

By: Minor

To: Finance

SENATE BILL NO. 2982

1 AN ACT TO AMEND THE PROVISIONS OF THE MISSISSIPPI MOTOR
2 VEHICLE COMMISSION LAW; TO CREATE NEW SECTION 63-17-109,
3 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE EVENT OF THE
4 PROPOSED SALE OR TRANSFER OF A MOTOR VEHICLE DEALERSHIP AND THE
5 FRANCHISE AGREEMENT FOR SUCH DEALERSHIP CONTAINS A RIGHT OF FIRST
6 REFUSAL FOR THE MANUFACTURER OR DISTRIBUTOR, THE MANUFACTURER OR
7 DISTRIBUTOR MUST MEET CERTAIN REQUIREMENTS IN ORDER TO EXERCISE
8 SUCH RIGHT OF FIRST REFUSAL; TO PROVIDE THAT SUCH REQUIREMENTS
9 SHALL NOT APPLY IN CERTAIN CIRCUMSTANCES; TO PROVIDE THAT IF THE
10 MANUFACTURER OR DISTRIBUTOR EXERCISES ITS RIGHT OF FIRST REFUSAL,
11 THE MANUFACTURER OR DISTRIBUTOR SHALL PAY THE REASONABLE EXPENSES
12 INCURRED BY THE PROPOSED OWNER PRIOR TO THE EXERCISE OF THE RIGHT
13 OF FIRST REFUSAL IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR
14 THE PROPOSED SALE OF THE DEALERSHIP; TO PROVIDE THAT THE MOTOR
15 VEHICLE DEALER SHALL NOT HAVE ANY LIABILITY TO ANY PERSON AS A
16 RESULT OF A MANUFACTURE OR DISTRIBUTOR EXERCISING ITS RIGHT OF
17 FIRST REFUSAL; TO CREATE NEW SECTION 63-17-111, MISSISSIPPI CODE
18 OF 1972, TO PROVIDE THAT, NOTWITHSTANDING THE TERMS OF A FRANCHISE
19 AGREEMENT, THE OWNER OF A MOTOR VEHICLE DEALERSHIP MAY APPOINT A
20 SUCCESSOR BY A WRITTEN AGREEMENT TO SUCCEED IN THE OWNERSHIP OF
21 THE DEALERSHIP UPON THE DEATH OR INCAPACITY OF THE OWNER; TO
22 PROVIDE THAT A MANUFACTURER OR DEALER SHALL HONOR THE SUCCESSION
23 UNLESS GOOD CAUSE EXISTS TO REFUSE TO HONOR THE SUCCESSION; TO
24 PROVIDE A PROCEDURE TO REFUSE TO HONOR THE SUCCESSION; TO CREATE
25 NEW SECTION 67-17-113, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE
26 MODIFICATION OF A FRANCHISE AGREEMENT WITHOUT 60 DAYS NOTICE; TO
27 AUTHORIZE A DEALER TO FILE A COMPLAINT WITH THE MOTOR VEHICLE
28 COMMISSION WITHIN THE NOTICE PERIOD; TO AUTHORIZE THE COMMISSION
29 TO DETERMINE WHETHER THERE IS GOOD CAUSE FOR SUCH MODIFICATION; TO
30 CREATE NEW SECTION 63-17-115, MISSISSIPPI CODE OF 1972, TO PROVIDE
31 THAT A MANUFACTURER OR DISTRIBUTOR OF MOTOR VEHICLES THAT DIRECTLY
32 OR INDIRECTLY OWNS OR OPERATES A NEW MOTOR VEHICLE DEALERSHIP
33 SHALL NOT DISCRIMINATE AGAINST ANY OTHER MOTOR VEHICLE DEALER IN
34 THE SAME LINE OR MAKE IN ANY MATTER GOVERNED BY THE FRANCHISE
35 AGREEMENT; TO CREATE NEW SECTION 63-17-117, MISSISSIPPI CODE OF
36 1972, TO PROVIDE THAT ANY WARRANTY OR SALES INCENTIVE AUDITS OF A
37 MOTOR VEHICLE RECORDS MUST BE CONDUCTED WITHIN A CERTAIN AMOUNT OF
38 TIME AFTER THE PAYMENT OF THE DISPUTED CLAIM; TO PROVIDE THAT NO
39 CLAIM WHICH HAS BEEN APPROVED AND PAID MAY BE CHARGED BACK TO THE
40 MOTOR VEHICLE DEALER UNLESS IT CAN BE SHOWN BY CLEAR AND
41 CONVINCING EVIDENCE THAT THE CLAIMS WERE FALSE OR FRAUDULENT, THE
42 REPAIRS WERE NOT PROPERLY MADE OR WERE UNNECESSARY, OR THE DEALER
43 FAILED TO SUBSTANTIATE THE CLAIM; TO CREATE NEW SECTION 63-17-119,
44 MISSISSIPPI CODE OF 1972, TO GIVE MOTOR VEHICLE DEALERS A CAUSE OF
45 ACTION AGAINST A MANUFACTURER OR DEALER BECAUSE OF LOSSES DUE TO A
46 VIOLATION BY THE MANUFACTURER OR DEALER OF THE MISSISSIPPI MOTOR
47 VEHICLE COMMISSION LAW; TO CREATE NEW SECTION 63-17-121,
48 MISSISSIPPI CODE OF 1972, TO PROHIBIT MANUFACTURERS OR
49 DISTRIBUTORS FROM SELLING NEW MOTOR VEHICLES EXCEPT THROUGH A
50 DEALER HOLDING A FRANCHISE FOR THE LINE OR MAKE OF SUCH NEW MOTOR

