

By: Senator(s) Doty

To: Finance

## SENATE BILL NO. 2836

1 AN ACT TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972,  
2 TO MAKE IT UNLAWFUL FOR A MOTOR VEHICLE MANUFACTURER,  
3 DISTRIBUTOR, WHOLESALER, DISTRIBUTOR BRANCH OR DIVISION, FACTORY  
4 BRANCH OR DIVISION, OR WHOLESALER BRANCH OR DIVISION, TO REQUIRE,  
5 A MOTOR VEHICLE DEALER OR SUCCESSOR DEALER TO CONSTRUCT OR  
6 SUBSTANTIALLY ALTER A FACILITY OR PREMISES IF SUCH CONSTRUCTION OR  
7 ALTERATION WOULD BE UNREASONABLE UNDER THE CIRCUMSTANCES, TO  
8 REQUIRE A MOTOR VEHICLE DEALER TO CONSTRUCT OR SUBSTANTIALLY ALTER  
9 A FACILITY OR PREMISES IF THE SAME AREA OF THE FACILITY OR  
10 PREMISES HAS BEEN CONSTRUCTED OR SUBSTANTIALLY ALTERED WITHIN THE  
11 LAST 10 YEARS AND THE CONSTRUCTION OR ALTERATION WAS REQUIRED AND  
12 APPROVED BY THE MANUFACTURER, OR TO REQUIRE A MOTOR VEHICLE DEALER  
13 TO PURCHASE CERTAIN GOODS OR FACILITY CONSTRUCTION FROM A  
14 SPECIFIED VENDOR; TO REQUIRE A MANUFACTURER TO COMPENSATE ITS NEW  
15 MOTOR VEHICLE DEALERS FOR ALL LABOR AND PARTS REQUIRED BY THE  
16 MANUFACTURER TO PERFORM CERTAIN RECALL REPAIRS; AND FOR RELATED  
17 PURPOSES.

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

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

21 63-17-73. (1) It is unlawful and a misdemeanor:

22 (a) For any person, firm, association, corporation or  
23 trust to engage in business as, or serve in the capacity of, or  
24 act as a motor vehicle dealer, motor vehicle salesman,  
25 manufacturer, distributor, wholesaler, factory branch or division,



distributor branch or division, wholesaler branch or division, factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided in the Mississippi Motor Vehicle Commission Law, regardless of whether or not the person, firm, association, corporation or trust maintains or has a place or places of business in this state. Any person, firm, association, corporation or trust engaging, acting or serving in more than one (1) of the capacities or having more than one (1) place where the business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

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

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

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



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

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

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

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

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

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



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

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

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

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



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

112                   (iii) To terminate or cancel the franchise or  
113 selling agreement of any dealer without due cause. The nonrenewal  
114 of a franchise or selling agreement, without due cause, shall  
115 constitute an unfair termination or cancellation, regardless of  
116 the terms or provisions of such franchise or selling agreement.  
117 "Due cause" shall be defined as a breach by the dealer of a  
118 material provision of the franchise agreement which breach has not  
119 been cured within a reasonable time after the dealer has been  
120 given written notice of the breach. The burden of proving that  
121 due cause exists shall be upon the party attempting to terminate,  
122 cancel or not renew the franchise or selling agreement. The  
123 manufacturer, distributor, wholesaler, distributor branch or



124 division, factory branch or division, or wholesaler branch or  
125 division, or officer, agent or other representative thereof shall  
126 notify a motor vehicle dealer in writing, and forward a copy of  
127 the notice to the commission, of the termination or cancellation  
128 of the franchise or selling agreement of the dealer at least sixty  
129 (60) days before the effective date thereof, stating the specific  
130 grounds for such termination or cancellation. The manufacturer,  
131 distributor, wholesaler, distributor branch or division, factory  
132 branch or division, or wholesaler branch or division, or officer,  
133 agent or other representative thereof shall notify a motor vehicle  
134 dealer in writing, and forward a copy of the notice to the  
135 commission, at least sixty (60) days before the contractual term  
136 of his franchise or selling agreement expires that the franchise  
137 or selling agreement will not be renewed, stating the specific  
138 grounds for the nonrenewal, in those cases where there is no  
139 intention to renew the franchise or selling agreement. In no  
140 event shall the contractual term of any franchise or selling  
141 agreement expire, without the written consent of the motor vehicle  
142 dealer involved, prior to the expiration of at least sixty (60)  
143 days following such written notice. Any motor vehicle dealer who  
144 receives written notice that his franchise or selling agreement is  
145 being terminated or cancelled or who receives written notice that  
146 his franchise or selling agreement will not be renewed, may,  
147 within the sixty-day notice period, file with the commission a  
148 verified complaint for its determination as to whether the



149 termination or cancellation or nonrenewal is unfair within the  
150 purview of the Mississippi Motor Vehicle Commission Law, and the  
151 franchise agreement shall continue in effect until final  
152 determination of the issues raised in the complaint  
153 notwithstanding anything to the contrary contained in the law or  
154 in the franchise or selling agreement.

