

By: Senator(s) Gordon

To: Finance

SENATE BILL NO. 2692

1 AN ACT TO AMEND SECTION 63-17-59, MISSISSIPPI CODE OF 1972,  
 2 TO REQUIRE MEMBERS OF THE MOTOR VEHICLE COMMISSION WHO ARE  
 3 QUALIFIED TO SERVE ON THE COMMISSION BY VIRTUE OF BEING THE HOLDER  
 4 OF A MOTOR VEHICLE SALESMAN'S LICENSE TO BE EMPLOYED IN A  
 5 FULL-TIME CAPACITY AS A MOTOR VEHICLE SALESMAN; TO AMEND SECTION  
 6 63-17-73, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROVISION THAT  
 7 REQUIRES MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS OR WHOLESALERS  
 8 TO OFFER ANY INDUCEMENTS FOR SALES TO STATE OR LOCAL GOVERNMENTS  
 9 TO ALL DEALERS WITHIN THE STATE; AND FOR RELATED PURPOSES.

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

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

13 63-17-59. Each of the members appointed to the commission  
 14 shall be a citizen of the United States and a resident of the  
 15 State of Mississippi and a qualified elector of the jurisdiction  
 16 from which appointed, and each shall be of good moral character.  
 17 The members of the commission initially appointed by the Attorney  
 18 General and the Secretary of State and all members subsequently  
 19 appointed by them shall never have been engaged in the  
 20 manufacture, distribution or sale of motor vehicles and shall not  
 21 thereafter be so engaged as long as they are members of the  
 22 commission. The members of the commission initially appointed by  
 23 the Governor and all such members subsequently appointed by an  
 24 incumbent Governor shall be qualified to receive a license under  
 25 the provisions of the Mississippi Motor Vehicle Commission Law and  
 26 shall be holders of a current license within ninety (90) days  
 27 after their respective appointments and shall continue to be  
 28 holders of a current license at all times thereafter so long as  
 29 they are such members; however, members who qualify by virtue of

30 holding a license as a motor vehicle salesman must be employed as  
31 a motor vehicle salesman in a full-time capacity.

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

34 63-17-73. (1) It is unlawful and a misdemeanor:

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

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

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

59 (ii) To represent and sell as a new motor vehicle  
60 any motor vehicle which has been used and operated for  
61 demonstration purposes or which is otherwise a used motor vehicle.

62                   (iii) To resort to or use any false or misleading  
63 advertisement in connection with his business as such motor  
64 vehicle dealer or motor vehicle salesman.

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

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

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

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

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

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

87                   (i) To refuse to deliver in reasonable quantities  
88 and within a reasonable time after receipt of dealer's order to  
89 any duly licensed motor vehicle dealer having a franchise or  
90 contractual arrangement for the retail sale of new motor vehicles  
91 sold or distributed by such manufacturer, distributor, wholesaler,  
92 distributor branch or division, factory branch or division or  
93 wholesale branch or division, any such motor vehicles as are  
94 covered by such franchise or contract specifically publicly

95 advertised by such manufacturer, distributor, wholesaler,  
96 distributor branch or division, factory branch or division or  
97 wholesale branch or division, to be available for immediate  
98 delivery. However, the failure to deliver any motor vehicle shall  
99 not be considered a violation of this subsection if such failure  
100 be due to acts of God, work stoppages or delays due to strikes or  
101 labor difficulties, freight embargoes or other causes over which  
102 the manufacturer, distributor or wholesaler, or any agent thereof,  
103 shall have no control.

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

117           (iii) To terminate or cancel the franchise or  
118 selling agreement of any such dealer without due cause. The  
119 nonrenewal of a franchise or selling agreement, without due cause,  
120 shall constitute an unfair termination or cancellation, regardless  
121 of the terms or provisions of such franchise or selling agreement.  
122 Such manufacturer, distributor, wholesaler, distributor branch or  
123 division, factory branch or division, or wholesaler branch or  
124 division, or officer, agent or other representative thereof shall  
125 notify a motor vehicle dealer in writing, and forward a copy of  
126 such notice to the commission, of the termination or cancellation  
127 of the franchise or selling agreement of such dealer at least

128 sixty (60) days before the effective date thereof, stating the  
129 specific grounds for such termination or cancellation. Such  
130 manufacturer, distributor, wholesaler, distributor branch or  
131 division, factory branch or division, or wholesaler branch or  
132 division, or officer, agent or other representative thereof shall  
133 notify a motor vehicle dealer in writing, and forward a copy of  
134 such notice to the commission, at least sixty (60) days before the  
135 contractual term of his franchise or selling agreement expires  
136 that the same will not be renewed, stating the specific grounds  
137 for such nonrenewal, in those cases where there is no intention to  
138 renew the same. In no event shall the contractual term of any  
139 such franchise or selling agreement expire, without the written  
140 consent of the motor vehicle dealer involved, prior to the  
141 expiration of at least sixty (60) days following such written  
142 notice. Any motor vehicle dealer who receives written notice that  
143 his franchise or selling agreement is being terminated or  
144 cancelled or who receives written notice that his franchise or  
145 selling agreement will not be renewed, may, within such sixty-day  
146 notice period, file with the commission a verified complaint for  
147 its determination as to whether such termination or cancellation  
148 or nonrenewal is unfair within the purview of the Mississippi  
149 Motor Vehicle Commission Law, and any such franchise or selling  
150 agreement shall continue in effect until final determination of  
151 the issues raised in such complaint notwithstanding anything to  
152 the contrary contained in said law or in such franchise or selling  
153 agreement.

