

By: Representative Ward

To: Ways and Means

HOUSE BILL NO. 1360

1 AN ACT TO ESTABLISH RELEVANT MARKET AREAS FOR NEW MOTOR
 2 VEHICLE DEALERS; TO DEFINE CERTAIN TERMS; TO PROVIDE THE
 3 PROCEDURES FOR ESTABLISHING OR RELOCATING NEW MOTOR VEHICLE
 4 DEALERS; TO PROVIDE NOTICE REQUIREMENTS; TO ADDRESS LINE-MAKE
 5 DISCONTINUATION; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF
 6 1972, TO REVISE THE DEFINITION OF MOTOR VEHICLE; TO AMEND SECTION
 7 63-17-57, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN APPOINTMENTS
 8 TO THE MOTOR VEHICLE COMMISSION; TO AMEND SECTION 63-17-73,
 9 MISSISSIPPI CODE OF 1972, TO DEFINE DUE CAUSE; TO REVISE OFFENSES;
 10 TO AMEND SECTION 63-17-95, MISSISSIPPI CODE OF 1972, TO ALLOW
 11 REIMBURSEMENT OF EXPENSES AND ATTORNEY'S FEES IN HEARINGS BEFORE
 12 THE COMMISSION; TO AMEND SECTION 63-17-109, MISSISSIPPI CODE OF
 13 1972, TO REVISE PROVISIONS REGARDING THE RIGHT OF FIRST REFUSAL;
 14 TO AMEND SECTION 63-17-119, MISSISSIPPI CODE OF 1972, TO PROVIDE
 15 THAT ANY REQUIREMENT THAT A DEALER WAIVE ITS RIGHT TO TRIAL IS
 16 VOID; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** (1) For purposes of this section, "relevant
 19 market area" means:

20 (a) For a proposed new motor vehicle dealer or a new
 21 motor vehicle dealer who plans to relocate his or her place of
 22 business in a county having a population which is greater than
 23 sixty thousand (60,000), the area within a radius of ten (10)
 24 miles of the intended site of the proposed or relocated dealer.
 25 The ten-mile distance shall be determined by measuring the
 26 distance between the nearest surveyed boundary of the existing new
 27 motor vehicle dealer's principal place of business and the nearest
 28 surveyed boundary line of the proposed or relocated new motor
 29 vehicle dealer's principal place of business; or

30 (b) For a proposed new motor vehicle dealer or a new
 31 motor vehicle dealer who plans to relocate his or her place of
 32 business in a county having a population which is sixty thousand
 33 (60,000) or less, the area within radius of fifteen (15) miles of
 34 the intended site of the proposed or relocated dealer, or the

35 county line, whichever is closer to the intended site. The
36 fifteen-mile distance shall be determined by measuring the
37 distance between the nearest surveyed boundary line of the
38 existing new motor vehicle dealer's principal place of business
39 and the nearest surveyed boundary line of the proposed or
40 relocated new motor vehicle dealer's principal place of business.

41 (2) As used in this section, "relocate" and "relocation"
42 shall not include the relocation of a new motor vehicle dealer
43 within two (2) miles of its established place of business.

44 (3) Before a franchisor enters into a franchise establishing
45 or relocating a new motor vehicle dealer within a relevant market
46 area where the same line-make is represented or establishes a
47 parts and service outlet utilizing the same trade names and
48 trademarks of the franchise, the franchisor shall give written
49 notice to each new motor vehicle dealer of the same line-make in
50 the relevant market area of its intent to establish an additional
51 dealer, the parts and service outlet, or to relocate an existing
52 dealer within that relevant market area.

53 (4) Within sixty (60) days after receiving the notice
54 provided for in subsection (3) of this section, or within sixty
55 (60) days after the end of any appeal or alternative dispute
56 resolution procedure provided by the franchisor, a new motor
57 vehicle dealer may file a verified complaint before the
58 Mississippi Motor Vehicle Commission pursuant to Section 63-17-91
59 to determine whether good cause exists for the establishing or
60 relocating of a proposed new motor vehicle dealer. The
61 Mississippi Motor Vehicle Commission shall render a decision on
62 the verified complaint within sixty (60) days of its filing. If
63 the Mississippi Motor Vehicle Commission fails to render its
64 decision within said time period, either party may file an appeal
65 pursuant to Section 63-17-99, and the court will conduct a hearing
66 and take evidence, both oral and documentary, in the place of the

67 Mississippi Motor Vehicle Commission and shall render a decision
68 utilizing the factors set forth in subsection (7).

