

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2970

1 AN ACT TO AMEND SECTION 63-17-57, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT FROM AND AFTER JULY 1, 2006, APPOINTMENTS TO THE
3 MISSISSIPPI MOTOR VEHICLE COMMISSION SHALL BE MADE FROM THE FOUR
4 MISSISSIPPI CONGRESSIONAL DISTRICTS ON A PHASED-IN BASIS; TO BRING
5 FORWARD SECTIONS 63-17-55, 63-17-73, 63-17-95, 63-17-109 AND
6 63-17-119, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 63-17-57, Mississippi Code of 1972, is
9 amended as follows:

10 63-17-57. There is hereby created the Mississippi Motor
11 Vehicle Commission to be composed of eight (8) members, one (1) of
12 whom shall be appointed by the Attorney General from the state at
13 large for a term of four (4) years and one (1) of whom shall be
14 appointed by the Secretary of State from the state at large for a
15 term of four (4) years, and six (6) licensees who shall be
16 appointed by the Governor, one (1) from the state at large and one
17 (1) from each of the five (5) congressional districts of this
18 state for terms of the following duration: the term of the member
19 from the state at large shall expire at the time the incumbent
20 Governor's term expires, the term of the member appointed from the
21 First Congressional District shall expire on June 30, 1973, the
22 term of the member appointed from the Second Congressional
23 District shall expire on June 30, 1974, the term of the member
24 appointed from the Third Congressional District shall expire on
25 June 30, 1976, the term of the member from the Fourth
26 Congressional District shall expire on June 30, 1977, and the term
27 of the member appointed from the Fifth Congressional District
28 shall expire on June 30, 1978. Each member shall serve until his
29 successor is appointed and qualified. At the expiration of the

30 term of the member initially appointed by the Attorney General
31 each successor member shall be appointed for a term of four (4)
32 years by the incumbent Attorney General, and at the expiration of
33 the term of the member appointed by the Secretary of State each
34 successor member shall be appointed for a term of four (4) years
35 by the incumbent Secretary. At the expiration of a term for which
36 each of the initial appointments of the Governor is made, each
37 successor member shall be appointed for a term of seven (7) years
38 except that the term of the member appointed from the state at
39 large shall be coterminous with that of the Governor making the
40 appointment. The members of the commission as constituted on July
41 1, 2006, who are appointed by the Governor and whose terms have
42 not expired shall serve the balance of their terms, after which
43 time the gubernatorial appointments shall be made as follows: The
44 Governor shall appoint one (1) member of the commission from each
45 of the four (4) Mississippi congressional districts as they
46 currently exist, and two (2) from the state at large, and the
47 Governor shall make appointments from the congressional district
48 having the smallest number of commission members until the
49 membership includes one (1) from each congressional district as
50 required.

51 One of the members appointed from the state at large by the
52 Governor shall serve as chairman of the commission and one (1) of
53 the other members appointed by the Governor shall be designated by
54 him to serve as vice chairman. In the absence of the chairman at
55 any meeting of the commission the vice chairman shall preside and
56 perform the duties of the chairman.

57 In the event of a vacancy created by the death, resignation
58 or removal of any member of the commission the vacancy shall be
59 filled by appointment of the Governor, Attorney General or the
60 Secretary of State, as the case may be, for the unexpired portion
61 of the term. All appointments hereunder shall be made with the
62 advice and consent of the Senate.

63 **SECTION 2.** Section 63-17-55, Mississippi Code of 1972, is
64 brought forward as follows:

65 63-17-55. The following words, terms and phrases, when used
66 in the Mississippi Motor Vehicle Commission Law, shall have the
67 meanings respectively ascribed to them in this section, except
68 where the context clearly indicates a different meaning:

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

73 (b) "Motor vehicle dealer" means any person, firm,
74 partnership, copartnership, association, corporation, trust or
75 legal entity, not excluded by subsection (c) of this section, who
76 holds a bona fide contract or franchise in effect with a
77 manufacturer, distributor or wholesaler of new motor vehicles, and
78 a license under the provisions of the Mississippi Motor Vehicle
79 Commission Law, and such duly franchised and licensed motor
80 vehicle dealers shall be the sole and only persons, firms,
81 partnerships, copartnerships, associations, corporations, trusts
82 or legal entities entitled to sell and publicly or otherwise
83 solicit and advertise for sale new motor vehicles as such.

