

By: Representative Wilson

To: Judiciary A

HOUSE BILL NO. 1477

1 AN ACT TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THE REQUIREMENTS OF A MANUFACTURER AND MOTOR VEHICLE
3 DEALER REGARDING A MOTOR VEHICLE SAFETY RECALL; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 63-17-73, Mississippi Code of 1972, is
7 amended as follows:

8 63-17-73. (1) It is unlawful and a misdemeanor:

9 (a) For any person, firm, association, corporation or
10 trust to engage in business as, or serve in the capacity of, or
11 act as a motor vehicle dealer, motor vehicle salesman,
12 manufacturer, distributor, wholesaler, factory branch or division,
13 distributor branch or division, wholesaler branch or division,
14 factory representative or distributor representative, as such, in
15 this state without first obtaining a license therefor as provided
16 in the Mississippi Motor Vehicle Commission Law, regardless of
17 whether or not the person, firm, association, corporation or trust
18 maintains or has a place or places of business in this state. Any
19 person, firm, association, corporation or trust engaging, acting



20 or serving in more than one (1) of the capacities or having more
21 than one (1) place where the business is carried on or conducted
22 shall be required to obtain and hold a current license for each
23 capacity and place of business.

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

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

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

36 (iii) To resort to or use any false or misleading
37 advertisement in connection with his business as a motor vehicle
38 dealer or motor vehicle salesman.

39 (iv) To sell an extended service contract,
40 extended maintenance plan or similar product that is not offered,
41 endorsed or sponsored by a manufacturer or distributor without
42 disclosing to the consumer, orally and in writing, that the
43 offered product is not provided or supported by a manufacturer or
44 distributor.



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

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

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

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

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

63 This paragraph (c) shall not apply to manufacturers of motor
64 homes governed by the provisions of Sections 63-17-201 through
65 63-17-221.

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



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

86 (ii) To coerce, or attempt to coerce any motor
87 vehicle dealer to enter into any agreement, with the manufacturer,
88 distributor, wholesaler, distributor branch or division, factory
89 branch or division, or wholesaler branch or division, or officer,
90 agent or other representative thereof, or to do any other act
91 prejudicial to the dealer by threatening to cancel any franchise
92 or any contractual agreement existing between the manufacturer,
93 distributor, wholesaler, distributor branch or division, factory
94 branch or division, or wholesaler branch or division, and the



95 dealer. However, good-faith notice to any motor vehicle dealer of
96 the dealer's violation of any terms or provisions of the franchise
97 or contractual agreement shall not constitute a violation of this
98 subsection.

99 (iii) To terminate or cancel the franchise or
100 selling agreement of any dealer without due cause. The nonrenewal
101 of a franchise or selling agreement, without due cause, shall
102 constitute an unfair termination or cancellation, regardless of
103 the terms or provisions of such franchise or selling agreement.
104 "Due cause" shall be defined as a breach by the dealer of a
105 material provision of the franchise agreement which breach has not
106 been cured within a reasonable time after the dealer has been
107 given written notice of the breach. The burden of proving that
108 due cause exists shall be upon the party attempting to terminate,
109 cancel or not renew the franchise or selling agreement. The
110 manufacturer, distributor, wholesaler, distributor branch or
111 division, factory branch or division, or wholesaler branch or
112 division, or officer, agent or other representative thereof shall
113 notify a motor vehicle dealer in writing, and forward a copy of
114 the notice to the commission, of the termination or cancellation
115 of the franchise or selling agreement of the dealer at least sixty
116 (60) days before the effective date thereof, stating the specific
117 grounds for such termination or cancellation. The manufacturer,
118 distributor, wholesaler, distributor branch or division, factory
119 branch or division, or wholesaler branch or division, or officer,



120 agent or other representative thereof shall notify a motor vehicle
121 dealer in writing, and forward a copy of the notice to the
122 commission, at least sixty (60) days before the contractual term
123 of his franchise or selling agreement expires that the franchise
124 or selling agreement will not be renewed, stating the specific
125 grounds for the nonrenewal, in those cases where there is no
126 intention to renew the franchise or selling agreement. In no
127 event shall the contractual term of any franchise or selling
128 agreement expire, without the written consent of the motor vehicle
129 dealer involved, prior to the expiration of at least sixty (60)
130 days following such written notice. Any motor vehicle dealer who
131 receives written notice that his franchise or selling agreement is
132 being terminated or cancelled or who receives written notice that
133 his franchise or selling agreement will not be renewed, may,
134 within the sixty-day notice period, file with the commission a
135 verified complaint for its determination as to whether the
136 termination or cancellation or nonrenewal is unfair within the
137 purview of the Mississippi Motor Vehicle Commission Law, and the
138 franchise agreement shall continue in effect until final
139 determination of the issues raised in the complaint
140 notwithstanding anything to the contrary contained in the law or
141 in the franchise or selling agreement.

