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Chapter No. 349
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HOUSE BILL NO. 581

Originated in House  Clerk

HOUSE BILL NO. 581

AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION 63-17-118, MISSISSIPPI CODE OF 1972, TO PROVIDE THE COMPENSATION THAT A MANUFACTURER OR DISTRIBUTOR MUST PAY TO A MOTOR VEHICLE DEALER UPON ANY TERMINATION, CANCELLATION, REFUSAL TO CONTINUE, OR REFUSAL TO RENEW ANY FRANCHISE OR ANY DISCONTINUATION OF ANY LINE OR MAKE OF MOTOR VEHICLE OR PARTS ESSENTIAL TO SUCH LINE OR MAKE; TO AMEND SECTION 63-17-55, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 63-17-73, MISSISSIPPI CODE OF 1972, TO PROHIBIT MOTOR VEHICLE DEALER OR MOTOR VEHICLE SALESMAN FROM SELLING EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT THAT IS NOT OFFERED, ENDORSED OR SPONSORED BY A MANUFACTURER OR DISTRIBUTOR WITHOUT DISCLOSING TO THE CONSUMER, ORALLY AND IN WRITING, THAT THE OFFERED PRODUCT IS NOT PROVIDED OR SUPPORTED BY A MANUFACTURER OR DISTRIBUTOR; TO PROHIBIT MANUFACTURERS OR DISTRIBUTORS FROM REQUIRING A MOTOR VEHICLE DEALER, BY FRANCHISE AGREEMENT OR OTHERWISE, OR AS A CONDITION TO THE RENEWAL OR CONTINUATION OF A FRANCHISE AGREEMENT, TO MATERIALLY CHANGE HIS METHOD OF CONDUCTING BUSINESS; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM CONDITIONING THE SALE, TRANSFER, RELOCATION OR RENEWAL OF A FRANCHISE OR DEALER AGREEMENT, OR TO CONDITION SALES, SERVICE, PARTS OR FINANCE INCENTIVES UPON A SITE-CONTROL AGREEMENT; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM ASSIGNING OR CHANGING A MOTOR VEHICLE DEALER'S MARKET AREA UNDER THE FRANCHISE OR MOTOR VEHICLE DEALER'S AGREEMENT ARBITRARILY OR WITHOUT DUE REGARD TO THE PRESENT OR PROJECTED FUTURE PATTERN OF MOTOR VEHICLE SALES AND REGISTRATIONS WITHIN THE MOTOR VEHICLE DEALER'S MARKET AREA; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM ESTABLISHING ANY PERFORMANCE STANDARD OR PROGRAM FOR MEASURING MOTOR VEHICLE DEALER'S PERFORMANCE THAT MAY HAVE A MATERIAL IMPACT ON A MOTOR VEHICLE DEALER THAT IS NOT FAIR,

