



SPONSOR: Sen. Poore

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1
TO
SENATE BILL NO. 278

1 AMEND Senate Bill No. 278 on line 17 by deleting "were" as it appears therein and inserting in lieu
2 thereof "are".

3 FURTHER AMEND Senate Bill No. 278 on line 18 by deleting "prior to August 1, 2023," as it appears
4 therein.

5 FURTHER AMEND Senate Bill No. 278 on line 307 by deleting "reasonably believes" as it appears
6 therein and inserting "can demonstrate".

7 FURTHER AMEND Senate Bill No. 278 on line 308 after "investments" and before "and the dealer" by
8 inserting "over the useful life of the part, tool, equipment, charger or other infrastructure in question".

9 FURTHER AMEND Senate Bill No. 278 on line 343 by deleting as it appears therein "20%" and inserting
10 in lieu thereof "8%".

11 FURTHER AMEND Senate Bill No. 278 on line 356 by deleting "50 new motor vehicle dealers" as it
12 appears therein and inserting in lieu thereof "30 new motor vehicle dealers".

13 FURTHER AMEND Senate Bill No. 278 on line 357 by deleting "10 motorcycle dealers" as it appears
14 therein and inserting in lieu thereof "6 motorcycle dealers".

15 FURTHER AMEND Senate Bill No. 278 on lines 358 through 361 by deleting "has standing to intervene
16 as a party in any civil or administrative proceeding in any of the courts or administrative agencies of this State, or to

17 file a petition or a civil action or cause of action in any court of competent jurisdiction for itself, or on behalf of any
18 or all of its members, seeking declaratory and injunctive relief.” as it appears therein and inserting in lieu thereof:
19 “has standing to file a petition or a civil action to enforce the provisions of this chapter in any court of competent
20 jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Any such
21 association also has standing to intervene as a party in an action previously filed by an individual member or
22 members of such association to enforce the provisions of this chapter.”.

23 FURTHER AMEND Senate Bill No. 278 on lines 366 through 370 by deleting:

24 “A cognizable injury to the collective interest of the members of the association shall be deemed
25 to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State, or
26 seeking to be licensed in this State in any capacity or to otherwise engage in business in this State, applies
27 for licensure to own, operate, or control a motor vehicle dealership in this state in violation of this chapter
28 or engages in any conduct or takes any action that meets any of the following criteria:” as it appears
29 therein.

30 FURTHER AMEND Senate Bill No. 278 by deleting lines 371 through 376 in their entirety.

31 FURTHER AMEND Senate Bill No. 278 on line 402 by deleting “,” after “buyers” therein.

32 FURTHER AMEND Senate Bill No. 278 on line 402 by deleting “distributor was licensed” as it appears
33 therein and inserting in lieu thereof “distributor is licensed”.

34 FURTHER AMEND Senate Bill No. 278 by deleting lines 403 through 404 in their entirety and inserting
35 in lieu thereof “motor vehicle dealer.”.

36 FURTHER AMEND Senate Bill 278 after line 406 by inserting: “h. Any entity that is an issuer of
37 securities registered under Section 12 of the Securities Exchange Act of 1934, including its subsidiaries or
38 affiliates.”

39 FURTHER AMEND Senate Bill No. 278 by deleting line 409 in its entirety and inserting in lieu thereof the
40 following:

41 “() “New motor vehicle” means a motor vehicle with a manufacturer's certificate of origin that has not
42 been titled or registered by any state or country in the name of an end user via sale or lease and that has never been
43 the subject of a completed, successful, or conditional sale that was subsequently approved other than between new
44 motor vehicle dealers, or between a manufacturer and a new motor vehicle dealer of the same franchise.”.

45 FURTHER AMEND Senate Bill No. 278 on line 420 by deleting "Franchised ~~and~~ new vehicle dealers" as
46 it appears therein and inserting in lieu thereof "Franchised and new vehicle dealers".