155 (iv) To require, attempt to require, coerce or  
156 attempt to coerce a dealer, by franchise agreement or otherwise,  
157 or as a condition to the renewal or continuation of a franchise  
158 agreement, to materially change the dealer's method of conducting  
159 business, not including its facilities, if the change would impose  
160 substantial and unreasonable financial hardship on the business of  
161 the motor vehicle dealer in light of the business objective of the  
162 proposed change, unless the change is voluntarily agreed to by the  
163 dealer for separate and valuable consideration.

164 (v) To offer to sell or to sell any new motor  
165 vehicle to any motor vehicle dealer at a lower actual price  
166 therefor than the actual price charged to any other motor vehicle  
167 dealer for the same model vehicle similarly equipped or to utilize  
168 any device, including, but not limited to, sales promotion plans  
169 or programs which result in such lesser actual price. The  
170 provisions of this subparagraph shall not apply so long as a  
171 manufacturer, distributor or wholesaler, or any agent thereof,  
172 offers to sell or sells new motor vehicles to all motor vehicle  
173 dealers at the same price. This subparagraph shall not be



174 construed to prevent the offering of volume discounts if such  
175 discounts are equally available to all franchised motor vehicle  
176 dealers of the same line or make in this state.

177       The provisions of this subsection shall not apply to sales to  
178 a motor vehicle dealer of any motor vehicle ultimately sold,  
179 donated or used by such dealer in a driver education program, to  
180 sales to a motor vehicle dealer for resale to any unit of  
181 government, federal, state or local, or to bona fide fleet sales.

182               (vi) To offer to sell or to sell parts and/or  
183 accessories to any new motor vehicle dealer for use in his own  
184 business for the purpose of repairing or replacing the same or a  
185 comparable part or accessory, at a lower actual price therefor  
186 than the actual price charged to any other new motor vehicle  
187 dealer for similar parts and/or accessories for use in his own  
188 business. However, it is recognized that certain motor vehicle  
189 dealers operate and serve as wholesalers of parts and accessories  
190 to retail outlets, and nothing herein contained shall be construed  
191 to prevent a manufacturer, distributor or wholesaler, or any agent  
192 thereof, from selling to a motor vehicle dealer who operates and  
193 serves as a wholesaler of parts and accessories, the parts and  
194 accessories as may be ordered by such motor vehicle dealer for  
195 resale to retail outlets, at a lower actual price than the actual  
196 price charged a motor vehicle dealer who does not operate or serve  
197 as a wholesaler of parts and accessories.





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

206                   (viii) To prevent or attempt to prevent by  
207 contract or otherwise any motor vehicle dealer or any officer,  
208 partner or stockholder of any motor vehicle dealer from selling or  
209 transferring any part of the interest of any of them to any other  
210 person or persons or party or parties. However, no motor vehicle  
211 dealer, officer, partner or stockholder shall have the right to  
212 sell, transfer or assign the franchise or any right thereunder  
213 without the consent of the manufacturer, distributor or wholesaler  
214 which consent shall not be unreasonably withheld.

215                   (ix) To condition unreasonably the renewal or  
216 extension of a franchise on a motor vehicle dealer's substantial  
217 renovation of the motor vehicle dealer's place of business or on  
218 the construction, purchase, acquisition or rental of a new place  
219 of business by the motor vehicle dealer. The manufacturer shall  
220 notify the motor vehicle dealer in writing of its intent to impose  
221 such a condition within a reasonable time prior to the effective  
222 date of the proposed renewal or extension, but in no case less



223 than one hundred eighty (180) days prior to the renewal or  
224 extension. Upon receipt of written notification, a motor vehicle  
225 dealer shall have sixty (60) days to file a protest with the  
226 commission, and the manufacturer shall demonstrate to the  
227 commission the need for the demand in view of the need to service  
228 the public and the economic conditions existing in the motor  
229 vehicle industry and the market area served by the motor vehicle  
230 dealer at the time the action would be required of the motor  
231 vehicle dealer. As part of any such condition the manufacturer  
232 shall offer the motor vehicle dealer a reasonable initial supply  
233 and model mix of motor vehicles to meet the sales levels necessary  
234 to support the increased overhead incurred by the motor vehicle  
235 dealer by reason of the renovation, construction, purchase or  
236 rental of a new place of business consistent with nationally  
237 applied standards.