69 (5) This section shall not apply to:

70 (a) The reopening or replacement in a relevant market
71 area of a closed dealership that has been closed within the
72 preceding two (2) years, if the established place of business of
73 the reopened or replacement dealer is within two (2) miles of the
74 established place of business of the closed dealership.

75 (b) The entering into of a renewal, replacement, or
76 succeeding franchise agreement with an existing motor vehicle
77 dealer whose operations will continue at the dealer's then current
78 location; or

79 (c) The relocation of an existing or replacement dealer
80 to a location within the existing or replacement dealer's own
81 relevant market area, provided, however, that the proposed new
82 location is not within a six-mile radius of any other same
83 line-make motor vehicle dealer.

84 (6) Only a dealer into whose relevant market area the
85 proposed new franchise or relocated dealer will be located shall
86 have standing to object to the additional franchise agreement or
87 relocation or to take any other action under this chapter with
88 respect to the proposed appointment or relocation. Such dealer
89 may not protest the relocation of an existing dealer or the
90 establishment of a replacement dealer, however, if the proposed
91 location is further away from the dealer than the relocating or
92 replacement dealer's current or former location.

93 (7) In determining whether good cause exists for
94 establishing or relocating an additional new motor vehicle dealer
95 for the same line-make, the Mississippi Motor Vehicle Commission
96 shall take into consideration the existing circumstances
97 including, but not limited to, the following:

98 (a) Permanency of the investment;

99 (b) Effect on the retail motor vehicle business and the
100 consuming public in the relevant market area;

101 (c) Whether it is injurious or beneficial to the public
102 welfare;

103 (d) Whether the new motor vehicle dealers of the same
104 line-make in that relevant market area are providing adequate
105 competition and convenient consumer care for the motor vehicles of
106 that line-make in the market area, including the adequacy of motor
107 vehicle sales and qualified service personnel;

108 (e) Whether the establishment or relocation of the new
109 motor vehicle dealer in the relevant market area would promote
110 competition;

111 (f) Growth or decline of the population and the number
112 of new motor vehicle registrations in the relevant market area;

113 (g) Effect on the relocating dealer, the establishment
114 of a new dealer, or the establishment of a parts and service
115 outlet and the franchisor of a denial of the dealer's relocation
116 into the relevant market area; and

117 (h) Effect on the objecting dealer of the relocation or
118 establishment of a new proposed franchise location.

119 **SECTION 2.** (1) For purposes of Section 63-17-73, the
120 termination, cancellation or discontinuation of a motor vehicle
121 line-make will be considered to be the cancellation or failure to
122 renew the franchise of a motor vehicle dealer or distributor of
123 that line-make even if that line-make is part of an agreement that
124 includes other line-makes but a manufacturer, importer or
125 distributor may change, add or delete models, specifications,
126 model names, numbers of identifying marks or similar
127 characteristics of motor vehicles that it markets.

128 (2) The cancellation or nonrenewal of a franchise shall not
129 be a violation of Section 63-17-73 if all of the following
130 requirements are met:

131 (a) The motor vehicle dealer or distributor is given
132 notice at least twelve (12) months before the effective date of
133 the cancellation or nonrenewal.

134 (b) The manufacturer, importer or distributor
135 contemporaneously cancels or fails to renew every franchise for
136 the same line-make granted to any dealer or distributor in the
137 United States, the manufacturer, importer or distributor,
138 contemporaneously cancels or fails to renew every franchise for
139 the same line-make granted to any dealer or distributor in this
140 state.

141 (c) If the franchise is a motor vehicle dealer, the
142 dealer receives the termination benefits set forth in paragraph
143 (d).

144 (d) The manufacturer, importer or distributor does the
145 following:

146 (i) Offers or causes to be offered to the motor
147 vehicle dealer or distributor a replacement franchise with
148 reasonable terms and conditions; or

149 (ii) Compensates the dealer or distributor for the
150 actual pecuniary loss caused by the franchise cancellation or
151 nonrenewal but not less than three (3) times the annual fair
152 rental value of the dealership property and improvements. In
153 determining the actual pecuniary loss, the value of any continued
154 service or parts business available to the dealer or distributor
155 for the line-make covered by the franchise shall be considered.
156 If the dealer or distributor and the manufacturer, importer or
157 distributor cannot agree on the amount of compensation to be paid
158 under this section, either may file a declaratory judgment action
159 in a court of competent jurisdiction.

