

By: Representatives Lamar, Anthony, Tullos,
Stamps

To: Ways and Means

HOUSE BILL NO. 833
(As Passed the House)

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; AND FOR
9 RELATED PURPOSES.

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

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

13 63-17-75. Within ninety (90) days after July 1, 1970, all
14 persons who on July 1, 1970, are engaged in a business or
15 occupation for which a license is required under the Mississippi
16 Motor Vehicle Commission Law shall make application on forms
17 prescribed by the commission for their respective licenses. All
18 such persons shall be permitted, without a license, to continue to
19 engage in the business or occupation for which a license is
20 applied for until the license is either granted or, in case it is
21 denied, until the applicant has exhausted or has had an



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

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



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

68 New applications for licenses as a new, used or wholesale
69 motor vehicle dealer shall, in addition to the foregoing, be
70 accompanied by the filing with the commission of a corporate
71 surety bond in the penal sum of Twenty-five Thousand Dollars



72 (\$25,000.00) on a bond form approved by the commission. However,
73 an applicant for licenses at multiple locations may choose to
74 provide a corporate surety bond in the penal sum of One Hundred
75 Thousand Dollars (\$100,000.00) covering all licensed locations of
76 the same capacity in lieu of separate bonds for each location.

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

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



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

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

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

115 63-17-109. (1) In the event of a proposed sale or transfer
116 of a dealership and the franchise agreement for the dealership
117 contains a right of first refusal in favor of the manufacturer or
118 distributor, notwithstanding the terms of the franchise agreement,
119 the manufacturer or distributor shall be permitted to exercise a
120 right of first refusal to acquire the dealership only if all of
121 the following requirements are met:



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

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

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

144 (a) A designated family member or members, including
145 the spouse, child or grandchild, spouse of a child or grandchild,



146 brother, sister or parent of the dealer-operator, or one or more
147 motor vehicle dealer owners;

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

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

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

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

169 (b) No payment of expenses and attorneys' fees shall be
170 required if the person claiming reimbursement has not submitted or



171 caused to be submitted an accounting of those expenses within
172 thirty (30) days after the receipt of the manufacturer's or
173 distributor's written request for the accounting. A manufacturer
174 or distributor may request the accounting before exercising its
175 right of first refusal.

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

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

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

193 (a) The ownership, operation or control by a
194 manufacturer, factory branch, distributor, distributor branch or
195 subsidiary thereof, of a dealership for a temporary period (not to



196 exceed one (1) year) during the transition from one (1) licensed
197 motor vehicle dealer to another. The commission may extend the
198 temporary ownership, operation or control period upon a showing of
199 good cause by the manufacturer, factory branch, distributor,
200 distributor branch, or subsidiary thereof.

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

211 (c) The ownership, operation or control of not more
212 than one (1) motor vehicle dealership location within this state
213 by a manufacturer that manufactures and sells only motor vehicles
214 that are plug-in electric vehicles that do not rely on any
215 nonelectric source of power in all modes of operation, provided
216 that the dealership has been continuously licensed since August 1,
217 2021, and provided that the ownership or controlling interest in
218 the dealership is not transferred, sold or conveyed to another
219 person required to be licensed under this title.



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

