

**Enrolled**  
**House Bill 2739**

Sponsored by Representative ESQUIVEL

CHAPTER .....

AN ACT

Relating to motor vehicle dealerships; creating new provisions; amending ORS 650.120, 650.140, 650.145, 650.150 and 650.155; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 650.145 is amended to read:

650.145. (1) As used in subsection (2) of this section, "fair and reasonable compensation" means the amount originally paid by the dealer minus any incentive payments, model close-out allowances or any other programs applicable to the vehicles.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of any franchise, the dealer shall be allowed fair and reasonable compensation by the manufacturer, distributor or importer for the following:

(a) All new [*current model year*] **vehicles manufactured in the current calendar year and any subsequent calendar year in the** motor vehicle inventory [*with a gross vehicle weight rating of less than 8,500 pounds*] purchased from the manufacturer, distributor or importer that [*has*] **have** not been materially altered, substantially damaged or driven for more than 300 miles;

(b) All new **vehicles in the** motor vehicle inventory that [*has*] **have** not been materially altered or substantially damaged, provided that the vehicles:

(A) If motor vehicles with a gross vehicle weight rating of less than 8,500 pounds, were not driven for more than 300 miles, were purchased directly from the manufacturer, distributor or importer within 120 days of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source; or

(B) If motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, were not driven more than [*4,000*] **3,500** miles, were purchased directly from the manufacturer, distributor or importer within one year of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source;

(c) Supplies and parts inventory purchased from the manufacturer, distributor or importer and listed in the manufacturer's, distributor's or importer's current parts catalog;

(d) Equipment, furnishings and signs purchased from the manufacturer, distributor or importer and required by the manufacturer, distributor or importer that have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value; and

(e) Special tools purchased from the manufacturer, distributor or importer within three years of the date of termination, cancellation, nonrenewal or discontinuance and required by the manufacturer that have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value.

(3) Nothing in this section is intended to modify the manufacturer's, distributor's or importer's contractual right of setoff.

(4) Upon the termination, cancellation, nonrenewal or discontinuance of a franchise, the manufacturer, distributor or importer shall also pay to the dealer a sum equal to the current, fair rental value of the dealer's established place of business for a period of one year from the effective date of termination, cancellation, nonrenewal or discontinuance or the remaining period of any lease, whichever is less.

(5) Subsection (4) of this section shall apply only to the extent that the dealer's established place of business is used for performance of sales and service obligations under the manufacturer's, distributor's or importer's franchise agreement.

(6) In the event that termination is by the dealer, the payment required by subsection (4) of this section is not required.

(7) This section shall not relieve a new motor vehicle dealer, lessor or other owner of an established place of business from the obligation of mitigating damages.

**SECTION 2.** ORS 650.155 is amended to read:

650.155. (1) Notwithstanding the terms of any franchise, the manufacturer is liable for any and all damage to new motor vehicles before delivery to a carrier or transporter.

(2) Whenever a new motor vehicle is damaged in transit, the dealer shall:

(a) Notify the manufacturer of the damage within three business days from the date of delivery to the dealer or within any additional time as specified in the franchise; and

(b) Request from the manufacturer authorization to replace the components, parts and accessories damaged or to otherwise repair the damage.

(3) If the manufacturer refuses or fails to authorize repair of any damage within 10 days after receipt of notification under subsection (2) of this section, or within any additional time as specified in the franchise, ownership of the new motor vehicle shall revert to the manufacturer, and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(4) A manufacturer shall disclose in writing to a dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs.

(5) If the total value of repairs to a new motor vehicle by the manufacturer's authorized agent and a dealer equals or exceeds the amount specified under subsection (6) of this section, the manufacturer may either repurchase the motor vehicle from the dealer, or provide reasonable and adequate compensation to the dealer to assist in sale or disposition of the new motor vehicle, as long as the dealer has complied with all other contractual agreements with regard to damaged vehicles. If the manufacturer repurchases the motor vehicle, the dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(6) A dealer shall disclose, in writing, to a purchaser of the new motor vehicle prior to entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds [\$500] **\$1,000**, as calculated at the rate of the dealer's authorized warranty rate for labor and parts. Replacement of glass, tires, bumpers or any comparable nonwelded component is not considered damage and repair for purposes of this section. For purposes of this subsection, "comparable nonwelded component" does not include a fender, hood, trunk lid or door.