160 (iii) Complies in all respects with the provisions
161 of Section 63-17-141.

162 **SECTION 3.** Section 63-17-55, Mississippi Code of 1972, is
163 amended as follows:

164 63-17-55. The following words, terms and phrases, when used
165 in the Mississippi Motor Vehicle Commission Law, shall have the
166 meanings respectively ascribed to them in this section, except
167 where the context clearly indicates a different meaning:

168 (a) "Motor vehicle" means any motor-driven vehicle of
169 the sort and kind required to have a Mississippi road or bridge
170 privilege license, and shall include, but not be limited to,
171 motorcycles. "Motor vehicle" shall also mean an engine,
172 transmission, or rear axle manufactured for installation in a
173 vehicle having as its primary purpose the transport of person or
174 persons or property on a public highway and having a gross vehicle
175 weight rating of more than sixteen thousand (16,000) pounds,
176 whether or not attached to a vehicle chassis.

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

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

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

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

194 (iii) Employees of persons, corporations or
195 associations enumerated in subsection (c)(i) of this section when

196 engaged in the specific performance of their duties as such
197 employees; or

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

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

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

212 2. Any sale or other disposition by such a
213 motor vehicle manufacturer of motor vehicles for which the
214 manufacturer obtained distinguishing number tags under Section
215 27-19-309(8).

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

219 (e) "Ultimate purchaser" means, with respect to any new
220 motor vehicle, the first person, other than a motor vehicle dealer
221 purchasing in his capacity as such dealer, who in good faith
222 purchases such new motor vehicle for purposes other than for
223 resale.

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

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

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

233 (i) "Manufacturer" means any person, firm, association,
234 corporation or trust, resident or nonresident, who manufactures or
235 assembles new motor vehicles.

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

241 (k) "Factory branch" means a branch or division office
242 maintained by a person, firm, association, corporation or trust
243 who manufactures or assembles new motor vehicles for sale to
244 distributors or wholesalers, to motor vehicle dealers, or for
245 directing or supervising, in whole or in part, its
246 representatives.

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

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

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

259 (o) "Person" means and includes, individually and
260 collectively, individuals, firms, partnerships, copartnerships,

261 associations, corporations and trusts, or any other forms of
262 business enterprise, or any legal entity.

263 (p) "Good faith" means the duty of each party to any
264 franchise, and all officers, employees or agents thereof, to act
265 in a fair and equitable manner toward each other so as to
266 guarantee the one party freedom from coercion, intimidation or
267 threats of coercion or intimidation from the other party.
268 However, recommendation, endorsement, exposition, persuasion,
269 urging or argument shall not be deemed to constitute a lack of
270 good faith.

271 (q) "Coerce" means the failure to act in good faith in
272 performing or complying with any terms or provisions of the
273 franchise or agreement. However, recommendation, exposition,
274 persuasion, urging or argument shall not be deemed to constitute a
275 lack of good faith.

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

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

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

291 (u) "Auto auction" means (i) any person who provides a
292 place of business or facilities for the wholesale exchange of
293 motor vehicles by and between duly licensed motor vehicle dealers,

294 (ii) any motor vehicle dealer licensed to sell used motor vehicles
295 selling motor vehicles using an auction format but not on
296 consignment, or (iii) any person who provides the facilities for
297 or is in the business of selling in an auction format motor
298 vehicles.

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

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

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

312 **SECTION 4.** Section 63-17-57, Mississippi Code of 1972, is
313 amended as follows:

314 63-17-57. There is hereby created the Mississippi Motor
315 Vehicle Commission to be composed of eight (8) members, one (1) of
316 whom shall be appointed by the Attorney General from the state at
317 large for a term of four (4) years and one (1) of whom shall be
318 appointed by the Secretary of State from the state at large for a
319 term of four (4) years, and six (6) licensees who shall be
320 appointed by the Governor, one (1) from the state at large and one
321 (1) from each of the five (5) congressional districts of this
322 state for terms of the following duration: the term of the member
323 from the state at large shall expire at the time the incumbent
324 Governor's term expires, the term of the member appointed from the
325 First Congressional District shall expire on June 30, 1973, the
326 term of the member appointed from the Second Congressional

