

By: Senator(s) Doty

To: Highways and  
Transportation

SENATE BILL NO. 2875

1 AN ACT TO REVISE THE MISSISSIPPI MOTOR VEHICLE COMMISSION  
2 LAW; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF 1972, TO  
3 REVISE DEFINITIONS; TO AMEND SECTION 63-17-85, MISSISSIPPI CODE OF  
4 1972, TO REVISE PERFORMANCE OF OBLIGATIONS BETWEEN MANUFACTURERS  
5 AND DEALERS; TO CREATE NEW SECTION 63-17-86, MISSISSIPPI CODE OF  
6 1972, TO SPECIFY OBLIGATIONS OF MANUFACTURERS, DISTRIBUTORS AND  
7 MOTOR VEHICLE DEALERS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 63-17-55, Mississippi Code of 1972, is  
10 amended as follows:

11 63-17-55. The following words, terms and phrases, when used  
12 in the Mississippi Motor Vehicle Commission Law, shall have the  
13 meanings respectively ascribed to them in this section, except  
14 where the context clearly indicates a different meaning:

15 (a) "Motor vehicle" means any motor-driven vehicle of  
16 the sort and kind required to have a Mississippi road or bridge  
17 privilege license, and shall include, but not be limited to,  
18 motorcycles. "Motor vehicle" shall also mean an engine,  
19 transmission, or rear axle manufactured for installation in a  
20 vehicle having as its primary purpose the transport of person or



persons or property on a public highway and having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds, whether or not attached to a vehicle chassis.

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

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

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

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

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



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

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

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

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

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

(e) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his capacity as such dealer, who in good faith



purchases such new motor vehicle for purposes other than for resale.

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

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

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

(i) "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles. The term "manufacturer" includes the terms "distributor, "wholesaler," "factory branch," and "distributor branch".

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

(k) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles for sale to distributors or wholesalers, to motor vehicle dealers, or for



directing or supervising, in whole or in part, its  
representatives.

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

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

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

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

(p) "Good faith" means the duty of each party to any  
franchise agreement, and all officers, employees or agents \* \* \*,  
to act in a fair and equitable manner toward each other in the  
performance of the respective obligations under the franchise  
agreement.

(q) "Coerce" means to compel or attempt to compel by  
threat or duress. However, recommendation, exposition,



persuasion, urging or argument shall not be deemed to constitute coercion.

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

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

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

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



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

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

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

(y) "Net cost" means the price the motor vehicle dealer pays for new motor vehicles, supplies, parts, equipment, signs, furnishings and special tools, minus any applicable discounts or subsidies obtained by the motor vehicle dealer.

(z) "Line or make" means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor or importer offered for sale, lease or distribution pursuant to a common trademark, service mark or brand name; however:

(i) Multiple brand names or marks may constitute a single line or make, but only when included in a common motor vehicle dealer agreement and the manufacturer, distributor or



importer offers such vehicles bearing the multiple names of marks together only, and not separately, to its authorized motor vehicle dealers.

(ii) Motor vehicles bearing a common brand name or mark may constitute separate line or makes when such vehicles are of different vehicle types or are intended for different types of use, provided that either:

1. The manufacturer has expressly defined or covered the subject line or makes of vehicles as separate and distinct line or makes in the applicable dealer agreements; or

2. The manufacturer has consistently characterized the subject vehicles as constituting separate and distinct line or makes to its dealer network.

(aa) "Site-control agreement" or "exclusive use agreement" means an agreement that, regardless of its name, title, form or the parties entering into it, has the effect of:

(i) Controlling the use and development of the premises of a motor vehicle dealer's franchise or facilities;

(ii) Requiring a motor vehicle dealer to establish or maintain an exclusive motor vehicle dealership facility on the premises of the motor vehicle dealer's franchise or facility;

(iii) Restricting the power or authority of the dealer or the lessor, if the motor vehicle dealer leases the dealership premises, to transfer, sell, lease, develop, redevelop or change the use of the dealership premises, whether by sublease,





195 lease, collateral pledge of lease, right of first refusal to  
196 purchase or lease, option to purchase or lease or any similar  
197 arrangement; or

198 (iv) Establishing a valuation process or formula  
199 for the motor vehicle dealership premises that does not allow for  
200 the motor vehicle dealership premises to be transferred, sold or  
201 leased by the motor vehicle dealer at the highest and best use  
202 valuation for the motor vehicle dealership premises.

203 (bb) "Market area" means the area of responsibility set  
204 forth in the franchise agreement.

205 (cc) "Core parts" means those original vehicle  
206 manufacturer parts that are listed in the original vehicle  
207 manufacturer's or distributor's current parts catalog, for which  
208 there is a core charge and which are returnable to the  
209 manufacturer or distributor.