51 VEHICLE; TO CREATE NEW SECTION 63-17-123, MISSISSIPPI CODE OF
52 1972, TO PROVIDE THAT THE VENUE FOR ANY PROCEEDING ARISING FROM
53 THE FRANCHISE AGREEMENT SHALL BE THE STATE OF MISSISSIPPI; TO
54 CREATE NEW SECTION 63-17-125, MISSISSIPPI CODE OF 1972, TO LIMIT
55 THE AMOUNT OF TIME THAT A MANUFACTURER MAY OWN AN INTEREST IN A
56 FRANCHISED MOTOR VEHICLE DEALER; TO PROVIDE CERTAIN EXCEPTIONS TO
57 SUCH LIMITATIONS; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF
58 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 63-17-73,
59 MISSISSIPPI CODE OF 1972, TO PROHIBIT MANUFACTURERS OR
60 DISTRIBUTORS FROM REQUIRING OR CONDITIONING THE RENEWAL OR
61 EXTENSION OF A FRANCHISE THAT THE DEALER RENOVATE HIS BUILDING OR
62 CONSTRUCT A NEW ONE UNLESS CERTAIN CONDITIONS ARE MET; TO PROHIBIT
63 MANUFACTURER OR DISTRIBUTOR FROM PROHIBITING A DEALER FROM
64 ACQUIRING ANOTHER LINE OF MOTOR VEHICLES IF THE DEALER REMAINS IN
65 SUBSTANTIAL COMPLIANCE WITH THE REASONABLE FACILITIES REQUIREMENTS
66 OF THE MANUFACTURER OR DISTRIBUTOR; TO PROHIBIT THE MANUFACTURER
67 OR DISTRIBUTOR FROM REFUSING TO SELL TO ALL DEALERS IN A LINE OR
68 MAKE EVERY MOTOR VEHICLE SOLD OR OFFERED FOR SALE UNDER THE
69 FRANCHISE AGREEMENT; TO PROVIDE THAT A MANUFACTURER OR DEALER
70 SHALL NOT REQUIRE A DEALER TO ADHERE TO PERFORMANCE STANDARDS THAT
71 ARE NOT APPLIED UNIFORMLY TO SIMILARLY SITUATED MOTOR VEHICLE
72 DEALERS; TO AMEND SECTION 63-17-75, MISSISSIPPI CODE OF 1972, TO
73 REQUIRE THAT NEW APPLICATIONS FOR LICENSES AS A MOTOR VEHICLE
74 DEALER SHALL BE ACCOMPANIED BY A SURETY BOND; TO AMEND SECTION
75 63-17-51, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
76 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

77

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

79 SECTION 1. The following shall be codified as Section
80 63-17-109, Mississippi Code of 1972:

81 63-17-109. (1) In the event of a proposed sale or transfer
82 of a dealership and the franchise agreement for such dealership
83 contains a right of first refusal in favor of the manufacturer or
84 distributor, notwithstanding the terms of the franchise agreement,
85 the manufacturer or distributor shall be permitted to exercise a
86 right of first refusal to acquire the dealership only if all of
87 the following requirements are met:

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

93 (b) The exercise of the right of first refusal will
94 result in the motor vehicle dealer receiving consideration, terms
95 and conditions that are either the same as or greater than that

96 for which such dealer has contracted for in connection with the
97 proposed transaction;

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

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

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

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

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

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

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

125 (b) No payment of such expenses and attorney's fees
126 shall be required if the person claiming reimbursement has not
127 submitted or caused to be submitted an accounting of those
128 expenses within thirty (30) days after the receipt of the

129 manufacturer's or distributor's written request for such an
130 accounting. A manufacturer or distributor may request such an
131 accounting before exercising its right of first refusal.

132 (4) The motor vehicle dealer shall not have any liability to
133 any person as a result of a manufacturer or distributor exercising
134 its right of first refusal and the manufacturer or distributor
135 shall assume the defense of the selling motor vehicle dealer for
136 any claims by the proposed owner arising from the exercise of the
137 right of first refusal.

138 SECTION 2. The following shall be codified as Section
139 63-17-111, Mississippi Code of 1972:

140 63-17-111. (1) Notwithstanding the terms of any franchise
141 agreement, any dealer-operator may appoint by will, or other
142 written instrument, a designated successor to succeed in the
143 ownership of the dealer-operator in the dealership upon the death
144 or incapacity of the dealer-operator.

