

By: Representatives Baker, Sykes

To: Judiciary A

HOUSE BILL NO. 872
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT A MOTOR VEHICLE MANUFACTURER, DISTRIBUTOR, WHOLESALER
3 OR ANY FACTORY, BRANCH OR DIVISION THEREOF FROM COERCING A MOTOR
4 VEHICLE DEALER INTO CONSTRUCTING OR SUBSTANTIALLY ALTERING A
5 FACILITY OR PREMISES UNDER CERTAIN CONDITIONS; TO PRESCRIBE
6 STANDARDS FOR MOTOR VEHICLE MANUFACTURERS TO REGULATE COSTS AND
7 MANAGEMENT OF INVENTORY BETWEEN MOTOR VEHICLE MANUFACTURERS AND
8 ITS FRANCHISEES; AND FOR RELATED PURPOSES.

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

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

12 63-17-73. (1) It is unlawful * * *:

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



22 maintains or has a place or places of business in this state. Any
23 person, firm, association, corporation or trust engaging, acting
24 or serving in more than one (1) of the capacities or having more
25 than one (1) place where the business is carried on or conducted
26 shall be required to obtain and hold a current license for each
27 capacity and place of business.

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

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

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

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

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



47 offered product is not provided or supported by a manufacturer or
48 distributor.

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

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

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

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

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

67 This paragraph (c) shall not apply to manufacturers of motor
68 homes governed by the provisions of Sections 63-17-201 through
69 63-17-221.

70 (d) For a manufacturer, a distributor, a wholesaler, a
71 distributor branch or division, a factory branch or division, or a



72 wholesaler branch or division, or officer, agent or other
73 representative thereof:

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

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



97 distributor, wholesaler, distributor branch or division, factory
98 branch or division, or wholesaler branch or division, and the
99 dealer. However, good-faith notice to any motor vehicle dealer of
100 the dealer's violation of any terms or provisions of the franchise
101 or contractual agreement shall not constitute a violation of this
102 subsection.

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



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



146 (iv) To require, attempt to require, coerce or
147 attempt to coerce a dealer, by franchise agreement or otherwise,
148 or as a condition to the renewal or continuation of a franchise
149 agreement, to materially change the dealer's method of conducting
150 business, not including its facilities, if the change would impose
151 substantial and unreasonable financial hardship on the business of
152 the motor vehicle dealer in light of the business objective of the
153 proposed change, unless the change is voluntarily agreed to by the
154 dealer for separate and valuable consideration.

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

168 The provisions of this subsection shall not apply to sales to
169 a motor vehicle dealer of any motor vehicle ultimately sold,
170 donated or used by such dealer in a driver education program, to



171 sales to a motor vehicle dealer for resale to any unit of
172 government, federal, state or local, or to bona fide fleet sales.

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

189 (vii) To prevent or attempt to prevent by contract
190 or otherwise any motor vehicle dealer from changing the capital
191 structure of his dealership or the means by or through which he
192 finances the operation of his dealership, provided the motor
193 vehicle dealer at all times meets any capital standards agreed to
194 between the dealership and the manufacturer, distributor or



195 wholesaler, provided such standards are deemed reasonable by the
196 commission.

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

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



220 vehicle industry and the market area served by the motor vehicle
221 dealer at the time the action would be required of the motor
222 vehicle dealer. As part of any such condition the manufacturer
223 shall offer the motor vehicle dealer a reasonable initial supply
224 and model mix of motor vehicles to meet the sales levels necessary
225 to support the increased overhead incurred by the motor vehicle
226 dealer by reason of the renovation, construction, purchase or
227 rental of a new place of business consistent with nationally
228 applied standards.

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



245 noncoerced acceptance of such conditions by the motor vehicle
246 dealer in writing for separate and valuable consideration shall
247 not constitute a violation.

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

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



269 (xiii) To assign or change a motor vehicle
270 dealer's market area under the franchise or motor vehicle dealer's
271 agreement arbitrarily or without due regard to the present or
272 projected future pattern of motor vehicle sales and registrations
273 within the motor vehicle dealer's market area, and without first
274 having provided the motor vehicle dealer's with written notice of
275 the change in the motor vehicle dealer's market area and a
276 detailed description of the change and reasons therefor.