**SECTION 3.** ORS 650.120 is amended to read:

650.120. For the purposes of ORS 650.120 to 650.170:

(1) "Dealer" means any person who has been issued a vehicle dealer certificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer engages in buying, selling, leasing or exchanging new motor vehicles.

(2) "Dealership" means the location from which a dealer buys, sells, leases, trades, stores, takes on consignment or in any other manner deals in new motor vehicles.

(3) "Distributor" means a person who sells or distributes motor vehicles other than motor homes to motor vehicle dealers.

(4) "Fleet owner" means a person in this state who at one time buys or leases for use in a business:

- (a) 15 or more motor vehicles with a gross vehicle weight rating of less than 8,500 pounds; or
- (b) 50 or more vehicles with a gross vehicle weight rating of 8,500 pounds or more.

(5) "Franchise" means a contract or agreement under which:

(a) The franchisee is granted the right to sell, lease and exchange new motor vehicles manufactured, distributed or imported by the franchisor;

(b) The franchise is an independent business operating as a component of a distribution or marketing system prescribed in substantial part by the franchisor;

(c) The franchisee's business is substantially associated with the trademark, trade name, commercial symbol or advertisements designating the franchisor or the products distributed by the franchisor;

(d) The franchisee's business is substantially reliant on the franchisor for a continued supply of motor vehicles, parts and accessories;

(e) The franchisee is granted the right to perform warranty repairs authorized by the franchisor; and

(f) The franchisee is granted the right to sell, install and exchange parts, equipment and accessories manufactured, distributed or imported by the franchisor for use in or on motor vehicles.

(6) "Franchisee" means a dealer to whom a franchise is granted.

(7) "Franchisor" means a manufacturer, distributor or importer who grants a franchise to a dealer.

(8) "Importer" means a person who transports or arranges for the transportation of any foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, other than motor homes, that when installed forms an integral part of the motor vehicle and constitutes a major manufacturing alteration and which completed unit is owned by the manufacturer.

(10) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle without the accessory or optional equipment.

(11) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and is built into an integral part of, or is permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must contain permanently installed independent life support systems and provide at least four of the following facilities:

- (a) Cooking;
- (b) Refrigeration or ice box;
- (c) Self-contained toilet;
- (d) Heating or air conditioning;
- (e) A potable water supply system including a faucet and sink; or
- (f) A separate 110-120 volt electrical power supply or liquid petroleum gas supply.

(12) "Motor vehicle" means:

- (a) A self-propelled device, other than a motor home, used:
  - (A) For transportation of persons or property upon a public highway; or
  - (B) In construction; or

(b) A trailer with a gross vehicle weight rating of 20,000 pounds or more that is used for commercial transportation on a public highway.

**(13) "Predecessor in interest" means a manufacturer, distributor or importer that transferred to another manufacturer, distributor or importer, whether through sale or other means, the right to manufacture, distribute or import motor vehicles using the manufac-**

**turer's, distributor's or importer's trademark, service mark, trade name, logotype or other commercial symbol.**

[(13)] (14) "Qualified vendor" means a person with a contract or agreement to sell goods or services to a manufacturer, distributor or importer.

[(14)] (15) "Relevant market area" means:

(a) For a dealer primarily of motor vehicles with a gross vehicle weight rating of less than 8,500 pounds, a circular area around an existing dealership of:

(A) Not less than a 10-mile radius from the dealership site;

(B) Not less than a 15-mile radius from the dealership site if the population is less than 250,000 within a 10-mile radius from the existing dealership and 150,000 or more within a 15-mile radius from the existing dealership;

(C) Not less than a 20-mile radius from the dealership site if the population is less than 150,000 within a 15-mile radius from the existing dealership; or

(D) The area of sales and service responsibility determined under the franchise agreement if the area is larger than the areas provided for in this paragraph.

(b) For a dealer primarily of motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, a circular area around an existing dealership of:

(A) Not less than a 25-mile radius from the dealership site; or

(B) The area of sales and service responsibility determined under the franchise agreement if the area is larger than the area provided for in subparagraph (A) of this paragraph.