47 FURTHER AMEND after line 421 by inserting the following:

48 "(g) Restriction upon ownership of dealership by manufacturer, importer or distributor

49 A manufacturer, importer, or distributor, or agent of a manufacturer, importer, or distributor, or

50 parent, subsidiary, common entity, officer, or currently employed representative of the

51 manufacturer, importer, or distributor, may not directly or indirectly own, operate, or control, by

52 contract, agreement, or otherwise, a motor vehicle dealership in this state if the manufacturer,

53 importer, or distributor has manufactured, imported, or distributed motor vehicles of any line-

54 make which have been or are offered for sale under a franchise agreement in this state with an

55 independent person. Any person who is not prohibited by this section from owning, operating, or

56 controlling a motor vehicle dealership may be issued a dealer license, provided that all applicable

57 licensing requirements are satisfied. Any person prohibited by this section from owning,

58 operating, or controlling a motor vehicle dealership may not be issued a dealer license.

59 Whenever used in this section, unless the context otherwise requires, the following words and
60 terms have the following meanings:

61 (1) "Common entity" means a person who satisfies the following criteria:

62 a. Who is directly or indirectly controlled by or has more than 30% of its equity
63 interest directly or indirectly owned, beneficially or of record, through any form of ownership
64 structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

65 b. Who has more than 30% of its equity interest directly or indirectly controlled
66 or owned, beneficially or of record, through any form of ownership structure, by one or
67 more persons who also directly or indirectly control or own, beneficially or of record,
68 more than 30% of the equity interests of a manufacturer, an importer, or any affiliate
69 thereof.

70 (2) "Independent person" means a person who is not an agent, a parent, a subsidiary, a common
71 entity, an officer, a director, or an employed representative of a manufacturer, importer, or distributor.

72 (3) "Importer" means any person who imports motor vehicles from a foreign country into the

Synopsis:

This Amendment makes a number of changes to SB 278:

The Amendment provides that "new motor vehicle dealer" or "dealer" includes manufacturers who are licensed by the Department of Motor Vehicles to sell or lease new motor vehicles directly to customers. This revises SB 278, which included in the definition of "new motor vehicle dealer" or "dealer" only those manufacturers who were licensed by the DMV prior to August 1, 2023.

The Amendment provides that a manufacturer violates Chapter 49 by refusing to accept the return of or fully reimburse the dealer for the cost of parts, tools, and other equipment or infrastructure required under the franchise agreement or as part of a policy or program related to the sale or service of electric motor vehicles, if the dealer can demonstrate that the volume of electric motor vehicle sales is inadequate to allow the dealer to realize a reasonable return on the investment over the useful life of the part, tool, or other equipment or infrastructure. SB 278 did not require the dealer to make this demonstration.

The Amendment reduces, from 20% to 8% of the percent of gross revenue from the manufacturer or distributor's sale directly to a retail customer of a motor vehicle accessory, option, or similar, that the manufacturer or distributor is required to pay to a franchised new motor vehicle dealer for cars sold within the 5-year period preceding the sale of the accessory or option.

In addition, the Amendment reduces the number of new motor vehicle dealers or motorcycle dealers required to be members of an association in order for the association to have standing to pursue collective action and removes language concerning what constitutes a cognizable injury for purposes of collective action.

The Amendment provides that a manufacturer or distributor is not considered a "dealer" or "motor vehicle dealer" for purposes of Title 21, unless the manufacturer or distributor is licensed as a motor vehicle dealer. This revises SB 278, which provided that only a manufacturer or distributor licensed before May 15, 2023 would be considered a "dealer" or "motor vehicle dealer."

The also Amendment prohibits manufacturers, importers, and distributors from owning a dealership in Delaware if the manufacturer, importer, or distributor has manufactured, imported, or distributed motor vehicles of any line make that have been or are offered for sale within the state under a franchise agreement with an independent person.

Author: Senator Poore