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

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

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

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

161 (4) (a) If the manufacturer or distributor believes that

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

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

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

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

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

188 SECTION 3. The following shall be codified as Section
189 63-17-113, Mississippi Code of 1972:

190 63-17-113. (1) No person shall modify a franchise agreement
191 during the term of such agreement or upon its renewal if the
192 modification substantially and adversely affects the motor vehicle
193 dealer's rights, obligations, investment, or return on investment
194 without giving sixty (60) days written notice of the proposed

195 modification to the motor vehicle dealer, unless the modifications
196 are required by law, court order, or the commission. Within the
197 sixty-day notice period, the motor vehicle dealer may file a
198 complaint with the commission for a determination whether there is
199 good cause for permitting the proposed modification. The party
200 seeking to modify or replace an agreement must demonstrate by a
201 preponderance of the evidence that there is good cause for the
202 modification or replacement. The commission shall schedule a
203 hearing within sixty (60) days to decide the matter. Multiple
204 complaints pertaining to the same proposed modifications shall be
205 consolidated for hearing. The proposed modifications shall not
206 take effect pending the determination of the matter.

207 (2) In making a determination of whether there is good cause
208 for permitting a proposed modification, the commission may
209 consider any relevant factors, including, but not limited to, the
210 following:

211 (a) The reasons for the proposed modification.

212 (b) Whether the proposed modification is applied to or
213 affects all motor vehicle dealers in a nondiscriminating manner.

214 (c) The degree to which the proposed modification will
215 have a substantial and adverse effect upon the motor vehicle
216 dealer's investment or return on investment.

217 (d) Whether the proposed modification is in the public
218 interest.

219 (e) The degree to which the proposed modification is
220 necessary to the orderly and profitable distribution of motor
221 vehicles by the motor vehicle dealer.

222 (f) Whether the proposed modification is offset by
223 other modifications beneficial to the motor vehicle dealer.

224 (3) The decision of the commission shall be in writing and
225 shall contain findings of fact and a determination of whether
226 there is good cause for permitting the proposed modification. The
227 commission shall deliver copies of the decision to the parties

228 personally or by certified mail, return receipt requested.

229 SECTION 4. The following shall be codified as Section
230 63-17-115, Mississippi Code of 1972:

231 63-17-115. A manufacturer or distributor of motor vehicles
232 that directly or indirectly owns or operates a new motor vehicle
233 dealership, in whole or in part, shall not discriminate against
234 any other motor vehicle dealer in the same line or make in any
235 matter governed by the franchise agreement, including, but not
236 limited to:

- 237 (a) The sale, allocation, or availability of motor
238 vehicles and other manufacturer or distributor products;
239 (b) Promotional or advertising allowances;
240 (c) Personnel training;
241 (d) The opportunity to perform warranty work; or
242 (e) The implementation of dealer programs or benefits.

243 SECTION 5. The following shall be codified as Section
244 63-17-117, Mississippi Code of 1972:

245 63-17-117. (1) Notwithstanding the terms of any franchise
246 agreement, warranty and sales incentive audits of a motor vehicle
247 dealer's records may be conducted by the manufacturer or
248 distributor. Any audit for warranty parts or service compensation
249 shall be performed within the twelve (12) month period immediately
250 following the date of the payment of the disputed claim by the
251 manufacturer or distributor. Any audit for sales incentives,
252 service incentives, rebates, or other forms of incentive
253 compensation shall be performed within the eighteen (18) month
254 period immediately following the date of the payment of the
255 disputed claim by the manufacturer or distributor.

256 (2) No claim which has been approved and paid may be charged
257 back to the motor vehicle dealer unless it can be shown by clear
258 and convincing evidence that the claim was false or fraudulent,
259 that the repairs were not properly made or were unnecessary to
260 correct the defective conditions under generally accepted

261 standards of workmanship, or that the motor vehicle dealer failed
262 to reasonably substantiate the repair.

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

267 (4) Limitations on warranty parts, service compensation,
268 sales incentive audits, rebates, or other forms of incentive
269 compensation, chargebacks for warranty parts or service
270 compensation, and service incentives and chargebacks for sales
271 compensation only, shall not be effective in the case of
272 intentionally false or fraudulent claims.

273 SECTION 6. The following shall be codified as Section
274 63-17-119, Mississippi Code of 1972:

275 63-17-119. Notwithstanding any provision of a franchise
276 agreement to the contrary, if any motor vehicle dealer or
277 dealer-operator incurs pecuniary loss due to a violation of the
278 Mississippi Motor Vehicle Commission Law by a manufacturer or
279 distributor, the motor vehicle dealer or dealer-operator may bring
280 suit in a court of competent jurisdiction and recover damages,
281 together with costs, including reasonable attorneys' fees.

282 SECTION 7. The following shall be codified as Section
283 67-17-121, Mississippi Code of 1972:

284 63-17-121. No manufacturer or distributor shall offer to
285 sell or sell, directly or indirectly, any new motor vehicle to a
286 consumer in this state, except through a new motor vehicle dealer
287 holding a franchise for the line or make covering such new motor
288 vehicle. This section shall not apply to manufacturer or
289 franchise sales of new motor vehicles to the federal government,
290 charitable organizations, or employees of the manufacturer or
291 distributor.

292 SECTION 8. The following shall be codified as Section
293 63-17-123, Mississippi Code of 1972:

294 63-17-123. Venue for any proceeding arising from the
295 franchise agreement shall be in Mississippi and shall be
296 consistent with Mississippi law. It is the public policy of this
297 state that venue provided for in this section may not be modified
298 by contract. Any provision contained in the franchise agreement
299 that requires arbitration or litigation to be conducted outside
300 the State of Mississippi shall be void and unenforceable.

