

By: Senator(s) Robertson

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2970

1 AN ACT TO ESTABLISH RELEVANT MARKET AREAS FOR NEW MOTOR
2 VEHICLE DEALERS; TO DEFINE CERTAIN TERMS; TO AMEND SECTION
3 63-17-55, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
4 MOTOR VEHICLE; TO AMEND SECTION 63-17-57, MISSISSIPPI CODE OF
5 1972, TO REVISE CERTAIN APPOINTMENTS TO THE MOTOR VEHICLE
6 COMMISSION; TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972,
7 TO DEFINE DUE CAUSE; TO REVISE OFFENSES; TO AMEND SECTION
8 63-17-109, MISSISSIPPI CODE OF 1972, TO REVISE PROVISIONS
9 REGARDING THE RIGHT OF FIRST REFUSAL; TO AMEND SECTION 63-17-119,
10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY REQUIREMENT THAT A
11 DEALER WAIVE ITS RIGHT TO TRIAL IS VOID; AND FOR RELATED PURPOSES.

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

13 SECTION 1. (1) For purposes of this section, "relevant
14 market area" means:

15 (a) For a proposed new motor vehicle dealer or a new
16 motor vehicle dealer who plans to relocate his or her place of
17 business in a county having a population which is greater than
18 sixty thousand (60,000), the area within a radius of ten (10)
19 miles of the intended site of the proposed or relocated dealer.
20 The ten-mile distance shall be determined by measuring the
21 distance between the nearest surveyed boundary of the existing new
22 motor vehicle dealer's principal place of business and the nearest
23 surveyed boundary line of the proposed or relocated new motor
24 vehicle dealer's principal place of business; or

25 (b) For a proposed new motor vehicle dealer or a new
26 motor vehicle dealer who plans to relocate his or her place of
27 business in a county having a population which is sixty thousand
28 (60,000) or less, the area within radius of fifteen (15) miles of
29 the intended site of the proposed or relocated dealer, or the
30 county line, whichever is closer to the intended site. The
31 fifteen-mile distance shall be determined by measuring the

32 distance between the nearest surveyed boundary line of the
33 existing new motor vehicle dealer's principal place of business
34 and the nearest surveyed boundary line of the proposed or
35 relocated new motor vehicle dealer's principal place of business.

36 (2) As used in this section, "relocate" and "relocation"
37 shall not include the relocation of a new motor vehicle dealer
38 within two (2) miles of its established place of business.

39 (3) Before a franchisor enters into a franchise establishing
40 or relocating a new motor vehicle dealer within a relevant market
41 area where the same line-make is represented, the franchisor shall
42 give written notice to each new motor vehicle dealer of the same
43 line-make in the relevant market area of its intent to establish
44 an additional dealer or to relocate an existing dealer within that
45 relevant market area.

46 (4) Within sixty (60) days after receiving the notice
47 provided for in subsection (3) of this section, or within sixty
48 (60) days after the end of any appeal or alternative dispute
49 resolution procedure provided by the franchisor, a new motor
50 vehicle dealer may file a verified complaint before the
51 Mississippi Motor Vehicle Commission pursuant to Section 63-17-91
52 to determine whether good cause exists for the establishing or
53 relocating of a proposed new motor vehicle dealer. The
54 Mississippi Motor Vehicle Commission shall render a decision on
55 the verified complaint within sixty (60) days of its filing. If
56 the commission fails to render its decision within the sixty-day
57 time period, either party may file an appeal pursuant to Section
58 63-17-99, and the court will conduct a hearing and take evidence,
59 both oral and documentary, in the place of the Mississippi Motor
60 Vehicle Commission and shall render a decision utilizing the
61 factors set forth in subsection (7).

62 (5) This section shall not apply to:

63 (a) The reopening or replacement in a relevant market
64 area of a closed dealership that has been closed within the

65 preceding two (2) years, if the established place of business of
66 the reopened or replacement dealer is within two (2) miles of the
67 established place of business of the closed dealership.

