

House Bill 3088

Sponsored by Representative G SMITH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits motor vehicle manufacturer, distributor or importer from making incentive payment to any person other than dealer unless agreed to in writing in advance.

A BILL FOR AN ACT

1
2 Relating to incentive payments to dealers; creating new provisions; and amending ORS 650.130.

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

4 **SECTION 1.** ORS 650.130 is amended to read:

5 650.130. Notwithstanding the terms of any franchise or other agreement, a manufacturer, dis-
6 tributor or importer may not:

7 (1) Require or attempt to require a dealer to accept delivery of any motor vehicle, part, acces-
8 sory or any other commodity not voluntarily ordered by the dealer. This subsection does not apply
9 to recall safety and emissions campaign parts not voluntarily ordered by the dealer or any vehicle
10 features, parts, accessories or other components mandated by federal, state or local law.

11 (2) Coerce or attempt to coerce a dealer to enter any agreement or sales promotion program
12 by threatening to cancel the franchise of the dealer.

13 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new
14 motor vehicle, part or accessory covered by the franchise if the vehicle, part or accessory is ad-
15 vertised as being available for delivery or is being delivered to another dealer. This subsection does
16 not apply if the failure to deliver is the result of a cause beyond the control of the manufacturer,
17 distributor or importer.

18 (4) Prevent or attempt to prevent a dealer from making reasonable changes in the capital
19 structure of a dealership or the means by which the dealership is financed, provided that the dealer
20 meets any reasonable capital requirement of the manufacturer, distributor or importer.

21 (5) Unreasonably refuse to compensate the dealer for work or services performed and expenses
22 incurred in accordance with the dealer's delivery, preparation and warranty obligations under the
23 terms of a franchise or agreement.

24 (6) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign
25 or contest, or purchase any promotional materials, display devices or display decorations or mate-
26 rials at the expense of the dealer.

27 (7) Establish a maximum price a dealer may charge for motor vehicles with a gross vehicle
28 weight rating of less than 8,500 pounds.

29 (8) Initiate an audit to determine the validity of paid claims for dealer compensation or any
30 charge-backs for warranty parts or service compensation more than one year following the date of
31 payment unless the manufacturer, distributor or importer has reasonable grounds to believe that the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 dealer submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit
2 more than one year following the date of payment, the manufacturer, distributor or importer may
3 charge back to the dealer only the amount of a claim that the manufacturer, distributor or importer
4 proves was fraudulent. Parties shall cooperate to ensure that permitted audits are concluded within
5 60 days of initiation.

6 (9) Initiate an audit to determine the validity of paid claims for dealer compensation or any
7 charge-backs for consumer or dealer incentives more than one year following the date of payment
8 unless the manufacturer, distributor or importer has reasonable grounds to believe that the dealer
9 submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit more than
10 one year following the date of payment, the manufacturer, distributor or importer may charge back
11 to the dealer only the amount of a claim that the manufacturer, distributor or importer proves was
12 fraudulent. Parties shall cooperate to ensure that permitted audits are concluded within 60 days of
13 initiation.

14 (10) Unfairly compete with a dealer in any matters governed by the franchise including, but not
15 limited to, the sale or allocation of vehicles or other franchisor products, or the execution of dealer
16 programs or benefits. This subsection applies if the manufacturer, distributor or importer has an
17 ownership interest in, operates or controls, directly or indirectly, a business that is a dealer in this
18 state.

19 (11) Have an ownership interest in, operate or control, directly or indirectly, a business that
20 sells or leases a motor vehicle to a person in Oregon except to a franchisee of the manufacturer,
21 distributor or importer. It is not a violation of this subsection if:

22 (a) A manufacturer, distributor or importer:

23 (A) Has an ownership interest in, operates or controls, directly or indirectly, a business that is
24 a dealership in this state and is a business that:

25 (i) A franchisee owned, operated or controlled before the manufacturer, distributor or importer
26 acquired the ownership interest in or began to operate or control the business;

27 (ii) The manufacturer, distributor or importer maintains an ownership interest in, operates or
28 controls for no more than two years; and

29 (iii) While the manufacturer, distributor or importer maintains an ownership interest in, oper-
30 ates or controls the business, the manufacturer, distributor or importer offers the business for sale
31 to any qualified independent person at a fair and reasonable price.

32 (B) Has a part ownership interest in, operates or controls, directly or indirectly, a business that
33 is a dealership in this state and another person:

34 (i) Manages the day-to-day operations and business of the dealership;

35 (ii) Has made, or is obligated to make within 12 months, a significant capital investment in the
36 dealership that is subject to loss;

37 (iii) Has an ownership interest in the dealership; and

38 (iv) Operates the dealership under a franchise through which the person will within 15 years
39 acquire full ownership of the dealership under reasonable terms and conditions.

40 (C) As of January 1, 2000, had an ownership interest in, operated or controlled, directly or in-
41 directly, a business that is a dealership in this state that sells motor vehicles with a gross vehicle
42 weight rating of 8,500 pounds or more.

