

By: Representatives Lamar, Anthony, Tullos,  
Stamps

To: Ways and Means

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 833

1 AN ACT TO AMEND SECTION 63-17-75, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW TO PROHIBIT  
3 CERTAIN DIRECT SALES ACTIVITIES BY A MOTOR VEHICLE MANUFACTURER,  
4 FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR SUBSIDIARY  
5 THEREOF; TO AMEND SECTION 63-17-109, MISSISSIPPI CODE OF 1972, TO  
6 CLARIFY WHAT THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW DOES NOT  
7 PROHIBIT REGARDING A MOTOR VEHICLE MANUFACTURER, FACTORY BRANCH,  
8 DISTRIBUTOR, DISTRIBUTOR BRANCH OR SUBSIDIARY THEREOF, OR A  
9 DIRECT-SALE MANUFACTURER; TO DEFINE THE TERM "DIRECT-SALE  
10 MANUFACTURER" FOR THE PURPOSES OF THIS ACT; AND FOR RELATED  
11 PURPOSES.

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

13 **SECTION 1.** Section 63-17-75, Mississippi Code of 1972, is  
14 amended as follows:

15 63-17-75. Within ninety (90) days after July 1, 1970, all  
16 persons who on July 1, 1970, are engaged in a business or  
17 occupation for which a license is required under the Mississippi  
18 Motor Vehicle Commission Law shall make application on forms  
19 prescribed by the commission for their respective licenses. All  
20 such persons shall be permitted, without a license, to continue to  
21 engage in the business or occupation for which a license is  
22 applied for until the license is either granted or, in case it is



23 denied, until the applicant has exhausted or has had an  
24 opportunity to exhaust all of his remedies under Section 63-17-99.  
25 No person not engaged in a business or occupation requiring such a  
26 license on July 1, 1970, shall be permitted to engage in such  
27 business or occupation until he shall have first obtained a  
28 license to engage in such business or occupation.

29 Applications for licenses shall be verified by the oath or  
30 affirmation of the applicants and shall be on forms prescribed by  
31 the commission and furnished to such applicants. Applications  
32 shall contain such information as the commission deems necessary  
33 to enable it to fully determine the qualifications and eligibility  
34 of the several applicants to receive the license or licenses  
35 applied for. The commission shall require that there be set forth  
36 in each application information relating to the applicant's  
37 financial standing, the applicant's business integrity, whether  
38 the applicant has an established place of business and is  
39 primarily engaged in the pursuit, avocation or business for which  
40 a license or licenses is applied for, and whether the applicant is  
41 able to properly conduct the business for which a license or  
42 licenses is applied for, and such other pertinent information  
43 consistent with the safeguarding of the public interest and public  
44 welfare. Applications for license as a motor vehicle dealer  
45 shall, in addition to the foregoing, be accompanied by the filing  
46 with the commission of a bona fide contract or franchise then in  
47 effect between the applicant and a manufacturer, distributor or



48 wholesaler of the new motor vehicle or vehicles proposed to be  
49 dealt in, unless such contract or franchise has already been filed  
50 with the commission in connection with a previous application made  
51 by such applicant, in which event the applicant shall, in lieu of  
52 again filing the contract or franchise, identify the contract or  
53 franchise by appropriate reference and file all revisions and  
54 additions, if any, which have been made to said contract or  
55 franchise. The applicant must furnish satisfactory evidence that  
56 he or it maintains adequate space in the building or structure  
57 wherein his or its established business is conducted for the  
58 display of new motor vehicles, or he will have such facilities  
59 within a reasonable time after receiving a license, and that he or  
60 it has or will have adequate facilities in said building or  
61 structure for the repair and servicing of motor vehicles and the  
62 storage of new parts and accessories for same. However, the  
63 failure to furnish the evidence called for in the preceding  
64 sentence shall not constitute sufficient cause for denying a  
65 license to any motor vehicle dealer who on July 1, 1970, was an  
66 enfranchised new motor vehicle dealer in this state of a  
67 manufacturer, distributor or wholesaler of new motor vehicles and  
68 who continued to be such a dealer from such date until application  
69 was made for a license as a motor vehicle dealer.

70 New applications for licenses as a new, used or wholesale  
71 motor vehicle dealer shall, in addition to the foregoing, be  
72 accompanied by the filing with the commission of a corporate



73 surety bond in the penal sum of Twenty-five Thousand Dollars  
74 (\$25,000.00) on a bond form approved by the commission. However,  
75 an applicant for licenses at multiple locations may choose to  
76 provide a corporate surety bond in the penal sum of One Hundred  
77 Thousand Dollars (\$100,000.00) covering all licensed locations of  
78 the same capacity in lieu of separate bonds for each location.