68 (b) The entering into of a renewal, replacement, or
69 succeeding franchise agreement with an existing motor vehicle
70 dealer whose operations will continue at the dealer's then current
71 location; or

72 (c) The relocation of an existing or replacement dealer
73 to a location within the existing or replacement dealer's own
74 relevant market area if the proposed new location is not within a
75 six-mile radius of any other same line-make motor vehicle dealer.

76 (6) Only a dealer into whose relevant market area the
77 proposed new franchise or relocated dealer will be located shall
78 have standing to object to the additional franchise agreement or
79 relocation or to take any other action under this chapter with
80 respect to the proposed appointment or relocation. Such a dealer
81 may not protest the relocation of an existing dealer or the
82 establishment of a replacement dealer if the proposed location is
83 further away from the dealer than the relocating or replacement
84 dealer's current or former location.

85 (7) In determining whether good cause exists for
86 establishing or relocating an additional new motor vehicle dealer
87 for the same line-make, the Mississippi Motor Vehicle Commission
88 shall take into consideration the existing circumstances
89 including, but not limited to, the following:

90 (a) Permanency of the investment;

91 (b) Effect on the retail motor vehicle business and the
92 consuming public in the relevant market area;

93 (c) Whether it is injurious or beneficial to the public
94 welfare;

95 (d) Whether the new motor vehicle dealers of the same
96 line-make in that relevant market area are providing adequate
97 competition and convenient consumer care for the motor vehicles of

98 that line-make in the market area, including the adequacy of motor
99 vehicle sales and qualified service personnel;

100 (e) Whether the establishment or relocation of the new
101 motor vehicle dealer in the relevant market area would promote
102 competition;

103 (f) Growth or decline of the population and the number
104 of new motor vehicle registrations in the relevant market area;

105 (g) Effect on the relocating dealer and the franchisor
106 of a denial of the establishment of a new dealer in, or a
107 relocation of a dealer into, the relevant market area; and

108 (h) Effect on the objecting dealer of the relocation or
109 establishment of a new proposed franchise location.

110 **SECTION 2.** Section 63-17-55, Mississippi Code of 1972, is
111 amended as follows:

112 63-17-55. The following words, terms and phrases, when used
113 in the Mississippi Motor Vehicle Commission Law, shall have the
114 meanings respectively ascribed to them in this section, except
115 where the context clearly indicates a different meaning:

116 (a) "Motor vehicle" means any motor-driven vehicle of
117 the sort and kind required to have a Mississippi road or bridge
118 privilege license, and shall include, but not be limited to,
119 motorcycles. "Motor vehicle" shall also mean an engine,
120 transmission, or rear axle manufactured for installation in a
121 vehicle having as its primary purpose the transport of person or
122 persons or property on a public highway and having a gross vehicle
123 weight rating of more than sixteen thousand (16,000) pounds,
124 whether or not attached to a vehicle chassis.

125 (b) "Motor vehicle dealer" means any person, firm,
126 partnership, copartnership, association, corporation, trust or
127 legal entity, not excluded by paragraph (c) of this section, who
128 holds a bona fide contract or franchise in effect with a
129 manufacturer, distributor or wholesaler of new motor vehicles, and
130 a license under the provisions of the Mississippi Motor Vehicle

131 Commission Law, and such duly franchised and licensed motor
132 vehicle dealers shall be the sole and only persons, firms,
133 partnerships, copartnerships, associations, corporations, trusts
134 or legal entities entitled to sell and publicly or otherwise
135 solicit and advertise for sale new motor vehicles as such.