301 SECTION 9. The following shall be codified as Section
302 63-17-125, Mississippi Code of 1972:

303 63-17-125. (1) In addition to the meaning given to the term
304 "manufacturer" in Section 63-17-55, for purposes of this section
305 such term includes:

306 (a) A factory representative; or

307 (b) A person or entity who is affiliated with a
308 manufacturer or factory representative or who, directly or
309 indirectly through an intermediary, is controlled by, or is under
310 common control with, the manufacturer. For purposes of this
311 paragraph, a person or entity is controlled by a manufacturer if
312 the manufacturer has the authority directly or indirectly, by law
313 or by agreement of the parties, to direct or influence the
314 management and policies of the person or entity.

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

317 (a) Own an interest in a dealer or dealership;

318 (b) Operate or control a dealer or dealership; or

319 (c) Act in the capacity of a dealer.

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

324 (a) The person from whom the manufacturer or

325 distributor acquired the dealership was a franchised dealer, and

326 (b) The dealership is for sale by the manufacturer or

327 distributor at a reasonable price and on reasonable terms and
328 conditions.

329 (4) For the purpose of broadening the diversity of its
330 dealer body and enhancing opportunities for qualified persons who
331 are part of a group who have historically been under represented
332 in its dealers, or who are qualified persons who lack the
333 resources to purchase a dealership outright, but for no other
334 purpose, a manufacturer or distributor may temporarily own an
335 interest in a dealership, if the manufacturer's or distributor's
336 participation in the dealership is in a bona fide relationship
337 with the franchised dealer and the franchised dealer:

338 (a) Has made a significant investment in the
339 dealership, subject to loss;

340 (b) Has an ownership interest in the dealership; and

341 (c) Operates the dealership under a plan to acquire
342 full ownership of the dealership within a reasonable time and
343 under reasonable terms and conditions.

344 (5) On a showing by a manufacturer or distributor of good
345 cause, the commission may extend the time limit set forth in
346 subsection (3) of this section. An extension under this
347 subsection shall not exceed twelve (12) months. An application
348 for an extension after the first extension is granted is subject
349 to protest by a dealer of the same line or make whose dealership
350 is located in the same county as, or within fifteen (15) miles of,
351 the dealership owned or controlled by the manufacturer or
352 distributor.

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

357 (a) Hold both a motor home dealer's license and a motor
358 home manufacturer's license; and

359 (b) Operate as both a manufacturer and dealer of motor

360 homes but of no other type of vehicle.

361 SECTION 10. Section 63-17-55, Mississippi Code of 1972, is
362 amended as follows:[WAN1]

363 63-17-55. The following words, terms and phrases, when used
364 in the Mississippi Motor Vehicle Commission Law, shall have the
365 meanings respectively ascribed to them in this section, except
366 where the context clearly indicates a different meaning:

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

371 (b) "Motor vehicle dealer" means any person, firm,
372 partnership, copartnership, association, corporation, trust or
373 legal entity, not excluded by subsection (c) of this section, who
374 holds a bona fide contract or franchise in effect with a
375 manufacturer, distributor or wholesaler of new motor vehicles, and
376 a license under the provisions of the Mississippi Motor Vehicle
377 Commission Law, and such duly franchised and licensed motor
378 vehicle dealers shall be the sole and only persons, firms,
379 partnerships, co-partnerships, associations, corporations, trusts
380 or legal entities entitled to sell and publicly or otherwise
381 solicit and advertise for sale new motor vehicles as such.

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

383 (i) Receivers, trustees, administrators,
384 executors, guardians or other persons appointed by or acting under
385 judgment, decree or order of any court; or

386 (ii) Public officers while performing their duties
387 as such officers; or

388 (iii) Employees of persons, corporations or
389 associations enumerated in subsection (c)(i) of this section when
390 engaged in the specific performance of their duties as such
391 employees.

392 (d) "New motor vehicle" means a motor vehicle which has

393 not been previously sold to any person except a distributor or
394 wholesaler or motor vehicle dealer for resale.

395 (e) "Ultimate purchaser" means, with respect to any new
396 motor vehicle, the first person, other than a motor vehicle dealer
397 purchasing in his capacity as such dealer, who in good faith
398 purchases such new motor vehicle for purposes other than for
399 resale.

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

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

407 (h) "Commission" means the Mississippi Motor Vehicle
408 Commission.

409 (i) "Manufacturer" means any person, firm, association,
410 corporation or trust, resident or nonresident, who manufactures or
411 assembles new motor vehicles.

412 (j) "Distributor" or "wholesaler" means any person,
413 firm, association, corporation or trust, resident or nonresident,
414 who in whole or in part sells or distributes new motor vehicles to
415 motor vehicle dealers, or who maintains distributor
416 representatives.

417 (k) "Factory branch" means a branch or division office
418 maintained by a person, firm, association, corporation or trust
419 who manufactures or assembles new motor vehicles for sale to
420 distributors or wholesalers, to motor vehicle dealers, or for
421 directing or supervising, in whole or in part, its
422 representatives.

423 (l) "Distributor branch" means a branch or division
424 office similarly maintained by a distributor or wholesaler for the
425 same purposes a factory branch or division is maintained.