[(15)] (16) "Replacement dealer" means any person who, at a dealership where the former dealer was franchised by the same manufacturer, distributor or importer, **or the manufacturer's, distributor's or importer's predecessor in interest**, has been issued a vehicle dealer certificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer, **or the manufacturer's, distributor's or importer's predecessor in interest**, engages in buying, selling, leasing or exchanging new motor vehicles.

(17) "Successor in interest" means a manufacturer, distributor or importer that **acquires, whether through purchase, transfer or other means, the right to manufacture, distribute or import motor vehicles using the trademark, service mark, trade name, logotype or other commercial symbol of another manufacturer, distributor or importer.**

**SECTION 4.** ORS 650.140 is amended to read:

650.140. (1) Notwithstanding the terms of any franchise or other agreement, it [*shall be*] is unlawful for any manufacturer, distributor or importer to cancel, terminate or refuse to continue any franchise without showing good cause, provided the dealer protests [*such*] **the** termination by filing a complaint in court of competent jurisdiction within the time period specified in subsection (3) of this section.

(2) In determining if good cause exists pursuant to subsection (1) of this section, the court shall consider such factors as:

(a) The amount of business transacted by the dealer as compared to the amount of business available to the dealer.

(b) The investment necessarily made and obligations necessarily incurred by the franchisee in performance of the franchise.

(c) The permanency of the investment.

(d) The adequacy of the franchisee's new motor vehicle sales and service facilities, equipment and parts.

(e) The qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles.

(f) The failure of the franchisee to substantially comply in good faith with those requirements of the franchise that are reasonable.

(3) Notwithstanding the terms of any franchise or other agreement, a franchisor shall give a franchisee 60 days' written notice stating the specific reasons for cancellation, termination or non-

continuance of a franchise, provided that a franchisor need only give 30 days' written notice concerning the following reasons:

(a) Misrepresentation by the franchisee in applying for the franchise.

(b) Insolvency of the franchisee, or filing of any petition by or against the franchisee, under any bankruptcy or receivership law.

(c) Conviction of a felony, provided that conviction after a plea nolo contendere shall be considered a conviction for purposes of this subsection.

(d) Failure of the dealer to maintain its operation open for business for seven consecutive business days or for eight business days out of any 15-business-day period.

**(4)(a) If a manufacturer, distributor or importer cancels, terminates or refuses to continue any franchise with the dealer for any reason other than good cause pursuant to the terms of the franchise agreement or for good cause as that term is used in this section, and the manufacturer, distributor or importer did not cancel at the same time a franchise with another motor vehicle dealership of the same line-make within the dealer's relevant market area, the manufacturer, distributor or importer, or where applicable the manufacturer's, distributor's or importer's successor in interest, shall provide the dealer with the specific reasons why the dealer's franchise was canceled, terminated or not continued and another dealer's franchise of the same line-make within the dealer's relevant market area was retained or renewed.**

**(b) The information required by paragraph (a) of this subsection must include the criteria and data used in making the determination to cancel, terminate or not continue, or to retain or renew, the franchise, and must be provided within a reasonable period of time not to exceed 30 days after the manufacturer, distributor or importer gives notice of the cancellation, termination or refusal to continue.**

**SECTION 5.** ORS 650.150 is amended to read:

650.150. (1) A dealer **or former dealer** may enjoin a manufacturer, distributor or importer, **or the manufacturer's, distributor's or importer's successor in interest**, from franchising an additional motor vehicle dealership of the same line-make within the dealer's **or former dealer's** relevant market area for good cause, provided that the dealer files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection [(5)] **(6)** of this section. For purposes of this section, "relevant market area" [shall have] **has** the meaning given that term in ORS 650.120, but other factors such as actual sales and service area [shall] **must** be considered.