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

137 (i) Receivers, trustees, administrators,
138 executors, guardians or other persons appointed by or acting under
139 judgment, decree or order of any court;

140 (ii) Public officers while performing their duties
141 as such officers;

142 (iii) Employees of persons, corporations or
143 associations enumerated in paragraph (c)(i) of this section when
144 engaged in the specific performance of their duties as such
145 employees; or

146 (iv) A motor vehicle manufacturer operating a
147 project as defined in Section 57-75-5(f)(iv)1; and the provisions
148 of the Mississippi Motor Vehicle Commission Law shall not apply
149 to:

150 1. a. Any lease by such a motor vehicle
151 manufacturer of three (3) or fewer motor vehicles at any one time
152 and related vehicle maintenance, of any line of vehicle produced
153 by the manufacturer or its subsidiaries, to any one (1) employee
154 of the motor vehicle manufacturer on a direct basis; or

155 b. Any sale or other disposition of such
156 motor vehicles by the motor vehicle manufacturer at the end of a
157 lease through direct sales to employees of the manufacturer or
158 through an open auction or auction limited to dealers of the
159 manufacturer's vehicle line or its subsidiaries' vehicle lines; or

160 2. Any sale or other disposition by such a
161 motor vehicle manufacturer of motor vehicles for which the
162 manufacturer obtained distinguishing number tags under Section
163 27-19-309(8).

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

167 (e) "Ultimate purchaser" means, with respect to any new
168 motor vehicle, the first person, other than a motor vehicle dealer
169 purchasing in his capacity as such dealer, who in good faith
170 purchases such new motor vehicle for purposes other than for
171 resale.

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

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

179 (h) "Commission" means the Mississippi Motor Vehicle
180 Commission.

181 (i) "Manufacturer" means any person, firm, association,
182 corporation or trust, resident or nonresident, who manufactures or
183 assembles new motor vehicles.

184 (j) "Distributor" or "wholesaler" means any person,
185 firm, association, corporation or trust, resident or nonresident,
186 who in whole or in part sells or distributes new motor vehicles to
187 motor vehicle dealers, or who maintains distributor
188 representatives.

189 (k) "Factory branch" means a branch or division office
190 maintained by a person, firm, association, corporation or trust
191 who manufactures or assembles new motor vehicles for sale to
192 distributors or wholesalers, to motor vehicle dealers, or for
193 directing or supervising, in whole or in part, its
194 representatives.

195 (1) "Distributor branch" means a branch or division
196 office similarly maintained by a distributor or wholesaler for the
197 same purposes a factory branch or division is maintained.

198 (m) "Factory representative" means a representative
199 employed by a person, firm, association, corporation or trust who
200 manufactures or assembles new motor vehicles, or by a factory
201 branch, for the purpose of making or promoting the sale of his,
202 its or their new motor vehicles, or for supervising or contacting
203 his, its or their dealers or prospective dealers.

204 (n) "Distributor representative" means a representative
205 similarly employed by a distributor, distributor branch or
206 wholesaler.

207 (o) "Person" means and includes, individually and
208 collectively, individuals, firms, partnerships, copartnerships,
209 associations, corporations and trusts, or any other forms of
210 business enterprise, or any legal entity.

211 (p) "Good faith" means the duty of each party to any
212 franchise, and all officers, employees or agents thereof, to act
213 in a fair and equitable manner toward each other so as to
214 guarantee the one party freedom from coercion, intimidation or
215 threats of coercion or intimidation from the other party.
216 However, recommendation, endorsement, exposition, persuasion,
217 urging or argument shall not be deemed to constitute a lack of
218 good faith.

219 (q) "Coerce" means the failure to act in good faith in
220 performing or complying with any terms or provisions of the
221 franchise or agreement. However, recommendation, exposition,
222 persuasion, urging or argument shall not be deemed to constitute a
223 lack of good faith.

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

227 (s) "Motor vehicle lessor" means any person, not
228 excluded by paragraph (c) of this section, engaged in the motor
229 vehicle leasing or rental business.

