

By: Representatives Cockerham, Aguirre,
Lancaster

To: Judiciary A

HOUSE BILL NO. 746

1 AN ACT TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITIONS FOR THE MISSISSIPPI MOTOR VEHICLE
3 COMMISSION LAW; TO AMEND SECTION 63-17-85, MISSISSIPPI CODE OF
4 1972, TO REVISE THE REASONS FOR WHICH THE MOTOR VEHICLE COMMISSION
5 MAY REJECT OR ACCEPT A LICENSE; TO CREATE NEW SECTION 63-17-86,
6 MISSISSIPPI CODE OF 1972, TO ESTABLISH THE OBLIGATIONS OF
7 MANUFACTURERS, DISTRIBUTORS AND MOTOR VEHICLE DEALERS; AND FOR
8 RELATED PURPOSES.

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

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

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

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



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

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

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

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

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

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



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

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

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

61 2. Any sale or other disposition by such a
62 motor vehicle manufacturer of motor vehicles for which the
63 manufacturer obtained distinguishing number tags under Section
64 27-19-309(8).

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

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



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

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

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

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

82 (i) "Manufacturer" means any person, firm, association,
83 corporation or trust, resident or nonresident, who manufactures or
84 assembles new motor vehicles.

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

90 (k) "Factory branch" means a branch or division office
91 maintained by a person, firm, association, corporation or trust
92 who manufactures or assembles new motor vehicles for sale to
93 distributors or wholesalers, to motor vehicle dealers, or for
94 directing or supervising, in whole or in part, its
95 representatives.



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

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

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

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

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

117 (q) "Coerce" means to compel or attempt to compel by
118 threat or duress. However, recommendation, exposition,
119 persuasion, urging or argument shall not be deemed to constitute
120 coercion.



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

214 (ee) "Warranty work" means all labor, including that of
215 a diagnostic character, performed, and all parts, including
216 original or replacement parts, and components, including engine,
217 transmission, and other parts assemblies, installed by motor
218 vehicle dealers on motor vehicles which are reasonably incurred by



219 motor vehicle dealers (other than the incidental expenses incurred
220 in performing labor and installing parts on motor vehicles) in
221 fulfilling a manufacturer's obligations under a new motor vehicle
222 warranty, a recall, or a certified pre-owned warranty, to
223 consumers, including, but not limited to, the expense of shipping
224 or returning defective parts to the manufacturer, when required by
225 the manufacturer.

226 (ff) "Repair order" means an invoice, paid by a retail
227 customer, and closed as of the time of submission, encompassing
228 one or more repairs to a new motor vehicle, and reflecting, in the
229 case of a parts mark-up submission, the cost of each part and the
230 sale price thereof, and in the case of a labor rate submission,
231 the total charges for labor and the total number of hours that
232 produced such charges, which invoice may be submitted in
233 electronic form.

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

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



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

245 63-17-85. The commission may deny an application for a
246 license, or revoke or suspend a license after it has been granted,
247 for any of the following reasons:

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

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

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

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

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

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

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



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

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

287 (j) On satisfactory proof that any manufacturer,
288 distributor, wholesaler, distributor branch or division, factory
289 branch or division, or wholesaler branch or division has unfairly
290 and without due regard to the equities of the parties or to the
291 detriment of the public welfare failed to properly fulfill any



292 warranty agreement or to adequately and fairly compensate any of
293 its motor vehicle dealers for labor * * * and parts * * * incurred
294 by any such dealer with regard to * * * warranty * * * work
295 performed by any such dealer, and upon the written request of a
296 dealer using a format provided by the manufacturer, which is
297 consistent with the requirements of Section 63-17-86. In no event
298 shall any such manufacturer, distributor, wholesaler, distributor
299 branch or division, factory branch or division, or wholesaler
300 branch or division pay to * * * the requesting motor vehicle * * *
301 dealer an hourly labor rate * * * and parts mark-up for warranty
302 work that is less than that charged by * * * such dealer to its
303 retail customers in accordance with Section 63-17-86. Time
304 allowances for the diagnosis and performance of warranty work
305 shall be reasonable and adequate for such work to be performed
306 using the actual time required by a qualified technician of
307 ordinary skill to perform such work. No such dealer shall charge
308 to its manufacturer, distributor, wholesaler, distributor branch
309 or division, factory branch or division, or wholesaler branch or
310 division, a labor rate * * * in excess of the rate charged to its
311 retail customers. All claims made by motor vehicle dealers
312 hereunder for such labor * * * and/or parts * * * shall be paid
313 within thirty (30) days following their approval. All such claims
314 shall be either approved or disapproved within thirty (30) days
315 after their receipt, and when any such claim is disapproved the
316 motor vehicle dealer who submits it shall be notified in writing



317 of its disapproval within said period, and each such notice shall
318 state the specific grounds upon which the disapproval is based.