43 (D) Has an ownership interest in, operates or controls, directly or indirectly, a business that
44 primarily leases or rents motor vehicles for a period of 12 months or less and the only motor vehi-
45 cles that the business sells are motor vehicles that have been:

- 1 (i) Owned by the business for 180 days or more; or
2 (ii) Driven more than 10,000 miles while owned by the business.
- 3 (E)(i) Has an ownership interest in, operates or controls, directly or indirectly, a business that
4 finances the sale or lease of motor vehicles; and
5 (ii) Is a business that sells or leases motor vehicles to retail lessees in Oregon.
- 6 (F) Has an ownership interest in, operates or controls, directly or indirectly, a business that
7 makes a sale or lease of a motor vehicle that is not a violation of subsection (12) of this section.
- 8 (b) A manufacturer has a part ownership interest in, operates or controls, directly or indirectly,
9 a business that is a dealership in this state that buys, sells, leases, trades, stores, takes on
10 consignment or in any other manner deals exclusively in a single line-make of the manufacturer and:
11 (A) The manufacturer has, directly or indirectly, no more than 45 percent of the ownership in-
12 terest in the dealership;
13 (B) When the manufacturer acquires an ownership interest in the dealership, the distance from
14 the manufacturer's dealership to the dealership of a dealer that buys, sells, leases, trades, stores,
15 takes on consignment or in any other manner deals in the single line-make of the manufacturer and
16 in which the manufacturer has no ownership interest is not less than 15 miles;
17 (C) The manufacturer complies with the area restrictions in ORS 650.120 and 650.150;
18 (D) The manufacturer's franchises authorize a dealer of the single line-make of the manufacturer
19 to operate as many dealerships within a defined geographic area as the dealer and manufacturer
20 agree on; and
21 (E) On January 1, 2000:
22 (i) There were no more than four dealers in the state of the manufacturer's single line-make; and
23 (ii) Of the dealers in this state of the manufacturer's single line-make, at least one was a
24 franchisee that owned and operated at least two dealerships within the geographic area authorized
25 by franchises with the manufacturer.
- 26 (12) Sell or lease a motor vehicle to a person in this state other than to a business described
27 in subsection (11) of this section or to a franchisee of the manufacturer, distributor or importer. It
28 is not a violation of this subsection if:
29 (a) The manufacturer, distributor or importer sells or leases a motor vehicle to:
30 (A) An employee, retired employee or family member of an employee or retired employee of the
31 manufacturer, distributor or importer;
32 (B) A driver training program;
33 (C) A nonprofit corporation;
34 (D) A qualified vendor;
35 (E) A public agency as defined in ORS 537.515;
36 (F) A current retail lessee;
37 (G) A fleet owner;
38 (H) A business acting as a vehicle dealer under ORS chapter 822 that sells motor vehicles only
39 to other vehicle dealers; or
40 (I) The customers of a business acting as a vehicle dealer under ORS chapter 822 that sells
41 motor vehicles only to other vehicle dealers.
42 (b) The sale or lease is by a business in this state that primarily leases or rents motor vehicles
43 for a period of 12 months or less and the only motor vehicles that the business sells are motor ve-
44 hicles that have been:
45 (A) Owned by the business for 180 days or more; or

1 (B) Driven more than 10,000 miles while owned by the business.

2 (c) The sale or lease is by a subsidiary of a manufacturer, distributor or importer that finances
3 the sale or lease of motor vehicles and the sale or lease is to a person who previously leased the
4 vehicle from the subsidiary.

5 (13)(a) Own, operate or control a business or enter into any contract, agreement or other writ-
6 ten instrument permitting a person that is not a dealer to be compensated by the manufacturer,
7 distributor or importer for performing warranty repairs and services if the business is located within
8 a dealer's relevant market area.

9 (b) Paragraph (a) of this subsection does not apply to:

10 (A) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
11 rating of less than 8,500 pounds provided for commercial or government fleets; or

12 (B) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
13 rating of 8,500 pounds or more if, after January 1, 2002, a manufacturer, distributor or importer of
14 only motor vehicles with a gross vehicle weight rating of 8,500 pounds or more has:

15 (i) Obtained written permission from the dealers in the relevant market area to perform the re-
16 pairs or services; or

17 (ii) Authorized the repairs or services to be performed by a person who owns or leases the motor
18 vehicles for use in the person's business.

19 (14) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any
20 franchise agreement because the dealer owns, has an investment in, participates in the management
21 of or holds a franchise agreement with another manufacturer, distributor or importer at a different
22 dealership site, or has franchises with more than one manufacturer, distributor or importer sharing
23 the same dealership site, facilities, personnel or display space before October 23, 1999.

24 **(15) Pay money under an incentive program to any person other than a dealer, unless the**
25 **dealer agrees in writing to the payment of the money to another person, including an em-**
26 **ployee of the dealer, before the payment is made.**

27 **SECTION 2. The amendments to ORS 650.130 by section 1 of this 2011 Act apply to in-**
28 **centive payments made on or after the effective date of this 2011 Act.**

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