

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2739

By COMMITTEE ON BUSINESS AND TRANSPORTATION

June 3

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” delete the rest of the line
2 and line 3 and insert “amending ORS 650.120, 650.140, 650.145, 650.150 and 650.155; and declaring
3 an emergency.”.

4 On page 3, after line 4, insert:

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

6 “650.120. For the purposes of ORS 650.120 to 650.170:

7 “(1) ‘Dealer’ means any person who has been issued a vehicle dealer certificate under ORS
8 822.020 and pursuant to a franchise from a manufacturer, distributor or importer engages in buying,
9 selling, leasing or exchanging new motor vehicles.

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

12 “(3) ‘Distributor’ means a person who sells or distributes motor vehicles other than motor homes
13 to motor vehicle dealers.

14 “(4) ‘Fleet owner’ means a person in this state who at one time buys or leases for use in a
15 business:

16 “(a) 15 or more motor vehicles with a gross vehicle weight rating of less than 8,500 pounds; or

17 “(b) 50 or more vehicles with a gross vehicle weight rating of 8,500 pounds or more.

18 “(5) ‘Franchise’ means a contract or agreement under which:

19 “(a) The franchisee is granted the right to sell, lease and exchange new motor vehicles manu-
20 factured, distributed or imported by the franchisor;

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

23 “(c) The franchisee’s business is substantially associated with the trademark, trade name, com-
24 mercial symbol or advertisements designating the franchisor or the products distributed by the
25 franchisor;

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

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

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

32 “(6) ‘Franchisee’ means a dealer to whom a franchise is granted.

33 “(7) ‘Franchisor’ means a manufacturer, distributor or importer who grants a franchise to a
34 dealer.

35 “(8) ‘Importer’ means a person who transports or arranges for the transportation of any foreign

1 manufactured new motor vehicle into the United States for sale in this state.

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

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

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

15 “(a) Cooking;

16 “(b) Refrigeration or ice box;

17 “(c) Self-contained toilet;

18 “(d) Heating or air conditioning;

19 “(e) A potable water supply system including a faucet and sink; or

20 “(f) A separate 110-120 volt electrical power supply or liquid petroleum gas supply.

21 “(12) ‘Motor vehicle’ means:

22 “(a) A self-propelled device, other than a motor home, used:

23 “(A) For transportation of persons or property upon a public highway; or

24 “(B) In construction; or

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

27 “(13) **‘Predecessor in interest’ means a manufacturer, distributor or importer that**
28 **transferred to another manufacturer, distributor or importer, whether through sale or other**
29 **means, the right to manufacture, distribute or import motor vehicles using the manufac-**
30 **turer’s, distributor’s or importer’s trademark, service mark, trade name, logotype or other**
31 **commercial symbol.**

32 “[13] (14) ‘Qualified vendor’ means a person with a contract or agreement to sell goods or
33 services to a manufacturer, distributor or importer.

34 “[14] (15) ‘Relevant market area’ means:

35 “(a) For a dealer primarily of motor vehicles with a gross vehicle weight rating of less than
36 8,500 pounds, a circular area around an existing dealership of:

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

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

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

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

45 “(b) For a dealer primarily of motor vehicles with a gross vehicle weight rating of 8,500 pounds

1 or more, a circular area around an existing dealership of:

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

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

5 “[15] (16) ‘Replacement dealer’ means any person who, at a dealership where the former dealer
6 was franchised by the same manufacturer, distributor or importer, **or the manufacturer’s, dis-
7 tributor’s or importer’s predecessor in interest**, has been issued a vehicle dealer certificate un-
8 der ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer, **or the
9 manufacturer’s, distributor’s or importer’s predecessor in interest**, engages in buying, selling,
10 leasing or exchanging new motor vehicles.

11 “(17) ‘Successor in interest’ means a manufacturer, distributor or importer that ac-
12 quires, whether through purchase, transfer or other means, the right to manufacture, dis-
13 tribute or import motor vehicles using the trademark, service mark, trade name, logotype
14 or other commercial symbol of another manufacturer, distributor or importer.