210 (dd) "Pre-delivery preparation obligations" means all  
211 work and services, except warranty work, performed on new motor  
212 vehicles by motor vehicle dealers at the direction of the vehicle  
213 manufacturer before the delivery of the vehicles to the first  
214 retail consumer.

215 (ee) "Warranty work" means all labor performed,  
216 including that of a diagnostic character, and all parts, including  
217 original or replacement parts, and components, including engine,  
218 transmission, and other parts assemblies, installed by motor  
219 vehicle dealers in fulfilling a manufacturer's obligations to



consumers under a new motor vehicle warranty, a recall, or a certified pre-owned warranty, including, but not limited to, the expense of shipping or returning defective parts to the manufacturer when required by the manufacturer. "Warranty work" does not include the incidental expenses incurred in performing labor and installing parts on motor vehicles.

(ff) "Repair order" means an invoice, paid by a retail customer, and closed as of the time of submission, encompassing one or more repairs to a new motor vehicle, and reflecting, in the case of a parts markup submission, the cost of each part and the sale price thereof, and in the case of a labor rate submission, the labor hours allocated to each job and the sale price thereof; an invoice may be submitted in electronic form.

(gg) "Qualified repair" means a repair to a motor vehicle, paid by a retail customer, which would have come within the manufacturer's new motor vehicle warranty but for the motor vehicle having exceeded the chronological or mileage limit of the warranty, and which does not constitute any of the work encompassed by Section 63-17-86(4).

(hh) "Qualified repair order" means a repair order which encompasses, in whole or in part, a qualified repair or repairs.

**SECTION 2.** Section 63-17-85, Mississippi Code of 1972, is amended as follows:



63-17-85. The commission may deny an application for a license, or revoke or suspend a license after it has been granted, for any of the following reasons:

(a) On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in the Mississippi Motor Vehicle Commission Law.

(b) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of Section 63-17-75.

(c) For any willful failure to comply with any provision of said law or with any rule or regulation promulgated by the commission under authority vested in it by said law.

(d) Change of condition after license is granted or failure to maintain the qualifications for license.

(e) Continued or flagrant violation of any of the provisions of said law or of any of the rules or regulations of the commission.

(f) For any willful violation of any law relating to the sale, distribution or financing of motor vehicles.

(g) Willfully defrauding any retail buyer to the buyer's damage.

(h) Willful failure to perform any written agreement with any retail buyer.



268 (i) Being a manufacturer who \* \* \* fails to specify to  
269 its motor vehicle dealers the pre-delivery \* \* \* preparation  
270 obligations of its motor vehicle dealers prior to delivery of new  
271 motor vehicles to retail buyers \* \* \*, including a schedule of the  
272 compensation to be paid to its motor vehicle dealers for the work  
273 and services they shall be required to perform in connection with  
274 such pre-delivery and preparation obligations \* \* \* which shall  
275 constitute any such dealer's only responsibility for product  
276 liability as between such dealer and such manufacturer. The  
277 compensation as set forth on said schedule shall be reasonable and  
278 the reasonableness thereof shall be subject to the \* \* \*  
279 determination by the commission as to reasonableness if a dealer  
280 files a verified complaint with the commission challenging the  
281 reasonableness of the pre-delivery obligations or compensation.  
282 Any mechanical, body or parts defects arising from any express or  
283 implied warranties of any such manufacturer shall constitute such  
284 manufacturer's product or warranty liability.

285 (j) On satisfactory proof that any manufacturer \* \* \*  
286 has unfairly and without due regard to the equities of the parties  
287 or to the detriment of the public welfare failed to properly  
288 fulfill any warranty agreement or to adequately and fairly  
289 compensate any of its motor vehicle dealers for labor \* \* \* and  
290 parts \* \* \* incurred by any such dealer with regard to \* \* \*  
291 warranty \* \* \* work performed by any such dealer, and upon the  
292 written request of a dealer using a format provided by the



293 manufacturer that is consistent with the requirements of Section  
294 63-17-86. In no event shall any such manufacturer \* \* \* pay  
295 to \* \* \* the requesting motor vehicle dealers \* \* \* an hourly  
296 labor rate \* \* \* and parts markup for warranty work that is less  
297 than that charged by \* \* \* the dealer to its retail customers.  
298 Time allowances for the diagnosis and performance of warranty work  
299 and service must be reasonable and adequate for the work to use  
300 the actual time required by a technician of ordinary skill to  
301 perform the work. No such dealer shall charge to its  
302 manufacturer \* \* \* a labor rate \* \* \* in excess of the rate  
303 charged to its retail customers. All claims made by motor vehicle  
304 dealers hereunder for such labor \* \* \* or parts or both \* \* \* must  
305 be paid within thirty (30) days following their approval. All  
306 such claims shall be either approved or disapproved within thirty  
307 (30) days after their receipt, and when any such claim is  
308 disapproved the motor vehicle dealer who submits it shall be  
309 notified in writing of its disapproval within said period, and  
310 each such notice shall state the specific grounds upon which the  
311 disapproval is based.