REASONABLE AND EQUITABLE, OR FROM APPLYING ANY SUCH STANDARD OR PROGRAM TO A MOTOR VEHICLE DEALER IN A MANNER THAT IS NOT FAIR, REASONABLE AND EQUITABLE; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM UTILIZING CERTAIN METHODS TO REQUIRE ANY NEW MOTOR VEHICLE DEALER TO SELL, OFFER TO SELL OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT OFFERED OR ENDORSED OR SPONSORED BY THE MANUFACTURER OR DISTRIBUTOR; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM REQUIRING A MOTOR VEHICLE DEALER TO PROVIDE ITS CUSTOMER LISTS OR SERVICE FILES TO THE MANUFACTURER OR DISTRIBUTOR, UNLESS NECESSARY FOR CERTAIN PURPOSES; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM RELEASING A MOTOR VEHICLE DEALER'S NONPUBLIC CUSTOMER INFORMATION TO ANOTHER MOTOR VEHICLE DEALER UNLESS THE FRANCHISE HAS BEEN TERMINATED, THE CUSTOMER HAS RELOCATED TO AN ADDRESS THAT IS OUTSIDE OF THE MOTOR VEHICLE DEALER'S MARKET AREA, THE CUSTOMER HAS NOT RETURNED TO THE SELLING DEALER FOR SERVICES IN EXCESS OF 24 MONTHS, OR THE CUSTOMER HAS REQUESTED TO ALLOW THE INFORMATION TO BE SHARED WITH ANOTHER DEALER; TO PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM REQUIRING ANY MOTOR VEHICLE DEALER TO PROVIDE INSTALLMENT FINANCING WITH A SPECIFIED FINANCIAL INSTITUTION; TO AMEND SECTION 63-17-117, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A MOTOR VEHICLE DEALER TO SUBMIT AN AMENDED OR SUPPLEMENTAL CLAIM WITHIN THE TIME AND MANNER REQUIRED BY THE MANUFACTURER FOR SALES INCENTIVES, SERVICE INCENTIVES, REBATES OR OTHER FORMS OF INCENTIVE COMPENSATION FOR UP TO 60 DAYS FROM THE DATE ON WHICH SUCH A CLAIM WAS SUBMITTED OR COULD HAVE BEEN SUBMITTED; TO REPEAL SECTION 63-17-141, MISSISSIPPI CODE OF 1972, WHICH PROVIDES DUTIES OF DEALERS AND MANUFACTURERS OF MOTOR VEHICLES UPON RENEWAL OF FRANCHISE AGREEMENTS; AND FOR RELATED PURPOSES.

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

SECTION 1. The following provision shall be codified as Section 63-17-118, Mississippi Code of 1972:

63-17-118. (1) Upon any termination, cancellation, refusal to continue, or refusal to renew any franchise or any discontinuation of any line or make of motor vehicle or parts essential to such line or make, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a) (i) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rating of sixteen thousand (16,000) pounds or less of the current and prior model year with less than seven hundred fifty (750) miles on the odometer that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.

(ii) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rate of more than sixteen thousand (16,000) pounds of the current and prior model year that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.

(iii) The manufacturer or distributor shall have no obligation to repurchase a motor vehicle if the motor vehicle has been modified to the extent that the modifications are so significant as to void the manufacturer's warranty or has been substantially altered to the prejudice of the manufacturer or distributor. The manufacturer or distributor shall have no obligation to repurchase any parts used to modify the motor vehicle that were not produced by or for the manufacturer or distributor.

(b) The motor vehicle dealer's net cost of each new, unused and undamaged part or accessory listed in the manufacturer or distributor's current parts catalog and in the original, resalable merchandising packages. In the case of sheet metal, a comparable substitute for the original package shall be sufficient. New or reconditioned core parts shall be valued at their core value, listed in the original vehicle manufacturer's or distributor's current parts catalog. If the part or accessory was purchased by the motor vehicle dealer from another authorized same line or make motor vehicle dealer in the ordinary course of business, the manufacturer shall purchase the part or accessory for the price in the current parts catalog. The motor vehicle dealer shall maintain accurate records regarding the actual purchase price of parts that the manufacturer or distributor is required to purchase under this paragraph.

(c) In addition to the costs referenced in paragraphs (a) and (b) of this subsection, the manufacturer shall pay the motor vehicle dealer an additional five percent (5%) charge based on the total compensation due under this section for handling, packing, storing and loading of any parts subject to repurchase pursuant to this section and the manufacturer shall pay for shipping the vehicles subject to repurchase from the location of the motor vehicle dealer to the location directed by the manufacturer.

(d) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of property to the manufacturer. The manufacturer shall remove the property from the motor vehicle dealer's premises within one hundred eighty (180) days after the tender of the property.

