

By: Senator(s) Gordon

To: Finance

SENATE BILL NO. 2453

1 AN ACT TO AMEND SECTION 63-17-59, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE MEMBERS OF THE MOTOR VEHICLE COMMISSION WHO ARE
 3 QUALIFIED TO SERVE ON THE COMMISSION BY VIRTUE OF BEING THE HOLDER
 4 OF A MOTOR VEHICLE SALESMAN'S LICENSE TO BE EMPLOYED IN A
 5 FULL-TIME CAPACITY AS A MOTOR VEHICLE SALESMAN; TO AMEND SECTION
 6 63-17-73, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROVISION THAT
 7 REQUIRES MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS OR WHOLESALERS
 8 TO OFFER ANY INDUCEMENTS FOR SALES TO STATE OR LOCAL GOVERNMENTS
 9 TO ALL DEALERS WITHIN THE STATE; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 63-17-59, Mississippi Code of 1972, is
 12 amended as follows:

13 63-17-59. Each of the members appointed to the commission
 14 shall be a citizen of the United States and a resident of the
 15 State of Mississippi and a qualified elector of the jurisdiction
 16 from which appointed, and each shall be of good moral character.
 17 The members of the commission initially appointed by the Attorney
 18 General and the Secretary of State and all members subsequently
 19 appointed by them shall never have been engaged in the
 20 manufacture, distribution or sale of motor vehicles and shall not
 21 thereafter be so engaged as long as they are members of the
 22 commission. The members of the commission initially appointed by
 23 the Governor and all such members subsequently appointed by an
 24 incumbent Governor shall be qualified to receive a license under
 25 the provisions of the Mississippi Motor Vehicle Commission Law and
 26 shall be holders of a current license within ninety (90) days
 27 after their respective appointments and shall continue to be
 28 holders of a current license at all times thereafter so long as
 29 they are such members; however, members who qualify by virtue of



30 holding a license as a motor vehicle salesman must be employed as
31 a motor vehicle salesman in a full-time capacity.

32 **SECTION 2.** Section 63-17-73, Mississippi Code of 1972, is
33 amended as follows:

34 63-17-73. (1) It is unlawful and a misdemeanor:

35 (a) For any person, firm, association, corporation or
36 trust to engage in business as, or serve in the capacity of, or
37 act as a motor vehicle dealer, motor vehicle salesman,
38 manufacturer, distributor, wholesaler, factory branch or division,
39 distributor branch or division, wholesaler branch or division,
40 factory representative or distributor representative, as such, in
41 this state without first obtaining a license therefor as provided
42 in the Mississippi Motor Vehicle Commission Law, regardless of
43 whether or not said person, firm, association, corporation or
44 trust maintains or has a place or places of business in this
45 state. Any person, firm, association, corporation or trust
46 engaging, acting or serving in more than one (1) of said
47 capacities or having more than one (1) place where such business
48 is carried on or conducted shall be required to obtain and hold a
49 current license for each capacity and place of business.

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

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

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



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

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

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

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

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

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

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

87 (i) To refuse to deliver in reasonable quantities
88 and within a reasonable time after receipt of dealer's order to
89 any duly licensed motor vehicle dealer having a franchise or
90 contractual arrangement for the retail sale of new motor vehicles
91 sold or distributed by such manufacturer, distributor, wholesaler,
92 distributor branch or division, factory branch or division or
93 wholesale branch or division, any such motor vehicles as are
94 covered by such franchise or contract specifically publicly



95 advertised by such manufacturer, distributor, wholesaler,
96 distributor branch or division, factory branch or division or
97 wholesale branch or division, to be available for immediate
98 delivery. However, the failure to deliver any motor vehicle shall
99 not be considered a violation of this subsection if such failure
100 be due to acts of God, work stoppages or delays due to strikes or
101 labor difficulties, freight embargoes or other causes over which
102 the manufacturer, distributor or wholesaler, or any agent thereof,
103 shall have no control.

