

By: Little

To: Finance

SENATE BILL NO. 2475
(As Passed the Senate)

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 MANUFACTURER
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 PROVIDE THAT A
33 MANUFACTURER OR DISTRIBUTOR THAT DIRECTLY OR INDIRECTLY OWNS OR
34 OPERATES A NEW MOTOR VEHICLE DEALERSHIP SHALL NOT UNREASONABLY
35 DISCRIMINATE AGAINST ANY OTHER MOTOR VEHICLE DEALERSHIP IN THE
36 SAME LINE OR MAKE IN ANY MATTER GOVERNED BY THE FRANCHISE
37 AGREEMENT; TO CREATE NEW SECTION 63-17-117, MISSISSIPPI CODE OF
38 1972, TO PROVIDE THAT ANY WARRANTY OR SALES INCENTIVE AUDITS OF A
39 MOTOR VEHICLE RECORDS MUST BE CONDUCTED WITHIN A CERTAIN AMOUNT OF
40 TIME AFTER THE PAYMENT OF THE DISPUTED CLAIM; TO PROVIDE THAT NO
41 CLAIM WHICH HAS BEEN APPROVED AND PAID MAY BE CHARGED BACK TO THE
42 MOTOR VEHICLE DEALER UNLESS IT CAN BE SHOWN BY A PREPONDERANCE OF
43 THE EVIDENCE THAT THE CLAIMS WERE FALSE OR FRAUDULENT, THE REPAIRS
44 WERE NOT PROPERLY MADE OR WERE UNNECESSARY, OR THE DEALER FAILED
45 TO SUBSTANTIATE THE CLAIM; TO CREATE NEW SECTION 63-17-121,
46 MISSISSIPPI CODE OF 1972, TO GIVE MOTOR VEHICLE DEALERS A CAUSE OF
47 ACTION FOR VIOLATIONS OF THE MISSISSIPPI MOTOR VEHICLE COMMISSION
48 LAW BY MANUFACTURERS OR DEALERS; TO PROVIDE THAT THE VENUE FOR ANY
49 PROCEEDING ARISING FROM THE FRANCHISE AGREEMENT SHALL BE THE STATE
50 OF MISSISSIPPI; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF

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

70

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

72 SECTION 1. The following provision shall be codified as

73 Section 63-17-80, Mississippi Code of 1972:

74 63-17-80. It is unlawful for a motor vehicle lessor or any
75 agent, employee or representative thereof: (a) to represent and
76 to offer for lease any new motor vehicle in Mississippi without
77 first obtaining a new motor vehicle dealer license, or (b) to
78 lease or offer to lease a new motor vehicle from an unlicensed
79 location.

80 SECTION 2. The following shall be codified as Section

81 63-17-109, Mississippi Code of 1972:

82 63-17-109. (1) In the event of a proposed sale or transfer
83 of a dealership and the franchise agreement for such dealership
84 contains a right of first refusal in favor of the manufacturer or
85 distributor, notwithstanding the terms of the franchise agreement,
86 the manufacturer or distributor shall be permitted to exercise a
87 right of first refusal to acquire the dealership only if all of
88 the following requirements are met:

89 (a) The manufacturer or distributor sends by certified
90 mail, return receipt requested, or any other reliable means of
91 communication, notice of its intent to exercise its right of first
92 refusal within sixty (60) days of receipt of the completed

93 proposal for the proposed sale or transfer.

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

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

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

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

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

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

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

124 Such expenses and attorney's fees shall be paid to the proposed
125 new owner at the time of the closing of the sale at which the

126 manufacturer or distributor exercises its right of first refusal.

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

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

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

144 63-17-111. (1) Notwithstanding the terms of any franchise
145 agreement, any dealer-operator may appoint by will, or other
146 written instrument, a designated successor to succeed in the
147 ownership of the dealer-operator in the dealership upon the death
148 or incapacity of the dealer-operator.

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

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

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

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

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

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

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

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

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

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

194 63-17-113. (1) No person shall modify a franchise agreement
195 during the term of such agreement or upon its renewal if the
196 modification substantially and adversely affects the motor vehicle
197 dealer's rights, obligations, investment, or return on investment
198 without giving sixty (60) days' written notice of the proposed
199 modification to the motor vehicle dealer and without showing good
200 cause to the commission.