327 District shall expire on June 30, 1974, the term of the member
328 appointed from the Third Congressional District shall expire on
329 June 30, 1976, the term of the member from the Fourth
330 Congressional District shall expire on June 30, 1977, and the term
331 of the member appointed from the Fifth Congressional District
332 shall expire on June 30, 1978. Each member shall serve until his
333 successor is appointed and qualified. At the expiration of the
334 term of the member initially appointed by the Attorney General
335 each successor member shall be appointed for a term of four (4)
336 years by the incumbent Attorney General, and at the expiration of
337 the term of the member appointed by the Secretary of State each
338 successor member shall be appointed for a term of four (4) years
339 by the incumbent Secretary. At the expiration of a term for which
340 each of the initial appointments of the Governor is made, each
341 successor member shall be appointed for a term of seven (7) years
342 except that the term of the member appointed from the state at
343 large shall be coterminous with that of the Governor making the
344 appointment. The members of the commission as constituted on July
345 1, 2006, who are appointed by the Governor and whose terms have
346 not expired shall serve the balance of their terms, after which
347 time the gubernatorial appointments shall be made as follows: The
348 Governor shall appoint one (1) member of the commission from each
349 of the four (4) congressional districts and two (2) from the state
350 at large.

351 The member appointed from the state at large by the Governor
352 shall serve as chairman of the commission and one (1) of the other
353 members appointed by the Governor shall be designated by him to
354 serve as vice chairman. In the absence of the chairman at any
355 meeting of the commission the vice chairman shall preside and
356 perform the duties of the chairman.

357 In the event of a vacancy created by the death, resignation
358 or removal of any member of the commission the vacancy shall be
359 filled by appointment of the Governor, Attorney General or the

360 Secretary of State, as the case may be, for the unexpired portion
361 of the term. All appointments hereunder shall be made with the
362 advice and consent of the Senate.

363 **SECTION 5.** Section 63-17-73, Mississippi Code of 1972, is
364 amended as follows:

365 63-17-73. (1) It is unlawful and a misdemeanor:

366 (a) For any person, firm, association, corporation or
367 trust to engage in business as, or serve in the capacity of, or
368 act as a motor vehicle dealer, motor vehicle salesman,
369 manufacturer, distributor, wholesaler, factory branch or division,
370 distributor branch or division, wholesaler branch or division,
371 factory representative or distributor representative, as such, in
372 this state without first obtaining a license therefor as provided
373 in the Mississippi Motor Vehicle Commission Law, regardless of
374 whether or not said person, firm, association, corporation or
375 trust maintains or has a place or places of business in this
376 state. Any person, firm, association, corporation or trust
377 engaging, acting or serving in more than one (1) of said
378 capacities or having more than one (1) place where such business
379 is carried on or conducted shall be required to obtain and hold a
380 current license for each capacity and place of business.

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

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

390 2. To represent and sell as a new motor vehicle
391 any motor vehicle which has been used and operated for
392 demonstration purposes or which is otherwise a used motor vehicle.

393 3. To resort to or use any false or misleading
394 advertisement in connection with his business as such motor
395 vehicle dealer or motor vehicle salesman.

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

401 1. To order or accept delivery of any motor
402 vehicle or vehicles, appliances, equipment, parts or accessories
403 therefor, or any other commodity or commodities which shall not
404 have been voluntarily ordered by said motor vehicle dealer.

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

409 3. To order for any person any parts, accessories,
410 equipment, machinery, tools, appliances or any commodity
411 whatsoever.

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

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

418 1. To refuse to deliver in reasonable quantities
419 and within a reasonable time after receipt of dealer's order to
420 any duly licensed motor vehicle dealer having a franchise or
421 contractual arrangement for the retail sale of new motor vehicles
422 sold or distributed by such manufacturer, distributor, wholesaler,
423 distributor branch or division, factory branch or division or
424 wholesale branch or division, any such motor vehicles as are
425 covered by such franchise or contract specifically publicly

426 advertised by such manufacturer, distributor, wholesaler,
427 distributor branch or division, factory branch or division or
428 wholesale branch or division, to be available for immediate
429 delivery. However, the failure to deliver any motor vehicle shall
430 not be considered a violation of this subsection if such failure
431 be due to acts of God, work stoppages or delays due to strikes or
432 labor difficulties, freight embargoes or other causes over which
433 the manufacturer, distributor or wholesaler, or any agent thereof,
434 shall have no control.