426 (m) "Factory representative" means a representative
427 employed by a person, firm, association, corporation or trust who
428 manufactures or assembles new motor vehicles, or by a factory
429 branch, for the purpose of making or promoting the sale of his,
430 its or their new motor vehicles, or for supervising or contacting
431 his, its or their dealers or prospective dealers.

432 (n) "Distributor representative" means a representative
433 similarly employed by a distributor, distributor branch, or
434 wholesaler.

435 (o) "Person" means and includes, individually and
436 collectively, individuals, firms, partnerships, co-partnerships,
437 associations, corporations and trusts, or any other forms of
438 business enterprise, or any legal entity.

439 (p) "Good faith" means the duty of each party to any
440 franchise, and all officers, employees or agents thereof, to act
441 in a fair and equitable manner toward each other so as to
442 guarantee the one party freedom from coercion, intimidation or
443 threats of coercion or intimidation from the other party.
444 However, recommendation, endorsement, exposition, persuasion,
445 urging or argument shall not be deemed to constitute a lack of
446 good faith.

447 (q) "Coerce" means the failure to act in good faith in
448 performing or complying with any terms or provisions of the
449 franchise or agreement. However, recommendation, exposition,
450 persuasion, urging or argument shall not be deemed to constitute a
451 lack of good faith.

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

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

458 (t) "Specialty vehicle" means a motor vehicle

459 manufactured by a second stage manufacturer by purchasing motor
460 vehicle components, e.g. frame and drive train, and completing the
461 manufacturer of finished motor vehicles for the purpose of resale
462 with the primary manufacturer warranty unimpaired, to a limited
463 commercial market rather than the consuming public. Specialty
464 vehicles include garbage trucks, ambulances, fire trucks, buses,
465 limousines, hearses and other similar limited purpose vehicles as
466 the commission may by regulation provide.

467 (u) "Auto auction" means (i) any person who provides a
468 place of business or facilities for the wholesale exchange of
469 motor vehicles by and between duly licensed motor vehicle dealers,
470 (ii) any motor vehicle dealer licensed to sell used motor vehicles
471 selling motor vehicles using an auction format but not on
472 consignment, or (iii) any person who provides the facilities for
473 or is in the business of selling in an auction format motor
474 vehicles.

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

478 (w) "Dealer-operator" means the individual designated
479 in the franchise agreement as the operator of the motor vehicle
480 dealership.

481 (x) "Franchise" or "franchise agreement" means a
482 written contract or agreement between a motor vehicle dealer and a
483 manufacturer or its distributor or factory branch by which the
484 motor vehicle is authorized to engage in the business of selling
485 or leasing the specific makes, models or classifications of new
486 motor vehicles marketed or leased by the manufacturer and
487 designated in the agreement or any addendum to such agreement.

488 SECTION 11. Section 63-17-73, Mississippi Code of 1972, is
489 amended as follows:[WAN2]

490 63-17-73. (1) It is unlawful and a misdemeanor:

491 (a) For any person, firm, association, corporation or

492 trust to engage in business as, or serve in the capacity of, or
493 act as a motor vehicle dealer, motor vehicle salesman,
494 manufacturer, distributor, wholesaler, factory branch or division,
495 distributor branch or division, wholesaler branch or division,
496 factory representative or distributor representative, as such, in
497 this state without first obtaining a license therefor as provided
498 in the Mississippi Motor Vehicle Commission Law, regardless of
499 whether or not said person, firm, association, corporation or
500 trust maintains or has a place or places of business in this
501 state. Any person, firm, association, corporation or trust
502 engaging, acting, or serving in more than one of said capacities
503 or having more than one place where such business is carried on or
504 conducted shall be required to obtain and hold a current license
505 for each capacity and place of business.

506 (b) For a motor vehicle dealer or a motor vehicle
507 salesman:

508 1. To require a purchaser of a new motor vehicle,
509 as a condition of sale and delivery thereof, to also purchase
510 special features, appliances, equipment, parts or accessories not
511 desired or requested by the purchaser. However, this prohibition
512 shall not apply as to special features, appliances, equipment,
513 parts or accessories which are already installed on the car when
514 received by the dealer.

515 2. To represent and sell as a new motor vehicle
516 any motor vehicle which has been used and operated for
517 demonstration purposes or which is otherwise a used motor vehicle.

518 3. To resort to or use any false or misleading
519 advertisement in connection with his business as such motor
520 vehicle dealer or motor vehicle salesman.

521 (c) For a manufacturer, a distributor, a wholesaler, a
522 distributor branch or division, a factory branch or division, or a
523 wholesaler branch or division, or officer, agent or other
524 representative thereof, to coerce, or attempt to coerce, any motor

525 vehicle dealer:

526 1. To order or accept delivery of any motor
527 vehicle or vehicles, appliances, equipment, parts or accessories
528 therefor, or any other commodity or commodities which shall not
529 have been voluntarily ordered by said motor vehicle dealer.

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

534 3. To order for any person any parts, accessories,
535 equipment, machinery, tools, appliances, or any commodity
536 whatsoever.