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

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

214 63-17-115. A manufacturer or distributor of motor vehicles
215 that directly or indirectly owns or operates a new motor vehicle
216 dealership, in whole or in part, shall not unreasonably
217 discriminate against any other motor vehicle dealer in the same
218 line or make in any matter governed by the franchise agreement,
219 including, but not limited to, the allocation or availability of:

- 220 (a) Motor vehicles;
- 221 (b) Other manufacturer or distributor products;
- 222 (c) Promotional or advertising allowances;
- 223 (d) The opportunity to perform warranty work; or
- 224 (e) The implementation of dealer programs or benefits.

225 SECTION 6. The following shall be codified as Section
226 63-17-117, Mississippi Code of 1972:

227 63-17-117. (1) Notwithstanding the terms of any franchise
228 agreement, warranty and sales incentive audits of a motor vehicle
229 dealer's records may be conducted by the manufacturer or
230 distributor. Any audit for warranty parts or service compensation
231 shall be performed within the eighteen-month period immediately
232 following the date of the payment of the disputed claim by the
233 manufacturer or distributor. Any audit for sales incentives,
234 service incentives, rebates, or other forms of incentive
235 compensation shall be performed within the twenty-four-month
236 period immediately following the date of the payment of the
237 disputed claim by the manufacturer or distributor.

238 (2) No claim which has been approved and paid may be charged
239 back to the motor vehicle dealer unless it can be shown by a
240 preponderance of the evidence that the claim was false or
241 fraudulent, that the repairs were not properly made or were
242 unnecessary to correct the defective conditions under generally
243 accepted standards of workmanship, or that the motor vehicle
244 dealer failed to reasonably substantiate the repair in accordance
245 with the manufacturer's or distributor's reasonable written claim
246 requirement.

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

251 (4) Limitations on warranty parts, service compensation,
252 sales incentive audits, rebates, or other forms of incentive
253 compensation, chargebacks for warranty parts or service
254 compensation, and service incentives and chargebacks for sales
255 compensation only, shall not be effective in the case of
256 intentionally false or fraudulent claims.

257 SECTION 7. The following shall be codified as Section

258 63-17-121, Mississippi Code of 1972:

259 63-17-121. (1) Notwithstanding any provision of a franchise
260 agreement to the contrary, if any motor vehicle dealer or
261 dealer-operator incurs pecuniary loss due to a violation of the
262 Mississippi Motor Vehicle Commission Law by a manufacturer or
263 distributor, the motor vehicle dealer or dealer-operator may bring
264 suit in a court of competent jurisdiction and recover damages,
265 together with costs, including reasonable attorneys' fees.

266 (2) Venue for any proceeding arising from the franchise
267 agreement shall be in Mississippi and shall be consistent with
268 Mississippi law. It is the public policy of this state that venue
269 provided for in this section may not be modified by contract. Any
270 provision contained in the franchise agreement that requires
271 arbitration or litigation to be conducted outside the State of
272 Mississippi shall be void and unenforceable.

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

275 63-17-55. The following words, terms and phrases, when used
276 in the Mississippi Motor Vehicle Commission Law, shall have the
277 meanings respectively ascribed to them in this section, except
278 where the context clearly indicates a different meaning:

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

283 (b) "Motor vehicle dealer" means any person, firm,
284 partnership, copartnership, association, corporation, trust or
285 legal entity, not excluded by subsection (c) of this section, who
286 holds a bona fide contract or franchise in effect with a
287 manufacturer, distributor or wholesaler of new motor vehicles, and
288 a license under the provisions of the Mississippi Motor Vehicle
289 Commission Law, and such duly franchised and licensed motor
290 vehicle dealers shall be the sole and only persons, firms,

291 partnerships, copartnerships, associations, corporations, trusts
292 or legal entities entitled to sell and publicly or otherwise
293 solicit and advertise for sale new motor vehicles as such.

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

295 (i) Receivers, trustees, administrators,
296 executors, guardians or other persons appointed by or acting under
297 judgment, decree or order of any court; or

298 (ii) Public officers while performing their duties
299 as such officers; or

300 (iii) Employees of persons, corporations or
301 associations enumerated in subsection (c)(i) of this section when
302 engaged in the specific performance of their duties as such
303 employees.

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

307 (e) "Ultimate purchaser" means, with respect to any new
308 motor vehicle, the first person, other than a motor vehicle dealer
309 purchasing in his capacity as such dealer, who in good faith
310 purchases such new motor vehicle for purposes other than for
311 resale.