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

159           (v) To offer to sell or to sell any new motor  
160 vehicle to any motor vehicle dealer at a lower actual price

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

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

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

182 (vii) To offer to sell or to sell parts and/or  
183 accessories to any new motor vehicle dealer for use in his own  
184 business for the purpose of repairing or replacing the same or a  
185 comparable part or accessory, at a lower actual price therefor  
186 than the actual price charged to any other new motor vehicle  
187 dealer for similar parts and/or accessories for use in his own  
188 business. However, it is recognized that certain motor vehicle  
189 dealers operate and serve as wholesalers of parts and accessories  
190 to retail outlets, and nothing herein contained shall be construed  
191 to prevent a manufacturer, distributor or wholesaler, or any agent  
192 thereof, from selling to a motor vehicle dealer who operates and  
193 serves as a wholesaler of parts and accessories, such parts and

194 accessories as may be ordered by such motor vehicle dealer for  
195 resale to retail outlets, at a lower actual price than the actual  
196 price charged a motor vehicle dealer who does not operate or serve  
197 as a wholesaler of parts and accessories.

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

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

213           (x) To condition unreasonably the renewal or  
214 extension of a franchise on a motor vehicle dealer's substantial  
215 renovation of the dealer's place of business or on the  
216 construction, purchase, acquisition or rental of a new place of  
217 business by the motor vehicle dealer. The manufacturer shall  
218 notify the motor vehicle dealer in writing of its intent to impose  
219 such a condition within a reasonable time prior to the effective  
220 date of the proposed renewal or extension, but in no case less  
221 than one hundred eighty (180) days prior to the renewal or  
222 extension, and the manufacturer shall demonstrate to the  
223 commission the need for such demand in view of the need to service  
224 the public and the economic conditions existing in the motor  
225 vehicle industry at the time such action would be required of the  
226 motor vehicle dealer. As part of any such condition the

227 manufacturer shall offer the motor vehicle dealer a reasonable  
228 initial supply and model mix of motor vehicles to meet the sales  
229 levels necessary to support the increased overhead incurred by the  
230 motor vehicle dealer by reason of such renovation, construction,  
231 purchase or rental of a new place of business.

232           (xi) To require, coerce or attempt to coerce a  
233 motor vehicle dealer to refrain from participation in the  
234 management of, investment in or the acquisition of any other line  
235 of motor vehicles or related products, as long as the motor  
236 vehicle dealer maintains a reasonable line of credit for each  
237 dealership and the motor vehicle dealer remains in substantial  
238 compliance with reasonable facilities' requirements of the  
239 manufacturer or distributor. The reasonable facilities'  
240 requirements may not include any requirement that a motor vehicle  
241 dealer establish or maintain exclusive facilities, personnel or  
242 display space when the requirements are unreasonable considering  
243 current economic conditions and not otherwise justified by  
244 reasonable business considerations. The burden of proving by a  
245 preponderance of the evidence that the current economic conditions  
246 and reasonable business considerations do not justify exclusive  
247 facilities is on the dealer.

248           (xii) To fail or refuse to sell or offer to sell  
249 to all motor vehicle dealers in a line or make, every motor  
250 vehicle sold or offered for sale under the franchise agreement to  
251 any motor vehicle dealer of the same line or make; or to  
252 unreasonably require a motor vehicle dealer to pay an extra fee,  
253 purchase unreasonable advertising displays or any other materials,  
254 or to unreasonably require the dealer-operator to remodel,  
255 renovate or recondition its existing facilities as a prerequisite  
256 to receiving a certain model or series of vehicles. However, the  
257 failure to deliver any such motor vehicle shall not be considered  
258 a violation of this section if the failure is not arbitrary and is  
259 due to a lack of manufacturing capacity or to a strike or labor

260 difficulty, a shortage of materials, a freight embargo or other  
261 cause of which the manufacturer or distributor has no control.  
262 This provision shall not apply to manufacturers of recreational  
263 vehicles.

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

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

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

290           (a) A new motor vehicle dealer or agent or employee of  
291 such a dealer; or

292                   (b) A distributor or an agent or employee of such a  
293 distributor.

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

297                   **SECTION 3.** This act shall take effect and be in force from  
298 and after July 1, 2004.