238                   (x) To require, coerce or attempt to coerce a  
239 motor vehicle dealer to refrain from participation in the  
240 management of, investment in, the acquisition of, or the current  
241 operation of any other line of motor vehicles or related products,  
242 as long as the motor vehicle dealer maintains a reasonable line of  
243 credit for each dealership and the motor vehicle dealer remains in  
244 substantial compliance with reasonable facilities' requirements of  
245 the manufacturer or distributor. The reasonable facilities'  
246 requirements may not include any requirement that a motor vehicle  
247 dealer establish or maintain exclusive facilities, personnel or



display space when the requirements are unreasonable considering current economic conditions in the market area and not otherwise justified by reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations justify exclusive facilities is on the manufacturer. Voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing for separate and valuable consideration shall not constitute a violation.

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



272                   (xii) To condition the sale, transfer, relocation  
273 or renewal of a franchise or dealer agreement or to condition  
274 sales, services, parts or finance incentives upon site-control  
275 agreement; however, voluntary and noncoerced acceptance of such  
276 conditions by the motor vehicle dealer in writing, shall not  
277 constitute a violation.

278                   (xiii) To assign or change a motor vehicle  
279 dealer's market area under the franchise or motor vehicle dealer's  
280 agreement arbitrarily or without due regard to the present or  
281 projected future pattern of motor vehicle sales and registrations  
282 within the motor vehicle dealer's market area, and without first  
283 having provided the motor vehicle dealer's with written notice of  
284 the change in the motor vehicle dealer's market area and a  
285 detailed description of the change and reasons therefor.

286                   (xiv) To attempt to coerce, or coerce, a motor  
287 vehicle dealer to adhere to performance standards that are not  
288 applied uniformly to other similarly situated motor vehicle  
289 dealers.

290                   (xv) To establish any performance standard or  
291 program for measuring motor vehicle dealer's performance that may  
292 have a material impact on a motor vehicle dealer that is not fair,  
293 reasonable and equitable, or applying any such standard or program  
294 to a motor vehicle dealer in a manner that is not fair, reasonable  
295 and equitable. If dealership performance standards are based on a  
296 survey, the manufacturer or distributor shall establish the



objectivity of the survey process and provide this information to any motor vehicle dealer covered by the survey request. Within fifteen (15) business days of a request by the motor vehicle dealer, a manufacturer shall disclose in writing to the motor vehicle dealer a description of the performance standard or program and all relevant information used in the application of the performance standard or program to that motor vehicle dealer unless the manufacturer has already provided the information.

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

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

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



321                   2. By a provision in a franchise agreement  
322 that the motor vehicle dealer shall sell, offer to sell or sell  
323 exclusively an extended service contract, extended warranty plan  
324 or similar product offered, endorsed or sponsored by the  
325 manufacturer or distributor; or

326                   3. By measuring the motor vehicle dealer's  
327 performance under the franchise agreement based on the sale of  
328 extended service contracts, extended maintenance plans or similar  
329 products offered, endorsed or sponsored by the manufacturer or  
330 distributor; or

331                   4. By requiring the motor vehicle dealer to  
332 actively promote the sale or extended service contracts, extended  
333 maintenance plans or similar products offered, endorsed or  
334 sponsored by the manufacturer or distributor.

335           Nothing in this subparagraph shall prohibit a manufacturer or  
336 distributor from providing incentive programs to a new motor  
337 vehicle dealer who makes the voluntary decision to offer to sell,  
338 sell or sell exclusively an extended service contract, extended  
339 maintenance plan or similar product offered, endorsed or sponsored  
340 by the manufacturer or distributor.