230 (t) "Specialty vehicle" means a motor vehicle
231 manufactured by a second stage manufacturer by purchasing motor
232 vehicle components, e.g. frame and drive train, and completing the
233 manufacturer of finished motor vehicles for the purpose of resale
234 with the primary manufacturer warranty unimpaired, to a limited
235 commercial market rather than the consuming public. Specialty
236 vehicles include garbage trucks, ambulances, fire trucks, buses,
237 limousines, hearses and other similar limited purpose vehicles as
238 the commission may by regulation provide.

239 (u) "Auto auction" means (i) any person who provides a
240 place of business or facilities for the wholesale exchange of
241 motor vehicles by and between duly licensed motor vehicle dealers,
242 (ii) any motor vehicle dealer licensed to sell used motor vehicles
243 selling motor vehicles using an auction format but not on
244 consignment, or (iii) any person who provides the facilities for
245 or is in the business of selling in an auction format motor
246 vehicles.

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

250 (w) "Dealer-operator" means the individual designated
251 in the franchise agreement as the operator of the motor vehicle
252 dealership.

253 (x) "Franchise" or "franchise agreement" means a
254 written contract or agreement between a motor vehicle dealer and a
255 manufacturer or its distributor or factory branch by which the
256 motor vehicle dealer is authorized to engage in the business of
257 selling or leasing the specific makes, models or classifications
258 of new motor vehicles marketed or leased by the manufacturer and
259 designated in the agreement or any addendum to such agreement.

260 **SECTION 3.** Section 63-17-57, Mississippi Code of 1972, is
261 amended as follows:
262 63-17-57. There is hereby created the Mississippi Motor
263 Vehicle Commission to be composed of eight (8) members, one (1) of
264 whom shall be appointed by the Attorney General from the state at
265 large for a term of four (4) years and one (1) of whom shall be
266 appointed by the Secretary of State from the state at large for a
267 term of four (4) years, and six (6) licensees who shall be
268 appointed by the Governor, one (1) from the state at large and one
269 (1) from each of the five (5) congressional districts of this
270 state for terms of the following duration: the term of the member
271 from the state at large shall expire at the time the incumbent
272 Governor's term expires, the term of the member appointed from the
273 First Congressional District shall expire on June 30, 1973, the
274 term of the member appointed from the Second Congressional
275 District shall expire on June 30, 1974, the term of the member
276 appointed from the Third Congressional District shall expire on
277 June 30, 1976, the term of the member from the Fourth
278 Congressional District shall expire on June 30, 1977, and the term
279 of the member appointed from the Fifth Congressional District
280 shall expire on June 30, 1978. Each member shall serve until his
281 successor is appointed and qualified. At the expiration of the
282 term of the member initially appointed by the Attorney General
283 each successor member shall be appointed for a term of four (4)
284 years by the incumbent Attorney General, and at the expiration of
285 the term of the member appointed by the Secretary of State each
286 successor member shall be appointed for a term of four (4) years
287 by the incumbent Secretary. At the expiration of a term for which
288 each of the initial appointments of the Governor is made, each
289 successor member shall be appointed for a term of seven (7) years
290 except that the term of the member appointed from the state at
291 large shall be coterminous with that of the Governor making the
292 appointment. The members of the commission as constituted on July

293 1, 2006, who are appointed by the Governor and whose terms have
294 not expired shall serve the balance of their terms, after which
295 time the gubernatorial appointments shall be made as follows: The
296 Governor shall appoint one (1) member of the commission from each
297 of the four (4) congressional districts and two (2) from the state
298 at large.

299 The member appointed from the state at large by the Governor
300 shall serve as chairman of the commission and one (1) of the other
301 members appointed by the Governor shall be designated by him to
302 serve as vice chairman. In the absence of the chairman at any
303 meeting of the commission the vice chairman shall preside and
304 perform the duties of the chairman.

305 In the event of a vacancy created by the death, resignation
306 or removal of any member of the commission the vacancy shall be
307 filled by appointment of the Governor, Attorney General or the
308 Secretary of State, as the case may be, for the unexpired portion
309 of the term. All appointments made pursuant to this section shall
310 be made with the advice and consent of the Senate.

