

By: Senator(s) Sparks, McMahan, McCaughn, Barrett, Boyd, McLendon, Carter, Blackwell, Turner-Ford, Suber, Whaley, Branning, Tate, Horhn, Hickman, Younger, Williams, DeLano, Barnett

To: Finance

SENATE BILL NO. 2455

1 AN ACT TO AMEND SECTION 63-17-75, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR THE INDEPENDENCE OF THE MOTOR VEHICLE DEALERSHIP
3 TIER FROM OWNERSHIP OR CONTROL BY A MANUFACTURER, FACTORY BRANCH,
4 DISTRIBUTOR, DISTRIBUTOR BRANCH OR SUBSIDIARY THEREOF, WITH
5 RESPECT TO THE SAME TYPE OR CLASSIFICATION OF MOTOR VEHICLE; TO
6 AMEND SECTION 63-17-109, MISSISSIPPI CODE OF 1972, TO PROVIDE
7 CERTAIN EXCEPTIONS; AND FOR RELATED PURPOSES.

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

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

11 63-17-75. Within ninety (90) days after July 1, 1970, all
12 persons who on July 1, 1970, are engaged in a business or
13 occupation for which a license is required under the Mississippi
14 Motor Vehicle Commission Law shall make application on forms
15 prescribed by the commission for their respective licenses. All
16 such persons shall be permitted, without a license, to continue to
17 engage in the business or occupation for which a license is
18 applied for until the license is either granted or, in case it is
19 denied, until the applicant has exhausted or has had an
20 opportunity to exhaust all of his remedies under Section 63-17-99.



21 No person not engaged in a business or occupation requiring such a
22 license on July 1, 1970, shall be permitted to engage in such
23 business or occupation until he shall have first obtained a
24 license to engage in such business or occupation.

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



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

66 New applications for licenses as a new, used or wholesale
67 motor vehicle dealer shall, in addition to the foregoing, be
68 accompanied by the filing with the commission of a corporate
69 surety bond in the penal sum of Twenty-five Thousand Dollars
70 (\$25,000.00) on a bond form approved by the commission. However,



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

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

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



96 application for license shall be denied if proof of liability
97 insurance satisfactory to the Department of Revenue is not
98 provided.

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

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

113 63-17-109. (1) In the event of a proposed sale or transfer
114 of a dealership and the franchise agreement for the dealership
115 contains a right of first refusal in favor of the manufacturer or
116 distributor, notwithstanding the terms of the franchise agreement,
117 the manufacturer or distributor shall be permitted to exercise a
118 right of first refusal to acquire the dealership only if all of
119 the following requirements are met:



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

