

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 401

1 AN ACT TO AMEND SECTION 63-17-75 AND 63-17-109, MISSISSIPPI
 2 CODE OF 1972, WHICH ARE PROVISIONS OF THE "MISSISSIPPI MOTOR
 3 VEHICLE COMMISSION LAW," TO PROVIDE EXCEPTIONS UNDER WHICH A MOTOR
 4 VEHICLE MANUFACTURER IS ELIGIBLE TO OWN ANY INTEREST IN, OPERATE
 5 OR CONTROL A MOTOR VEHICLE DEALER OR DEALERSHIP, APPLY FOR A MOTOR
 6 VEHICLE DEALERS LICENSE OR BE LICENSED AS A NEW MOTOR VEHICLE
 7 DEALER IN THE STATE OF MISSISSIPPI; TO SPECIFY IN THE EXCEPTION
 8 THAT STATE LAW SHALL NOT BE CONSTRUED TO PROHIBIT THE OWNERSHIP,
 9 OPERATION OR CONTROL BY A MANUFACTURER OR SUBSIDIARY THEREOF WHO
 10 HAS MET CERTAIN CONDITIONS TO RECEIVE A LICENSE AS A MOTOR VEHICLE
 11 DEALERSHIP; AND FOR RELATED 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. (1) Within ninety (90) days after July 1, 1970,
 16 all 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 (2) (a) Applications for licenses shall:

30 (i) Be verified by the oath or affirmation of the
31 applicants * * *;

32 (ii) Be on forms prescribed by the commission and
33 furnished to such applicants * * *; and

34 (iii) Contain such information as the commission
35 deems necessary to enable it to fully determine the qualifications
36 and eligibility of the several applicants to receive the license
37 or licenses applied for.

38 (b) The commission shall require that there be set
39 forth in each application information relating to:

40 (i) The applicant's financial standing * * *;

41 (ii) The applicant's business integrity * * *;

42 (iii) Whether the applicant has an established
43 place of business and is primarily engaged in the pursuit,
44 avocation or business for which a license or licenses is applied
45 for * * *; and

46 (iv) Whether the applicant is able to properly
47 conduct the business for which a license or licenses is applied



48 for, and such other pertinent information consistent with the
49 safeguarding of the public interest and public welfare.

50 (c) In addition to the requirements of subsection (1)
51 and paragraphs (a) and (b) of this subsection (2), applications
52 for license as a motor vehicle dealer shall * * * be accompanied
53 by the filing, with the commission, of a bona fide contract or
54 franchise then in effect between the applicant and a manufacturer,
55 distributor or wholesaler of the new motor vehicle or vehicles
56 proposed to be dealt in, unless such contract or franchise has
57 already been filed with the commission in connection with a
58 previous application made by such applicant, in which event the
59 applicant shall, in lieu of again filing the contract or
60 franchise, identify the contract or franchise by appropriate
61 reference and file all revisions and additions, if any, which have
62 been made to said contract or franchise.

63 (d) The applicant must furnish satisfactory evidence
64 that he or it maintains adequate space in the building or
65 structure wherein his or its established business is conducted for
66 the display of new motor vehicles, or he will have such facilities
67 within a reasonable time after receiving a license, and that he or
68 it has or will have adequate facilities in said building or
69 structure for the repair and servicing of motor vehicles and the
70 storage of new parts and accessories for same. However, the
71 failure to furnish the evidence called for in * * * this paragraph
72 shall not constitute sufficient cause for denying a license to any



73 motor vehicle dealer who, on July 1, 1970, was an enfranchised new
74 motor vehicle dealer in this state of a manufacturer, distributor
75 or wholesaler of new motor vehicles and who continued to be such a
76 dealer from such date until application was made for a license as
77 a motor vehicle dealer.

78 (3) (a) New applications for licenses as a new, used or
79 wholesale motor vehicle dealer shall, in addition to * * * meeting
80 the requirements of subsections (1) and (2), be accompanied by the
81 filing with the commission of a corporate surety bond in the penal
82 sum of Twenty-five Thousand Dollars (\$25,000.00) on a bond form
83 approved by the commission. However, an applicant for licenses at
84 multiple locations may choose to provide a corporate surety bond
85 in the penal sum of One Hundred Thousand Dollars (\$100,000.00)
86 covering all licensed locations of the same capacity in lieu of
87 separate bonds for each location.

88 (b) The bond shall be in effect upon the applicant
89 being licensed and shall be conditioned upon his complying with
90 the provisions of the Mississippi Motor Vehicle Commission Law.
91 The bond shall be an indemnity for any loss sustained by any
92 person by reason of the acts of the person bonded when those acts
93 constitute grounds for the suspension or revocation of license.
94 The bond shall be executed in the name of the State of Mississippi
95 for the benefit of any aggrieved party. The aggregate liability
96 of the surety for any claimants, regardless of the number of years
97 this bond is in force or has been in effect, shall not exceed the



98 amount of the bond. The proceeds of the bond shall be paid upon
99 receipt by the commission of a final judgment from a Mississippi
100 court of competent jurisdiction against the principal and in favor
101 of an aggrieved party.

102 (4) New, used and wholesale motor vehicle dealers shall be
103 required to maintain motor vehicle liability insurance providing
104 blanket coverage on vehicles operated on the public streets and
105 highways of this state, including vehicles in dealership inventory
106 unless the motor vehicle dealer's inventory does not have a motor.
107 Evidence of liability insurance for business and inventory
108 vehicles shall be filed with the application for license, and the
109 application for license shall be denied if proof of liability
110 insurance satisfactory to the Department of Revenue is not
111 provided.