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

322 If the commission finds, after notice and hearing in the
323 manner provided for under the Mississippi Motor Vehicle Commission
324 Law, that there is sufficient cause upon which to base the
325 revocation of the license of any licensee involved in the hearing,
326 the commission may in lieu of revoking such license assess a civil
327 penalty against the guilty licensee not to exceed Ten Thousand
328 Dollars (\$10,000.00). If the commission finds, after such notice
329 and hearing, that sufficient cause exists for the suspension only
330 of the license of any licensee, the commission may in lieu of
331 suspending such license assess a civil penalty against the guilty
332 licensee of not less than Fifty Dollars (\$50.00) nor more than
333 Five Hundred Dollars (\$500.00) per day for each day such license
334 would otherwise be suspended. However, the amount of such penalty
335 shall not exceed an aggregate of Seven Thousand Five Hundred
336 Dollars (\$7,500.00). Failure of the licensee to pay all penalties
337 so assessed within the time allowed by the commission for the
338 payment thereof, which time shall in no case exceed ninety (90)
339 days from the date of the commission's order making such
340 assessment, shall, unless an appeal is taken and perfected within
341 the time and in the manner provided by the Mississippi Motor



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

354 **SECTION 3.** The following shall be codified as Section
355 63-17-86, Mississippi Code of 1972:

356 63-17-86. **Obligations of manufacturers, distributors and**
357 **motor vehicle dealers. Establishment of rate for parts and labor.**
358 **Establishment, rebuttal and protest.**

359 (1) The mark-up customarily charged by the dealer for parts
360 or its labor rate may be established at the election of the dealer
361 by the dealer submitting to the manufacturer, either by electronic
362 transmission or tangible delivery, and in accordance with Section
363 63-17-85(j), all consecutive repair orders that include one
364 hundred (100) sequential repair orders reflecting qualified
365 repairs, or all repair orders closed during any period of ninety
366 (90) consecutive days, whichever produces the fewer number of



367 repair orders, covering repairs made no more than one hundred
368 eighty (180) days before the submission, and declaring the parts
369 mark-up or labor rate.

370 (2) The dealer shall calculate its labor rate by determining
371 the total charges for labor from the qualified repairs submitted
372 and dividing that amount by the total number of hours that
373 produced such charges. The dealer shall calculate its parts
374 mark-up by determining the total charges for parts from the
375 qualified repairs submitted, dividing that amount by its total
376 cost of the purchase of such parts, subtracting one from that
377 amount, and multiplying by one hundred (100) to produce a
378 percentage.

379 (3) A motor vehicle dealer seeking to establish or modify
380 its warranty reimbursement labor rate, parts mark-up, or both
381 shall no more frequently than once per twelve-month period, submit
382 to the manufacturer:

383 (a) A single set of repair orders for purposes of
384 calculating both its labor rate and parts mark-up; or

385 (b) A set of repair orders for purposes of calculating
386 only its labor rate or for purposes of calculating only its parts
387 mark-up.

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



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

394 (b) Parts sold at wholesale.

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

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

400 (e) Installations of accessories.

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

404 (g) Vehicle reconditioning.

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

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

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

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

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

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



416 (5) The submitted parts mark-up or labor rate shall each be
417 presumed to be reasonable, and shall go into effect forty-five
418 (45) days after the manufacturer's receipt of its submission,
419 unless, within such period, the manufacturer rebuts that
420 presumption, by reasonably substantiating that such submission is
421 materially incomplete, materially inaccurate or is materially
422 unreasonable and providing a full explanation of any and all
423 reasons that such submitted mark-up or rate is materially
424 incomplete, materially inaccurate or materially unreasonable,
425 evidence validating each such reason, a copy of all calculations
426 used by it demonstrating any material inaccuracy, and a proposed
427 adjusted mark-up or rate provided that the dealers submission is
428 materially accurate, based upon the qualified repair orders
429 submitted by the dealer. In such event, the manufacturer may not
430 submit more than one (1) such rebuttal to the dealer, and may not
431 thereafter add to, expand, supplement, or otherwise modify any
432 element thereof, including, but not limited to, its grounds for
433 contesting such parts mark-up or labor rate.

434 If a manufacturer determines from any set of repair orders
435 submitted under this subsection and Section 63-17-86 that the
436 labor rate or parts mark-up calculated under this subsection is
437 substantially higher or lower than the rate currently on record
438 with the manufacturer for labor and/or parts, the manufacturer
439 may, in accordance with this subsection, request additional repair
440 orders for a period of either sixty (60) days prior to or sixty



441 (60) days subsequent to the time period for which the repair
442 orders were submitted for purposes of an alteration, and shall
443 have forty-five (45) days from receiving the additional repair
444 orders to rebut the presumption that the dealer's proposed mark-up
445 and labor rates are reasonable.

446 (6) If the dealer and the manufacturer do not agree on the
447 parts mark-up or labor rate, as the case may be, then the dealer
448 may file a protest with the commission within sixty (60) days of
449 receiving the manufacturer's written rejection of the dealer's
450 proposed parts mark-up or labor rate. If such a protest is filed,
451 the commission shall inform the manufacturer thereof and that a
452 hearing will be held thereon. In any such hearing, the
453 manufacturer shall have the burden of proving by a preponderance
454 of the evidence that the dealer's submitted parts mark-up or labor
455 rate or both was materially incomplete, materially inaccurate or
456 was unreasonable as described in subsection (5). Upon a
457 commission decision in favor of the dealer, any increase in the
458 dealer's parts mark-up or labor rate arising from such proceeding
459 shall be effective retroactively to the date forty-five (45) days
460 following the manufacturer's receipt of the original submission to
461 the manufacturer.

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



466 this section by compensating the dealer on the basis of the
467 dealer's mark-up on the cost for the part or component as listed
468 in the manufacturer's price schedule less the cost for the part or
469 component.

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

475 **SECTION 4.** This act shall take effect and be in force from
476 and after July 1, 2021.