(2) In the event a manufacturer or distributor cancels, refuses to continue, or refuses to renew any franchise or discontinues any line or make or parts essential to such line or make, in addition to the compensation provided in subsection (1) of this section, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a) In the event a motor vehicle dealer leases the dealership facilities, then the manufacturer shall be liable for twelve (12) months payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer shall be liable for the equivalent of twelve (12) months payment of gross rent based upon the fair market value of the dealership facilities. The gross rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are used solely for performance in accordance with the franchise and not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility

is used for the operations of more than one (1) franchise, the gross rent compensation shall only include the prorated value of the square footage used exclusively for the terminated franchise or line or make at the time of termination. This paragraph shall not apply to a termination, cancellation or nonrenewal due to a sale of the assets or stock of the motor vehicle dealership. In addition to the gross rent, the manufacturer is required to pay the dealer the net cost of any upgrades or other alterations made by the motor vehicle dealer to the dealership facilities which were required in writing by the manufacturer and made by the motor vehicle dealer within two (2) years prior to the effective date of termination. Nothing in this paragraph shall be construed to relieve a motor vehicle dealer of its obligation to mitigate damages upon termination, cancellation, or nonrenewal. As used in this paragraph "Gross rent" is the monthly rent plus the monthly cost of insurance and taxes.

(b) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months of any outstanding amounts on any leases or the remaining amount of the lease, whichever is less, of computer hardware or software that is exclusively used to manage and report data of the terminated line or make to the manufacturer or distributor for financial reporting requirements.

(c) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months or the remaining amount of the lease, whichever is less of any outstanding amounts on any

manufacturer or distributor required equipment leases, service contracts, and sign leases.

(d) The fair market value of each undamaged sign owned by the motor vehicle dealer which bears a trademark or trade name used or claimed by the manufacturer if the sign was purchased from, or purchased at a requirement of, the manufacturer, plus the costs of installing the sign and the costs of purchasing and installing any pole upon which the sign is located. During the first three (3) years after its purchase, the fair market value of each sign shall be the motor vehicle dealer's net costs of purchasing the sign. Thereafter, the fair market value of the sign shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(e) The fair market value of all tools, data processing programs and equipment and automotive service equipment owned by the motor vehicle dealer which are exclusively used for the line or make being terminated and which were required in writing and designated as equipment, tools, data processing programs and equipment, and automotive service equipment and purchased from, or purchased as a requirement of, the manufacturer if the equipment, tools, programs and equipment are in usable and good condition, except for reasonable wear and tear. During the first three (3) years after their purchase, the fair market value of each item of equipment, tools, programs, and equipment shall be the motor vehicle dealer's net cost associated with purchasing the items.

Thereafter, the fair market value of each item shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(f) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon the manufacturer discontinuing the sale in this state of a line or make that was the subject of the franchise, then the manufacturer shall also be liable to the motor vehicle dealer for an amount at least equivalent to the fair market value of the motor vehicle dealer's franchise for the discontinued line or make as of:

(i) The date immediately preceding the date the manufacturer announces the action which results in termination, cancellation, or nonrenewal; or

(ii) The day twelve (12) months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

At the motor vehicle dealer's option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the motor vehicle dealer under this paragraph if the manufacturer, or another motor vehicle manufacturer pursuant to an agreement with the manufacturer, offers the motor vehicle dealer a replacement motor vehicle franchise with terms substantially similar to that offered to other same line or make motor vehicle dealers.

(g) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection along with any other amounts that may be due to the motor vehicle dealer under the franchise agreement within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of the property to the manufacturer. The manufacturer shall remove the property within one hundred eighty (180) days after the tender of the property from the motor vehicle dealer's premises. Unless previous arrangements have been made and agreed upon, the motor vehicle dealer is under no obligation to provide insurance for the property left after one hundred eighty (180) days.

(3) This section shall not apply to any sale, exchange, inheritance, gift or other transfer of ownership, stock, assets, management, or any other rights of the motor vehicle dealer, or to any termination for good cause, including, but not limited to, a conviction for a felony involving moral turpitude, for failure to conduct business for seven (7) consecutive business days or eight (8) business days out of any fifteen-day business period, for insolvency of the motor vehicle dealer or for loss of license to sell motor vehicles, or where there is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of a material significance to the franchise relationship provided that the dealer has been notified in writing of the failure.

