition the
 25 renewal or extension of a franchise on a new motor vehicle
 26 dealer's substantial renovation of the dealer's place of business
 27 or on the construction, purchase, acquisition or rental of a new
 28 place of business by the new motor vehicle dealer, unless the
 29 manufacturer notifies the dealer in writing of its intent to
 30 impose such a condition within a reasonable time prior to the
 31 effective date of the proposed renewal or extension, but in no

32 case less than one hundred eighty (180) days, and shows good cause
33 to the commission the need for such demand in view of the need to
34 service the public and the economic conditions existing in the
35 motor vehicle industry at the time such action would be required
36 of the new motor vehicle dealer.

37 (2) A manufacturer or distributor shall have a right of
38 first refusal to acquire the new vehicle dealer's assets or
39 ownership in the event of a proposed change of ownership that
40 results in a person owning more than fifty percent (50%) of the
41 new motor dealer's ownership, or a transfer that results in a
42 person owning more than fifty percent (50%) of the new motor
43 vehicle dealer's assets, if all the following are met:

44 (a) In order to exercise the right of first refusal,
45 the manufacturer or distributor shall notify the motor vehicle
46 dealer in writing within sixty (60) days of its receipt of the
47 completed application forms and related information generally
48 utilized by the manufacturer or distributor to conduct its review
49 of such a proposal, and a copy of all agreements regarding the
50 proposed transfer, assignment or sale;

51 (b) The exercise of the right of first refusal will
52 result in the dealer and dealer's owners receiving consideration,
53 terms and conditions that are either the same as or greater than
54 that which they have contracted to receive in connection with the
55 proposed change of the dealer's ownership or the transfer of the
56 dealer's assets;

57 (c) The proposed change of the dealership's ownership
58 or the transfer of the dealer's assets does not involve the
59 transfer of assets or the transfer or issuance of stock by the
60 dealer or one or more dealer owners to any one of the following:

61 (i) A designated family member or members,
62 including the spouse, child or grandchild, spouse of a child or
63 grandchild, brother, sister or parent of the dealer owner, or one
64 or more dealer owners;

65 (ii) A manager employed by the dealer in the
66 dealership during the previous five (5) years and is otherwise
67 qualified as a dealer operator;

68 (iii) A partnership or corporation controlled by

69 any of the family members described in clause (C.)(i);

70 (iv) A trust arrangement established or to be
71 established for the purpose of allowing the new motor vehicle
72 dealer to continue to qualify as such pursuant to the
73 manufacturer's or distributor's standards, or provides for the
74 succession of the franchise agreement to designated family members
75 or qualified management in the event of the death or incapacity of
76 the dealer or its principal owner or owners.

77 (d) The exercise of a right of first refusal by a
78 manufacturer or distributor eliminated any requirement under the
79 dealer agreement or applicable law that the manufacturer evaluate,
80 process or respond to the underlying proposed transfer by
81 approving or rejecting the proposal, and is not subject to
82 challenge as a rejection or denial of a proposed transfer.

83 (e) A manufacturer or distributor of motor vehicles
84 that directly or indirectly owns or operated a new motor vehicle
85 dealership, in whole or in part, shall not discriminate against
86 any other motor vehicle dealer in the same line-make in any matter
87 governed by the franchise, including, but not limited to, the sale
88 or allocation of vehicles or other franchisor products, or the
89 execution of dealer programs or benefits.

90 (3) If a manufacturer or distributor believes that good
91 cause exists for refusing to honor the succession of a deceased or
92 incapacitated dealer, the manufacturer or distributor may, not
93 more than sixty (60) days following receipt of notice of the
94 designated successor's intent to succeed or receipt from the
95 designated successor of such personal or financial data as is
96 reasonably necessary to determine the qualifications of the
97 designated successor, whichever is later, serve upon the
98 designated successor notice of its refusal to honor the succession
99 and of its intent to discontinue the existing franchise with the
100 dealer not earlier than one hundred twenty (120) days from the
101 date such notice is served.

102 (4) No person shall modify a franchise agreement during the
103 term of the agreement or upon its renewal if the modification
104 substantially and adversely affects the motor vehicles dealer's
105 rights obligations, investment or return on investment without
106 giving sixty (60) days' written notice of the proposed
107 modification to the motor vehicle dealer and show good cause to
108 the commission.

109 (5) The manufacturer or distributor may reasonably and
110 periodically audit a new motor vehicle dealer to determine the
111 validity of paid claims for dealer compensation or any
112 charge-backs for warranty parts or service compensation or
113 consumer or dealer incentives. Audits shall only be for the
114 twenty-four-month period immediately following the date of
115 payment. This limitation does not apply if the
116 manufacturer/distributor reasonably suspects fraud, and provide
117 the dealer with information, upon which suspicion is based.