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

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

319 (h) "Commission" means the Mississippi Motor Vehicle
320 Commission.

321 (i) "Manufacturer" means any person, firm, association,
322 corporation or trust, resident or nonresident, who manufactures or
323 assembles new motor vehicles.

324 (j) "Distributor" or "wholesaler" means any person,
325 firm, association, corporation or trust, resident or nonresident,
326 who in whole or in part sells or distributes new motor vehicles to
327 motor vehicle dealers, or who maintains distributor
328 representatives.

329 (k) "Factory branch" means a branch or division office
330 maintained by a person, firm, association, corporation or trust
331 who manufactures or assembles new motor vehicles for sale to
332 distributors or wholesalers, to motor vehicle dealers, or for
333 directing or supervising, in whole or in part, its
334 representatives.

335 (l) "Distributor branch" means a branch or division
336 office similarly maintained by a distributor or wholesaler for the
337 same purposes a factory branch or division is maintained.

338 (m) "Factory representative" means a representative
339 employed by a person, firm, association, corporation or trust who
340 manufactures or assembles new motor vehicles, or by a factory
341 branch, for the purpose of making or promoting the sale of his,
342 its or their new motor vehicles, or for supervising or contacting
343 his, its or their dealers or prospective dealers.

344 (n) "Distributor representative" means a representative
345 similarly employed by a distributor, distributor branch, or
346 wholesaler.

347 (o) "Person" means and includes, individually and
348 collectively, individuals, firms, partnerships, copartnerships,
349 associations, corporations and trusts, or any other forms of
350 business enterprise, or any legal entity.

351 (p) "Good faith" means the duty of each party to any
352 franchise, and all officers, employees or agents thereof, to act
353 in a fair and equitable manner toward each other so as to
354 guarantee the one party freedom from coercion, intimidation or
355 threats of coercion or intimidation from the other party.
356 However, recommendation, endorsement, exposition, persuasion,

357 urging or argument shall not be deemed to constitute a lack of
358 good faith.

359 (q) "Coerce" means the failure to act in good faith in
360 performing or complying with any terms or provisions of the
361 franchise or agreement. However, recommendation, exposition,
362 persuasion, urging or argument shall not be deemed to constitute a
363 lack of good faith.

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

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

370 (t) "Specialty vehicle" means a motor vehicle
371 manufactured by a second stage manufacturer by purchasing motor
372 vehicle components, e.g. frame and drive train, and completing the
373 manufacturer of finished motor vehicles for the purpose of resale
374 with the primary manufacturer warranty unimpaired, to a limited
375 commercial market rather than the consuming public. Specialty
376 vehicles include garbage trucks, ambulances, fire trucks, buses,
377 limousines, hearses and other similar limited purpose vehicles as
378 the commission may by regulation provide.

379 (u) "Auto auction" means (i) any person who provides a
380 place of business or facilities for the wholesale exchange of
381 motor vehicles by and between duly licensed motor vehicle dealers,
382 (ii) any motor vehicle dealer licensed to sell used motor vehicles
383 selling motor vehicles using an auction format but not on
384 consignment, or (iii) any person who provides the facilities for
385 or is in the business of selling in an auction format motor
386 vehicles.

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

390 (w) "Dealer-operator" means the individual designated
391 in the franchise agreement as the operator of the motor vehicle
392 dealership.

393 (x) "Franchise" or "franchise agreement" means a
394 written contract or agreement between a motor vehicle dealer and a
395 manufacturer or its distributor or factory branch by which the
396 motor vehicle dealer is authorized to engage in the business of
397 selling or leasing the specific makes, models or classifications
398 of new motor vehicles marketed or leased by the manufacturer and
399 designated in the agreement or any addendum to such agreement.

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

402 63-17-73. (1) It is unlawful and a misdemeanor:

403 (a) For any person, firm, association, corporation or
404 trust to engage in business as, or serve in the capacity of, or
405 act as a motor vehicle dealer, motor vehicle salesman,
406 manufacturer, distributor, wholesaler, factory branch or division,
407 distributor branch or division, wholesaler branch or division,
408 factory representative or distributor representative, as such, in
409 this state without first obtaining a license therefor as provided
410 in the Mississippi Motor Vehicle Commission Law, regardless of
411 whether or not said person, firm, association, corporation or
412 trust maintains or has a place or places of business in this
413 state. Any person, firm, association, corporation or trust
414 engaging, acting, or serving in more than one of said capacities
415 or having more than one place where such business is carried on or
416 conducted shall be required to obtain and hold a current license
417 for each capacity and place of business.