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

85 (i) Receivers, trustees, administrators,
86 executors, guardians or other persons appointed by or acting under
87 judgment, decree or order of any court;

88 (ii) Public officers while performing their duties
89 as such officers;

90 (iii) Employees of persons, corporations or
91 associations enumerated in subsection (c)(i) of this section when
92 engaged in the specific performance of their duties as such
93 employees; or

94 (iv) A motor vehicle manufacturer operating a
95 project as defined in Section 57-75-5(f)(iv)1; and the provisions

96 of the Mississippi Motor Vehicle Commission Law shall not apply
97 to:

98 1. a. Any lease by such a motor vehicle
99 manufacturer of three (3) or fewer motor vehicles at any one time
100 and related vehicle maintenance, of any line of vehicle produced
101 by the manufacturer or its subsidiaries, to any one (1) employee
102 of the motor vehicle manufacturer on a direct basis; or

103 b. Any sale or other disposition of such
104 motor vehicles by the motor vehicle manufacturer at the end of a
105 lease through direct sales to employees of the manufacturer or
106 through an open auction or auction limited to dealers of the
107 manufacturer's vehicle line or its subsidiaries' vehicle lines; or

108 2. Any sale or other disposition by such a
109 motor vehicle manufacturer of motor vehicles for which the
110 manufacturer obtained distinguishing number tags under Section
111 27-19-309(8).

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

115 (e) "Ultimate purchaser" means, with respect to any new
116 motor vehicle, the first person, other than a motor vehicle dealer
117 purchasing in his capacity as such dealer, who in good faith
118 purchases such new motor vehicle for purposes other than for
119 resale.

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

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

127 (h) "Commission" means the Mississippi Motor Vehicle
128 Commission.

129 (i) "Manufacturer" means any person, firm, association,
130 corporation or trust, resident or nonresident, who manufactures or
131 assembles new motor vehicles.

132 (j) "Distributor" or "wholesaler" means any person,
133 firm, association, corporation or trust, resident or nonresident,
134 who in whole or in part sells or distributes new motor vehicles to
135 motor vehicle dealers, or who maintains distributor
136 representatives.

137 (k) "Factory branch" means a branch or division office
138 maintained by a person, firm, association, corporation or trust
139 who manufactures or assembles new motor vehicles for sale to
140 distributors or wholesalers, to motor vehicle dealers, or for
141 directing or supervising, in whole or in part, its
142 representatives.

143 (l) "Distributor branch" means a branch or division
144 office similarly maintained by a distributor or wholesaler for the
145 same purposes a factory branch or division is maintained.

146 (m) "Factory representative" means a representative
147 employed by a person, firm, association, corporation or trust who
148 manufactures or assembles new motor vehicles, or by a factory
149 branch, for the purpose of making or promoting the sale of his,
150 its or their new motor vehicles, or for supervising or contacting
151 his, its or their dealers or prospective dealers.

152 (n) "Distributor representative" means a representative
153 similarly employed by a distributor, distributor branch or
154 wholesaler.

155 (o) "Person" means and includes, individually and
156 collectively, individuals, firms, partnerships, copartnerships,
157 associations, corporations and trusts, or any other forms of
158 business enterprise, or any legal entity.

159 (p) "Good faith" means the duty of each party to any
160 franchise, and all officers, employees or agents thereof, to act
161 in a fair and equitable manner toward each other so as to

162 guarantee the one party freedom from coercion, intimidation or
163 threats of coercion or intimidation from the other party.
164 However, recommendation, endorsement, exposition, persuasion,
165 urging or argument shall not be deemed to constitute a lack of
166 good faith.

167 (q) "Coerce" means the failure to act in good faith in
168 performing or complying with any terms or provisions of the
169 franchise or agreement. However, recommendation, exposition,
170 persuasion, urging or argument shall not be deemed to constitute a
171 lack of good faith.

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

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

178 (t) "Specialty vehicle" means a motor vehicle
179 manufactured by a second stage manufacturer by purchasing motor
180 vehicle components, e.g. frame and drive train, and completing the
181 manufacturer of finished motor vehicles for the purpose of resale
182 with the primary manufacturer warranty unimpaired, to a limited
183 commercial market rather than the consuming public. Specialty
184 vehicles include garbage trucks, ambulances, fire trucks, buses,
185 limousines, hearses and other similar limited purpose vehicles as
186 the commission may by regulation provide.

187 (u) "Auto auction" means (i) any person who provides a
188 place of business or facilities for the wholesale exchange of
189 motor vehicles by and between duly licensed motor vehicle dealers,
190 (ii) any motor vehicle dealer licensed to sell used motor vehicles
191 selling motor vehicles using an auction format but not on
192 consignment, or (iii) any person who provides the facilities for
193 or is in the business of selling in an auction format motor
194 vehicles.