435 2. To coerce, or attempt to coerce any motor
436 vehicle dealer to enter into any agreement, with such
437 manufacturer, distributor, wholesaler, distributor branch or
438 division, factory branch or division, or wholesaler branch or
439 division, or officer, agent or other representative thereof, or to
440 do any other act prejudicial to said dealer by threatening to
441 cancel any franchise or any contractual agreement existing between
442 such manufacturer, distributor, wholesaler, distributor branch or
443 division, factory branch or division, or wholesaler branch or
444 division, and said dealer. However, good faith notice to any
445 motor vehicle dealer of said dealer's violation of any terms or
446 provisions of such franchise or contractual agreement shall not
447 constitute a violation of this subsection.

448 3. To terminate or cancel the franchise or selling
449 agreement of any such dealer without due cause. The nonrenewal of
450 a franchise or selling agreement, without due cause, shall
451 constitute an unfair termination or cancellation, regardless of
452 the terms or provisions of such franchise or selling agreement.
453 "Due cause" shall be defined as a breach by the dealer of a
454 material provision of the franchise agreement which breach has not
455 been substantially cured within a reasonable time after the dealer
456 has been given written notice of the breach. The burden of
457 proving that due cause exists shall be upon the party attempting
458 to terminate, cancel or not renew the franchise or selling

459 agreement. Such manufacturer, distributor, wholesaler,
460 distributor branch or division, factory branch or division, or
461 wholesaler branch or division, or officer, agent or other
462 representative thereof shall notify a motor vehicle dealer in
463 writing, and forward a copy of such notice to the commission, of
464 the termination or cancellation of the franchise or selling
465 agreement of such dealer at least sixty (60) days before the
466 effective date thereof, stating the specific grounds for such
467 termination or cancellation. Such manufacturer, distributor,
468 wholesaler, distributor branch or division, factory branch or
469 division, or wholesaler branch or division, or officer, agent or
470 other representative thereof shall notify a motor vehicle dealer
471 in writing, and forward a copy of such notice to the commission,
472 at least sixty (60) days before the contractual term of his
473 franchise or selling agreement expires that the same will not be
474 renewed, stating the specific grounds for such nonrenewal, in
475 those cases where there is no intention to renew the same. In no
476 event shall the contractual term of any such franchise or selling
477 agreement expire, without the written consent of the motor vehicle
478 dealer involved, prior to the expiration of at least sixty (60)
479 days following such written notice. Any motor vehicle dealer who
480 receives written notice that his franchise or selling agreement is
481 being terminated or cancelled or who receives written notice that
482 his franchise or selling agreement will not be renewed, may,
483 within such sixty-day notice period, file with the commission a
484 verified complaint for its determination as to whether such
485 termination or cancellation or nonrenewal is unfair within the
486 purview of the Mississippi Motor Vehicle Commission Law, and any
487 such franchise or selling agreement shall continue in effect until
488 final determination of the issues raised in such complaint
489 notwithstanding anything to the contrary contained in said law or
490 in such franchise or selling agreement.

491 4. To resort to or use any false or misleading
492 advertisement in connection with his or its business as such
493 manufacturer, distributor, wholesaler, distributor branch or
494 division, factory branch or division, or wholesaler branch or
495 division, or officer, agent or other representative thereof.

496 5. To offer to sell or to sell any new motor
497 vehicle to any motor vehicle dealer at a lower actual price
498 therefor than the actual price charged to any other motor vehicle
499 dealer for the same model vehicle similarly equipped or to utilize
500 any device, including, but not limited to, sales promotion plans
501 or programs which result in such lesser actual price. The
502 provisions of this subsection shall not apply so long as a
503 manufacturer, distributor or wholesaler, or any agent thereof,
504 offers to sell or sells new motor vehicles to all motor vehicle
505 dealers at the same price. This subsection shall not be construed
506 to prevent the offering of volume discounts if such discounts are
507 equally available to all franchised dealers in this state.

508 The provisions of this subsection shall not apply to sales to
509 a motor vehicle dealer of any motor vehicle ultimately sold,
510 donated or used by said dealer in a driver education program, or
511 to sales to a motor vehicle dealer for resale to any unit of
512 government, federal, state or local.