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

539 (d) For a manufacturer, a distributor, a wholesaler, a
540 distributor branch or division, a factory branch or division, or a
541 wholesaler branch or division, or officer, agent or other
542 representative thereof:

543 1. To refuse to deliver in reasonable quantities
544 and within a reasonable time after receipt of dealer's order to
545 any duly licensed motor vehicle dealer having a franchise or
546 contractual arrangement for the retail sale of new motor vehicles
547 sold or distributed by such manufacturer, distributor, wholesaler,
548 distributor branch or division, factory branch or division or
549 wholesale branch or division, any such motor vehicles as are
550 covered by such franchise or contract specifically publicly
551 advertised by such manufacturer, distributor, wholesaler,
552 distributor branch or division, factory branch or division or
553 wholesale branch or division, to be available for immediate
554 delivery. However, the failure to deliver any motor vehicle shall
555 not be considered a violation of this subsection if such failure
556 be due to acts of God, work stoppages or delays due to strikes or
557 labor difficulties, freight embargoes or other causes over which

558 the manufacturer, distributor, or wholesaler, or any agent
559 thereof, shall have no control.

560 2. To coerce, or attempt to coerce any motor
561 vehicle dealer to enter into any agreement, with such
562 manufacturer, distributor, wholesaler, distributor branch or
563 division, factory branch or division, or wholesaler branch or
564 division, or officer, agent or other representative thereof, or to
565 do any other act prejudicial to said dealer by threatening to
566 cancel any franchise or any contractual agreement existing between
567 such manufacturer, distributor, wholesaler, distributor branch or
568 division, factory branch or division, or wholesaler branch or
569 division, and said dealer. However, good faith notice to any
570 motor vehicle dealer of said dealer's violation of any terms or
571 provisions of such franchise or contractual agreement shall not
572 constitute a violation of this subsection.

573 3. To terminate or cancel the franchise or selling
574 agreement of any such dealer without due cause. The nonrenewal of
575 a franchise or selling agreement, without due cause, shall
576 constitute an unfair termination or cancellation, regardless of
577 the terms or provisions of such franchise or selling agreement.
578 Such manufacturer, distributor, wholesaler, distributor branch or
579 division, factory branch or division, or wholesaler branch or
580 division, or officer, agent or other representative thereof shall
581 notify a motor vehicle dealer in writing, and forward a copy of
582 such notice to the commission, of the termination or cancellation
583 of the franchise or selling agreement of such dealer at least
584 sixty (60) days before the effective date thereof, stating the
585 specific grounds for such termination or cancellation. Such
586 manufacturer, distributor, wholesaler, distributor branch or
587 division, factory branch or division, or wholesaler branch or
588 division, or officer, agent or other representative thereof shall
589 notify a motor vehicle dealer in writing, and forward a copy of
590 such notice to the commission, at least sixty (60) days before the

591 contractual term of his franchise or selling agreement expires
592 that the same will not be renewed, stating the specific grounds
593 for such nonrenewal, in those cases where there is no intention to
594 renew the same. In no event shall the contractual term of any
595 such franchise or selling agreement expire, without the written
596 consent of the motor vehicle dealer involved, prior to the
597 expiration of at least sixty (60) days following such written
598 notice. Any motor vehicle dealer who receives written notice that
599 his franchise or selling agreement is being terminated or
600 cancelled or who receives written notice that his franchise or
601 selling agreement will not be renewed, may, within such sixty-day
602 notice period, file with the commission a verified complaint for
603 its determination as to whether such termination or cancellation
604 or nonrenewal is unfair within the purview of the Mississippi
605 Motor Vehicle Commission Law, and any such franchise or selling
606 agreement shall continue in effect until final determination of
607 the issues raised in such complaint notwithstanding anything to
608 the contrary contained in said law or in such franchise or selling
609 agreement.

610 4. To resort to or use any false or misleading
611 advertisement in connection with his or its business as such
612 manufacturer, distributor, wholesaler, distributor branch or
613 division, factory branch or division, or wholesaler branch or
614 division, or officer, agent or other representative thereof.

615 5. To offer to sell or to sell any new motor
616 vehicle to any motor vehicle dealer at a lower actual price
617 therefor than the actual price charged to any other motor vehicle
618 dealer for the same model vehicle similarly equipped or to utilize
619 any device, including but not limited to, sales promotion plans or
620 programs which result in such lesser actual price. The provisions
621 of this subsection shall not apply so long as a manufacturer,
622 distributor or wholesaler, or any agent thereof, offers to sell or
623 sells new motor vehicles to all motor vehicle dealers at the same

624 price. This subsection shall not be construed to prevent the
625 offering of volume discounts if such discounts are equally
626 available to all franchised dealers in this state.

627 The provisions of this subsection shall not apply to sales to
628 a motor vehicle dealer of any motor vehicle ultimately sold,
629 donated or used by said dealer in a driver education program, or
630 to sales to a motor vehicle dealer for resale to any unit of
631 government, federal, state or local.

632 6. To offer to sell or to sell any new motor
633 vehicle to any person, except a wholesaler or distributor, at a
634 lower actual price therefor than the actual price offered and
635 charged to a motor vehicle dealer for the same model vehicle
636 similarly equipped or to utilize any device which results in such
637 lesser actual price.

