

By: Representative Parker

To: Transportation; Ways and
Means

HOUSE BILL NO. 853

1 AN ACT TO PROVIDE EDUCATIONAL REQUIREMENTS AS PREREQUISITE
2 FOR A USED MOTOR VEHICLE DEALER LICENSE; TO AMEND SECTION
3 63-17-85, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FAILURE TO
4 COMPLY WITH THE EDUCATIONAL REQUIREMENTS SHALL BE GROUNDS FOR THE
5 DENIAL, REVOCATION OR SUSPENSION OF LICENSE; AND FOR RELATED
6 PURPOSES.

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

8 **SECTION 1.** (1) Beginning July 1, 2008, every application
9 for the issuance of a used motor vehicle dealer's license shall be
10 accompanied by, or supported by, such evidence as the commission
11 shall prescribe, documenting the completion of an education
12 seminar, approved by the commission, during the twelve-month
13 period immediately preceding the date of application. Completion
14 of an eight-hour licensing course shall be required for an initial
15 license. The education requirements of this section shall not
16 apply to:

17 (a) Used motor vehicle dealer the primary business of
18 which is the sale of salvage vehicles on behalf of insurers;

19 (b) A manufactured home dealer; or

20 (c) A new car dealer.

21 (2) In the discretion of the commission, the commission may
22 grant prior approval to any of the following types of educational
23 activities to meet continuing education requirements:

24 (a) The commission approved seminar(s);

25 (b) National or state automobile association sponsored
26 seminars, courses of instruction, or meetings;

27 (c) Courses related to used motor vehicles at any state
28 certified institution of higher learning;

29 (d) Seminars or courses related to used cars sponsored
30 or participated in by any state or federal agency;

31 (e) Any other seminar, course, or meeting which the
32 commission deems to be appropriately related to the used car
33 business.

34 (3) Requests for approval of any continuing educational
35 activity shall be submitted to the commission before the date of
36 attendance, and shall include a complete and specific description
37 of the educational activity, a description of how it will benefit
38 licensees in conducting their businesses, the number of hours
39 involved, a description of the method which will be used to ensure
40 attendance, and copies of any instructional materials which will
41 be provided to attendees. At the time approval is granted, the
42 commission shall determine how many hours of continuing education
43 a licensee may receive by attending the program. At any time the
44 commission deems that a previously approved educational activity
45 is not meeting the requirements for continuing education, it may
46 revoke the approval of the activity.

47 (4) No license shall be issued to any franchised motor
48 vehicle dealer or any independent motor vehicle dealer owned by a
49 franchised motor vehicle dealer or its dealer-operator and
50 operated by the dealer-operator of a franchised motor vehicle
51 dealer unless the dealer-operator holds a valid certificate of
52 qualification issued by the commission. Such certificate shall be
53 issued only on application to the commission, payment of an
54 application fee of no more than Fifty Dollars (\$50.00) as
55 determined by the commission, the successful completion of an
56 examination prepared and administered by the commission, and other
57 prerequisites as set forth in this subsection. However, any
58 individual who is the dealer-operator of a licensed dealer on July
59 1, 2006, shall be entitled to such a certificate without
60 examination by application to the commission on or before January
61 1, 2007. The commission may establish minimum qualifications for

62 applicants and require applicants to satisfactorily complete
63 courses of study or other prerequisites prior to taking the
64 examination.

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

67 63-17-85. The commission may deny an application for a
68 license, or revoke or suspend a license after it has been granted,
69 for any of the following reasons:

70 (a) On satisfactory proof of unfitness of the applicant
71 or the licensee, as the case may be, under the standards
72 established and set out in the Mississippi Motor Vehicle
73 Commission Law.

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

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

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

82 (e) Continued or flagrant violation of any of the
83 provisions of said law or of any of the rules or regulations of
84 the commission.

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

87 (g) Willfully defrauding any retail buyer to the
88 buyer's damage.

89 (h) Willful failure to perform any written agreement
90 with any retail buyer.