277 (xiv) To attempt to coerce, or coerce, a motor
278 vehicle dealer to adhere to performance standards that are not
279 applied uniformly to other similarly situated motor vehicle
280 dealers.

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



294 the performance standard or program to that motor vehicle dealer
295 unless the manufacturer has already provided the information.

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

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

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

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

317 3. By measuring the motor vehicle dealer's
318 performance under the franchise agreement based on the sale of



319 extended service contracts, extended maintenance plans or similar
320 products offered, endorsed or sponsored by the manufacturer or
321 distributor; or

322 4. By requiring the motor vehicle dealer to
323 actively promote the sale or extended service contracts, extended
324 maintenance plans or similar products offered, endorsed or
325 sponsored by the manufacturer or distributor.

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

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



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

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

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

360 (xxii) To require, coerce or attempt to coerce a
361 dealer or successor dealer to construct or substantially alter a
362 facility or premises if the same area of the facility or premises
363 has been constructed or substantially altered within the last ten
364 (10) years and the construction or alteration was required and
365 approved by the manufacturer as a part of a program, standard or
366 policy, except for improvements made to comply with health or
367 safety laws, or to accommodate the technology requirements



368 necessary to sell or to service a motor vehicle. As used in this
369 subsection, "substantially alter" means an alteration that
370 substantially impacts the architectural features, characteristics,
371 or integrity of a structure or lot. The term does not include
372 routine maintenance reasonably necessary to maintain a dealership
373 in attractive condition, or items directly protected by federal
374 intellectual property rights of the manufacturer. If, during such
375 ten-year period, the manufacturer revises an existing, or
376 establishes a new program, standard, policy, bonus, incentive,
377 rebate, or other benefit for the construction or substantial
378 alteration of a dealership facility or premises, a motor vehicle
379 dealer who completed a facility as a part of a prior program,
380 standard, or policy within the ten-year period and elects not to
381 comply with the applicant's or manufacturer's requirements under
382 the revised or new program, standard, or facility-related policy
383 will not be eligible for any bonus, incentive, rebate, or other
384 benefit under the revised or new program but shall remain entitled
385 to all benefits under the prior program according to the terms of
386 the prior program in place when the dealer began to perform under
387 the program. If the prior program under which the dealer
388 completed a facility construction or substantial alteration does
389 not contain a specific time period during which the manufacturer
390 or distributor must provide payments or benefits to a dealer, then
391 the manufacturer or distributor may not deny the dealer payment or
392 benefits under the terms of that prior program, as it existed when



393 the dealer began to perform under the prior program, for the
394 balance of the ten-year period, regardless of whether the
395 manufacturer's or distributor's facility program has been changed
396 or canceled.

397 (xxiii) To require, coerce, or attempt to coerce a
398 dealer located in this state to purchase goods or facility
399 construction or maintenance services for items not trademarked or
400 otherwise directly protected by federal intellectual property
401 rights of the manufacturer from a vendor selected, identified, or
402 designated by a manufacturer, distributor, affiliate, or captive
403 finance source when the dealer may obtain goods or facility
404 construction or maintenance services for items not trademarked or
405 otherwise directly protected by federal intellectual property
406 rights of the manufacturer of the same quality, material, and
407 design from a vendor selected by the dealer, provided the dealer
408 obtains prior approval from the manufacturer, distributor or
409 affiliate, for the use of the dealer's selected vendor. Goods
410 shall include signs or sign components to be purchased or leased
411 by the dealer which are not trademarked or otherwise directly
412 protected by the federal intellectual property rights of the
413 manufacturer. Such approval by the manufacturer, distributor or
414 affiliate may not be unreasonably withheld. For purposes of this
415 subdivision, the term "goods" does not include moveable displays,
416 brochures, and promotional materials containing material subject
417 to the intellectual property rights of a manufacturer or



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

438 This paragraph (d) shall not apply to manufacturers of motor
439 homes governed by the provisions of Sections 63-17-201 through
440 63-17-221.