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

117 (iii) To terminate or cancel the franchise or
118 selling agreement of any such dealer without due cause. The
119 nonrenewal of a franchise or selling agreement, without due cause,
120 shall constitute an unfair termination or cancellation, regardless
121 of the terms or provisions of such franchise or selling agreement.
122 Such manufacturer, distributor, wholesaler, distributor branch or
123 division, factory branch or division, or wholesaler branch or
124 division, or officer, agent or other representative thereof shall
125 notify a motor vehicle dealer in writing, and forward a copy of
126 such notice to the commission, of the termination or cancellation
127 of the franchise or selling agreement of such dealer at least



128 sixty (60) days before the effective date thereof, stating the
129 specific grounds for such termination or cancellation. Such
130 manufacturer, distributor, wholesaler, distributor branch or
131 division, factory branch or division, or wholesaler branch or
132 division, or officer, agent or other representative thereof shall
133 notify a motor vehicle dealer in writing, and forward a copy of
134 such notice to the commission, at least sixty (60) days before the
135 contractual term of his franchise or selling agreement expires
136 that the same will not be renewed, stating the specific grounds
137 for such nonrenewal, in those cases where there is no intention to
138 renew the same. In no event shall the contractual term of any
139 such franchise or selling agreement expire, without the written
140 consent of the motor vehicle dealer involved, prior to the
141 expiration of at least sixty (60) days following such written
142 notice. Any motor vehicle dealer who receives written notice that
143 his franchise or selling agreement is being terminated or
144 cancelled or who receives written notice that his franchise or
145 selling agreement will not be renewed, may, within such sixty-day
146 notice period, file with the commission a verified complaint for
147 its determination as to whether such termination or cancellation
148 or nonrenewal is unfair within the purview of the Mississippi
149 Motor Vehicle Commission Law, and any such franchise or selling
150 agreement shall continue in effect until final determination of
151 the issues raised in such complaint notwithstanding anything to
152 the contrary contained in said law or in such franchise or selling
153 agreement.

154 (iv) To resort to or use any false or misleading
155 advertisement in connection with his or its business as such
156 manufacturer, distributor, wholesaler, distributor branch or
157 division, factory branch or division, or wholesaler branch or
158 division, or officer, agent or other representative thereof.

159 (v) To offer to sell or to sell any new motor
160 vehicle to any motor vehicle dealer at a lower actual price



161 therefor than the actual price charged to any other motor vehicle
162 dealer for the same model vehicle similarly equipped or to utilize
163 any device, including, but not limited to, sales promotion plans
164 or programs which result in such lesser actual price. The
165 provisions of this subsection shall not apply so long as a
166 manufacturer, distributor or wholesaler, or any agent thereof,
167 offers to sell or sells new motor vehicles to all motor vehicle
168 dealers at the same price. This subsection shall not be construed
169 to prevent the offering of volume discounts if such discounts are
170 equally available to all franchised dealers in this state.

171 The provisions of this subsection shall not apply to sales to
172 a motor vehicle dealer of any motor vehicle ultimately sold,
173 donated or used by said dealer in a driver education program, or
174 to sales to a motor vehicle dealer for resale to any unit of
175 government, federal, state or local.

176 (vi) To offer to sell or to sell any new motor
177 vehicle to any person, except a wholesaler or distributor, at a
178 lower actual price therefor than the actual price offered and
179 charged to a motor vehicle dealer for the same model vehicle
180 similarly equipped or to utilize any device which results in such
181 lesser actual price.

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

205 (ix) To prevent or attempt to prevent by contract
206 or otherwise any motor vehicle dealer or any officer, partner or
207 stockholder of any motor vehicle dealer from selling or
208 transferring any part of the interest of any of them to any other
209 person or persons or party or parties. However, no dealer,
210 officer, partner or stockholder shall have the right to sell,
211 transfer or assign the franchise or any right thereunder without
212 the consent of the manufacturer, distributor or wholesaler.