15 “SECTION 4. ORS 650.140 is amended to read:

16 “650.140. (1) Notwithstanding the terms of any franchise or other agreement, it [*shall be*] is un-
17 lawful for any manufacturer, distributor or importer to cancel, terminate or refuse to continue any
18 franchise without showing good cause, provided the dealer protests [*such*] **the** termination by filing
19 a complaint in court of competent jurisdiction within the time period specified in subsection (3) of
20 this section.

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

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

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

27 “(c) The permanency of the investment.

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

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

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

34 “(3) Notwithstanding the terms of any franchise or other agreement, a franchisor shall give a
35 franchisee 60 days’ written notice stating the specific reasons for cancellation, termination or non-
36 continuance of a franchise, provided that a franchisor need only give 30 days’ written notice con-
37 cerning the following reasons:

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

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

41 “(c) Conviction of a felony, provided that conviction after a plea nolo contendere shall be con-
42 sidered a conviction for purposes of this subsection.

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

45 “(4)(a) **Notwithstanding subsection (3) of this section, if a manufacturer, distributor or**

1 importer cancels, terminates or refuses to continue any franchise as a result of the man-
2 ufacturer's, distributor's or importer's filing for or receiving protection under the bank-
3 ruptcy laws, and the manufacturer, distributor or importer did not cancel at the same time
4 a franchise with another motor vehicle dealership of the same line-make within the dealer's
5 relevant market area, the manufacturer, distributor or importer, or where applicable the
6 manufacturer's, distributor's or importer's successor in interest, shall provide the dealer
7 with the specific reasons why the dealer's franchise was canceled, terminated or not con-
8 tinued and another dealer's franchise of the same line-make within the dealer's relevant
9 market area was retained or renewed.

10 "(b) The information required by paragraph (a) of this subsection must include the cri-
11 teria and data used in making the determination to cancel, terminate or not continue, or to
12 retain or renew, the franchise, and must be provided within a reasonable period of time not
13 to exceed 30 days after the manufacturer, distributor or importer gives notice of the can-
14 cellation, termination or refusal to continue. As used in this paragraph, 'reasonable period
15 of time' means such time as is sufficient to allow the dealer time to file objections or
16 pleadings to contest the cancellation, termination or refusal to continue of the franchise in
17 the bankruptcy proceeding.

18 "(c) Whenever the Director of the Department of Consumer and Business Services de-
19 termines that a manufacturer, distributor or importer has failed to comply with paragraphs
20 (a) and (b) of this subsection or has engaged in an act or practice that would give rise to li-
21 ability under ORS 650.020, the director may take any appropriate action, including but not
22 limited to actions authorized under ORS 650.005 to 650.100.

23 "SECTION 5. ORS 650.150 is amended to read:

24 "650.150. (1) A dealer **or former dealer** may enjoin a manufacturer, distributor or importer, **or**
25 **the manufacturer's, distributor's or importer's successor in interest**, from franchising an ad-
26 ditional motor vehicle dealership of the same line-make within the dealer's **or former dealer's** rel-
27 evant market area for good cause, provided that the dealer files a complaint with a court of
28 competent jurisdiction within 60 days of receiving the notice specified in subsection [(5)] **(6)** of this
29 section. For purposes of this section, 'relevant market area' [*shall have*] **has** the meaning given that
30 term in ORS 650.120, but other factors such as actual sales and service area [*shall*] **must** be con-
31 sidered.

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

43 "(3)(a) A dealer **or former dealer** may enjoin a manufacturer, distributor or importer, **or the**
44 **manufacturer's, distributor's or importer's successor in interest**, from franchising a replace-
45 ment dealer to operate a dealership of the same line-make within the dealer's **or former dealer's**

1 relevant market area for good cause, provided that the franchising of the replacement dealer has
2 not occurred within one year of the expiration or termination of the former franchise and the dealer
3 files a complaint with a court of competent jurisdiction within 60 days of receiving the notice
4 specified in subsection [(5)] (6) of this section. For the purposes of this section, ‘relevant market
5 area’ [shall have] **has** the meaning given that term in ORS 650.120, but other factors such as actual
6 sales and service area [shall] **must** be considered.