(4) This section shall not apply to motor homes.

SECTION 2. Section 63-17-55, Mississippi Code of 1972, is amended as follows:

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

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

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

or legal entities entitled to sell and publicly or otherwise solicit and advertise for sale new motor vehicles as such.

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

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

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

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

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

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

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or

through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) "Specialty vehicle" means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, e.g. frame and drive train, and completing the

manufacturer of finished motor vehicles for the purpose of resale with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicles include garbage trucks, ambulances, fire trucks, buses, limousines, hearses and other similar limited purpose vehicles as the commission may by regulation provide.

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

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

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

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

of new motor vehicles marketed or leased by the manufacturer and designated in the agreement or any addendum to such agreement.

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

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

(i) Multiple brand names or marks may constitute a single line or make, but only when included in a common motor vehicle dealer agreement and the manufacturer, distributor or importer offers such vehicles bearing the multiple names of marks together only, and not separately, to its authorized motor vehicle dealers.

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

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

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

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

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

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

(iii) Restricting the power or authority of the dealer or the lessor, if the motor vehicle dealer leases the dealership premises, to transfer, sell, lease, develop, redevelop or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease or any similar arrangement; or

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

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

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

SECTION 3. Section 63-17-73, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * (i) To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any motor vehicles as

are covered by such franchise or contract specifically publicly advertised by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this subsection if the failure * * * is due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes or other causes over which the manufacturer, distributor or wholesaler, or any agent thereof, * * * has no control.

* * * (ii) To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and the dealer. However, good-faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection.

* * * (iii) To terminate or cancel the franchise or selling agreement of any dealer without due cause. The

nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. "Due cause" shall be defined as a breach by the dealer of a material provision of the franchise agreement which breach has not been cured within a reasonable time after the dealer has been given written notice of the breach. The burden of proving that due cause exists shall be upon the party attempting to terminate, cancel or not renew the franchise or selling agreement. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no

intention to renew the franchise or selling agreement. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within the sixty-day notice period, file with the commission a verified complaint for its determination as to whether the termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and the franchise * * * agreement shall continue in effect until final determination of the issues raised in the complaint notwithstanding anything to the contrary contained in the law or in the franchise or selling agreement.

* * *

(iv) To require, attempt to require, coerce or attempt to coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to materially change the dealer's method of conducting business, not including its facilities, if the change would impose substantial and unreasonable financial hardship on the business of the motor vehicle dealer in light of the business objective of the

proposed change, unless the change is voluntarily agreed to by the dealer for separate and valuable consideration.

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

The provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by * * * such dealer in a driver education program, * * * to sales to a motor vehicle dealer for resale to any unit of government, federal, state or local, or to bona fide fleet sales.

* * *

* * * (vi) To offer to sell or to sell parts and/or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or

a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and/or accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, and nothing herein contained shall be construed to prevent a manufacturer, distributor or wholesaler, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories, the parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

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

* * * (viii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other

person or persons or party or parties. However, no motor vehicle dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor or wholesaler which consent shall not be unreasonably withheld.

* * * (ix) To condition unreasonably the renewal or extension of a franchise on a motor vehicle dealer's substantial renovation of the motor vehicle dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the motor vehicle dealer. The manufacturer shall notify the motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one hundred eighty (180) days prior to the renewal or extension. Upon receipt of written notification, a motor vehicle dealer shall have sixty (60) days to file a protest with the commission, and the manufacturer shall demonstrate to the commission the need for the demand in view of the need to service the public and the economic conditions existing in the motor vehicle industry and the market area served by the motor vehicle dealer at the time the action would be required of the motor vehicle dealer. As part of any such condition the manufacturer shall offer the motor vehicle dealer a reasonable initial supply and model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by the motor vehicle

dealer by reason of the renovation, construction, purchase or rental of a new place of business consistent with nationally applied standards.