142 (iv) To require, attempt to require, coerce or
143 attempt to coerce a dealer, by franchise agreement or otherwise,
144 or as a condition to the renewal or continuation of a franchise



145 agreement, to materially change the dealer's method of conducting
146 business, not including its facilities, if the change would impose
147 substantial and unreasonable financial hardship on the business of
148 the motor vehicle dealer in light of the business objective of the
149 proposed change, unless the change is voluntarily agreed to by the
150 dealer for separate and valuable consideration.

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

164 The provisions of this subsection shall not apply to sales to
165 a motor vehicle dealer of any motor vehicle ultimately sold,
166 donated or used by such dealer in a driver education program, to
167 sales to a motor vehicle dealer for resale to any unit of
168 government, federal, state or local, or to bona fide fleet sales.



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

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



193 (viii) To prevent or attempt to prevent by
194 contract or otherwise any motor vehicle dealer or any officer,
195 partner or stockholder of any motor vehicle dealer from selling or
196 transferring any part of the interest of any of them to any other
197 person or persons or party or parties. However, no motor vehicle
198 dealer, officer, partner or stockholder shall have the right to
199 sell, transfer or assign the franchise or any right thereunder
200 without the consent of the manufacturer, distributor or wholesaler
201 which consent shall not be unreasonably withheld.

202 (ix) To condition unreasonably the renewal or
203 extension of a franchise on a motor vehicle dealer's substantial
204 renovation of the motor vehicle dealer's place of business or on
205 the construction, purchase, acquisition or rental of a new place
206 of business by the motor vehicle dealer. The manufacturer shall
207 notify the motor vehicle dealer in writing of its intent to impose
208 such a condition within a reasonable time prior to the effective
209 date of the proposed renewal or extension, but in no case less
210 than one hundred eighty (180) days prior to the renewal or
211 extension. Upon receipt of written notification, a motor vehicle
212 dealer shall have sixty (60) days to file a protest with the
213 commission, and the manufacturer shall demonstrate to the
214 commission the need for the demand in view of the need to service
215 the public and the economic conditions existing in the motor
216 vehicle industry and the market area served by the motor vehicle
217 dealer at the time the action would be required of the motor



218 vehicle dealer. As part of any such condition the manufacturer
219 shall offer the motor vehicle dealer a reasonable initial supply
220 and model mix of motor vehicles to meet the sales levels necessary
221 to support the increased overhead incurred by the motor vehicle
222 dealer by reason of the renovation, construction, purchase or
223 rental of a new place of business consistent with nationally
224 applied standards.

225 (x) To require, coerce or attempt to coerce a
226 motor vehicle dealer to refrain from participation in the
227 management of, investment in, the acquisition of, or the current
228 operation of any other line of motor vehicles or related products,
229 as long as the motor vehicle dealer maintains a reasonable line of
230 credit for each dealership and the motor vehicle dealer remains in
231 substantial compliance with reasonable facilities' requirements of
232 the manufacturer or distributor. The reasonable facilities'
233 requirements may not include any requirement that a motor vehicle
234 dealer establish or maintain exclusive facilities, personnel or
235 display space when the requirements are unreasonable considering
236 current economic conditions in the market area and not otherwise
237 justified by reasonable business considerations. The burden of
238 proving by a preponderance of the evidence that the current
239 economic conditions and reasonable business considerations justify
240 exclusive facilities is on the manufacturer. Voluntary and
241 noncoerced acceptance of such conditions by the motor vehicle



242 dealer in writing for separate and valuable consideration shall
243 not constitute a violation.

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

259 (xii) To condition the sale, transfer, relocation
260 or renewal of a franchise or dealer agreement or to condition
261 sales, services, parts or finance incentives upon site-control
262 agreement; however, voluntary and noncoerced acceptance of such
263 conditions by the motor vehicle dealer in writing, shall not
264 constitute a violation.

265 (xiii) To assign or change a motor vehicle
266 dealer's market area under the franchise or motor vehicle dealer's



267 agreement arbitrarily or without due regard to the present or
268 projected future pattern of motor vehicle sales and registrations
269 within the motor vehicle dealer's market area, and without first
270 having provided the motor vehicle dealer's with written notice of
271 the change in the motor vehicle dealer's market area and a
272 detailed description of the change and reasons therefor.