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

198 (w) "Dealer-operator" means the individual designated
199 in the franchise agreement as the operator of the motor vehicle
200 dealership.

201 (x) "Franchise" or "franchise agreement" means a
202 written contract or agreement between a motor vehicle dealer and a
203 manufacturer or its distributor or factory branch by which the
204 motor vehicle dealer is authorized to engage in the business of
205 selling or leasing the specific makes, models or classifications
206 of new motor vehicles marketed or leased by the manufacturer and
207 designated in the agreement or any addendum to such agreement.

208 **SECTION 3.** Section 63-17-73, Mississippi Code of 1972, is
209 brought forward as follows:

210 63-17-73. (1) It is unlawful and a misdemeanor:

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

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

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

235 2. To represent and sell as a new motor vehicle
236 any motor vehicle which has been used and operated for
237 demonstration purposes or which is otherwise a used motor vehicle.

238 3. To resort to or use any false or misleading
239 advertisement in connection with his business as such motor
240 vehicle dealer or motor vehicle salesman.

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

246 1. To order or accept delivery of any motor
247 vehicle or vehicles, appliances, equipment, parts or accessories
248 therefor, or any other commodity or commodities which shall not
249 have been voluntarily ordered by said motor vehicle dealer.

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

254 3. To order for any person any parts, accessories,
255 equipment, machinery, tools, appliances or any commodity
256 whatsoever.

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

259 (d) For a manufacturer, a distributor, a wholesaler, a
260 distributor branch or division, a factory branch or division, or a

261 wholesaler branch or division, or officer, agent or other
262 representative thereof:

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

280 2. To coerce, or attempt to coerce any motor
281 vehicle dealer to enter into any agreement, with such
282 manufacturer, distributor, wholesaler, distributor branch or
283 division, factory branch or division, or wholesaler branch or
284 division, or officer, agent or other representative thereof, or to
285 do any other act prejudicial to said dealer by threatening to
286 cancel any franchise or any contractual agreement existing between
287 such manufacturer, distributor, wholesaler, distributor branch or
288 division, factory branch or division, or wholesaler branch or
289 division, and said dealer. However, good faith notice to any
290 motor vehicle dealer of said dealer's violation of any terms or
291 provisions of such franchise or contractual agreement shall not
292 constitute a violation of this subsection.

293 3. To terminate or cancel the franchise or selling
294 agreement of any such dealer without due cause. The nonrenewal of
295 a franchise or selling agreement, without due cause, shall
296 constitute an unfair termination or cancellation, regardless of
297 the terms or provisions of such franchise or selling agreement.
298 Such manufacturer, distributor, wholesaler, distributor branch or
299 division, factory branch or division, or wholesaler branch or
300 division, or officer, agent or other representative thereof shall
301 notify a motor vehicle dealer in writing, and forward a copy of
302 such notice to the commission, of the termination or cancellation
303 of the franchise or selling agreement of such dealer at least
304 sixty (60) days before the effective date thereof, stating the
305 specific grounds for such termination or cancellation. Such
306 manufacturer, distributor, wholesaler, distributor branch or
307 division, factory branch or division, or wholesaler branch or
308 division, or officer, agent or other representative thereof shall
309 notify a motor vehicle dealer in writing, and forward a copy of
310 such notice to the commission, at least sixty (60) days before the
311 contractual term of his franchise or selling agreement expires
312 that the same will not be renewed, stating the specific grounds
313 for such nonrenewal, in those cases where there is no intention to
314 renew the same. In no event shall the contractual term of any
315 such franchise or selling agreement expire, without the written
316 consent of the motor vehicle dealer involved, prior to the
317 expiration of at least sixty (60) days following such written
318 notice. Any motor vehicle dealer who receives written notice that
319 his franchise or selling agreement is being terminated or
320 cancelled or who receives written notice that his franchise or
321 selling agreement will not be renewed, may, within such sixty-day
322 notice period, file with the commission a verified complaint for
323 its determination as to whether such termination or cancellation
324 or nonrenewal is unfair within the purview of the Mississippi
325 Motor Vehicle Commission Law, and any such franchise or selling

326 agreement shall continue in effect until final determination of
327 the issues raised in such complaint notwithstanding anything to
328 the contrary contained in said law or in such franchise or selling
329 agreement.

330 4. To resort to or use any false or misleading
331 advertisement in connection with his or its business as such
332 manufacturer, distributor, wholesaler, distributor branch or
333 division, factory branch or division, or wholesaler branch or
334 division, or officer, agent or other representative thereof.