311 **SECTION 4.** Section 63-17-73, Mississippi Code of 1972, is
312 amended as follows:

313 63-17-73. (1) It is unlawful and a misdemeanor:

314 (a) For any person, firm, association, corporation or
315 trust to engage in business as, or serve in the capacity of, or
316 act as a motor vehicle dealer, motor vehicle salesman,
317 manufacturer, distributor, wholesaler, factory branch or division,
318 distributor branch or division, wholesaler branch or division,
319 factory representative or distributor representative, as such, in
320 this state without first obtaining a license therefor as provided
321 in the Mississippi Motor Vehicle Commission Law, regardless of
322 whether or not the person, firm, association, corporation or trust
323 maintains or has a place or places of business in this state. Any
324 person, firm, association, corporation or trust engaging, acting
325 or serving in more than one (1) of the capacities or having more

326 than one (1) place where the business is carried on or conducted
327 shall be required to obtain and hold a current license for each
328 capacity and place of business.

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

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

338 2. To represent and sell as a new motor vehicle
339 any motor vehicle which has been used and operated for
340 demonstration purposes or which is otherwise a used motor vehicle.

341 3. To resort to or use any false or misleading
342 advertisement in connection with his business as a motor vehicle
343 dealer or motor vehicle salesman.

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

349 1. To order or accept delivery of any motor
350 vehicle or vehicles, appliances, equipment, parts or accessories
351 therefor, or any other commodity or commodities which shall not
352 have been voluntarily ordered by the motor vehicle dealer.

353 2. To order or accept delivery of any motor
354 vehicle with special features, appliances, accessories or
355 equipment not included in the list price of the motor vehicles as
356 publicly advertised by the manufacturer thereof.

357 3. To order for any person any parts, accessories,
358 equipment, machinery, tools, appliances or any commodity
359 whatsoever.

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

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

366 1. To refuse to deliver in reasonable quantities
367 and within a reasonable time after receipt of dealer's order to
368 any duly licensed motor vehicle dealer having a franchise or
369 contractual arrangement for the retail sale of new motor vehicles
370 sold or distributed by such manufacturer, distributor, wholesaler,
371 distributor branch or division, factory branch or division or
372 wholesale branch or division, any * * * motor vehicles as are
373 covered by such franchise or contract specifically publicly
374 advertised by the manufacturer, distributor, wholesaler,
375 distributor branch or division, factory branch or division or
376 wholesale branch or division, to be available for immediate
377 delivery. However, the failure to deliver any motor vehicle shall
378 not be considered a violation of this subsection if the failure be
379 due to acts of God, work stoppages or delays due to strikes or
380 labor difficulties, freight embargoes or other causes over which
381 the manufacturer, distributor or wholesaler, or any agent thereof,
382 shall have no control.

383 2. To coerce, or attempt to coerce any motor
384 vehicle dealer to enter into any agreement, with the manufacturer,
385 distributor, wholesaler, distributor branch or division, factory
386 branch or division, or wholesaler branch or division, or officer,
387 agent or other representative thereof, or to do any other act
388 prejudicial to the dealer by threatening to cancel any franchise
389 or any contractual agreement existing between the manufacturer,

390 distributor, wholesaler, distributor branch or division, factory
391 branch or division, or wholesaler branch or division, and the
392 dealer. However, good faith notice to any motor vehicle dealer of
393 the dealer's violation of any terms or provisions of the franchise
394 or contractual agreement shall not constitute a violation of this
395 subsection.