7 **“(b) Notwithstanding paragraph (a) of this subsection, when good cause exists as provided**
8 **in subsection (5) of this section, a dealer or former dealer may enjoin a manufacturer, dis-**
9 **tributor or importer, or the manufacturer’s, distributor’s or importer’s successor in inter-**
10 **est, under this subsection at any time after the expiration or termination of the former**
11 **franchise without regard to when the franchising of the replacement dealer took place or**
12 **will take place.**

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

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

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

19 **“(c) Whether the manufacturer, distributor or importer, or the manufacturer’s, distrib-**
20 **utor’s or importer’s successor in interest, breached the terms or provisions of a franchise.**

21 **“(d) Whether the manufacturer, distributor or importer, or the manufacturer’s, distrib-**
22 **utor’s or importer’s successor in interest, engaged in conduct prohibited under ORS 650.130.**

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

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

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

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

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

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

38 “(A) The adequacy and convenience of existing motor vehicle sales facilities and service facili-
39 ties.

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

41 “(C) The existence of competition among existing dealers.

42 **“(5)(a) Notwithstanding subsection (4) of this section, good cause as used in this section**
43 **shall be deemed to exist without consideration of any other factors when a dealer or former**
44 **dealer’s franchise was canceled, terminated or not continued for any reason during the**
45 **pendency of, or as a result of, a bankruptcy proceeding by a manufacturer, distributor or**

1 importer who filed for or received protection under the bankruptcy laws.

2 **“(b) A manufacturer, distributor or importer, or a manufacturer’s, distributor’s or**
3 **importer’s successor in interest, enjoined for good cause under this subsection shall offer the**
4 **franchise sought to be granted or relocated to the dealer or former dealer whose franchise**
5 **was canceled, terminated or not continued during the pendency of the manufacturer’s, dis-**
6 **tributor’s or importer’s bankruptcy proceeding. The dealer or former dealer shall have 60**
7 **days within which to accept or reject the offer required under this paragraph. Only after a**
8 **dealer or former dealer has declined, rejected or failed to respond to the offer required under**
9 **this paragraph, may the manufacturer, distributor or importer, or the manufacturer’s, dis-**
10 **tributor’s or importer’s successor in interest, offer to grant the franchise to another dealer**
11 **or replacement dealer or relocate an existing motor vehicle dealership.**

12 **“[(5)] (6) A manufacturer, distributor or importer must give [an existing dealership] a dealer or**
13 **former dealer at least 60 days’ written notice prior to franchising a new dealership of the same**
14 **line-make or authorizing the relocation of another dealership of the same line-make within the rel-**
15 **evant market area of the [existing] dealer’s or former dealer’s dealership. Notice under this sub-**
16 **section must be given to all dealers and former dealers of the same line-make within the relevant**
17 **market area of the site of the proposed new or relocated dealership.**

18 **“[(6) If a dealer enjoins a manufacturer, distributor or importer under this section, the manufac-**
19 **turer, distributor or importer shall pay the dealer’s court costs and attorney fees if the dealer prevails**
20 **regardless of whether a new dealership was actually established.]**

21 **“(7) If a dealer or former dealer enjoins or files an action to enforce rights arising under**
22 **this section against a manufacturer, distributor or importer, or a manufacturer’s, distribu-**
23 **tor’s or importer’s successor in interest, the manufacturer, distributor or importer, or the**
24 **manufacturer’s, distributor’s or importer’s successor in interest, shall pay the dealer’s or**
25 **former dealer’s court costs and attorney fees if the dealer or former dealer prevails regard-**
26 **less of whether a new dealership was actually established.**

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

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

31 **“(b) The termination notices occurred after many automobile dealers purchased extra**
32 **inventory from automobile manufacturers in an effort to shore up the manufacturers’ busi-**
33 **nesses.**

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

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

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

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

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

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

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

4 “(A) An emergency exists that warrants the state contracting agency’s using the emer-
5 gency procurement authority set forth in ORS 279B.080; or

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

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

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

20 “(A) Purchase only automobiles and automobile parts that meet specifications the state
21 contracting agency developed in the ordinary course of the state contracting agency’s pro-
22 curement process;

23 “(B) Negotiate for and obtain discounts and other concessions from automobile dealers
24 that will result in cost savings to the state contracting agency and that are fair to the au-
25 tomobile dealers;

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

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

31 In line 5, delete “3” and insert “7” and before “The” insert “(1)”.

32 After line 7, insert:

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

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

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

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