341                   (xviii) To require a motor vehicle dealer to  
342 provide its customer lists or service files to the manufacturer or  
343 distributor, unless necessary for the sale and delivery of a new  
344 motor vehicle to a consumer, to validate and pay consumer or  
345 dealer incentives, for reasonable marketing purposes, for



evaluation of dealer performance, for analytics or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this section shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(xix) To release or cause to be released a motor vehicle dealer's nonpublic customer information to another motor vehicle dealer unless the franchise has been terminated, the customer has relocated to an address that is outside of the motor vehicle dealer's market area, the customer has transacted business with another motor vehicle dealer of the same brand, a customer has not transacted with the dealer from which a vehicle was purchased for a period of nine (9) months, or the motor vehicle dealer consents to the sharing of customer information with other dealers.

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

(xxi) To require, coerce or attempt to coerce a dealer or successor dealer to construct or substantially alter a facility or premises if such construction or alteration would be unreasonable under the circumstances.

(xxii) To require, coerce or attempt to coerce a dealer or successor dealer to construct or substantially alter a



facility or premises if the same area of the facility or premises  
has been constructed or substantially altered within the last ten  
(10) years and the construction or alteration was required and  
approved by the manufacturer as a part of a program, standard or  
policy, except for improvements made to comply with health or  
safety laws, or to accommodate the technology requirements  
necessary to sell or to service a motor vehicle. As used in this  
subparagraph, "substantially alter" means an alteration that  
substantially impacts the architectural features, characteristics  
or integrity of a structure or lot. The term "substantially  
alter" does not include routine maintenance reasonably necessary  
to maintain a dealership in attractive condition, or items  
directly protected by federal intellectual property rights of the  
manufacturer. If, during such ten-year period, the manufacturer  
revises an existing, or establishes a new program, standard,  
policy, bonus, incentive, rebate, or other benefit for the  
construction or substantial alteration of a dealership facility or  
premises, a motor vehicle dealer who completed a facility as a  
part of a prior program, standard or policy within the ten-year  
period and elects not to comply with the applicant's or  
manufacturer's requirements under the revised or new program,  
standard or facility-related policy will not be eligible for any  
bonus, incentive, rebate or other benefit under the revised or new  
program but shall remain entitled to all benefits under the prior  
program according to the terms of the prior program in place when





the dealer began to perform under the program. If the prior program under which the dealer completed a facility construction or substantial alteration does not contain a specific time period during which the manufacturer or distributor must provide payments or benefits to a dealer, then the manufacturer or distributor may not deny the dealer payment or benefits under the terms of that prior program as it existed when the dealer began to perform under the prior program, for the balance of the ten-year period, regardless of whether the manufacturer's or distributor's facility program has been changed or canceled.

(xxiii) To require, coerce or attempt to coerce a dealer located in this state to purchase goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer, from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate or captive finance source, when the dealer may obtain goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer of the same quality, material and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor or affiliate for the use of the dealers selected vendor. Goods shall include signs or sign components to be purchased or leased by the dealer which are not trademarked or otherwise directly protected



421 by the federal intellectual property rights of the manufacturer.  
422 The approval by the manufacturer, distributor or affiliate may not  
423 be unreasonably withheld. Goods does not include moveable  
424 displays, brochures and promotional materials containing material  
425 subject to the intellectual property rights of a manufacturer or  
426 distributor, or special tools as reasonably required by the  
427 manufacturer, or parts to be used in repairs under warranty or  
428 recall obligations of a manufacturer or distributor. If the  
429 manufacturer, distributor or affiliate claims that a vendor chosen  
430 by the dealer cannot supply goods or facility construction or  
431 maintenance services for items not trademarked or otherwise  
432 directly protected by federal intellectual property rights of the  
433 manufacturer which are the same quality, material and design, the  
434 dealer may file a protest with the commission. When a protest is  
435 filed, the commission shall promptly inform the manufacturer,  
436 distributor, affiliate or captive finance source that a protest  
437 has been filed. The commission shall conduct a hearing on the  
438 merits of the protest within ninety (90) days following the filing  
439 of a response to the protest. The manufacturer, distributor or  
440 affiliate shall bear the burden of proving that the goods or  
441 facility construction or maintenance services for items not  
442 trademarked or otherwise directly protected by federal  
443 intellectual property rights of the manufacturer chosen by the  
444 dealer are not of the same quality, material or design to those  
445 required by the manufacturer, distributor or affiliate.



446           This paragraph (d) shall not apply to manufacturers of motor  
447 homes governed by the provisions of Sections 63-17-201 through  
448 63-17-221.

