HOUSE BILL NO. 986

AN ACT TO AMEND SECTION 63-17-59, MISSISSIPPI CODE OF 1972, TO REQUIRE MEMBERS OF THE MOTOR VEHICLE COMMISSION WHO ARE QUALIFIED TO SERVE ON THE COMMISSION BY VIRTUE OF BEING THE HOLDER OF A MOTOR VEHICLE SALESMAN'S LICENSE TO BE EMPLOYED IN A FULL-TIME CAPACITY AS A MOTOR VEHICLE SALESMAN; TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROVISION THAT REQUIRES MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS OR WHOLESALERS TO OFFER ANY INDUCEMENTS FOR SALES TO STATE OR LOCAL GOVERNMENTS TO ALL DEALERS WITHIN THE STATE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 63-17-59, Mississippi Code of 1972, is amended as follows:

63-17-59. Each of the members appointed to the commission shall be a citizen of the United States and a resident of the State of Mississippi and a qualified elector of the jurisdiction from which appointed, and each shall be of good moral character. The members of the commission initially appointed by the Attorney General and the Secretary of State and all members subsequently appointed by them shall never have been engaged in the manufacture, distribution or sale of motor vehicles and shall not thereafter be so engaged as long as they are members of the commission. The members of the commission initially appointed by the Governor and all such members subsequently appointed by an incumbent Governor shall be qualified to receive a license under the provisions of the Mississippi Motor Vehicle Commission Law and shall be holders of a current license within ninety (90) days after their respective appointments and shall continue to be holders of a current license at all times thereafter so long as they are such members; however, members who qualify by virtue of
holding a license as a motor vehicle salesman must be employed as
a motor vehicle salesman in a full-time capacity.

SECTION 2. Section 63-17-73, Mississippi Code of 1972, is
amended as follows:

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

(a) For any person, firm, association, corporation or
trust to engage in business as, or serve in the capacity of, or
act as a motor vehicle dealer, motor vehicle salesman,
manufacturer, distributor, wholesaler, factory branch or division,
distributor branch or division, wholesaler branch or division,
factory representative or distributor representative, as such, in
this state without first obtaining a license therefor as provided
in the Mississippi Motor Vehicle Commission Law, regardless of
whether or not said person, firm, association, corporation or
trust maintains or has a place or places of business in this
state. Any person, firm, association, corporation or trust
engaging, acting or serving in more than one (1) of said
capacities or having more than one (1) place where such business
is carried on or conducted shall be required to obtain and hold a
current license for each capacity and place of business.

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

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

(ii) To represent and sell as a new motor vehicle
any motor vehicle which has been used and operated for
demonstration purposes or which is otherwise a used motor vehicle.
(iii) To resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer or motor vehicle salesman.

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

(i) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered by said motor vehicle dealer.

(ii) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

(iv) To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

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

(i) To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any such motor vehicles as are covered by such franchise or contract specifically publicly
advertised by such manufacturer, distributor, wholesaler,
distributor branch or division, factory branch or division or
wholesale branch or division, to be available for immediate
delivery. However, the failure to deliver any motor vehicle shall
not be considered a violation of this subsection if such failure
be due to acts of God, work stoppages or delays due to strikes or
labor difficulties, freight embargoes or other causes over which
the manufacturer, distributor or wholesaler, or any agent thereof,
shall have no control.

(ii) To coerce, or attempt to coerce any motor
vehicle dealer to enter into any agreement, with such
manufacturer, distributor, wholesaler, distributor branch or
division, factory branch or division, or wholesaler branch or
division, or officer, agent or other representative thereof, or to
do any other act prejudicial to said dealer by threatening to
cancel any franchise or any contractual agreement existing between
such manufacturer, distributor, wholesaler, distributor branch or
division, factory branch or division, or wholesaler branch or
division, and said dealer. However, good faith notice to any
motor vehicle dealer of said dealer's violation of any terms or
provisions of such franchise or contractual agreement shall not
constitute a violation of this subsection.

(iii) To terminate or cancel the franchise or
selling agreement of any such dealer without due cause. The
nonrenewal of a franchise or selling agreement, without due cause,
shall constitute an unfair termination or cancellation, regardless
of the terms or provisions of such franchise or selling agreement.
Such manufacturer, distributor, wholesaler, distributor branch or
division, factory branch or division, or wholesaler branch or
division, or officer, agent or other representative thereof shall
notify a motor vehicle dealer in writing, and forward a copy of
such notice to the commission, of the termination or cancellation
of the franchise or selling agreement of such dealer at least
sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. Such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of such notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for such nonrenewal, in those cases where there is no intention to renew the same. In no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within such sixty-day notice period, file with the commission a verified complaint for its determination as to whether such termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and any such franchise or selling agreement shall continue in effect until final determination of the issues raised in such complaint notwithstanding anything to the contrary contained in said law or in such franchise or selling agreement.

(iv) To resort to or use any false or misleading advertisement in connection with his or its business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof.

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

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

(vi) To offer to sell or to sell any new motor
vehicle to any person, except a wholesaler or distributor, at a
lower actual price therefor than the actual price offered and
charged to a motor vehicle dealer for the same model vehicle
similarly equipped or to utilize any device which results in such
lesser actual price.

(vii) To offer to sell or to sell parts and/or
accessories to any new motor vehicle dealer for use in his own
business for the purpose of repairing or replacing the same or a
comparable part or accessory, at a lower actual price therefor
than the actual price charged to any other new motor vehicle
dealer for similar parts and/or accessories for use in his own
business. However, it is recognized that certain motor vehicle
dealers operate and serve as wholesalers of parts and accessories
to retail outlets, and nothing herein contained shall be construed
to prevent a manufacturer, distributor or wholesaler, or any agent
thereof, from selling to a motor vehicle dealer who operates and
serves as a wholesaler of parts and accessories, such parts and
accessories as may be ordered by such motor vehicle dealer for
resale to retail outlets, at a lower actual price than the actual
price charged a motor vehicle dealer who does not operate or serve
as a wholesaler of parts and accessories.

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

(ix) To prevent or attempt to prevent by contract
or otherwise any motor vehicle dealer or any officer, partner or
stockholder of any motor vehicle dealer from selling or
transferring any part of the interest of any of them to any other
person or persons or party or parties. However, no dealer,
officer, partner or stockholder shall have the right to sell,
transfer or assign the franchise or any right thereunder without
the consent of the manufacturer, distributor or wholesaler.

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

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

(xiii) To attempt to coerce, or coerce, a motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers. Any performance standards shall be fair, reasonable, equitable and based upon accurate information. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer of the same line or make covered by the survey request. Upon request of the dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information pertaining to that dealer used in the application of the performance standard or program to that dealer.

(2) Concerning any sale of a motor vehicle or vehicles to the State of Mississippi, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offer or offers to all other of its dealers within the state. * * *

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

(a) A new motor vehicle dealer or agent or employee of such a dealer; or
(b) A distributor or an agent or employee of such a distributor. However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

SECTION 3. This act shall take effect and be in force from and after July 1, 2003.