213 (x) To condition unreasonably the renewal or
214 extension of a franchise on a motor vehicle dealer's substantial
215 renovation of the dealer's place of business or on the
216 construction, purchase, acquisition or rental of a new place of
217 business by the motor vehicle dealer. The manufacturer shall
218 notify the motor vehicle dealer in writing of its intent to impose
219 such a condition within a reasonable time prior to the effective
220 date of the proposed renewal or extension, but in no case less
221 than one hundred eighty (180) days prior to the renewal or
222 extension, and the manufacturer shall demonstrate to the
223 commission the need for such demand in view of the need to service
224 the public and the economic conditions existing in the motor
225 vehicle industry at the time such action would be required of the
226 motor vehicle dealer. As part of any such condition the



227 manufacturer shall offer the motor vehicle dealer a reasonable
228 initial supply and model mix of motor vehicles to meet the sales
229 levels necessary to support the increased overhead incurred by the
230 motor vehicle dealer by reason of such renovation, construction,
231 purchase or rental of a new place of business.

232 (xi) To require, coerce or attempt to coerce a
233 motor vehicle dealer to refrain from participation in the
234 management of, investment in or the acquisition of any other line
235 of motor vehicles or related products, as long as the motor
236 vehicle dealer maintains a reasonable line of credit for each
237 dealership and the motor vehicle dealer remains in substantial
238 compliance with reasonable facilities' requirements of the
239 manufacturer or distributor. The reasonable facilities'
240 requirements may not include any requirement that a motor vehicle
241 dealer establish or maintain exclusive facilities, personnel or
242 display space when the requirements are unreasonable considering
243 current economic conditions and not otherwise justified by
244 reasonable business considerations. The burden of proving by a
245 preponderance of the evidence that the current economic conditions
246 and reasonable business considerations do not justify exclusive
247 facilities is on the dealer.

248 (xii) To fail or refuse to sell or offer to sell
249 to all motor vehicle dealers in a line or make, every motor
250 vehicle sold or offered for sale under the franchise agreement to
251 any motor vehicle dealer of the same line or make; or to
252 unreasonably require a motor vehicle dealer to pay an extra fee,
253 purchase unreasonable advertising displays or any other materials,
254 or to unreasonably require the dealer-operator to remodel,
255 renovate or recondition its existing facilities as a prerequisite
256 to receiving a certain model or series of vehicles. However, the
257 failure to deliver any such motor vehicle shall not be considered
258 a violation of this section if the failure is not arbitrary and is
259 due to a lack of manufacturing capacity or to a strike or labor



260 difficulty, a shortage of materials, a freight embargo or other
261 cause of which the manufacturer or distributor has no control.
262 This provision shall not apply to manufacturers of recreational
263 vehicles.

264 (xiii) To attempt to coerce, or coerce, a motor
265 vehicle dealer to adhere to performance standards that are not
266 applied uniformly to other similarly situated motor vehicle
267 dealers. Any performance standards shall be fair, reasonable,
268 equitable and based upon accurate information. If dealership
269 performance standards are based on a survey, the manufacturer or
270 distributor shall establish the objectivity of the survey process
271 and provide this information to any motor vehicle dealer of the
272 same line or make covered by the survey request. Upon request of
273 the dealer, a manufacturer or distributor shall disclose in
274 writing to the dealer a description of how a performance standard
275 or program is designed and all relevant information pertaining to
276 that dealer used in the application of the performance standard or
277 program to that dealer.

278 (2) Concerning any sale of a motor vehicle or vehicles to
279 the State of Mississippi, or to the several counties or
280 municipalities thereof, or to any other political subdivision
281 thereof, no manufacturer, distributor or wholesaler shall offer
282 any discounts, refunds, or any other similar type inducements to
283 any dealer without making the same offer or offers to all other of
284 its dealers within the state. * * *

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

290 (a) A new motor vehicle dealer or agent or employee of
291 such a dealer; or



292 (b) A distributor or an agent or employee of such a
293 distributor.

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

297 **SECTION 3.** This act shall take effect and be in force from
298 and after July 1, 2003.