638 7. To offer to sell or to sell parts and/or
639 accessories to any new motor vehicle dealer for use in his own
640 business for the purpose of repairing or replacing the same or a
641 comparable part or accessory, at a lower actual price therefor
642 than the actual price charged to any other new motor vehicle
643 dealer for similar parts and/or accessories for use in his own
644 business. However, it is recognized that certain motor vehicle
645 dealers operate and serve as wholesalers of parts and accessories
646 to retail outlets, and nothing herein contained shall be construed
647 to prevent a manufacturer, distributor or wholesaler, or any agent
648 thereof, from selling to a motor vehicle dealer who operates and
649 serves as a wholesaler of parts and accessories, such parts and
650 accessories as may be ordered by such motor vehicle dealer for
651 re-sale to retail outlets, at a lower actual price than the actual
652 price charged a motor vehicle dealer who does not operate or serve
653 as a wholesaler of parts and accessories.

654 8. To prevent or attempt to prevent by contract or
655 otherwise any motor vehicle dealer from changing the capital
656 structure of his dealership or the means by or through which he

657 finances the operation of his dealership, provided the dealer at
658 all times meets any capital standards agreed to between the
659 dealership and the manufacturer, distributor or wholesaler,
660 provided such standards are deemed reasonable by the commission.

661 9. To prevent or attempt to prevent by contract or
662 otherwise any motor vehicle dealer or any officer, partner or
663 stockholder of any motor vehicle dealer from selling or
664 transferring any part of the interest of any of them to any other
665 person or persons or party or parties. However, no dealer,
666 officer, partner or stockholder shall have the right to sell,
667 transfer or assign the franchise or any right thereunder without
668 the consent of the manufacturer, distributor or wholesaler.

669 (e) For a manufacturer or distributor:

670 1. To condition the renewal or extension of a
671 franchise on a motor vehicle dealer's substantial renovation of
672 the dealer's place of business or on the construction, purchase,
673 acquisition, or rental of a new place of business by the motor
674 vehicle dealer, unless the motor vehicle dealer is notified in
675 writing of the intent to impose such condition within a reasonable
676 time prior to the effective date of the proposed renewal or
677 extension, but in no case less than one hundred eighty (180) days
678 prior to the renewal or extension and the manufacturer or
679 distributor demonstrates to the commission the need for such
680 demand in view of the need to service the public and the economic
681 conditions existing in the motor vehicle industry at the time such
682 action would be required of the motor vehicle dealer. As a part
683 of any such condition the manufacturer or distributor shall supply
684 the motor vehicle dealer with an adequate initial supply and mode
685 mix of motor vehicles to meet the sales levels necessary to
686 support the increased overhead incurred by the motor vehicle
687 dealer by reason of such renovation, construction, purchase or
688 rental of a new place of business.

689 2. To require, coerce, or attempt to coerce a

690 motor vehicle dealer to refrain from participation in the
691 management of, investment in or the acquisition of any other line
692 of motor vehicles or related products, as long as the motor
693 vehicle dealer remains in substantial compliance with reasonable
694 facilities requirements of the manufacturer or distributor. The
695 reasonable facilities requirement of the manufacturer or
696 distributor shall not include any requirement that a motor vehicle
697 dealer establish or maintain exclusive facilities, personnel or
698 display space when the requirements are unreasonable considering
699 current economic conditions and not otherwise justified by
700 reasonable business considerations. The burden of proving by a
701 preponderance of the evidence that the current economic conditions
702 and reasonable business considerations justify exclusive
703 facilities is on the manufacturer or distributor.

704 3. To fail or refuse to sell or offer to sell to
705 all motor vehicle dealers in a line or make every motor vehicle
706 sold or offered for sale under the franchise agreement to any
707 motor vehicle dealer of the same line or make, or to unreasonably
708 require a motor vehicle dealer to pay an extra fee, purchase
709 unreasonable advertising displays or any other material, or to
710 unreasonably require the dealer to remodel, renovate or
711 recondition its existing facilities as a prerequisite to receiving
712 a certain model or series of vehicles. However, the failure to
713 deliver any such motor vehicle shall not be considered a violation
714 of this section if the failure is not arbitrary and is due to a
715 lack of manufacturing capacity or to a strike or labor difficulty,
716 a shortage of materials, a freight embargo or other cause over
717 which the manufacturer or distributor has no control.

718 4. To coerce, or attempt to coerce, a motor
719 vehicle dealer to adhere to performance standards that are not
720 applied uniformly to other similarly situated motor vehicle
721 dealers. Performance standards may be imposed if they are fair,
722 reasonable, equitable and based upon accurate information. If

723 performance standards are based upon a survey, the manufacturer or
724 distributor shall establish the objectivity of the survey process
725 and provide this information to any motor vehicle dealer of the
726 same line or make covered by the survey request. Each response to
727 a survey used by a manufacturer in preparing an evaluation or
728 performance rating of a motor vehicle dealer shall be made
729 available to that motor vehicle dealer, or it cannot be used by
730 the manufacturer or distributor. However, if a customer requests
731 that the manufacturer or distributor not disclose the customer's
732 identity to the dealer, the manufacturer may withhold the
733 customer's identity in providing the survey response to the motor
734 vehicle dealer, and the manufacturer or distributor may use the
735 response.

736 (2) Concerning any sale of a motor vehicle or vehicles to
737 the State of Mississippi, or to the several counties or
738 municipalities thereof, or to any other political subdivision
739 thereof, no manufacturer, distributor or wholesaler shall offer
740 any discounts, refunds, or any other similar type inducements to
741 any dealer without making the same offer or offers to all other of
742 its dealers within the state. If such inducements above-mentioned
743 are made, the manufacturer, distributor or wholesaler shall give
744 simultaneous notice thereof to all of its dealers within the
745 state.

