

By: Representative Barbour

To: Transportation;
Judiciary B

HOUSE BILL NO. 1439

1 AN ACT TO CREATE THE OFFENSE OF CURBSTONING, TO PROVIDE
2 PENALTIES FOR VIOLATIONS; TO AMEND SECTION 63-17-73, MISSISSIPPI
3 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. (1) Any person who sells more than five (5)
7 motor vehicles in a twelve-month period without a valid license as
8 required by the Mississippi Motor Vehicle Commission Law shall be
9 guilty of curbstoning and, upon conviction, shall be punished by a
10 fine of One Hundred Dollars (\$100.00) per occurrence for a first
11 offense. For a second offense such person shall be punished by a
12 fine of Five Hundred Dollars (\$500.00) per occurrence. For a
13 third or subsequent offense such person shall be punished by a
14 fine of One Thousand Dollars (\$1,000.00) per occurrence and by
15 imprisonment of not more than six (6) months. Any landowner or
16 tenant who allows this offense on their property shall be subject
17 to the same fines as provided in this subsection.

18 (2) The tax assessor of each county shall be charged with
19 the responsibility of determining and recording from whom
20 purchased on each title application that they fill out and
21 process. Once an unlicensed dealer sells his sixth vehicle in a
22 twelve-month period, then the county tax assessor shall report the
23 violator to the Motor Vehicle Title Bureau for assignment for
24 investigation. The Motor Vehicle Title Bureau shall instigate the
25 necessary legal action within forty-five (45) days of the
26 reporting date by the tax assessor. The Motor Vehicle Title
27 Bureau shall prescribe the method of reporting by the tax

28 assessor. The bureau shall maintain an adequate data base of
29 these violators.

30 SECTION 2. Section 63-17-73, Mississippi Code of 1972, is
31 amended as follows:

32 63-17-73. (1) It is unlawful and a misdemeanor:

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

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

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

57 2. To represent and sell as a new motor vehicle
58 any motor vehicle which has been used and operated for
59 demonstration purposes or which is otherwise a used motor vehicle.

60 3. To resort to or use any false or misleading
61 advertisement in connection with his business as such motor
62 vehicle dealer or motor vehicle salesman.

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

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

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

76 3. To order for any person any parts, accessories,
77 equipment, machinery, tools, appliances, or any commodity
78 whatsoever.

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

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

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

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

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

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

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

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

157 5. To offer to sell or to sell any new motor
158 vehicle to any motor vehicle dealer at a lower actual price

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

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

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

180 7. To offer to sell or to sell parts and/or
181 accessories to any new motor vehicle dealer for use in his own
182 business for the purpose of repairing or replacing the same or a
183 comparable part or accessory, at a lower actual price therefor
184 than the actual price charged to any other new motor vehicle
185 dealer for similar parts and/or accessories for use in his own
186 business. However, it is recognized that certain motor vehicle
187 dealers operate and serve as wholesalers of parts and accessories
188 to retail outlets, and nothing herein contained shall be construed
189 to prevent a manufacturer, distributor or wholesaler, or any agent
190 thereof, from selling to a motor vehicle dealer who operates and
191 serves as a wholesaler of parts and accessories, such parts and

192 accessories as may be ordered by such motor vehicle dealer for
193 resale to retail outlets, at a lower actual price than the actual
194 price charged a motor vehicle dealer who does not operate or serve
195 as a wholesaler of parts and accessories.

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (4) The offense of curbstoning shall be prosecuted as
298 provided in Section 1 of this act.

299 SECTION 3. This act shall take effect and be in force from
300 and after July 1, 2001.