513 6. To offer to sell or to sell any new motor
514 vehicle to any person, except a wholesaler or distributor, at a
515 lower actual price therefor than the actual price offered and
516 charged to a motor vehicle dealer for the same model vehicle
517 similarly equipped or to utilize any device which results in such
518 lesser actual price.

519 7. To offer to sell or to sell parts and/or
520 accessories to any new motor vehicle dealer for use in his own
521 business for the purpose of repairing or replacing the same or a
522 comparable part or accessory, at a lower actual price therefor
523 than the actual price charged to any other new motor vehicle

524 dealer for similar parts and/or accessories for use in his own
525 business. However, it is recognized that certain motor vehicle
526 dealers operate and serve as wholesalers of parts and accessories
527 to retail outlets, and nothing herein contained shall be construed
528 to prevent a manufacturer, distributor or wholesaler, or any agent
529 thereof, from selling to a motor vehicle dealer who operates and
530 serves as a wholesaler of parts and accessories, such parts and
531 accessories as may be ordered by such motor vehicle dealer for
532 resale to retail outlets, at a lower actual price than the actual
533 price charged a motor vehicle dealer who does not operate or serve
534 as a wholesaler of parts and accessories.

535 8. To prevent or attempt to prevent by contract or
536 otherwise any motor vehicle dealer from changing the capital
537 structure of his dealership or the means by or through which he
538 finances the operation of his dealership, provided the dealer at
539 all times meets any capital standards agreed to between the
540 dealership and the manufacturer, distributor or wholesaler,
541 provided such standards are deemed reasonable by the Mississippi
542 Motor Vehicle Commission.

543 9. To prevent or attempt to prevent by contract or
544 otherwise any motor vehicle dealer or any officer, partner or
545 stockholder of any motor vehicle dealer from selling or
546 transferring any part of the interest of any of them to any other
547 person or persons or party or parties. However, no dealer,
548 officer, partner or stockholder shall have the right to sell,
549 transfer or assign the franchise or any right thereunder without
550 the consent of the manufacturer, distributor or wholesaler which
551 consent shall not be unreasonably withheld.

552 10. To condition unreasonably the renewal or
553 extension of a franchise on a motor vehicle dealer's substantial
554 renovation of the dealer's place of business or on the
555 construction, purchase, acquisition or rental of a new place of
556 business by the motor vehicle dealer. The manufacturer shall

557 notify the motor vehicle dealer in writing of its intent to impose
558 such a condition within a reasonable time prior to the effective
559 date of the proposed renewal or extension, but in no case less
560 than one hundred eighty (180) days prior to the renewal or
561 extension, and the manufacturer shall demonstrate to the
562 commission the need for such demand in view of the need to service
563 the public and the economic conditions existing in the motor
564 vehicle industry at the time such action would be required of the
565 motor vehicle dealer. As part of any such condition the
566 manufacturer shall offer the motor vehicle dealer a reasonable
567 initial supply and model mix of motor vehicles to meet the sales
568 levels necessary to support the increased overhead incurred by the
569 motor vehicle dealer by reason of such renovation, construction,
570 purchase or rental of a new place of business.

571 11. To require, coerce or attempt to coerce a
572 motor vehicle dealer to refrain from participation in the
573 management of, investment in or the acquisition of any other line
574 of motor vehicles or related products, as long as the motor
575 vehicle dealer maintains a reasonable line of credit for each
576 dealership and the motor vehicle dealer remains in substantial
577 compliance with reasonable facilities' requirements of the
578 manufacturer or distributor. The reasonable facilities'
579 requirements may not include any requirement that a motor vehicle
580 dealer establish or maintain exclusive facilities, personnel or
581 display space when the requirements are unreasonable considering
582 current economic conditions and not otherwise justified by
583 reasonable business considerations. The burden of proving by a
584 preponderance of the evidence that the current economic conditions
585 and reasonable business considerations do not justify exclusive
586 facilities is on the dealer.