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

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

352 6. To offer to sell or to sell any new motor
353 vehicle to any person, except a wholesaler or distributor, at a
354 lower actual price therefor than the actual price offered and
355 charged to a motor vehicle dealer for the same model vehicle
356 similarly equipped or to utilize any device which results in such
357 lesser actual price.

358 7. To offer to sell or to sell parts and/or
359 accessories to any new motor vehicle dealer for use in his own
360 business for the purpose of repairing or replacing the same or a
361 comparable part or accessory, at a lower actual price therefor
362 than the actual price charged to any other new motor vehicle
363 dealer for similar parts and/or accessories for use in his own
364 business. However, it is recognized that certain motor vehicle
365 dealers operate and serve as wholesalers of parts and accessories
366 to retail outlets, and nothing herein contained shall be construed
367 to prevent a manufacturer, distributor or wholesaler, or any agent
368 thereof, from selling to a motor vehicle dealer who operates and
369 serves as a wholesaler of parts and accessories, such parts and
370 accessories as may be ordered by such motor vehicle dealer for
371 resale to retail outlets, at a lower actual price than the actual
372 price charged a motor vehicle dealer who does not operate or serve
373 as a wholesaler of parts and accessories.

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

381 9. To prevent or attempt to prevent by contract or
382 otherwise any motor vehicle dealer or any officer, partner or
383 stockholder of any motor vehicle dealer from selling or
384 transferring any part of the interest of any of them to any other
385 person or persons or party or parties. However, no dealer,
386 officer, partner or stockholder shall have the right to sell,
387 transfer or assign the franchise or any right thereunder without
388 the consent of the manufacturer, distributor or wholesaler.

389 10. To condition unreasonably the renewal or
390 extension of a franchise on a motor vehicle dealer's substantial

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

408 11. To require, coerce or attempt to coerce a
409 motor vehicle dealer to refrain from participation in the
410 management of, investment in or the acquisition of any other line
411 of motor vehicles or related products, as long as the motor
412 vehicle dealer maintains a reasonable line of credit for each
413 dealership and the motor vehicle dealer remains in substantial
414 compliance with reasonable facilities' requirements of the
415 manufacturer or distributor. The reasonable facilities'
416 requirements may not include any requirement that a motor vehicle
417 dealer establish or maintain exclusive facilities, personnel or
418 display space when the requirements are unreasonable considering
419 current economic conditions and not otherwise justified by
420 reasonable business considerations. The burden of proving by a
421 preponderance of the evidence that the current economic conditions
422 and reasonable business considerations do not justify exclusive
423 facilities is on the dealer.

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

439 13. To attempt to coerce, or coerce, a motor
440 vehicle dealer to adhere to performance standards that are not
441 applied uniformly to other similarly situated motor vehicle
442 dealers. Any performance standards shall be fair, reasonable,
443 equitable and based upon accurate information. If dealership
444 performance standards are based on a survey, the manufacturer or
445 distributor shall establish the objectivity of the survey process
446 and provide this information to any motor vehicle dealer of the
447 same line or make covered by the survey request. Upon request of
448 the dealer, a manufacturer or distributor shall disclose in
449 writing to the dealer a description of how a performance standard
450 or program is designed and all relevant information pertaining to
451 that dealer used in the application of the performance standard or
452 program to that dealer.

453 (2) Concerning any sale of a motor vehicle or vehicles to
454 the State of Mississippi, or to the several counties or
455 municipalities thereof, or to any other political subdivision
456 thereof, no manufacturer, distributor or wholesaler shall offer

457 any discounts, refunds, or any other similar type inducements to
458 any dealer without making the same offer or offers to all other of
459 its dealers within the state. If such inducements above mentioned
460 are made, the manufacturer, distributor or wholesaler shall give
461 simultaneous notice thereof to all of its dealers within the
462 state.

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

468 (a) A new motor vehicle dealer or agent or employee of
469 such a dealer; or

470 (b) A distributor or an agent or employee of such a
471 distributor.

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

475 **SECTION 4.** Section 63-17-95, Mississippi Code of 1972, is
476 brought forward as follows:

477 63-17-95. (1) All parties whose rights may be affected at
478 any hearing before the commission shall have the right to appear
479 personally and by counsel, to cross-examine witnesses appearing
480 against them, and to produce evidence and witnesses in their own
481 behalf. The commission shall make and keep a record of each such
482 hearing and shall provide a transcript thereof to any interested
483 party upon his request and at his expense. Testimony taken at all
484 such hearings shall be taken either stenographically or by
485 machine.