312 (k) A manufacturer may not recover or attempt to  
313 recover all or any portion of its costs of compensating motor  
314 vehicle dealers for warranty labor or parts, including, but not  
315 limited to: by reduction in the amount due to the dealer; by an  
316 increase in the wholesale price of a motor vehicle; or by separate  
317 charge, surcharge, or other imposition. A manufacturer is not



prohibited from increasing prices to all motor vehicle dealers for  
motor vehicles or parts in the normal course of business. A  
manufacturer shall not take or threaten to take any adverse action  
against a motor vehicle dealer due to reimbursement for warranty  
labor or parts owed to the motor vehicle dealer.

(1) For the commission of any act prohibited by  
Sections 63-17-73 through 63-17- \* \* \* 86 or the failure to  
perform any of the requirements of said sections.

If the commission finds, after notice and hearing in the  
manner provided for under the Mississippi Motor Vehicle Commission  
Law, that there is sufficient cause upon which to base the  
revocation of the license of any licensee involved in the hearing,  
the commission may in lieu of revoking such license assess a civil  
penalty against the guilty licensee not to exceed Ten Thousand  
Dollars (\$10,000.00). If the commission finds, after such notice  
and hearing, that sufficient cause exists for the suspension only  
of the license of any licensee, the commission may in lieu of  
suspending such license assess a civil penalty against the guilty  
licensee of not less than Fifty Dollars (\$50.00) nor more than  
Five Hundred Dollars (\$500.00) per day for each day such license  
would otherwise be suspended. However, the amount of such penalty  
shall not exceed an aggregate of Seven Thousand Five Hundred  
Dollars (\$7,500.00). Failure of the licensee to pay all penalties  
so assessed within the time allowed by the commission for the  
payment thereof, which time shall in no case exceed ninety (90)



343 days from the date of the commission's order making such  
344 assessment, shall, unless an appeal is taken and perfected within  
345 the time and in the manner provided by the Mississippi Motor  
346 Vehicle Commission Law, result in an automatic revocation of such  
347 licensee's license. Any such penalties assessed by the commission  
348 remaining unpaid at the expiration of the time for payment may be  
349 recovered by an action in the name of the commission. All such  
350 actions shall be brought by the Attorney General of the State of  
351 Mississippi upon the written request of the commission to do so,  
352 and shall be brought in the chancery court of the county or the  
353 chancery court of the judicial district of the county to which the  
354 commission's order making such assessment is appealable under the  
355 provisions of Section 63-17-99. All civil penalties assessed and  
356 collected by the commission under the authority of this subsection  
357 shall be deposited in the General Fund of the State Treasury.

358       **SECTION 3.** The following shall be codified as Section  
359 63-17-86, Mississippi Code of 1972:

360       63-17-86.   **Obligations of manufacturers, distributors and**  
361 **motor vehicle dealers; establishment of rate for parts and labor;**  
362 **establishment, rebuttal and protest.** (1) The markup customarily  
363 charged by the dealer for parts or its labor rate may be  
364 established at the election of the dealer by the dealer submitting  
365 to the manufacturer, either by electronic transmission or tangible  
366 delivery in accordance with Section 63-17-85(j), all consecutive  
367 repair orders that include one hundred (100) sequential repair



orders reflecting qualified repairs, or all repair orders closed during any period of ninety (90) consecutive days, whichever produces the fewer number of repair orders, covering repairs made no more than one hundred eighty (180) days before the submission, and declaring the parts markup or labor rate.

(2) The dealer must calculate its labor rate by determining the total charges for labor from the qualified repairs submitted, and dividing that amount by the total number of hours that produced the charges. The dealer must calculate its parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by its total cost for the purchase of such parts, subtracting one (1) from that amount, and multiplying by one hundred (100) to produce a percentage.

(3) A motor vehicle dealer seeking to establish or modify its warranty reimbursement labor rate, parts markup, or both, must no more frequently than once per twelve-month period, submit to the manufacturer:

(a) A single set of repair orders for purposes of calculating both its labor rate and parts markup; or

(b) A set of repair orders for purposes of calculating either only its labor rate or only its parts markup.