91 (i) Being a manufacturer who, for the protection of the
92 buying public, fails to specify the delivery and preparation
93 obligations of its motor vehicle dealers prior to delivery of new
94 motor vehicles to retail buyers. A copy of the delivery and

95 preparation obligations of its motor vehicle dealers and a
96 schedule of the compensation to be paid to its motor vehicle
97 dealers for the work and services they shall be required to
98 perform in connection with such delivery and preparation
99 obligations shall be filed with the commission by every licensed
100 motor vehicle manufacturer and shall constitute any such dealer's
101 only responsibility for product liability as between such dealer
102 and such manufacturer. The compensation as set forth on said
103 schedule shall be reasonable and the reasonableness thereof shall
104 be subject to the approval of the commission. Any mechanical,
105 body or parts defects arising from any express or implied
106 warranties of any such manufacturer shall constitute such
107 manufacturer's product or warranty liability.

108 (j) On satisfactory proof that any manufacturer,
109 distributor, wholesaler, distributor branch or division, factory
110 branch or division, or wholesaler branch or division has unfairly
111 and without due regard to the equities of the parties or to the
112 detriment of the public welfare failed to properly fulfill any
113 warranty agreement or to adequately and fairly compensate any of
114 its motor vehicle dealers for labor, parts and/or incidental
115 expenses incurred by any such dealer with regard to factory
116 warranty agreements performed by any such dealer. In no event
117 shall any such manufacturer, distributor, wholesaler, distributor
118 branch or division, factory branch or division, or wholesaler
119 branch or division pay to any of its motor vehicle dealers a labor
120 rate per hour for warranty work less than that charged by any such
121 dealer to its retail customers. No such dealer shall charge to
122 its manufacturer, distributor, wholesaler, distributor branch or
123 division, factory branch or division, or wholesaler branch or
124 division, a labor rate per hour in excess of the rate charged to
125 its retail customers. All claims made by motor vehicle dealers
126 hereunder for such labor, parts and/or incidental expenses shall
127 be paid within thirty (30) days following their approval. All

128 such claims shall be either approved or disapproved within thirty
129 (30) days after their receipt, and when any such claim is
130 disapproved the motor vehicle dealer who submits it shall be
131 notified in writing of its disapproval within said period, and
132 each such notice shall state the specific grounds upon which the
133 disapproval is based.

134 (k) For the commission of any act prohibited by
135 Sections 63-17-73 through 63-17-83 or the failure to perform any
136 of the requirements of said sections.

137 (l) For failure to comply with the educational
138 requirements provided by Section 1 of House Bill No. _____, 2007
139 Regular Session.

140 If the commission finds, after notice and hearing in the
141 manner provided for under the Mississippi Motor Vehicle Commission
142 Law, that there is sufficient cause upon which to base the
143 revocation of the license of any licensee involved in the hearing,
144 the commission may in lieu of revoking such license assess a civil
145 penalty against the guilty licensee not to exceed Ten Thousand
146 Dollars (\$10,000.00). If the commission finds, after such notice
147 and hearing, that sufficient cause exists for the suspension only
148 of the license of any licensee, the commission may in lieu of
149 suspending such license assess a civil penalty against the guilty
150 licensee of not less than Fifty Dollars (\$50.00) nor more than
151 Five Hundred Dollars (\$500.00) per day for each day such license
152 would otherwise be suspended. However, the amount of such penalty
153 shall not exceed an aggregate of Seven Thousand Five Hundred
154 Dollars (\$7,500.00). Failure of the licensee to pay all penalties
155 so assessed within the time allowed by the commission for the
156 payment thereof, which time shall in no case exceed ninety (90)
157 days from the date of the commission's order making such
158 assessment, shall, unless an appeal is taken and perfected within
159 the time and in the manner provided by the Mississippi Motor
160 Vehicle Commission Law, result in an automatic revocation of such

161 licensee's license. Any such penalties assessed by the commission
162 remaining unpaid at the expiration of the time for payment may be
163 recovered by an action in the name of the commission. All such
164 actions shall be brought by the Attorney General of the State of
165 Mississippi upon the written request of the commission to do so,
166 and shall be brought in the chancery court of the county or the
167 chancery court of the judicial district of the county to which the
168 commission's order making such assessment is appealable under the
169 provisions of Section 63-17-99. All civil penalties assessed and
170 collected by the commission under the authority of this subsection
171 shall be deposited in the General Fund of the State Treasury.

172 **SECTION 3.** This act shall take effect and be in force from
173 and after July 1, 2007.