418 (b) For a motor vehicle dealer or a motor vehicle
419 salesman:

420 1. To require a purchaser of a new motor vehicle,
421 as a condition of sale and delivery thereof, to also purchase
422 special features, appliances, equipment, parts or accessories not

423 desired or requested by the purchaser. However, this prohibition
424 shall not apply as to special features, appliances, equipment,
425 parts or accessories which are already installed on the car when
426 received by the dealer.

427 2. To represent and sell as a new motor vehicle
428 any motor vehicle which has been used and operated for
429 demonstration purposes or which is otherwise a used motor vehicle.

430 3. To resort to or use any false or misleading
431 advertisement in connection with his business as such motor
432 vehicle dealer or motor vehicle salesman.

433 (c) For a manufacturer, a distributor, a wholesaler, a
434 distributor branch or division, a factory branch or division, or a
435 wholesaler branch or division, or officer, agent or other
436 representative thereof, to coerce, or attempt to coerce, any motor
437 vehicle dealer:

438 1. To order or accept delivery of any motor
439 vehicle or vehicles, appliances, equipment, parts or accessories
440 therefor, or any other commodity or commodities which shall not
441 have been voluntarily ordered by said motor vehicle dealer.

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

446 3. To order for any person any parts, accessories,
447 equipment, machinery, tools, appliances, or any commodity
448 whatsoever.

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

451 (d) For a manufacturer, a distributor, a wholesaler, a
452 distributor branch or division, a factory branch or division, or a
453 wholesaler branch or division, or officer, agent or other
454 representative thereof:

455 1. To refuse to deliver in reasonable quantities

456 and within a reasonable time after receipt of dealer's order to
457 any duly licensed motor vehicle dealer having a franchise or
458 contractual arrangement for the retail sale of new motor vehicles
459 sold or distributed by such manufacturer, distributor, wholesaler,
460 distributor branch or division, factory branch or division or
461 wholesale branch or division, any such motor vehicles as are
462 covered by such franchise or contract specifically publicly
463 advertised by such manufacturer, distributor, wholesaler,
464 distributor branch or division, factory branch or division or
465 wholesale branch or division, to be available for immediate
466 delivery. However, the failure to deliver any motor vehicle shall
467 not be considered a violation of this subsection if such failure
468 be due to acts of God, work stoppages or delays due to strikes or
469 labor difficulties, freight embargoes or other causes over which
470 the manufacturer, distributor, or wholesaler, or any agent
471 thereof, shall have no control.

472 2. To coerce, or attempt to coerce any motor
473 vehicle dealer to enter into any agreement, with such
474 manufacturer, distributor, wholesaler, distributor branch or
475 division, factory branch or division, or wholesaler branch or
476 division, or officer, agent or other representative thereof, or to
477 do any other act prejudicial to said dealer by threatening to
478 cancel any franchise or any contractual agreement existing between
479 such manufacturer, distributor, wholesaler, distributor branch or
480 division, factory branch or division, or wholesaler branch or
481 division, and said dealer. However, good faith notice to any
482 motor vehicle dealer of said dealer's violation of any terms or
483 provisions of such franchise or contractual agreement shall not
484 constitute a violation of this subsection.

485 3. To terminate or cancel the franchise or selling
486 agreement of any such dealer without due cause. The nonrenewal of
487 a franchise or selling agreement, without due cause, shall
488 constitute an unfair termination or cancellation, regardless of