273 (xiv) To attempt to coerce, or coerce, a motor
274 vehicle dealer to adhere to performance standards that are not
275 applied uniformly to other similarly situated motor vehicle
276 dealers.

277 (xv) To establish any performance standard or
278 program for measuring motor vehicle dealer's performance that may
279 have a material impact on a motor vehicle dealer that is not fair,
280 reasonable and equitable, or applying any such standard or program
281 to a motor vehicle dealer in a manner that is not fair, reasonable
282 and equitable. If dealership performance standards are based on a
283 survey, the manufacturer or distributor shall establish the
284 objectivity of the survey process and provide this information to
285 any motor vehicle dealer covered by the survey request. Within
286 fifteen (15) business days of a request by the motor vehicle
287 dealer, a manufacturer shall disclose in writing to the motor
288 vehicle dealer a description of the performance standard or
289 program and all relevant information used in the application of
290 the performance standard or program to that motor vehicle dealer
291 unless the manufacturer has already provided the information.



292 (xvi) To increase prices of new motor vehicles
293 which the new motor vehicle dealer had ordered for the ultimate
294 purchasers prior to the motor vehicle dealer's receipt of written
295 official price increase notification. A sales contract signed by
296 the ultimate purchaser that includes model and firm price shall
297 constitute evidence of each such order provided that the vehicle
298 is in fact delivered to that purchaser.

299 (xvii) To attempt to require, coerce or attempt to
300 coerce any new motor vehicle dealer to sell, offer to sell or sell
301 exclusively an extended service contract, extended maintenance
302 plan or similar product, including, without limitation, GAP
303 products, offered, endorsed or sponsored by the manufacturer or
304 distributor by any of the following means:

305 1. By an act or statement made by the
306 manufacturer or distributor that will adversely impact the motor
307 vehicle dealer whether it is express or implied; or

308 2. By a provision in a franchise agreement
309 that the motor vehicle dealer shall sell, offer to sell or sell
310 exclusively an extended service contract, extended warranty plan
311 or similar product offered, endorsed or sponsored by the
312 manufacturer or distributor; or

313 3. By measuring the motor vehicle dealer's
314 performance under the franchise agreement based on the sale of
315 extended service contracts, extended maintenance plans or similar



316 products offered, endorsed or sponsored by the manufacturer or
317 distributor; or

318 4. By requiring the motor vehicle dealer to
319 actively promote the sale or extended service contracts, extended
320 maintenance plans or similar products offered, endorsed or
321 sponsored by the manufacturer or distributor.

322 Nothing in this subparagraph shall prohibit a manufacturer or
323 distributor from providing incentive programs to a new motor
324 vehicle dealer who makes the voluntary decision to offer to sell,
325 sell or sell exclusively an extended service contract, extended
326 maintenance plan or similar product offered, endorsed or sponsored
327 by the manufacturer or distributor.

328 (xviii) To require a motor vehicle dealer to
329 provide its customer lists or service files to the manufacturer or
330 distributor, unless necessary for the sale and delivery of a new
331 motor vehicle to a consumer, to validate and pay consumer or
332 dealer incentives, for reasonable marketing purposes, for
333 evaluation of dealer performance, for analytics or for the
334 submission to the franchisor for any services supplied by the
335 franchisee for any claim for warranty parts or repairs. Nothing
336 in this section shall limit the franchisor's ability to require or
337 use customer information to satisfy any safety or recall notice
338 obligation or other legal obligation.

339 (xix) To release or cause to be released a motor
340 vehicle dealer's nonpublic customer information to another motor



341 vehicle dealer unless the franchise has been terminated, the
342 customer has relocated to an address that is outside of the motor
343 vehicle dealer's market area, the customer has transacted business
344 with another motor vehicle dealer of the same brand, a customer
345 has not transacted with the dealer from which a vehicle was
346 purchased for a period of nine (9) months, or the motor vehicle
347 dealer consents to the sharing of customer information with other
348 dealers.

349 (xx) To coerce, attempt to coerce, require or
350 attempt to require any motor vehicle dealer to provide installment
351 financing with a specified financial institution.

352 This paragraph (d) shall not apply to manufacturers of motor
353 homes governed by the provisions of Sections 63-17-201 through
354 63-17-221.

355 (2) Concerning any sale of a motor vehicle or vehicles to
356 the State of Mississippi, or to the several counties or
357 municipalities thereof, or to any other political subdivision
358 thereof, no manufacturer, distributor or wholesaler shall offer
359 any discounts, refunds, or any other similar type inducements to
360 any dealer without making the same offer or offers to all other of
361 its dealers within the state. If the inducements above mentioned
362 are made, the manufacturer, distributor or wholesaler shall give
363 simultaneous notice thereof to all of its dealers within the
364 state.