587 12. To fail or refuse to sell or offer to sell to
588 all motor vehicle dealers in a line or make, every motor vehicle
589 sold or offered for sale under the franchise agreement to any

590 motor vehicle dealer of the same line or make; or to unreasonably
591 require a motor vehicle dealer to pay an extra fee, purchase
592 unreasonable advertising displays or any other materials, or to
593 unreasonably require the dealer-operator to remodel, renovate or
594 recondition its existing facilities as a prerequisite to receiving
595 a certain model or series of vehicles. However, the failure to
596 deliver any such motor vehicle shall not be considered a violation
597 of this section if the failure is not arbitrary and is due to a
598 lack of manufacturing capacity or to a strike or labor difficulty,
599 a shortage of materials, a freight embargo or other cause of which
600 the manufacturer or distributor has no control. This provision
601 shall not apply to manufacturers of recreational vehicles.

602 13. To attempt to coerce, or coerce, a motor
603 vehicle dealer to adhere to performance standards that are not
604 applied uniformly to other similarly situated motor vehicle
605 dealers. Any performance standards shall be fair, reasonable,
606 equitable and based upon accurate information. If dealership
607 performance standards are based on a survey, the manufacturer or
608 distributor shall establish the objectivity of the survey process
609 and provide this information to any motor vehicle dealer of the
610 same line or make covered by the survey request. Upon request of
611 the dealer, a manufacturer or distributor shall disclose in
612 writing to the dealer a description of how a performance standard
613 or program is designed and all relevant information pertaining to
614 that dealer used in the application of the performance standard or
615 program to that dealer.

616 14. To increase prices of new motor vehicles which
617 the new motor vehicle dealer had ordered for the ultimate
618 purchasers prior to the dealer's receipt of written official price
619 increase notification. A sales contract signed by the ultimate
620 purchaser shall constitute evidence of each such order; provided
621 that the vehicle is in fact delivered to that purchaser.

622 (2) Concerning any sale of a motor vehicle or vehicles to
623 the State of Mississippi, or to the several counties or
624 municipalities thereof, or to any other political subdivision
625 thereof, no manufacturer, distributor or wholesaler shall offer
626 any discounts, refunds, or any other similar type inducements to
627 any dealer without making the same offer or offers to all other of
628 its dealers within the state. If such inducements above mentioned
629 are made, the manufacturer, distributor or wholesaler shall give
630 simultaneous notice thereof to all of its dealers within the
631 state.

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

637 (a) A new motor vehicle dealer or agent or employee of
638 such a dealer; or

639 (b) A distributor or an agent or employee of such a
640 distributor.

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

644 **SECTION 6.** Section 63-17-95, Mississippi Code of 1972, is
645 amended as follows:

646 63-17-95. (1) All parties whose rights may be affected at
647 any hearing before the commission shall have the right to appear
648 personally and by counsel, to cross-examine witnesses appearing
649 against them, and to produce evidence and witnesses in their own
650 behalf. The commission shall make and keep a record of each such
651 hearing and shall provide a transcript thereof to any interested
652 party upon his request and at his expense. Testimony taken at all
653 such hearings shall be taken either stenographically or by
654 machine.

655 (2) Witnesses who testify at any hearing before the
656 commission shall testify under oath. The form of the oath or
657 affirmation shall be in the form or to the effect following: "You
658 do solemnly swear (or affirm) that the evidence you shall give as
659 a witness at this hearing shall be the truth, the whole truth, and
660 nothing but the truth; so help you God."

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

663 (4) The commission shall prescribe its rules of order or
664 procedure in hearings or other proceedings before it. However,
665 such rules of order or procedure shall not be in conflict or
666 contrary to the provisions of law governing hearings before the
667 commission, and appeals therefrom.

668 (5) All decisions of the commission with respect to the
669 hearings shall be incorporated into orders of the commission and
670 spread upon its minutes.

671 (6) The commission may apply to the chancery court of the
672 county or to the chancery court of the judicial district of the
673 county, or to any chancellor of any such court in vacation, to
674 which its order is appealable under the provisions of Section
675 63-17-99 for the enforcement of such order by injunction.

676 (7) Any licensee who prevails on a complaint filed before
677 the commission alleging the failure of another licensee or a
678 manufacturer or distributor to comply with any provision of the
679 Mississippi Motor Vehicle Commission Law or with any rule or
680 regulation promulgated by the commission under its authority
681 vested in it by said law shall be entitled to be reimbursed if
682 reasonable expenses and attorney's fees incurred in the
683 proceedings on the complaint and any appeal with said amounts to
684 be set by the final authority hearing the complaint.