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

751 (a) A new motor vehicle dealer or agent or employee of
752 such a dealer; or

753 (b) A distributor or an agent or employee of such a
754 distributor.

755 However, an individual shall not be deemed to be a

756 broker if he or she is the owner of the new or used motor vehicle
757 which is the object of the brokering transaction.

758 SECTION 12. Section 63-17-75, Mississippi Code of 1972, is
759 amended as follows:[WAN3]

760 63-17-75. (1) Within ninety (90) days after July 1, 1970,
761 all persons who on July 1, 1970, are engaged in a business or
762 occupation for which a license is required under the Mississippi
763 Motor Vehicle Commission Law, shall make application on forms
764 prescribed by the commission for their respective licenses. All
765 such persons shall be permitted, without a license, to continue to
766 engage in the business or occupation for which a license is
767 applied for until the license is either granted or, in case it is
768 denied, until the applicant has exhausted or has had an
769 opportunity to exhaust all of his remedies under Section 63-17-99.
770 No person not engaged in a business or occupation requiring such
771 a license on July 1, 1970, shall be permitted to engage in such
772 business or occupation until he shall have first obtained a
773 license to engage in such business or occupation.

774 Applications for * * * licenses shall be verified by the oath
775 or affirmation of the applicants and shall be on forms prescribed
776 by the commission and furnished to * * * applicants. * * *
777 Applications shall contain such information as the commission
778 deems necessary to enable it to fully determine the qualifications
779 and eligibility of the several applicants to receive the license
780 or licenses applied for. The commission shall require that there
781 be set forth in each * * * application information relating to the
782 applicant's financial standing, the applicant's business
783 integrity, whether the applicant has an established place of
784 business and is primarily engaged in the pursuit, avocation, or
785 business for which a license or licenses is applied for, and
786 whether the applicant is able to properly conduct the business for
787 which a license or licenses is applied for, and such other
788 pertinent information consistent with the safeguarding of the

789 public interest and public welfare. Applications for a license as
790 a motor vehicle dealer shall, in addition to the foregoing, * * *
791 be accompanied by the filing with the commission of a bona fide
792 contract or franchise then in effect between the applicant and a
793 manufacturer, distributor or wholesaler of the new motor vehicle
794 or vehicles proposed to be dealt in, unless such contract or
795 franchise has already been filed with the commission in connection
796 with a previous application made by such applicant, in which event
797 the applicant shall, in lieu of again filing the contract or
798 franchise, identify the contract or franchise by appropriate
799 reference and file all revisions and additions, if any, which have
800 been made to the contract or franchise. The applicant must
801 furnish satisfactory evidence that he or it maintains adequate
802 space in the building or structure wherein his or its established
803 business is conducted for the display of new motor vehicles, or he
804 or it will have such facilities within a reasonable time after
805 receiving a license, and that he or it has or will have adequate
806 facilities in said building or structure for the repair and
807 servicing of motor vehicles and the storage of new parts and
808 accessories for motor vehicles. However, the failure to furnish
809 the evidence called for in the preceding sentence shall not
810 constitute sufficient cause for denying a license to any motor
811 vehicle dealer who on July 1, 1970, was an enfranchised new motor
812 vehicle dealer in this state of a manufacturer, distributor or
813 wholesaler of new motor vehicles and who continued to be such a
814 dealer from such date until application was made for a license as
815 a motor vehicle dealer.

816 (2) New applications for licenses as motor vehicle dealers
817 shall be accompanied by a surety bond issued by a bonding company
818 or insurance company authorized to do business in this state, in
819 the principal sum of Twenty-five Thousand Dollars (\$25,000.00) for
820 each location; provided, however, that an applicant for licenses
821 at multiple locations may provide a surety bond in the principal

822 sum of One Hundred Thousand Dollars (\$100,000.00) to cover all
823 licensed locations in lieu of a separate bond for each location.
824 The bond shall be in a form satisfactory to the commission.

825 The bond shall be conditioned upon compliance with the
826 provisions of the Mississippi Motor Vehicle Commission Law. The
827 bond shall also be an indemnity for any loss sustained by any
828 person by reason of the acts of the person bonded when those acts
829 constitute grounds for the suspension or revocation of such
830 person's motor vehicle dealer license. The bond shall be executed
831 in the name of the State of Mississippi for the benefit of any
832 aggrieved party. The aggregate liability of the surety for any
833 claimants, regardless of the number of years the bond is in
834 effect, shall not exceed the principal amount of the bond. The
835 proceeds of the bond shall be paid upon receipt by the commission
836 of a final judgment from a Mississippi court of competent
837 jurisdiction against the principal and in favor of an aggrieved
838 party.

839 SECTION 13. Section 63-17-51, Mississippi Code of 1972, is
840 amended as follows:[WAN4]

841 63-17-51. Sections 63-17-51 through 63-17-125 shall be known
842 and may be cited as the "Mississippi Motor Vehicle Commission
843 Law."

844 SECTION 14. This act shall take effect and be in force from
845 and after July 1, 2000.