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

370 (a) A new motor vehicle dealer or agent or employee of
371 such a dealer; or

372 (b) A distributor or an agent or employee of such a
373 distributor.

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

377 (4) For purposes of this subsection, the term "stop-sale"
378 means a notification issued by a manufacturer to its franchised
379 new motor vehicle dealers stating that certain used vehicles in
380 inventory shall not be sold or leased, at either retail or
381 wholesale, due to a federal safety recall for a defect or a
382 noncompliance, or a federal emissions recall.

383 (a) A manufacturer shall compensate its new motor
384 vehicle dealers for all labor and parts required by the
385 manufacturer to perform recall repairs. Compensation for recall
386 repairs shall be reasonable. If parts or a remedy are not
387 reasonably available to perform a recall service or repair on a
388 used vehicle held for sale by a dealer authorized to sell and
389 service new vehicles of the same line-make within thirty (30) days



390 of the manufacturer issuing the initial notice of recall, and the
391 manufacturer has issued a Stop-Sale or Do-Not-Drive order on the
392 vehicle, the manufacturer shall compensate the dealer at a
393 prorated rate of at least one percent (1%) of the value of the
394 vehicle per month beginning on the date that is thirty (30) days
395 after the date on which the Stop-Sale or Do-Not-Drive order was
396 provided to the dealer until the earlier of either of the
397 following:

398 (i) The date the recall or remedy parts are made
399 available; or

400 (ii) The date the dealer sells, trades, or
401 otherwise disposes of the affected used motor vehicle.

402 (b) The value of a used vehicle shall be the average
403 trade-in value for used vehicles as indicated in an independent
404 third-party guide for the year, make, and model, of the recalled
405 vehicle.

406 (c) This section shall apply only to used vehicles
407 subject to safety or emissions recalls pursuant to and recalled in
408 accordance with federal law and regulations adopted thereunder and
409 where a Stop-Sale or Do-Not-Drive order has been issued and repair
410 parts or remedy remain unavailable for thirty (30) days or longer.
411 This section further shall apply only to new motor vehicle dealers
412 holding an affected used vehicle for sale:

413 (i) In inventory at the time the Stop-Sale or
414 Do-Not-Drive order was issued; or



415 (ii) Which was taken in the used vehicle inventory
416 of the dealer as a consumer trade-in incident to the purchase of a
417 new vehicle from the dealer after the Stop-Sale or Do-Not-Drive
418 order was issued; and

419 (iii) That are a line-make that the dealer is
420 franchised to sell or on which the dealer is authorized to perform
421 recall repairs.

422 (d) It shall be a violation of this section for a
423 manufacturer to reduce the amount of compensation otherwise owed
424 to an individual new motor vehicle dealer, whether through a
425 chargeback, removal of the individual dealer from an incentive
426 program or reduction in amount owed under an incentive program
427 solely because the new motor vehicle dealer has submitted a claim
428 for reimbursement under this section. This subsection shall not
429 apply to an action by a manufacturer that is applied uniformly
430 among all dealers of the same line-make in the state.

431 (e) All reimbursement claims made by new motor vehicle
432 dealers pursuant to this section for recall remedies or repairs,
433 or for compensation where no part or repair is reasonably
434 available and the vehicle is subject to a Stop-Sale or
435 Do-Not-Drive order shall be subject to the same limitations and
436 requirements as a warranty reimbursement claim made under
437 63-17-85(j). In the alternative, a manufacturer may compensate
438 its franchised dealers under a national recall compensation
439 program provided the compensation under the program is equal to or



440 greater than that provided under paragraph (b) of this subsection;
441 or the manufacturer and dealer otherwise agree.

442 (f) A manufacturer may direct the manner and method in
443 which a dealer must demonstrate the inventory status of an
444 affected used motor vehicle to determine eligibility under this
445 section, provided that the manner and method may not be unduly
446 burdensome and may not require information that is unduly
447 burdensome to provide.

448 (g) Nothing in this section shall require a
449 manufacturer to provide total compensation to a dealer which would
450 exceed the total average trade-in value of the affected used motor
451 vehicle as originally determined under paragraph (b) of this
452 subsection.

453 (h) Any remedy provided to a dealer under this section
454 is exclusive and may not be combined with any other state or
455 federal recall compensation remedy.

456 **SECTION 2.** This act shall take effect and be in force from
457 and after July 1, 2018.