118 SECTION 3. Section 63-17-75, Mississippi Code of 1972, is
119 amended as follows:[LR1]

120 63-17-75. Within ninety (90) days after July 1, 1970, all
121 persons who on July 1, 1970, are engaged in a business or
122 occupation for which a license is required under the Mississippi
123 Motor Vehicle Commission Law shall make application on forms
124 prescribed by the commission for their respective licenses. All
125 such persons shall be permitted, without a license, to continue to
126 engage in the business or occupation for which a license is
127 applied for until the license is either granted or, in case it is
128 denied, until the applicant has exhausted or has had an
129 opportunity to exhaust all of his remedies under Section 63-17-99.
130 No person not engaged in a business or occupation requiring such
131 a license on July 1, 1970, shall be permitted to engage in such
132 business or occupation until he shall have first obtained a
133 license to engage in such business or occupation.

134 Applications for said licenses shall be verified by the oath

135 or affirmation of the applicants and shall be on forms prescribed
136 by the commission and furnished to such applicants, and shall
137 contain such information as the commission deems necessary to
138 enable it to fully determine the qualifications and eligibility of
139 the several applicants to receive the license or licenses applied
140 for. The commission shall require that there be set forth in each
141 such application information relating to the applicant's financial
142 standing, the applicant's business integrity, whether the
143 applicant has an established place of business and is primarily
144 engaged in the pursuit, avocation, or business for which a license
145 or licenses is applied for, and whether the applicant is able to
146 properly conduct the business for which a license or licenses is
147 applied for, and such other pertinent information consistent with
148 the safeguarding of the public interest and public welfare.
149 Applications for license as a motor vehicle dealer must, in
150 addition to the foregoing, also be accompanied by the filing with
151 the commission of a bona fide contract or franchise then in effect
152 between the applicant and a manufacturer, distributor or
153 wholesaler of the new motor vehicle or vehicles proposed to be
154 dealt in, unless such contract or franchise has already been filed
155 with the commission in connection with a previous application made
156 by such applicant, in which event the applicant shall, in lieu of
157 again filing the contract or franchise, identify same by
158 appropriate reference and file all revisions and additions, if
159 any, which have been made to said contract or franchise. The
160 applicant must furnish satisfactory evidence that he or it
161 maintains adequate space in the building or structure wherein his
162 or its established business is conducted for the display of new
163 motor vehicles, or he will have such facilities within a
164 reasonable time after receiving a license, and that he or it has
165 or will have adequate facilities in said building or structure for
166 the repair and servicing of motor vehicles and the storage of new
167 parts and accessories for same. However, the failure to furnish

168 the evidence called for in the preceding sentence shall not
169 constitute sufficient cause for denying a license to any motor
170 vehicle dealer who on July 1, 1970, was an enfranchised new motor
171 vehicle dealer in this state of a manufacturer, distributor or
172 wholesaler of new motor vehicles and who continued to be such a
173 dealer from such date until application was made for a license as
174 a motor vehicle dealer.

175 New applications for licenses as new motor vehicles dealer
176 must, in addition to the foregoing, also be accompanied by the
177 filing with the commission of a corporate surety bond in the penal
178 sum of Twenty-five Thousand Dollars (\$25,000.00) on a bond form
179 approved by the commission. However, an applicant for licenses at
180 multiple locations may choose to provide a corporate surety bond
181 in the penal sum of One Hundred Thousand Dollars (\$100,000.00)
182 covering all licensed locations of the same capacity in lieu of
183 separate bonds for each location.

184 The bond shall be in effect upon the applicant being licensed
185 and shall be conditioned upon his complying with the provisions of
186 this chapter. The bond shall be an indemnity for any loss
187 sustained by any person by reason of the acts of the person bonded
188 when those acts constitute grounds for the suspension or
189 revocation of license. The bond shall be executed in the name of
190 the State of Mississippi for the benefit of any aggrieved party.
191 The aggregate liability of the surety for any claimants,
192 regardless of the number of years this bond is in force or has
193 been in effect, shall not exceed the amount of the bond. The
194 proceeds of the bond shall be paid upon receipt by the commission
195 of a final judgment from a Mississippi court of competent
196 jurisdiction against the principal and in favor of an aggrieved
197 party.

198 SECTION 4. This act shall take effect and be in force from
199 and after July 1, 2000.