(2) A dealer **or former dealer** may enjoin a manufacturer, distributor or importer, **or the manufacturer's, distributor's or importer's successor in interest**, from relocating an existing motor vehicle dealership of the same line-make within the dealer's **or former dealer's** relevant market area for good cause, provided that the dealer **or former dealer** files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection [(5)] **(6)** of this section. This subsection [shall] **does** not apply to an existing dealership or to the dealership of a replacement dealer that is relocating to a site within a one-mile radius of its existing site if the relevant market area of the existing or replacement dealership is not more than 10 miles, within a two-mile radius of its existing site if the relevant market area of the existing or replacement dealership is not more than 15 miles and within a three-mile radius of the existing site if the relevant market area of the existing or replacement dealership is more than 15 miles.

**(3)(a)** A dealer **or former dealer** may enjoin a manufacturer, distributor or importer, **or the manufacturer's, distributor's or importer's successor in interest**, from franchising a replacement dealer to operate a dealership of the same line-make within the dealer's **or former dealer's** relevant market area for good cause, provided that the franchising of the replacement dealer has not occurred within one year of the expiration or termination of the former franchise and the dealer files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection [(5)] **(6)** of this section. For the purposes of this section, "relevant market

area” [shall have] has the meaning given that term in ORS 650.120, but other factors such as actual sales and service area [shall] must be considered.

**(b) Notwithstanding paragraph (a) of this subsection, when good cause exists as provided in subsection (5) of this section, a dealer or former dealer may enjoin a manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, under this subsection within five years of the expiration or termination of the former franchise without regard to when the franchising of the replacement dealer took place or will take place.**

(4) In determining whether good cause exists pursuant to subsection (1), (2) or (3) of this section, the court may consider all factors that the court considers relevant, but in any case shall consider the following factors:

(a) Whether threats or other coercive action, oral or written, were made to or taken against the dealer by the manufacturer, distributor or importer.

(b) Whether the dealer is asked to terminate one franchise in order to keep another franchise.

**(c) Whether the manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, breached the terms or provisions of a franchise.**

**(d) Whether the manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, engaged in conduct prohibited under ORS 650.130.**

**(e) Whether the manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, canceled, terminated or refused to continue a franchise without good cause under ORS 650.140.**

[*(c)*] **(f)** Whether there will be an unjustifiable adverse effect upon existing dealers because of the grant of the new franchise or the relocation of an existing franchise. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors:

(A) The extent, nature and permanency of the investment of the existing motor vehicle dealers and the proposed motor vehicle dealer.

(B) The effect on the retail motor vehicle business in the relevant market area.

(C) The growth or decline in population and in new motor vehicle registrations in the relevant market area.

[*(d)*] **(g)** The effect on consumers in the relevant market area. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors in the relevant market area:

(A) The adequacy and convenience of existing motor vehicle sales facilities and service facilities.

(B) The supply of motor vehicle parts and qualified service personnel.

(C) The existence of competition among existing dealers.

**(5)(a) Notwithstanding subsection (4) of this section, good cause as used in this section shall be deemed to exist without consideration of any other factors when a dealer or former dealer’s franchise was canceled, terminated or not continued for any reason other than good cause pursuant to the terms of the franchise agreement or as a result of the manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, having breached the terms of the franchise agreement.**

**(b) A manufacturer, distributor or importer, or a manufacturer’s, distributor’s or importer’s successor in interest, enjoined for good cause under this subsection shall offer the franchise sought to be granted or relocated to the dealer or former dealer whose franchise was canceled, terminated or not continued. The dealer or former dealer shall have 60 days within which to accept or reject the offer required under this paragraph. Only after a dealer or former dealer has declined, rejected or failed to respond to the offer required under this paragraph, may the manufacturer, distributor or importer, or the manufacturer’s, distributor’s or importer’s successor in interest, offer to grant the franchise to another dealer or replacement dealer or relocate an existing motor vehicle dealership.**

[5] (6) A manufacturer, distributor or importer must give [*an existing dealership*] a **dealer or former dealer** at least 60 days' written notice prior to franchising a new dealership of the same line-make or authorizing the relocation of another dealership of the same line-make within the relevant market area of the [*existing*] **dealer's or former dealer's** dealership. Notice under this subsection must be given to all dealers **and former dealers** of the same line-make within the relevant market area of the site of the proposed new or relocated dealership.