396 3. To terminate or cancel the franchise or selling
397 agreement of any * * * dealer without due cause. The nonrenewal
398 of a franchise or selling agreement, without due cause, shall
399 constitute an unfair termination or cancellation, regardless of
400 the terms or provisions of such franchise or selling agreement.
401 "Due cause" shall be defined as a breach by the dealer of a
402 material provision of the franchise agreement which breach has not
403 been cured within a reasonable time after the dealer has been
404 given written notice of the breach. The burden of proving that
405 due cause exists shall be upon the party attempting to terminate,
406 cancel or not renew the franchise or selling agreement. The
407 manufacturer, distributor, wholesaler, distributor branch or
408 division, factory branch or division, or wholesaler branch or
409 division, or officer, agent or other representative thereof shall
410 notify a motor vehicle dealer in writing, and forward a copy of
411 the notice to the commission, of the termination or cancellation
412 of the franchise or selling agreement of the dealer at least sixty
413 (60) days before the effective date thereof, stating the specific
414 grounds for such termination or cancellation. The manufacturer,
415 distributor, wholesaler, distributor branch or division, factory
416 branch or division, or wholesaler branch or division, or officer,
417 agent or other representative thereof shall notify a motor vehicle
418 dealer in writing, and forward a copy of the notice to the
419 commission, at least sixty (60) days before the contractual term
420 of his franchise or selling agreement expires that the franchise
421 or selling agreement will not be renewed, stating the specific
422 grounds for the nonrenewal, in those cases where there is no

423 intention to renew the franchise or selling agreement. In no
424 event shall the contractual term of any * * * franchise or selling
425 agreement expire, without the written consent of the motor vehicle
426 dealer involved, prior to the expiration of at least sixty (60)
427 days following such written notice. Any motor vehicle dealer who
428 receives written notice that his franchise or selling agreement is
429 being terminated or cancelled or who receives written notice that
430 his franchise or selling agreement will not be renewed, may,
431 within the sixty-day notice period, file with the commission a
432 verified complaint for its determination as to whether the
433 termination or cancellation or nonrenewal is unfair within the
434 purview of the Mississippi Motor Vehicle Commission Law, and the
435 franchise or selling agreement shall continue in effect until
436 final determination of the issues raised in the complaint
437 notwithstanding anything to the contrary contained in the law or
438 in the franchise or selling agreement.

439 4. To resort to or use any false or misleading
440 advertisement in connection with his or its business as such
441 manufacturer, distributor, wholesaler, distributor branch or
442 division, factory branch or division, or wholesaler branch or
443 division, or officer, agent or other representative thereof.

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

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

461 6. To offer to sell or to sell any new motor
462 vehicle to any person, except a wholesaler or distributor, at a
463 lower actual price therefor than the actual price offered and
464 charged to a motor vehicle dealer for the same model vehicle
465 similarly equipped or to utilize any device which results in such
466 lesser actual price.

467 7. To offer to sell or to sell parts and/or
468 accessories to any new motor vehicle dealer for use in his own
469 business for the purpose of repairing or replacing the same or a
470 comparable part or accessory, at a lower actual price therefor
471 than the actual price charged to any other new motor vehicle
472 dealer for similar parts and/or accessories for use in his own
473 business. However, it is recognized that certain motor vehicle
474 dealers operate and serve as wholesalers of parts and accessories
475 to retail outlets, and nothing herein contained shall be construed
476 to prevent a manufacturer, distributor or wholesaler, or any agent
477 thereof, from selling to a motor vehicle dealer who operates and
478 serves as a wholesaler of parts and accessories, the parts and
479 accessories as may be ordered by such motor vehicle dealer for
480 resale to retail outlets, at a lower actual price than the actual
481 price charged a motor vehicle dealer who does not operate or serve
482 as a wholesaler of parts and accessories.

483 8. To prevent or attempt to prevent by contract or
484 otherwise any motor vehicle dealer from changing the capital
485 structure of his dealership or the means by or through which he
486 finances the operation of his dealership, provided the dealer at
487 all times meets any capital standards agreed to between the

488 dealership and the manufacturer, distributor or wholesaler,
489 provided such standards are deemed reasonable by the commission.

