

By: Representative Moak

To: Transportation;
Judiciary B

HOUSE BILL NO. 257

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 his property shall be subject to
17 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 he fills out and
21 processes or completes. Once an unlicensed dealer sells his sixth
22 vehicle in a twelve-month period, then the county tax assessor
23 shall report the alleged violator to the Motor Vehicle Title
24 Bureau for assignment for investigation. The Motor Vehicle Title
25 Bureau shall instigate the necessary legal action within
26 forty-five (45) days of the reporting date by the tax assessor.
27 The Motor Vehicle Title Bureau shall prescribe the method of

28 reporting by the tax assessor. The bureau shall maintain an
29 adequate data base of 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 the person, firm, association, corporation or trust
42 maintains or has a place or places of business in this state. Any
43 person, firm, association, corporation or trust engaging, acting
44 or serving in more than one (1) of the capacities or having more
45 than one (1) place where the business is carried on or conducted
46 shall be required to obtain and hold a current license for each
47 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 a motor vehicle
62 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 the 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 the 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 motor vehicles as are covered by
92 such franchise or contract specifically publicly advertised by the

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

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

115 3. To terminate or cancel the franchise or selling
116 agreement of any dealer without due cause. The nonrenewal of a
117 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 "Due cause" shall be defined as a breach by the dealer of a
121 material provision of the franchise agreement which breach has not
122 been cured within a reasonable time after the dealer has been
123 given written notice of the breach. The burden of proving that
124 due cause exists shall be upon the party attempting to terminate,
125 cancel or not renew the franchise or selling agreement. The

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

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

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

175 The provisions of this subsection shall not apply to sales to
176 a motor vehicle dealer of any motor vehicle ultimately sold,
177 donated or used by said dealer in a driver education program, or
178 to sales to a motor vehicle dealer for resale to any unit of
179 government, federal, state or local.

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

186 7. To offer to sell or to sell parts and/or
187 accessories to any new motor vehicle dealer for use in his own
188 business for the purpose of repairing or replacing the same or a
189 comparable part or accessory, at a lower actual price therefor
190 than the actual price charged to any other new motor vehicle

191 dealer for similar parts and/or accessories for use in his own
192 business. However, it is recognized that certain motor vehicle
193 dealers operate and serve as wholesalers of parts and accessories
194 to retail outlets, and nothing herein contained shall be construed
195 to prevent a manufacturer, distributor or wholesaler, or any agent
196 thereof, from selling to a motor vehicle dealer who operates and
197 serves as a wholesaler of parts and accessories, the parts and
198 accessories as may be ordered by such motor vehicle dealer for
199 resale to retail outlets, at a lower actual price than the actual
200 price charged a motor vehicle dealer who does not operate or serve
201 as a wholesaler of parts and accessories.

202 8. To prevent or attempt to prevent by contract or
203 otherwise any motor vehicle dealer from changing the capital
204 structure of his dealership or the means by or through which he
205 finances the operation of his dealership, provided the dealer at
206 all times meets any capital standards agreed to between the
207 dealership and the manufacturer, distributor or wholesaler,
208 provided such standards are deemed reasonable by the commission.

209 9. To prevent or attempt to prevent by contract or
210 otherwise any motor vehicle dealer or any officer, partner or
211 stockholder of any motor vehicle dealer from selling or
212 transferring any part of the interest of any of them to any other
213 person or persons or party or parties. However, no dealer,
214 officer, partner or stockholder shall have the right to sell,
215 transfer or assign the franchise or any right thereunder without
216 the consent of the manufacturer, distributor or wholesaler which
217 consent shall not be unreasonably withheld.

218 10. To condition unreasonably the renewal or
219 extension of a franchise on a motor vehicle dealer's substantial
220 renovation of the dealer's place of business or on the
221 construction, purchase, acquisition or rental of a new place of
222 business by the motor vehicle dealer. The manufacturer shall
223 notify the motor vehicle dealer in writing of its intent to impose

224 such a condition within a reasonable time prior to the effective
225 date of the proposed renewal or extension, but in no case less
226 than one hundred eighty (180) days prior to the renewal or
227 extension, and the manufacturer shall demonstrate to the
228 commission the need for the demand in view of the need to service
229 the public and the economic conditions existing in the motor
230 vehicle industry at the time the action would be required of the
231 motor vehicle dealer. As part of any such condition the
232 manufacturer shall offer the motor vehicle dealer a reasonable
233 initial supply and model mix of motor vehicles to meet the sales
234 levels necessary to support the increased overhead incurred by the
235 motor vehicle dealer by reason of the renovation, construction,
236 purchase or rental of a new place of business.

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

253 12. To fail or refuse to sell or offer to sell to
254 all motor vehicle dealers in a line or make, every motor vehicle
255 sold or offered for sale under the franchise agreement to any
256 motor vehicle dealer of the same line or make; or to unreasonably

257 require a motor vehicle dealer to pay an extra fee, purchase
258 unreasonable advertising displays or any other materials, or to
259 unreasonably require the dealer-operator to remodel, renovate or
260 recondition its existing facilities as a prerequisite to receiving
261 a certain model or series of vehicles. However, the failure to
262 deliver any such motor vehicle shall not be considered a violation
263 of this section if the failure is not arbitrary and is due to a
264 lack of manufacturing capacity or to a strike or labor difficulty,
265 a shortage of materials, a freight embargo or other cause of which
266 the manufacturer or distributor has no control. This provision
267 shall not apply to manufacturers of recreational vehicles.

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

282 14. To increase prices of new motor vehicles which
283 the new motor vehicle dealer had ordered for the ultimate
284 purchasers prior to the dealer's receipt of written official price
285 increase notification. A sales contract signed by the ultimate
286 purchaser that includes model and firm price shall constitute
287 evidence of each such order provided that the vehicle is in fact
288 delivered to that purchaser.

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

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

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

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

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

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

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