(4) In calculating the rate customarily charged by the dealer for parts and labor for purposes of this paragraph, the following shall not be included:





392 (a) Repairs which are the subject of manufacturer  
393 discounts, such as special events, specials, promotions, coupons,  
394 or service campaigns.

395 (b) Parts sold at wholesale.

396 (c) Repairs of motor vehicles owned by the dealer.

397 (d) Routine maintenance, including, but not limited to,  
398 replacements of fluids, filters, batteries, bulbs, belts, nuts,  
399 bolts, or fasteners, unless provided in the course of, and related  
400 to, a qualified repair.

401 (e) Installations of accessories.

402 (f) Replacements of or work on tires, wheels, or  
403 brakes, including alignments, wheel or tire rotations, or  
404 replacements of brake drums, rotors, shoes, or pads.

405 (g) Vehicle reconditioning.

406 (h) Safety or emission inspections required by law.

407 (i) Repairs for which volume discounts have been  
408 negotiated with government agencies or insurers.

409 (j) Repairs of conditions caused by collision, road  
410 hazard, the force of the elements, vandalism, theft, or owner,  
411 operator, or third-party negligence or deliberate act.

412 (k) Parts that do not have individual part numbers.

413 (l) Manufacturer approved and reimbursed goodwill  
414 repairs or reimbursements.

415 (m) Window replacement, window tint, protective film,  
416 or other masking products.



417           (5)   (a)   The submitted parts markup or labor rate shall each  
418   be presumed to be reasonable, and shall go into effect forty-five  
419   (45) days after the manufacturer's receipt of its submission,  
420   unless, within that period, the manufacturer rebuts that  
421   presumption by reasonably substantiating that the submission is  
422   materially inaccurate or is materially unreasonable, and provides  
423   a full explanation of any and all reasons that the submitted  
424   markup or rate is materially inaccurate or materially  
425   unreasonable, evidence validating each such reason, a copy of all  
426   calculations used by it demonstrating any material inaccuracy, and  
427   a proposed adjusted markup or rate, as applicable, based upon the  
428   qualified repair orders submitted by the dealer. In that event,  
429   the manufacturer may not submit more than one such rebuttal to the  
430   dealer, and may not thereafter add to, expand, supplement, or  
431   otherwise modify any element thereof, including, but not limited  
432   to, its grounds for contesting such parts markup or labor rate.

433           (b)   If a manufacturer determines from any set of repair  
434   orders submitted under this subsection (5) that the labor rate or  
435   parts markup calculated under this subsection (5) is substantially  
436   higher or lower than the rate currently on record with the  
437   manufacturer for labor or parts, the manufacturer may request  
438   additional repair orders for a period of either sixty (60) days  
439   before or sixty (60) days after the time period for which the  
440   repair orders were submitted for purposes of an alteration, and  
441   shall have forty-five (45) days from receiving the additional



442 repair orders to rebut the presumption that the dealer's proposed  
443 markup and labor rates are reasonable.

444 (6) If the dealer and the manufacturer do not agree on the  
445 parts markup or labor rate, as the case may be, the dealer may  
446 file a protest with the commission within sixty (60) days of  
447 receiving the manufacturer rejection of the dealer's proposed  
448 parts markup or labor rate. If such a protest is filed, the  
449 commission shall inform the manufacturer of the protest and that a  
450 hearing will be held thereon. In any such hearing, the  
451 manufacturer has the burden of proving by a preponderance of the  
452 evidence that the dealer's submitted parts markup or labor rate,  
453 or both, was materially incomplete, materially inaccurate or was  
454 unreasonable as described in subsection (5) of this section. Any  
455 increase in the dealer's parts markup or labor rate arising from  
456 such proceeding shall be effective retroactively to the date  
457 forty-five (45) days following the manufacturer's receipt of the  
458 original submission to the manufacturer. If the motor vehicle  
459 dealer prevails, the commission may award reasonable attorney's  
460 fees and expenses to the prevailing party and shall award the full  
461 amount of reimbursement that should have been paid to the motor  
462 vehicle dealer.

463 (7) If a manufacturer furnishes a part or component to a  
464 dealer to use in performing warranty work at reduced or no cost,  
465 the manufacturer must compensate the dealer for the part or  
466 component in the same manner as warranty parts compensation under



467 this section by compensating the dealer on the basis of the  
468 dealer's markup on the cost for the part or component as listed in  
469 the manufacturer's price schedule, less the cost for the part or  
470 component.

471 (8) A manufacturer may not require a dealer to establish the  
472 rate customarily charged by the dealer for parts and labor by an  
473 unduly burdensome or time-consuming method or by requiring  
474 information that is unduly burdensome or time-consuming to  
475 provide.

476 **SECTION 4.** This act shall take effect and be in force from  
477 and after July 1, 2020.

