

By: Moak

To: Transportation;
Judiciary B

HOUSE BILL NO. 455

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 non-renewal
117 of 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 days before the effective date thereof, stating the specific
127 grounds for such termination or cancellation. Such manufacturer,
128 distributor, wholesaler, distributor branch or division, factory
129 branch or division, or wholesaler branch or division, or officer,
130 agent or other representative thereof shall notify a motor vehicle
131 dealer in writing, and forward a copy of such notice to the
132 commission, at least sixty (60) days before the contractual term
133 of his franchise or selling agreement expires that the same will
134 not be renewed, stating the specific grounds for such non-renewal,
135 in those cases where there is no intention to renew the same. In
136 no event shall the contractual term of any such franchise or
137 selling agreement expire, without the written consent of the motor

138 vehicle dealer involved, prior to the expiration of at least sixty
139 (60) days following such written notice. Any motor vehicle dealer
140 who receives written notice that his franchise or selling
141 agreement is being terminated or cancelled or who receives written
142 notice that his franchise or selling agreement will not be
143 renewed, may, within such sixty-day notice period, file with the
144 commission a verified complaint for its determination as to
145 whether such termination or cancellation or non-renewal is unfair
146 within the purview of the Mississippi Motor Vehicle Commission
147 Law, and any such franchise or selling agreement shall continue in
148 effect until final determination of the issues raised in such
149 complaint notwithstanding anything to the contrary contained in
150 said law or in such franchise or selling agreement.

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

156 5. To offer to sell or to sell any new motor
157 vehicle to any motor vehicle dealer at a lower actual price
158 therefor than the actual price charged to any other motor vehicle
159 dealer for the same model vehicle similarly equipped or to utilize
160 any device, including but not limited to, sales promotion plans or
161 programs which result in such lesser actual price. The provisions
162 of this subsection shall not apply so long as a manufacturer,
163 distributor or wholesaler, or any agent thereof, offers to sell or
164 sells new motor vehicles to all motor vehicle dealers at the same
165 price. This subsection shall not be construed to prevent the

166 offering of volume discounts if such discounts are equally
167 available to all franchised dealers in this state.

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

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

179 7. To offer to sell or to sell parts and/or
180 accessories to any new motor vehicle dealer for use in his own
181 business for the purpose of repairing or replacing the same or a
182 comparable part or accessory, at a lower actual price therefor
183 than the actual price charged to any other new motor vehicle
184 dealer for similar parts and/or accessories for use in his own
185 business. However, it is recognized that certain motor vehicle
186 dealers operate and serve as wholesalers of parts and accessories
187 to retail outlets, and nothing herein contained shall be construed
188 to prevent a manufacturer, distributor or wholesaler, or any agent
189 thereof, from selling to a motor vehicle dealer who operates and
190 serves as a wholesaler of parts and accessories, such parts and
191 accessories as may be ordered by such motor vehicle dealer for
192 resale to retail outlets, at a lower actual price than the actual
193 price charged a motor vehicle dealer who does not operate or serve

194 as a wholesaler of parts and accessories.

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

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

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

220 (3) It is unlawful to be a broker. For the purpose of this
221 subsection, "broker" means a person who, for a fee, commission or

222 other valuable consideration, arranges or offers to arrange a
223 transaction involving the sale, for purposes other than resale, of
224 a new motor vehicle, and who is not:

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

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

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

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

234 SECTION 3. This act shall take effect and be in force from
235 and after July 1, 2000.