489 the terms or provisions of such franchise or selling agreement.
490 Such manufacturer, distributor, wholesaler, distributor branch or
491 division, factory branch or division, or wholesaler branch or
492 division, or officer, agent or other representative thereof shall
493 notify a motor vehicle dealer in writing, and forward a copy of
494 such notice to the commission, of the termination or cancellation
495 of the franchise or selling agreement of such dealer at least
496 sixty (60) days before the effective date thereof, stating the
497 specific grounds for such termination or cancellation. Such
498 manufacturer, distributor, wholesaler, distributor branch or
499 division, factory branch or division, or wholesaler branch or
500 division, or officer, agent or other representative thereof shall
501 notify a motor vehicle dealer in writing, and forward a copy of
502 such notice to the commission, at least sixty (60) days before the
503 contractual term of his franchise or selling agreement expires
504 that the same will not be renewed, stating the specific grounds
505 for such nonrenewal, in those cases where there is no intention to
506 renew the same. In no event shall the contractual term of any
507 such franchise or selling agreement expire, without the written
508 consent of the motor vehicle dealer involved, prior to the
509 expiration of at least sixty (60) days following such written
510 notice. Any motor vehicle dealer who receives written notice that
511 his franchise or selling agreement is being terminated or
512 cancelled or who receives written notice that his franchise or
513 selling agreement will not be renewed, may, within such sixty-day
514 notice period, file with the commission a verified complaint for
515 its determination as to whether such termination or cancellation
516 or nonrenewal is unfair within the purview of the Mississippi
517 Motor Vehicle Commission Law, and any such franchise or selling
518 agreement shall continue in effect until final determination of
519 the issues raised in such complaint notwithstanding anything to
520 the contrary contained in said law or in such franchise or selling
521 agreement.

522 4. To resort to or use any false or misleading
523 advertisement in connection with his or its business as such
524 manufacturer, distributor, wholesaler, distributor branch or
525 division, factory branch or division, or wholesaler branch or
526 division, or officer, agent or other representative thereof.

527 5. To offer to sell or to sell any new motor
528 vehicle to any motor vehicle dealer at a lower actual price
529 therefor than the actual price charged to any other motor vehicle
530 dealer for the same model vehicle similarly equipped or to utilize
531 any device, including, but not limited to, sales promotion plans
532 or programs which result in such lesser actual price. The
533 provisions of this subsection shall not apply so long as a
534 manufacturer, distributor or wholesaler, or any agent thereof,
535 offers to sell or sells new motor vehicles to all motor vehicle
536 dealers at the same price. This subsection shall not be construed
537 to prevent the offering of volume discounts if such discounts are
538 equally available to all franchised dealers in this state.

539 The provisions of this subsection shall not apply to sales to
540 a motor vehicle dealer of any motor vehicle ultimately sold,
541 donated or used by said dealer in a driver education program, or
542 to sales to a motor vehicle dealer for resale to any unit of
543 government, federal, state or local.

544 6. To offer to sell or to sell any new motor
545 vehicle to any person, except a wholesaler or distributor, at a
546 lower actual price therefor than the actual price offered and
547 charged to a motor vehicle dealer for the same model vehicle
548 similarly equipped or to utilize any device which results in such
549 lesser actual price.

550 7. To offer to sell or to sell parts and/or
551 accessories to any new motor vehicle dealer for use in his own
552 business for the purpose of repairing or replacing the same or a
553 comparable part or accessory, at a lower actual price therefor
554 than the actual price charged to any other new motor vehicle

555 dealer for similar parts and/or accessories for use in his own
556 business. However, it is recognized that certain motor vehicle
557 dealers operate and serve as wholesalers of parts and accessories
558 to retail outlets, and nothing herein contained shall be construed
559 to prevent a manufacturer, distributor or wholesaler, or any agent
560 thereof, from selling to a motor vehicle dealer who operates and
561 serves as a wholesaler of parts and accessories, such parts and
562 accessories as may be ordered by such motor vehicle dealer for
563 resale to retail outlets, at a lower actual price than the actual
564 price charged a motor vehicle dealer who does not operate or serve
565 as a wholesaler of parts and accessories.

566 8. To prevent or attempt to prevent by contract or
567 otherwise any motor vehicle dealer from changing the capital
568 structure of his dealership or the means by or through which he
569 finances the operation of his dealership, provided the dealer at
570 all times meets any capital standards agreed to between the
571 dealership and the manufacturer, distributor or wholesaler,
572 provided such standards are deemed reasonable by the commission.

573 9. To prevent or attempt to prevent by contract or
574 otherwise any motor vehicle dealer or any officer, partner or
575 stockholder of any motor vehicle dealer from selling or
576 transferring any part of the interest of any of them to any other
577 person or persons or party or parties. However, no dealer,
578 officer, partner or stockholder shall have the right to sell,
579 transfer or assign the franchise or any right thereunder without
580 the consent of the manufacturer, distributor or wholesaler.

