

## **Senate Amendments to House Bill No. 833**

**TO THE CLERK OF THE HOUSE:**

**THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:**

### **AMENDMENT NO. 1**

**Amend by striking all after the enacting clause and inserting in lieu thereof the following:**

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 and shall stand repealed on June 30, 2022.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.

SS36\HB833A.6J

Eugene S. Clarke  
Secretary of the Senate