

By: Representative Miles

To: Transportation

HOUSE BILL NO. 1452

1 AN ACT TO AMEND SECTION 63-17-85, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE MISSISSIPPI MOTOR VEHICLE COMMISSION TO DENY
3 APPLICATION TO ESTABLISH OR RELOCATE A NEW MOTOR VEHICLE
4 DEALERSHIP UNDER CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 63-17-85, Mississippi Code of 1972, is
7 amended as follows:

8 63-17-85. (1) The commission may deny an application for a
9 license, or revoke or suspend a license after it has been granted,
10 for any of the following reasons:

11 (a) On satisfactory proof of unfitness of the applicant
12 or the licensee, as the case may be, under the standards
13 established and set out in the Mississippi Motor Vehicle
14 Commission Law.

15 (b) For fraud practiced or any material misstatement
16 made by an applicant in any application for license under the
17 provisions of Section 63-17-75.

18 (c) For any willful failure to comply with any
19 provision of said law or with any rule or regulation promulgated
20 by the commission under authority vested in it by said law.

21 (d) Change of condition after license is granted or
22 failure to maintain the qualifications for license.

23 (e) Continued or flagrant violation of any of the
24 provisions of said law or of any of the rules or regulations of
25 the commission.

26 (f) For any willful violation of any law relating to
27 the sale, distribution or financing of motor vehicles.

28 (g) Willfully defrauding any retail buyer to the
29 buyer's damage.

30 (h) Willful failure to perform any written agreement
31 with any retail buyer.

32 (i) Being a manufacturer who, for the protection of the
33 buying public, fails to specify the delivery and preparation
34 obligations of its motor vehicle dealers prior to delivery of new
35 motor vehicles to retail buyers. A copy of the delivery and
36 preparation obligations of its motor vehicle dealers and a
37 schedule of the compensation to be paid to its motor vehicle
38 dealers for the work and services they shall be required to
39 perform in connection with such delivery and preparation
40 obligations shall be filed with the commission by every licensed
41 motor vehicle manufacturer and shall constitute any such dealer's
42 only responsibility for product liability as between such dealer
43 and such manufacturer. The compensation as set forth on said
44 schedule shall be reasonable and the reasonableness thereof shall
45 be subject to the approval of the commission. Any mechanical,
46 body or parts defects arising from any express or implied
47 warranties of any such manufacturer shall constitute such
48 manufacturer's product or warranty liability.

49 (j) On satisfactory proof that any manufacturer,
50 distributor, wholesaler, distributor branch or division, factory
51 branch or division, or wholesaler branch or division has unfairly
52 and without due regard to the equities of the parties or to the
53 detriment of the public welfare failed to properly fulfill any
54 warranty agreement or to adequately and fairly compensate any of
55 its motor vehicle dealers for labor, parts and/or incidental
56 expenses incurred by any such dealer with regard to factory
57 warranty agreements performed by any such dealer. In no event
58 shall any such manufacturer, distributor, wholesaler, distributor
59 branch or division, factory branch or division, or wholesaler
60 branch or division pay to any of its motor vehicle dealers a labor

61 rate per hour for warranty work less than that charged by any such
62 dealer to its retail customers. No such dealer shall charge to
63 its manufacturer, distributor, wholesaler, distributor branch or
64 division, factory branch or division, or wholesaler branch or
65 division, a labor rate per hour in excess of the rate charged to
66 its retail customers. All claims made by motor vehicle dealers
67 hereunder for such labor, parts and/or incidental expenses shall
68 be paid within thirty (30) days following their approval. All
69 such claims shall be either approved or disapproved within thirty
70 (30) days after their receipt, and when any such claim is
71 disapproved the motor vehicle dealer who submits it shall be
72 notified in writing of its disapproval within said period, and
73 each such notice shall state the specific grounds upon which the
74 disapproval is based.

75 (k) For the commission of any act prohibited by
76 Sections 63-17-73 through 63-17-83 or the failure to perform any
77 of the requirements of said sections.

78 If the commission finds, after notice and hearing in the
79 manner provided for under the Mississippi Motor Vehicle Commission
80 Law, that there is sufficient cause upon which to base the
81 revocation of the license of any licensee involved in the hearing,
82 the commission may in lieu of revoking such license assess a civil
83 penalty against the guilty licensee not to exceed Ten Thousand
84 Dollars (\$10,000.00). If the commission finds, after such notice
85 and hearing, that sufficient cause exists for the suspension only
86 of the license of any licensee, the commission may in lieu of
87 suspending such license assess a civil penalty against the guilty
88 licensee of not less than Fifty Dollars (\$50.00) nor more than
89 Five Hundred Dollars (\$500.00) per day for each day such license
90 would otherwise be suspended. However, the amount of such penalty
91 shall not exceed an aggregate of Seven Thousand Five Hundred
92 Dollars (\$7,500.00). Failure of the licensee to pay all penalties
93 so assessed within the time allowed by the commission for the

94 payment thereof, which time shall in no case exceed ninety (90)
95 days from the date of the commission's order making such
96 assessment, shall, unless an appeal is taken and perfected within
97 the time and in the manner provided by the Mississippi Motor
98 Vehicle Commission Law, result in an automatic revocation of such
99 licensee's license. Any such penalties assessed by the commission
100 remaining unpaid at the expiration of the time for payment may be
101 recovered by an action in the name of the commission. All such
102 actions shall be brought by the Attorney General of the State of
103 Mississippi upon the written request of the commission to do so,
104 and shall be brought in the chancery court of the county or the
105 chancery court of the judicial district of the county to which the
106 commission's order making such assessment is appealable under the
107 provisions of Section 63-17-99. All civil penalties assessed and
108 collected by the commission under the authority of this subsection
109 shall be deposited in the General Fund of the State Treasury.

110 (2) The commission may deny an application to establish a
111 dealership if, after protest, the applicant fails to establish
112 good cause therefor. In determining good cause, the commissioner
113 shall consider:

114 (a) Whether the manufacturer or distributor of the same
115 line-make of new motor vehicle is being adequately represented as
116 to sales and service;

117 (b) Whether the protesting franchised dealer
118 representing the same line-make of new motor vehicle is in
119 substantial compliance with his franchise agreement, to the extent
120 that the franchise agreement is not in conflict with the
121 Mississippi Motor Vehicle Commission Law;

122 (c) The desirability of a competitive marketplace;

123 (d) Any harm to the protesting franchised dealer; and

124 (e) The public interest.

125 (3) A franchised dealer shall have standing under subsection
126 (2) of this section to protest an application to establish or
127 relocate a dealership if the person filing the protest:

128 (a) Is a franchised dealer of the same line-make whose
129 dealership is located in the county in which the proposed
130 dealership site is to be located; or

131 (b) Is a dealer of the same line-make whose dealership
132 is located within a fifteen-mile radius of the proposed dealership
133 site.

134 (4) Notwithstanding the terms of subsection (3) of this
135 section, the relocation of a dealership is not subject to protest
136 by a franchised dealer:

137 (a) If the proposed relocation site is not farther than
138 one (1) mile from the site from which the dealership is being
139 relocated; or

140 (b) Whose dealership is not closer to the proposed
141 location than it is to the location from which the relocated
142 dealership is being relocated.

143 **SECTION 2.** This act shall take effect and be in force from
144 and after July 1, 2004.