490 9. To prevent or attempt to prevent by contract or
491 otherwise any motor vehicle dealer or any officer, partner or
492 stockholder of any motor vehicle dealer from selling or
493 transferring any part of the interest of any of them to any other
494 person or persons or party or parties. However, no dealer,
495 officer, partner or stockholder shall have the right to sell,
496 transfer or assign the franchise or any right thereunder without
497 the consent of the manufacturer, distributor or wholesaler which
498 consent shall not be unreasonably withheld.

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

518 11. To require, coerce or attempt to coerce a
519 motor vehicle dealer to refrain from participation in the
520 management of, investment in or the acquisition of any other line

521 of motor vehicles or related products, as long as the motor
522 vehicle dealer maintains a reasonable line of credit for each
523 dealership and the motor vehicle dealer remains in substantial
524 compliance with reasonable facilities' requirements of the
525 manufacturer or distributor. The reasonable facilities'
526 requirements may not include any requirement that a motor vehicle
527 dealer establish or maintain exclusive facilities, personnel or
528 display space when the requirements are unreasonable considering
529 current economic conditions and not otherwise justified by
530 reasonable business considerations. The burden of proving by a
531 preponderance of the evidence that the current economic conditions
532 and reasonable business considerations do not justify exclusive
533 facilities is on the dealer.

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

549 13. To attempt to coerce, or coerce, a motor
550 vehicle dealer to adhere to performance standards that are not
551 applied uniformly to other similarly situated motor vehicle
552 dealers. Any performance standards shall be fair, reasonable,
553 equitable and based upon accurate information. If dealership

554 performance standards are based on a survey, the manufacturer or
555 distributor shall establish the objectivity of the survey process
556 and provide this information to any motor vehicle dealer of the
557 same line or make covered by the survey request. Upon request of
558 the dealer, a manufacturer or distributor shall disclose in
559 writing to the dealer a description of how a performance standard
560 or program is designed and all relevant information pertaining to
561 that dealer used in the application of the performance standard or
562 program to that dealer.

563 14. To increase prices of new motor vehicles which
564 the new motor vehicle dealer had ordered for the ultimate
565 purchasers prior to the dealer's receipt of written official price
566 increase notification. A sales contract signed by the ultimate
567 purchaser that includes model and firm price shall constitute
568 evidence of each such order provided that the vehicle is in fact
569 delivered to that purchaser.

570 (2) Concerning any sale of a motor vehicle or vehicles to
571 the State of Mississippi, or to the several counties or
572 municipalities thereof, or to any other political subdivision
573 thereof, no manufacturer, distributor or wholesaler shall offer
574 any discounts, refunds, or any other similar type inducements to
575 any dealer without making the same offer or offers to all other of
576 its dealers within the state. If the inducements above mentioned
577 are made, the manufacturer, distributor or wholesaler shall give
578 simultaneous notice thereof to all of its dealers within the
579 state.

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

585 (a) A new motor vehicle dealer or agent or employee of
586 such a dealer; or

587 (b) A distributor or an agent or employee of such a
588 distributor.

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

592 **SECTION 5.** Section 63-17-109, Mississippi Code of 1972, is
593 amended as follows:

594 63-17-109. (1) In the event of a proposed sale or transfer
595 of a dealership and the franchise agreement for the dealership
596 contains a right of first refusal in favor of the manufacturer or
597 distributor, notwithstanding the terms of the franchise agreement,
598 the manufacturer or distributor shall be permitted to exercise a
599 right of first refusal to acquire the dealership only if all of
600 the following requirements are met:

601 (a) The manufacturer or distributor sends by certified
602 mail, return receipt requested, or any other reliable means of
603 communication, notice of its intent to exercise its right of first
604 refusal within sixty (60) days of receipt of the executed contract
605 for the proposed sale or transfer and completed application and
606 related documents reasonably requested by the manufacturer or
607 distributor. The manufacturer or distributor shall provide the
608 application and notice of other requirements within fifteen (15)
609 days of request. In no event shall the manufacturer or
610 distributor exercise its right of first refusal more than one
611 hundred twenty (120) days after receipt of the executed contract.
612 The manufacturer or distributor and the applicant shall act in
613 good faith to provide the required information in a timely and
614 expeditious manner.