[6] *If a dealer enjoins a manufacturer, distributor or importer under this section, the manufacturer, distributor or importer shall pay the dealer's court costs and attorney fees if the dealer prevails regardless of whether a new dealership was actually established.*]

(7) **If a dealer or former dealer enjoins or files an action to enforce rights arising under this section against a manufacturer, distributor or importer, or a manufacturer's, distributor's or importer's successor in interest, the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, shall pay the dealer's or former dealer's court costs and attorney fees if the dealer or former dealer prevails regardless of whether a new dealership was actually established.**

**SECTION 6. (1) The Legislative Assembly finds and declares that:**

(a) **Automobile manufacturers in the United States have announced that economic conditions have caused or will cause the manufacturers to terminate automobile dealership agreements with businesses in this state.**

(b) **The termination notices occurred after many automobile dealers purchased extra inventory from automobile manufacturers in an effort to shore up the manufacturers' businesses.**

(c) **Manufacturers have announced that inventory the automobile dealerships purchased cannot be sold back to the manufacturers.**

(d) **Automobile dealerships in this state are left with unsold automobiles and parts inventory that the dealerships cannot return to automobile manufacturers and must sell, often to other dealers and often at a substantial loss.**

(e) **Substantial losses from terminating the dealership agreements and leaving unsold inventory threatens the viability of dealerships in this state, which could in turn:**

(A) **Disrupt or reduce employment opportunities in communities that in some cases may have few alternative opportunities for employment at a time in which unemployment in this state has increased significantly;**

(B) **Reduce state and local tax revenues and charitable contributions in communities that in some cases are already vulnerable to poor economic conditions; and**

(C) **Reduce consumer choice and sources for parts and service for automobiles.**

(f) **The circumstances set forth in this subsection justify a determination by a state contracting agency that:**

(A) **An emergency exists that warrants the state contracting agency's using the emergency procurement authority set forth in ORS 279B.080; or**

(B) **Procuring automobiles that the state contracting agency requires and has authority to procure from an automobile dealer in distressed circumstances can reasonably be expected to result in substantial cost savings to the state contracting agency or the public, or otherwise substantially promotes the public interest, and warrants using the special procurement authority granted under ORS 279B.085.**

(2)(a) **The Legislative Assembly encourages state contracting agencies that require automobiles and have procurement authority to use the alternative procurement methods specified in subsection (1)(f) of this section to procure automobiles and automobile parts from automobile dealers whose dealership agreements have been terminated as part of a bankruptcy or restructuring by an automobile manufacturer within 90 days before and 120 days after the effective date of this 2009 Act.**

(b) The Legislative Assembly directs state contracting agencies that use the alternative procurement methods set forth in subsection (1)(f) of this section to make a procurement described in paragraph (a) of this subsection to:

(A) Purchase only automobiles and automobile parts that meet specifications the state contracting agency developed in the ordinary course of the state contracting agency's procurement process;

(B) Negotiate for and obtain discounts and other concessions from automobile dealers that will result in cost savings to the state contracting agency and that are fair to the automobile dealers;

(C) Use contracting methods that ensure fairness and that are unlikely to encourage favoritism in awarding public contracts or substantially diminish competition for public contracts; and

(D) When practicable, seek to make procurements from disadvantaged, minority, women and emerging small business enterprises certified under ORS 200.055.

**SECTION 7.** (1) The amendments to ORS 650.145 and 650.155 by sections 1 and 2 of this 2009 Act apply to motor vehicle transactions occurring on or after the effective date of this 2009 Act.

(2) The amendments to ORS 650.120, 650.140 and 650.150 by sections 3 to 5 of this 2009 Act apply to motor vehicle dealership franchises canceled, terminated or not continued on or after the effective date of this 2009 Act and to motor vehicle dealership franchises canceled, terminated or not continued in bankruptcy proceedings pending or filed on or after the effective date of this 2009 Act.

(3) Section 6 of this 2009 Act applies to automobile dealership agreements terminated before, on or after the effective date of this 2009 Act.

**SECTION 8.** Section 6 of this 2009 Act is repealed on January 2, 2012.

**SECTION 9.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 7, 2009

Received by Governor:

Repassed by House June 16, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate June 12, 2009

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2009

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Secretary of State