486 (2) Witnesses who testify at any hearing before the
487 commission shall testify under oath. The form of the oath or
488 affirmation shall be in the form or to the effect following: "You
489 do solemnly swear (or affirm) that the evidence you shall give as

490 a witness at this hearing shall be the truth, the whole truth, and
491 nothing but the truth; so help you God."

492 (3) Any member of the commission may administer oaths or
493 affirmations to witnesses testifying before the commission.

494 (4) The commission shall prescribe its rules of order or
495 procedure in hearings or other proceedings before it. However,
496 such rules of order or procedure shall not be in conflict or
497 contrary to the provisions of law governing hearings before the
498 commission, and appeals therefrom.

499 (5) All decisions of the commission with respect to the
500 hearings shall be incorporated into orders of the commission and
501 spread upon its minutes.

502 (6) The commission may apply to the chancery court of the
503 county or to the chancery court of the judicial district of the
504 county, or to any chancellor of any such court in vacation, to
505 which its order is appealable under the provisions of Section
506 63-17-99 for the enforcement of such order by injunction.

507 **SECTION 5.** Section 63-17-109, Mississippi Code of 1972, is
508 brought forward as follows:

509 63-17-109. (1) In the event of a proposed sale or transfer
510 of a dealership and the franchise agreement for such dealership
511 contains a right of first refusal in favor of the manufacturer or
512 distributor, notwithstanding the terms of the franchise agreement,
513 the manufacturer or distributor shall be permitted to exercise a
514 right of first refusal to acquire the dealership only if all of
515 the following requirements are met:

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

521 (b) The exercise of the right of first refusal will
522 result in the motor vehicle dealer receiving consideration, terms

523 and conditions that are either the same as or greater than that
524 for which such dealer has contracted for in connection with the
525 proposed transaction.

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

529 (a) A designated family member or members, including
530 the spouse, child or grandchild, spouse of a child or grandchild,
531 brother, sister or parent of the dealer-operator, or one or more
532 motor vehicle dealer owners;

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

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

538 (d) A trust arrangement established or to be
539 established for the purpose of allowing the new motor vehicle
540 dealer to continue to qualify as such pursuant to the
541 manufacturer's or distributor's standards, or provides for the
542 succession of the franchise agreement to designated family members
543 or qualified management in the event of the death or incapacity of
544 the dealer-operator or its principal owner or owners.

545 (3) (a) The manufacturer or distributor shall pay the
546 reasonable expenses, including attorneys' fees which do not exceed
547 the usual, customary and reasonable fees charged for similar work
548 done for other clients, incurred by the proposed owner prior to
549 the exercise of the right of first refusal in negotiating and
550 implementing the contract for the proposed sale of the dealership.
551 Such expenses and attorneys' fees shall be paid to the proposed
552 new owner at the time of the closing of the sale at which the
553 manufacturer or distributor exercises its right of first refusal.

554 (b) No payment of such expenses and attorneys' fees
555 shall be required if the person claiming reimbursement has not

556 submitted or caused to be submitted an accounting of those
557 expenses within thirty (30) days after the receipt of the
558 manufacturer's or distributor's written request for such an
559 accounting. A manufacturer or distributor may request such an
560 accounting before exercising its right of first refusal.

561 (4) If the selling dealer discloses the manufacturer's right
562 of first refusal to the proposed owner in writing, the motor
563 vehicle dealer shall not have any liability to any person as a
564 result of a manufacturer or distributor exercising its right of
565 first refusal and the manufacturer or distributor shall assume the
566 defense of the selling motor vehicle dealer for any claims by the
567 proposed owner arising from the exercise of the right of first
568 refusal.

569 **SECTION 6.** Section 63-17-119, Mississippi Code of 1972, is
570 brought forward as follows:

571 63-17-119. (1) Notwithstanding any provision of a franchise
572 agreement to the contrary, if any motor vehicle dealer or
573 dealer-operator incurs pecuniary loss due to a violation of the
574 Mississippi Motor Vehicle Commission Law by a manufacturer or
575 distributor, the motor vehicle dealer or dealer-operator may bring
576 suit in a court of competent jurisdiction and recover damages,
577 together with costs, including reasonable attorneys' fees.

578 (2) Venue for any proceeding arising from the franchise
579 agreement shall be in Mississippi and shall be consistent with
580 Mississippi law. It is the public policy of this state that venue
581 provided for in this section may not be modified by contract. Any
582 provision contained in the franchise agreement that requires
583 arbitration or litigation to be conducted outside the State of
584 Mississippi shall be void and unenforceable.

585 **SECTION 7.** This act shall take effect and be in force from
586 and after July 1, 2006.