112 (5) Except as expressly permitted by Section 63-17-109, no
113 motor vehicle manufacturer, factory branch, distributor,
114 distributor branch or subsidiary thereof is, directly through any
115 parent, subsidiary or affiliated entity, whether or not such motor
116 vehicle manufacturer, factory branch, distributor, distributor
117 branch or subsidiary thereof has entered into a franchise with any
118 person or entity in this state, eligible to:

119 (a) Own any ownership interest in, operate or control
120 any motor vehicle dealer or dealership in this state for the same
121 type or classification of motor vehicle that it manufactures or
122 distributes;



123 (b) Apply for a motor vehicle dealers license; or
124 (c) Be licensed as a new motor vehicle dealer in this
125 state.

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

128 63-17-109. (1) In the event of a proposed sale or transfer
129 of a dealership and the franchise agreement for the dealership
130 contains a right of first refusal in favor of the manufacturer or
131 distributor, notwithstanding the terms of the franchise agreement,
132 the manufacturer or distributor shall be permitted to exercise a
133 right of first refusal to acquire the dealership only if all of
134 the following requirements are met:

135 (a) The manufacturer or distributor sends by certified
136 mail, return receipt requested, or any other reliable means of
137 communication, notice of its intent to exercise its right of first
138 refusal within sixty (60) days of receipt of the executed contract
139 for the proposed sale or transfer and completed application and
140 related documents reasonably requested by the manufacturer or
141 distributor. The manufacturer or distributor shall provide the
142 application and notice of other requirements within fifteen (15)
143 days of request. In no event shall the manufacturer or
144 distributor exercise its right of first refusal more than one
145 hundred twenty (120) days after receipt of the executed contract.
146 The manufacturer or distributor and the applicant shall act in



147 good faith to provide the required information in a timely and
148 expeditious manner.

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

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

157 (a) A designated family member or members, including
158 the spouse, child or grandchild, spouse of a child or grandchild,
159 brother, sister or parent of the dealer-operator, or one or more
160 motor vehicle dealer owners;

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

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

166 (d) A trust arrangement established or to be
167 established for the purpose of allowing the new motor vehicle
168 dealer to continue to qualify as such pursuant to the
169 manufacturer's or distributor's standards, or provides for the
170 succession of the franchise agreement to designated family members



171 or qualified management in the event of the death or incapacity of
172 the dealer-operator or its principal owner or owners.

173 (3) (a) The manufacturer or distributor shall pay the
174 reasonable expenses, including attorneys' fees which do not exceed
175 the usual, customary and reasonable fees charged for similar work
176 done for other clients, incurred by the proposed owner prior to
177 the exercise of the right of first refusal in negotiating and
178 implementing the contract for the proposed sale of the dealership.
179 The expenses and attorneys' fees shall be paid to the proposed new
180 owner at the time of the closing of the sale at which the
181 manufacturer or distributor exercises its right of first refusal.

182 (b) No payment of expenses and attorneys' fees shall be
183 required if the person claiming reimbursement has not submitted or
184 caused to be submitted an accounting of those expenses within
185 thirty (30) days after the receipt of the manufacturer's or
186 distributor's written request for the accounting. A manufacturer
187 or distributor may request the accounting before exercising its
188 right of first refusal.

189 (4) If the selling dealer discloses the manufacturer's right
190 of first refusal to the proposed owner in writing, the motor
191 vehicle dealer shall not have any liability to any person as a
192 result of a manufacturer or distributor exercising its right of
193 first refusal and the manufacturer or distributor shall assume the
194 defense of the selling motor vehicle dealer for any claims by the



195 proposed owner arising from the exercise of the right of first
196 refusal.

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

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

206 (a) The ownership, operation or control by a
207 manufacturer, factory branch, distributor, distributor branch or
208 subsidiary thereof, of a dealership for a temporary period, not to
209 exceed one (1) year, during the transition from one (1) licensed
210 motor vehicle dealer to another. The commission may extend the
211 temporary ownership, operation or control period upon a showing of
212 good cause by the manufacturer, factory branch, distributor,
213 distributor branch or subsidiary thereof;

214 (b) The ownership, operation or control of a dealership
215 by a manufacturer, factory branch, distributor, distributor branch
216 or subsidiary thereof, while in a bona fide relationship with an
217 independent person, other than a manufacturer, factory branch,
218 distributor, distributor branch or an agent or affiliate thereof,
219 who has made a significant, bona fide, unencumbered initial



220 investment in the dealership that is subject to loss, and who can
221 reasonably expect to acquire full ownership of the dealership
222 within a reasonable period of time, and on reasonable terms and
223 conditions, provided that a reasonable period shall be presumed to
224 not exceed eight (8) years; or

225 (c) (i) The ownership, operation or control of motor
226 vehicle dealership locations within this state by a manufacturer
227 that manufactures and sells only motor vehicles that are plug-in
228 electric vehicles that do not rely on any nonelectric source of
229 power in all modes of operation, provided that the dealership is
230 licensed by the state and is owned or controlled by a United
231 States-based, publicly traded manufacturer that has a franchise
232 agreement with an independent dealership in the state licensed in
233 accordance with the provision of this chapter, and provided that
234 the ownership or controlling interest in the dealership is not
235 transferred, sold or conveyed to another person required to be
236 licensed under this title.

237 (ii) The ownership, operation or control of not
238 more than one (1) motor vehicle dealership location within this
239 state by a manufacturer that manufactures and sells only motor
240 vehicles that are plug-in electric vehicles that do not rely on
241 any nonelectric source of power in all modes of operation,
242 provided that the dealership has been continuously licensed since
243 August 1, 2021, and provided that the ownership or controlling



244 interest in the dealership is not transferred, sold or conveyed to
245 another person required to be licensed under this title.

246 **SECTION 3.** This act shall take effect and be in force from
247 and after July 1, 2023.