449           (2) Concerning any sale of a motor vehicle or vehicles to  
450 the State of Mississippi, or to the several counties or  
451 municipalities thereof, or to any other political subdivision  
452 thereof, no manufacturer, distributor or wholesaler shall offer  
453 any discounts, refunds, or any other similar type inducements to  
454 any dealer without making the same offer or offers to all other of  
455 its dealers within the state. If the inducements above mentioned  
456 are made, the manufacturer, distributor or wholesaler shall give  
457 simultaneous notice thereof to all of its dealers within the  
458 state.

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

464                   (a) A new motor vehicle dealer or agent or employee of  
465 such a dealer; or

466                   (b) A distributor or an agent or employee of such a  
467 distributor.

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



471       (4) (a) For purposes of this subsection, the term  
472 "stop-sale" or "do-not-drive order" means a notification issued by  
473 a manufacturer to its franchised new motor vehicle dealers stating  
474 that certain used vehicles in inventory shall not be sold or  
475 leased, at either retail or wholesale, due to a federal safety  
476 recall for a defect or noncompliance, or a federal emissions  
477 recall.

478       (b) A manufacturer shall compensate its new motor  
479 vehicle dealers for all labor and parts required by the  
480 manufacturer to perform recall repairs. Compensation for recall  
481 repairs shall be reasonable. If parts or a remedy are not  
482 reasonably available to perform a recall service or repair on a  
483 used vehicle held for sale by a dealer authorized to sell and  
484 service new vehicles of the same line-make within thirty (30) days  
485 of the manufacturer issuing the initial notice of recall, and the  
486 manufacturer has issued a stop-sale or do-not-drive order on the  
487 vehicle, the manufacturer shall compensate the dealer at a  
488 prorated rate of at least one percent (1%) of the value of the  
489 vehicle per month beginning on the date that is thirty (30) days  
490 after the date on which the stop-sale or do-not-drive order was  
491 provided to the dealer until the earlier of either of the  
492 following:

493       (i) The date the recall or remedy parts are made  
494 available; or



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

497 (c) The value of a used vehicle shall be the average  
498 trade-in value for used vehicles as indicated in an independent  
499 third-party guide for the year, make and model, of the recalled  
500 vehicle.

501 (d) This section shall apply only to used vehicles  
502 subject to safety or emissions recalls pursuant to and recalled in  
503 accordance with federal law and regulations adopted thereunder and  
504 where a stop-sale or do-not-drive order has been issued and repair  
505 parts or remedy remain unavailable for thirty (30) days or longer.  
506 This section further shall apply only to new motor vehicle dealers  
507 holding an affected used vehicle for sale:

508 (i) In inventory at the time the stop-sale or  
509 do-not-drive order was issued, or which was taken in the used  
510 vehicle inventory of the dealer as a consumer trade-in incident to  
511 the purchase of a new vehicle from the dealer after the stop-sale  
512 or do-not-drive order was issued; and

513 (ii) That are a line-make that the dealer is  
514 franchised to sell or on which the dealer is authorized to perform  
515 recall repairs.

516 (e) It shall be a violation of this subsection for a  
517 manufacturer to reduce the amount of compensation otherwise owed  
518 to an individual new motor vehicle dealer, whether through a  
519 chargeback, removal of the individual dealer from an incentive



program or reduction in amount owed under an incentive program solely because the new motor vehicle dealer has submitted a claim for reimbursement under this subsection. This subsection shall not apply to an action by a manufacturer that is applied uniformly among all dealers of the same line-make in the state.

(f) All reimbursement claims made by new motor vehicle dealers pursuant to this subsection for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a stop-sale or do-not-drive order, shall be subject to the same limitations and requirements as a warranty reimbursement claim made under Section 63-17-85(j). In the alternative, a manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than that provided under paragraph (b) of this subsection or the manufacturer and dealer otherwise agree.

(g) A manufacturer may direct the manner and method in which a dealer must demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this section; however, the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

(h) Nothing in this subsection shall require a manufacturer to provide total compensation to a dealer which would exceed the total average trade-in value of the affected used motor



545 vehicle as originally determined under paragraph (c) of this  
546 subsection.

547 (i) If a recall remedy for an affected used motor  
548 vehicle is available under a federal statute or regulation, then a  
549 dealer may opt to be compensated under either the federal statute  
550 or regulation or this section but may not combine these remedies.

551 **SECTION 2.** This act shall take effect and be in force from  
552 and after July 1, 2019.

