HOUSE BILL NO. 1439

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

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

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

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

SECTION 2. 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 said 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 of said capacities
or having more than one place where such 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:

1. 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.

2. 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.
3. To resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer or motor vehicle salesman.

(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:

1. 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 said motor vehicle dealer.

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

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

4. 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:

1. 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 such motor vehicles as are covered by such franchise or contract specifically publicly
advertised by such 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 such failure be 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, shall have no control.

2. To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with such 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 said dealer by threatening to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and said dealer. However, good faith notice to any motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this subsection.

3. To terminate or cancel the franchise or selling agreement of any such 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. Such 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 such notice to the commission, of the termination or cancellation of the franchise or selling agreement of such dealer at least
sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. Such 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 such notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for such nonrenewal, in those cases where there is no intention to renew the same. In no event shall the contractual term of any such 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 such sixty-day notice period, file with the commission a verified complaint for its determination as to whether such termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and any such franchise or selling agreement shall continue in effect until final determination of the issues raised in such complaint notwithstanding anything to the contrary contained in said law or in such franchise or selling agreement.

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

5. 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 subsection 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 subsection shall not be construed
to prevent the offering of volume discounts if such discounts are
equally available to all franchised dealers 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 said dealer in a driver education program, or
to sales to a motor vehicle dealer for resale to any unit of
government, federal, state or local.

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

7. 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, such 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.

8. 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 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.

9. 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 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.

10. To condition unreasonably the renewal or
extension of a franchise on a motor vehicle dealer's substantial
renovation of the 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, and the manufacturer shall demonstrate to the
commission the need for such demand in view of the need to service
the public and the economic conditions existing in the motor
vehicle industry at the time such 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 such renovation, construction, purchase or rental of a new place of business.

11. To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in or the acquisition 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 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 do not justify exclusive facilities is on the dealer.

12. 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.

13. 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. Any performance standards shall be fair, reasonable,
equitable and based upon accurate information. 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 of the
same line or make covered by the survey request. Upon request of
the dealer, a manufacturer or distributor shall disclose in
writing to the dealer a description of how a performance standard
or program is designed and all relevant information pertaining to
that dealer used in the application of the performance standard or
program to that dealer.

(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 such 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.

The offense of curbstoning shall be prosecuted as provided in Section 1 of this act.

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