79 The bond shall be in effect upon the applicant being licensed  
80 and shall be conditioned upon his complying with the provisions of  
81 the Mississippi Motor Vehicle Commission Law. The bond shall be  
82 an indemnity for any loss sustained by any person by reason of the  
83 acts of the person bonded when those acts constitute grounds for  
84 the suspension or revocation of license. The bond shall be  
85 executed in the name of the State of Mississippi for the benefit  
86 of any aggrieved party. The aggregate liability of the surety for  
87 any claimants, regardless of the number of years this bond is in  
88 force or has been in effect, shall not exceed the amount of the  
89 bond. The proceeds of the bond shall be paid upon receipt by the  
90 commission of a final judgment from a Mississippi court of  
91 competent jurisdiction against the principal and in favor of an  
92 aggrieved party.

93 New, used and wholesale motor vehicle dealers shall be  
94 required to maintain motor vehicle liability insurance providing  
95 blanket coverage on vehicles operated on the public streets and  
96 highways of this state, including vehicles in dealership inventory  
97 unless the motor vehicle dealer's inventory does not have a motor.



98 Evidence of liability insurance for business and inventory  
99 vehicles shall be filed with the application for license, and the  
100 application for license shall be denied if proof of liability  
101 insurance satisfactory to the Department of Revenue is not  
102 provided.

103 Except as expressly allowed by Section 63-17-109, no motor  
104 vehicle manufacturer, factory branch, distributor, distributor  
105 branch or subsidiary thereof, is eligible to directly through any  
106 parent, subsidiary or affiliated entity, whether or not such motor  
107 vehicle manufacturer, factory branch, distributor, distributor  
108 branch or subsidiary thereof has entered into a franchise with any  
109 person or entity in this state: (a) own any ownership interest  
110 in, operate or control any motor vehicle dealer or dealership in  
111 this state for the same type or classification of motor vehicle  
112 that it manufactures or distributes; (b) apply for a motor vehicle  
113 dealers license; or (c) be licensed as a new motor vehicle dealer  
114 in this state.

115 **SECTION 2.** Section 63-17-109, Mississippi Code of 1972, is  
116 amended as follows:

117 63-17-109. (1) In the event of a proposed sale or transfer  
118 of a dealership and the franchise agreement for the dealership  
119 contains a right of first refusal in favor of the manufacturer or  
120 distributor, notwithstanding the terms of the franchise agreement,  
121 the manufacturer or distributor shall be permitted to exercise a



122 right of first refusal to acquire the dealership only if all of  
123 the following requirements are met:

124           (a) The manufacturer or distributor sends by certified  
125 mail, return receipt requested, or any other reliable means of  
126 communication, notice of its intent to exercise its right of first  
127 refusal within sixty (60) days of receipt of the executed contract  
128 for the proposed sale or transfer and completed application and  
129 related documents reasonably requested by the manufacturer or  
130 distributor. The manufacturer or distributor shall provide the  
131 application and notice of other requirements within fifteen (15)  
132 days of request. In no event shall the manufacturer or  
133 distributor exercise its right of first refusal more than one  
134 hundred twenty (120) days after receipt of the executed contract.  
135 The manufacturer or distributor and the applicant shall act in  
136 good faith to provide the required information in a timely and  
137 expeditious manner.

138           (b) The exercise of the right of first refusal will  
139 result in the motor vehicle dealer receiving consideration, terms  
140 and conditions that are either the same as or greater than that  
141 for which such dealer has contracted for in connection with the  
142 proposed transaction.

143           (2) The manufacturer's or distributor's right of first  
144 refusal shall not apply to a transaction involving one (1) of the  
145 following:



146 (a) A designated family member or members, including  
147 the spouse, child or grandchild, spouse of a child or grandchild,  
148 brother, sister or parent of the dealer-operator, or one or more  
149 motor vehicle dealer owners;

150 (b) A manager employed by the motor vehicle dealer in  
151 the dealership during the previous five (5) years that is  
152 otherwise qualified as a dealer-operator;

153 (c) A partnership or corporation controlled by any of  
154 the family members of the dealer-operator;

155 (d) A trust arrangement established or to be  
156 established for the purpose of allowing the new motor vehicle  
157 dealer to continue to qualify as such pursuant to the  
158 manufacturer's or distributor's standards, or provides for the  
159 succession of the franchise agreement to designated family members  
160 or qualified management in the event of the death or incapacity of  
161 the dealer-operator or its principal owner or owners.