685 **SECTION 7.** Section 63-17-109, Mississippi Code of 1972, is
686 amended as follows:

687 63-17-109. (1) In the event of a proposed sale or transfer
688 of a dealership and the franchise agreement for such dealership
689 contains a right of first refusal in favor of the manufacturer or
690 distributor, notwithstanding the terms of the franchise agreement,
691 the manufacturer or distributor shall be permitted to exercise a
692 right of first refusal to acquire the dealership only if all of
693 the following requirements are met:

694 (a) The manufacturer or distributor sends by certified
695 mail, return receipt requested, or any other reliable means of
696 communication, notice of its intent to exercise its right of first
697 refusal within sixty (60) days of receipt of the contract for the
698 proposed sale or transfer.

699 (b) The exercise of the right of first refusal will
700 result in the motor vehicle dealer receiving consideration, terms
701 and conditions that are either the same as or greater than that
702 for which such dealer has contracted for in connection with the
703 proposed transaction.

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

707 (a) A designated family member or members, including
708 the spouse, child or grandchild, spouse of a child or grandchild,
709 brother, sister or parent of the dealer-operator, or one or more
710 motor vehicle dealer owners;

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

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

716 (d) A trust arrangement established or to be
717 established for the purpose of allowing the new motor vehicle
718 dealer to continue to qualify as such pursuant to the
719 manufacturer's or distributor's standards, or provides for the

720 succession of the franchise agreement to designated family members
721 or qualified management in the event of the death or incapacity of
722 the dealer-operator or its principal owner or owners.

723 (3) (a) The manufacturer or distributor shall pay the
724 reasonable expenses, including attorneys' fees which do not exceed
725 the usual, customary and reasonable fees charged for similar work
726 done for other clients, incurred by the proposed owner prior to
727 the exercise of the right of first refusal in negotiating and
728 implementing the contract for the proposed sale of the dealership.
729 Such expenses and attorneys' fees shall be paid to the proposed
730 new owner at the time of the closing of the sale at which the
731 manufacturer or distributor exercises its right of first refusal.

732 (b) No payment of such expenses and attorneys' fees
733 shall be required if the person claiming reimbursement has not
734 submitted or caused to be submitted an accounting of those
735 expenses within thirty (30) days after the receipt of the
736 manufacturer's or distributor's written request for such an
737 accounting. A manufacturer or distributor may request such an
738 accounting before exercising its right of first refusal.

739 (4) If the selling dealer discloses the manufacturer's right
740 of first refusal to the proposed owner in writing, the motor
741 vehicle dealer shall not have any liability to any person as a
742 result of a manufacturer or distributor exercising its right of
743 first refusal and the manufacturer or distributor shall assume the
744 defense of the selling motor vehicle dealer for any claims by the
745 proposed owner arising from the exercise of the right of first
746 refusal.

747 (5) If the manufacturer or distributor does not exercise its
748 right of first refusal within the time period set forth in
749 subsection (1)(a), the manufacturer or distributor shall act upon
750 the proposed sale of the franchise promptly and in good faith but
751 in no event more than ninety (90) days after receipt of the

752 completed application and related documents reasonably requested
753 by the manufacturer or distributor.

754 **SECTION 8.** Section 63-17-119, Mississippi Code of 1972, is
755 amended as follows:

756 63-17-119. (1) Notwithstanding any provision of a franchise
757 agreement to the contrary, if any motor vehicle dealer or
758 dealer-operator incurs pecuniary loss due to a violation of the
759 Mississippi Motor Vehicle Commission Law by a manufacturer or
760 distributor, the motor vehicle dealer or dealer-operator may bring
761 suit in a court of competent jurisdiction and recover damages,
762 together with costs, including reasonable attorneys' fees.

763 (2) Venue for any proceeding arising from the franchise
764 agreement shall be in Mississippi and shall be consistent with
765 Mississippi law. It is the public policy of this state that venue
766 provided for in this section may not be modified by contract. Any
767 provision contained in the franchise agreement that requires
768 arbitration or litigation to be conducted outside the State of
769 Mississippi shall be void and unenforceable.

770 (3) Notwithstanding any provision in a franchise agreement
771 to the contrary, any requirement that a dealer waive its right to
772 a trial by jury is void and unenforceable.

773 **SECTION 9.** Sections 1 and 1 of this act shall be codified in
774 Chapter 17 of Title 63, Mississippi Code of 1972.

775 **SECTION 10.** This act shall take effect and be in force from
776 and after July 1, 2006.