* * * (x) To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in * * *, the acquisition of, or the current operation of any other line of motor vehicles or related products, as long as the motor vehicle dealer maintains a reasonable line of credit for each dealership and the motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer or distributor. The reasonable facilities' requirements may not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions in the market area and not otherwise justified by reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations * * * justify exclusive facilities is on the * * * manufacturer. Voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing for separate and valuable consideration shall not constitute a violation.

* * * (xi) To fail or refuse to sell or offer to sell to all motor vehicle dealers in a line or make, every motor

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

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

(xiii) To assign or change a motor vehicle dealer's market area under the franchise or motor vehicle dealer's agreement arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the motor vehicle dealer's market area, and without first

having provided the motor vehicle dealer's with written notice of the change in the motor vehicle dealer's market area and a detailed description of the change and reasons therefor.

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

(xv) To establish any performance standard or program for measuring motor vehicle dealer's performance that may have a material impact on a motor vehicle dealer that is not fair, reasonable and equitable, or applying any such standard or program to a motor vehicle dealer in a manner that is not fair, reasonable and equitable. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer * * * covered by the survey request. * * * Within fifteen (15) business days of a request * * * by the motor vehicle dealer, a manufacturer * * * shall disclose in writing to the motor vehicle dealer a description of * * * the performance standard or program * * * and all relevant information * * * used in the application of the performance standard or program to that motor vehicle dealer unless the manufacturer has already provided the information.

* * * (xvi) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for the

ultimate purchasers prior to the motor vehicle dealer's receipt of written official price increase notification. A sales contract signed by the ultimate purchaser that includes model and firm price shall constitute evidence of each such order provided that the vehicle is in fact delivered to that purchaser.

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

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

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

3. By measuring the motor vehicle dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor; or

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

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

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

(xix) To release or cause to be released a motor vehicle dealer's nonpublic customer information to another motor vehicle dealer unless the franchise has been terminated, the customer has relocated to an address that is outside of the motor

vehicle dealer's market area, the customer has transacted business with another motor vehicle dealer of the same brand, a customer has not transacted with the dealer from which a vehicle was purchased for a period of nine (9) months, or the motor vehicle dealer consents to the sharing of customer information with other dealers.

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

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

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

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

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

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

SECTION 4. Section 63-17-117, Mississippi Code of 1972, is amended as follows:

63-17-117. (1) Notwithstanding the terms of any franchise agreement, warranty and sales incentive audits of a motor vehicle dealer's records may be conducted by the manufacturer or distributor. Any audit for warranty parts or service compensation shall be performed within the * * * twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor. Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall be performed within the * * * twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor or the end of the program during which the incentives, service incentives, rebates or other forms of incentives compensation were offered, whichever is later.

(2) No claim which has been approved and paid may be charged back to the motor vehicle dealer unless it can be shown by a

preponderance of the evidence that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective conditions under generally accepted standards of workmanship, or that the motor vehicle dealer failed to reasonably substantiate the repair in accordance with the manufacturer's or distributor's reasonable written claim requirement.

(3) A manufacturer or distributor shall not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement * * * such as a clerical error or other administrative technicality that does not call into question the legitimacy of a claim. A motor vehicle dealer may submit an amended or supplemental claim within the time and manner required by the manufacturer for sales incentives, service incentives, rebates or other forms of incentives compensation for up to sixty (60) days from the date on which such a claim was submitted or could have been submitted.

(4) Limitations on warranty parts, service compensation, sales incentive audits, rebates or other forms of incentive compensation, chargebacks for warranty parts or service compensation, and service incentives and chargebacks for sales compensation only, shall not be effective in the case of intentionally false or fraudulent claims.

SECTION 5. Section 63-17-141, Mississippi Code of 1972, which provides the duties of dealers and manufacturers of motor

vehicles upon termination or renewal of franchise agreements, is repealed.

SECTION 6. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 6, 2014



SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2014



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

3/17/2014

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