162 (3) (a) The manufacturer or distributor shall pay the  
163 reasonable expenses, including attorneys' fees which do not exceed  
164 the usual, customary and reasonable fees charged for similar work  
165 done for other clients, incurred by the proposed owner prior to  
166 the exercise of the right of first refusal in negotiating and  
167 implementing the contract for the proposed sale of the dealership.  
168 The expenses and attorneys' fees shall be paid to the proposed new  
169 owner at the time of the closing of the sale at which the  
170 manufacturer or distributor exercises its right of first refusal.



171           (b) No payment of expenses and attorneys' fees shall be  
172 required if the person claiming reimbursement has not submitted or  
173 caused to be submitted an accounting of those expenses within  
174 thirty (30) days after the receipt of the manufacturer's or  
175 distributor's written request for the accounting. A manufacturer  
176 or distributor may request the accounting before exercising its  
177 right of first refusal.

178           (4) If the selling dealer discloses the manufacturer's right  
179 of first refusal to the proposed owner in writing, the motor  
180 vehicle dealer shall not have any liability to any person as a  
181 result of a manufacturer or distributor exercising its right of  
182 first refusal and the manufacturer or distributor shall assume the  
183 defense of the selling motor vehicle dealer for any claims by the  
184 proposed owner arising from the exercise of the right of first  
185 refusal.

186           (5) If the manufacturer or distributor does not exercise its  
187 right of first refusal within the time period set forth in  
188 subsection (1)(a), the manufacturer or distributor shall act upon  
189 the proposed sale of the franchise promptly and in good faith but  
190 in no event more than one hundred twenty (120) days after receipt  
191 of the completed application and related documents reasonably  
192 requested by the manufacturer or distributor.

193           (6) Neither Section 63-17-75 nor this section shall be  
194 construed to prohibit any of the following:





195           (a) The ownership, operation or control by a  
196 manufacturer, factory branch, distributor, distributor branch or  
197 subsidiary thereof, of a dealership for a temporary period (not to  
198 exceed one (1) year) during the transition from one (1) licensed  
199 motor vehicle dealer to another. The commission may extend the  
200 temporary ownership, operation or control period upon a showing of  
201 good cause by the manufacturer, factory branch, distributor,  
202 distributor branch, or subsidiary thereof.

203           (b) The ownership or control of a dealership by a  
204 manufacturer, factory branch, distributor, distributor branch or  
205 subsidiary thereof, while in a bona fide relationship with an  
206 independent person, other than a manufacturer, factory branch,  
207 distributor, distributor branch or an agent or affiliate thereof,  
208 who has made a significant, bona fide, unencumbered initial  
209 investment in the dealership that is subject to loss and who can  
210 reasonably expect to acquire full ownership of the dealership  
211 within a reasonable period of time, and on reasonable terms and  
212 conditions.

213           (c) The ownership, operation or control of a dealership  
214 by a direct-sale manufacturer to sell, display for sale, lease,  
215 rent or offer for sale or exchange a new or used motor vehicle  
216 without a franchise; however, the direct-sale manufacturer may not  
217 sell, display for sale, lease, rent or offer for sale or exchange  
218 a new or used motor vehicle that is not of the same line-make the



219 direct-sale manufacturer manufactures. For the purposes of this  
220 paragraph (c), "direct-sale manufacturer" means a person:

221 (i) That is both a manufacturer and a dealer; and

222 (ii) That, in this state, sells, displays for  
223 sale, or offers for sale or exchange only new motor vehicles of  
224 the person's own line-make that are:

225 1. Exclusively propelled through the use of  
226 electricity, a hydrogen fuel cell, or another nonfossil fuel  
227 source;

228 2. Passenger vehicles with a gross vehicle  
229 weight rating of fourteen thousand (14,000) pounds or less or  
230 trucks with a gross vehicle weight rating of fourteen thousand  
231 (14,000) pounds or less; and

232 3. Manufactured by the person:

233 a. That is not a franchise holder;

234 b. That is domiciled in the United  
235 States; and

236 c. Who has at least one (1) chief  
237 officer direct, control, and coordinate the person's activities as  
238 a direct-sale manufacturer from a physical location in the United  
239 States.

240 **SECTION 3.** This act shall take effect and be in force from  
241 and after July 1, 2022.