581 10. To condition unreasonably the renewal or
582 extension of a franchise on a motor vehicle dealer's substantial
583 renovation of the dealer's place of business or on the
584 construction, purchase, acquisition or rental of a new place of
585 business by the motor vehicle dealer. The manufacturer shall
586 notify the motor vehicle dealer in writing of its intent to impose
587 such a condition within a reasonable time prior to the effective

588 date of the proposed renewal or extension, but in no case less
589 than one hundred eighty (180) days prior to the renewal or
590 extension, and the manufacturer shall demonstrate to the
591 commission the need for such demand in view of the need to service
592 the public and the economic conditions existing in the motor
593 vehicle industry at the time such action would be required of the
594 motor vehicle dealer. As part of any such condition the
595 manufacturer shall offer the motor vehicle dealer a reasonable
596 initial supply and model mix of motor vehicles to meet the sales
597 levels necessary to support the increased overhead incurred by the
598 motor vehicle dealer by reason of such renovation, construction,
599 purchase or rental of a new place of business.

600 11. To require, coerce or attempt to coerce a
601 motor vehicle dealer to refrain from participation in the
602 management of, investment in or the acquisition of any other line
603 of motor vehicles or related products, as long as the motor
604 vehicle dealer maintains a reasonable line of credit for each
605 dealership and the motor vehicle dealer remains in substantial
606 compliance with reasonable facilities' requirements of the
607 manufacturer or distributor. The reasonable facilities'
608 requirements may not include any requirement that a motor vehicle
609 dealer establish or maintain exclusive facilities, personnel or
610 display space when the requirements are unreasonable considering
611 current economic conditions and not otherwise justified by
612 reasonable business considerations. The burden of proving by a
613 preponderance of the evidence that the current economic conditions
614 and reasonable business considerations do not justify exclusive
615 facilities is on the dealer.

616 12. To fail or refuse to sell or offer to sell to
617 all motor vehicle dealers in a line or make, every motor vehicle
618 sold or offered for sale under the franchise agreement to any
619 motor vehicle dealer of the same line or make; or to unreasonably
620 require a motor vehicle dealer to pay an extra fee, purchase

621 unreasonable advertising displays or any other materials, or to
622 unreasonably require the dealer-operator to remodel, renovate or
623 recondition its existing facilities as a prerequisite to receiving
624 a certain model or series of vehicles. However, the failure to
625 deliver any such motor vehicle shall not be considered a violation
626 of this section if the failure is not arbitrary and is due to a
627 lack of manufacturing capacity or to a strike or labor difficulty,
628 a shortage of materials, a freight embargo or other cause of which
629 the manufacturer or distributor has no control. This provision
630 shall not apply to manufacturers of recreational vehicles.

631 13. To attempt to coerce, or coerce, a motor
632 vehicle dealer to adhere to performance standards that are not
633 applied uniformly to other similarly situated motor vehicle
634 dealers. Any performance standards shall be fair, reasonable,
635 equitable and based upon accurate information. If dealership
636 performance standards are based on a survey, the manufacturer or
637 distributor shall establish the objectivity of the survey process
638 and provide this information to any motor vehicle dealer of the
639 same line or make covered by the survey request. Upon request of
640 the dealer, a manufacturer or distributor shall disclose in
641 writing to the dealer a description of how a performance standard
642 or program is designed and all relevant information pertaining to
643 that dealer used in the application of the performance standard or
644 program to that dealer.

645 (2) Concerning any sale of a motor vehicle or vehicles to
646 the State of Mississippi, or to the several counties or
647 municipalities thereof, or to any other political subdivision
648 thereof, no manufacturer, distributor or wholesaler shall offer
649 any discounts, refunds, or any other similar type inducements to
650 any dealer without making the same offer or offers to all other of
651 its dealers within the state. If such inducements above mentioned
652 are made, the manufacturer, distributor or wholesaler shall give
653 simultaneous notice thereof to all of its dealers within the

654 state.

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

660 (a) A new motor vehicle dealer or agent or employee of
661 such a dealer; or

662 (b) A distributor or an agent or employee of such a
663 distributor.