441 (2) Concerning any sale of a motor vehicle or vehicles to
442 the State of Mississippi, or to the several counties or



443 municipalities thereof, or to any other political subdivision
444 thereof, no manufacturer, distributor or wholesaler shall offer
445 any discounts, refunds, or any other similar type inducements to
446 any dealer without making the same offer or offers to all other of
447 its dealers within the state. If the inducements above mentioned
448 are made, the manufacturer, distributor or wholesaler shall give
449 simultaneous notice thereof to all of its dealers within the
450 state.

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

456 (a) A new motor vehicle dealer or agent or employee of
457 such a dealer; or

458 (b) A distributor or an agent or employee of such a
459 distributor.

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

463 (4) (a) For purposes of this subsection, the term
464 "Stop-Sale" or "Do-Not-Drive" order means a notification issued by
465 a manufacturer to its franchised new motor vehicle dealers stating
466 that certain used vehicles in inventory shall not be sold or
467 leased, at either retail or wholesale, due to a federal safety



468 recall for a defect or noncompliance, or a federal emissions
469 recall.

470 (b) A manufacturer shall compensate its new motor
471 vehicle dealers for all labor and parts required by the
472 manufacturer to perform recall repairs. Compensation for recall
473 repairs shall be reasonable. If parts or a remedy are not
474 reasonably available to perform a recall service or repair on a
475 used vehicle held for sale by a dealer authorized to sell and
476 service new vehicles of the same line-make within thirty (30) days
477 of the manufacturer issuing the initial notice of recall, and the
478 manufacturer has issued a Stop-Sale or Do-Not-Drive order on the
479 vehicle, the manufacturer shall compensate the dealer at a
480 prorated rate of at least one percent (1%) of the value of the
481 vehicle per month beginning on the date that is thirty (30) days
482 after the date on which the Stop-Sale or Do-Not-Drive order was
483 provided to the dealer until the earlier of either of the
484 following:

485 (i) The date the recall or remedy parts are made
486 available; or

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

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



493 (d) This subsection shall apply only to used vehicles
494 subject to safety or emissions recalls pursuant to and recalled in
495 accordance with federal law and regulations adopted thereunder and
496 where a Stop-Sale or Do-Not-Drive order has been issued and repair
497 parts or remedy remain unavailable for thirty (30) days or longer.
498 This subsection further shall apply only to new motor vehicle
499 dealers holding an affected used vehicle for sale:

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

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

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

509 (e) It shall be a violation of this subsection for a
510 manufacturer to reduce the amount of compensation otherwise owed
511 to an individual new motor vehicle dealer, whether through a
512 chargeback, removal of the individual dealer from an incentive
513 program or reduction in amount owed under an incentive program
514 solely because the new motor vehicle dealer has submitted a claim
515 for reimbursement under this subsection. This subsection shall
516 not apply to an action by a manufacturer that is applied uniformly
517 among all dealers of the same line-make in the state.



518 (f) All reimbursement claims made by new motor vehicle
519 dealers pursuant to this subsection for recall remedies or
520 repairs, or for compensation where no part or repair is reasonably
521 available and the vehicle is subject to a Stop-Sale or
522 Do-Not-Drive order shall be subject to the same limitations and
523 requirements as a warranty reimbursement claim made under
524 paragraph (j) of Section 63-17-85. In the alternative, a
525 manufacturer may compensate its franchised dealers under a
526 national recall compensation program provided the compensation
527 under the program is equal to or greater than that provided under
528 paragraph (b); or the manufacturer and dealer otherwise agree.

529 (g) A manufacturer may direct the manner and method in
530 which a dealer must demonstrate the inventory status of an
531 affected used motor vehicle to determine eligibility under this
532 subsection, provided that the manner and method may not be unduly
533 burdensome and may not require information that is unduly
534 burdensome to the dealer.

535 (h) Nothing in this subsection shall require a
536 manufacturer to provide total compensation to a dealer which would
537 exceed the total average trade-in value of the affected used motor
538 vehicle as originally determined under paragraph (b) of this
539 subsection (4).

540 (i) If a recall remedy for an affected use motor
541 vehicle is available under a federal statute or regulation, then a



542 dealer may opt to be compensated under either the federal statute
543 or authority of this subsection but may not combine the remedies.

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