615 (b) The exercise of the right of first refusal will
616 result in the motor vehicle dealer receiving consideration, terms
617 and conditions that are either the same as or greater than that
618 for which such dealer has contracted for in connection with the
619 proposed transaction.

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

623 (a) A designated family member or members, including
624 the spouse, child or grandchild, spouse of a child or grandchild,
625 brother, sister or parent of the dealer-operator, or one or more
626 motor vehicle dealer owners;

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

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

632 (d) A trust arrangement established or to be
633 established for the purpose of allowing the new motor vehicle
634 dealer to continue to qualify as such pursuant to the
635 manufacturer's or distributor's standards, or provides for the
636 succession of the franchise agreement to designated family members
637 or qualified management in the event of the death or incapacity of
638 the dealer-operator or its principal owner or owners.

639 (3) (a) The manufacturer or distributor shall pay the
640 reasonable expenses, including attorneys' fees which do not exceed
641 the usual, customary and reasonable fees charged for similar work
642 done for other clients, incurred by the proposed owner prior to
643 the exercise of the right of first refusal in negotiating and
644 implementing the contract for the proposed sale of the dealership.
645 The expenses and attorneys' fees shall be paid to the proposed new
646 owner at the time of the closing of the sale at which the
647 manufacturer or distributor exercises its right of first refusal.

648 (b) No payment of * * * expenses and attorneys' fees
649 shall be required if the person claiming reimbursement has not
650 submitted or caused to be submitted an accounting of those
651 expenses within thirty (30) days after the receipt of the
652 manufacturer's or distributor's written request for the

653 accounting. A manufacturer or distributor may request the
654 accounting before exercising its right of first refusal.

655 (4) If the selling dealer discloses the manufacturer's right
656 of first refusal to the proposed owner in writing, the motor
657 vehicle dealer shall not have any liability to any person as a
658 result of a manufacturer or distributor exercising its right of
659 first refusal and the manufacturer or distributor shall assume the
660 defense of the selling motor vehicle dealer for any claims by the
661 proposed owner arising from the exercise of the right of first
662 refusal.

663 (5) If the manufacturer or distributor does not exercise its
664 right of first refusal within the time period set forth in
665 subsection (1)(a), the manufacturer or distributor shall act upon
666 the proposed sale of the franchise promptly and in good faith but
667 in no event more than one hundred twenty (120) days after receipt
668 of the completed application and related documents reasonably
669 requested by the manufacturer or distributor.

670 **SECTION 6.** Section 63-17-119, Mississippi Code of 1972, is
671 amended as follows:

672 63-17-119. (1) Notwithstanding any provision of a franchise
673 agreement to the contrary, if any motor vehicle dealer or
674 dealer-operator incurs pecuniary loss due to a violation of the
675 Mississippi Motor Vehicle Commission Law by a manufacturer or
676 distributor, the motor vehicle dealer or dealer-operator may bring
677 suit in a court of competent jurisdiction and recover damages,
678 together with costs, including reasonable attorneys' fees.

679 (2) Venue for any proceeding arising from the franchise
680 agreement shall be in Mississippi and shall be consistent with
681 Mississippi law. It is the public policy of this state that venue
682 provided for in this section may not be modified by contract. Any
683 provision contained in the franchise agreement that requires
684 arbitration or litigation to be conducted outside the State of
685 Mississippi shall be void and unenforceable.

686 (3) Notwithstanding any provision in a franchise agreement
687 to the contrary, any requirement that a dealer waive its right to
688 a trial by jury is void and unenforceable.

689 **SECTION 7.** Section 1 of this act shall be codified in
690 Chapter 17 of Title 63, Mississippi Code of 1972.

691 **SECTION 8.** This act shall take effect and be in force from
692 and after July 1, 2006.