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

667 SECTION 10. Section 63-17-75, Mississippi Code of 1972, is
668 amended as follows:[LR3]

669 63-17-75. Within ninety (90) days after July 1, 1970, all
670 persons who on July 1, 1970, are engaged in a business or
671 occupation for which a license is required under the Mississippi
672 Motor Vehicle Commission Law shall make application on forms
673 prescribed by the commission for their respective licenses. All
674 such persons shall be permitted, without a license, to continue to
675 engage in the business or occupation for which a license is
676 applied for until the license is either granted or, in case it is
677 denied, until the applicant has exhausted or has had an
678 opportunity to exhaust all of his remedies under Section 63-17-99.

679 No person not engaged in a business or occupation requiring such
680 a license on July 1, 1970, shall be permitted to engage in such
681 business or occupation until he shall have first obtained a
682 license to engage in such business or occupation.

683 Applications for * * * licenses shall be verified by the oath
684 or affirmation of the applicants and shall be on forms prescribed
685 by the commission and furnished to such applicants. Applications
686 shall contain such information as the commission deems necessary

687 to enable it to fully determine the qualifications and eligibility
688 of the several applicants to receive the license or licenses
689 applied for. The commission shall require that there be set forth
690 in each * * * application information relating to the applicant's
691 financial standing, the applicant's business integrity, whether
692 the applicant has an established place of business and is
693 primarily engaged in the pursuit, avocation, or business for which
694 a license or licenses is applied for, and whether the applicant is
695 able to properly conduct the business for which a license or
696 licenses is applied for, and such other pertinent information
697 consistent with the safeguarding of the public interest and public
698 welfare. Applications for license as a motor vehicle dealer
699 shall, in addition to the foregoing, * * * be accompanied by the
700 filing with the commission of a bona fide contract or franchise
701 then in effect between the applicant and a manufacturer,
702 distributor or wholesaler of the new motor vehicle or vehicles
703 proposed to be dealt in, unless such contract or franchise has
704 already been filed with the commission in connection with a
705 previous application made by such applicant, in which event the
706 applicant shall, in lieu of again filing the contract or
707 franchise, identify the contract or franchise by appropriate
708 reference and file all revisions and additions, if any, which have
709 been made to said contract or franchise. The applicant must
710 furnish satisfactory evidence that he or it maintains adequate
711 space in the building or structure wherein his or its established
712 business is conducted for the display of new motor vehicles, or he
713 will have such facilities within a reasonable time after receiving
714 a license, and that he or it has or will have adequate facilities
715 in said building or structure for the repair and servicing of
716 motor vehicles and the storage of new parts and accessories for
717 same. However, the failure to furnish the evidence called for in
718 the preceding sentence shall not constitute sufficient cause for
719 denying a license to any motor vehicle dealer who on July 1, 1970,

720 was an enfranchised new motor vehicle dealer in this state of a
721 manufacturer, distributor or wholesaler of new motor vehicles and
722 who continued to be such a dealer from such date until application
723 was made for a license as a motor vehicle dealer.

724 New applications for licenses as a new motor vehicle dealer
725 shall, in addition to the foregoing, be accompanied by the filing
726 with the commission of a corporate surety bond in the penal sum of
727 Twenty-five Thousand Dollars (\$25,000.00) on a bond form approved
728 by the commission. However, an applicant for licenses at multiple
729 locations may choose to provide a corporate surety bond in the
730 penal sum of One Hundred Thousand Dollars (\$100,000.00) covering
731 all licensed locations of the same capacity in lieu of separate
732 bonds for each location.

733 The bond shall be in effect upon the applicant being licensed
734 and shall be conditioned upon his complying with the provisions of
735 the Mississippi Motor Vehicle Commission Law. The bond shall be
736 an indemnity for any loss sustained by any person by reason of the
737 acts of the person bonded when those acts constitute grounds for
738 the suspension or revocation of license. The bond shall be
739 executed in the name of the State of Mississippi for the benefit
740 of any aggrieved party. The aggregate liability of the surety for
741 any claimants, regardless of the number of years this bond is in
742 force or has been in effect, shall not exceed the amount of the
743 bond. The proceeds of the bond shall be paid upon receipt by the
744 commission of a final judgment from a Mississippi court of
745 competent jurisdiction against the principal and in favor of an
746 aggrieved party.

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

749 63-17-51. Sections 63-17-51 through 63-17-121 shall be known
750 and may be cited as the "Mississippi Motor Vehicle Commission
751 Law."

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

753 and after July 1, 2000.