

Enrolled
Senate Bill 775

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

CHAPTER

AN ACT

Relating to motor vehicle dealerships; creating new provisions; and amending ORS 650.120, 650.130 and 650.140.

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

SECTION 1. 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*] **franchisee's business** 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 liquefied 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 manufacturer's, distributor's or importer's trademark, service mark, trade name, logotype or other commercial symbol.

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

(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.

(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) "Site-control agreement" means an agreement between a franchisor and franchisee pursuant to which the franchisor would:

(a) Control the use and development of a dealership site other than as permitted in ORS 650.120 to 650.170;

(b) Require a franchisee to establish or maintain an exclusive dealership under a franchise agreement with the franchisor by not investing in, managing or sharing another dealership with a different franchisor; or

(c) Restrict the ability of a franchisee, or if the franchisee leases the dealership, the ability of the franchisee's lessor, to transfer, assign, sell, lease, develop or change the use of the dealership site.

~~[(17)]~~ **(18)** "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 2. ORS 650.130 is amended to read:

650.130. Notwithstanding the terms of any franchise or other agreement, a manufacturer, distributor or importer may not:

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

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

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

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

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

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

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

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

(9) Initiate an audit to determine the validity of paid claims for dealer compensation or any charge-backs for consumer or dealer incentives more than one year following the date of payment

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

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

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

(a) A manufacturer, distributor or importer:

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

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

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

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

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

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

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

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

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

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

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

(i) Owned by the business for 180 days or more; or

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

(E)(i) Has an ownership interest in, operates or controls, directly or indirectly, a business that finances the sale or lease of motor vehicles; and

(ii) Is a business that sells or leases motor vehicles to retail lessees in Oregon.

(F) Has an ownership interest in, operates or controls, directly or indirectly, a business that makes a sale or lease of a motor vehicle that is not a violation of subsection (12) of this section.

(b) A manufacturer has a part ownership interest in, operates or controls, directly or indirectly, a business that is a dealership in this state that buys, sells, leases, trades, stores, takes on consignment or in any other manner deals exclusively in a single line-make of the manufacturer and:

(A) The manufacturer has, directly or indirectly, no more than 45 percent of the ownership interest in the dealership;

(B) When the manufacturer acquires an ownership interest in the dealership, the distance from the manufacturer's dealership to the dealership of a dealer that buys, sells, leases, trades, stores,

takes on consignment or in any other manner deals in the single line-make of the manufacturer and in which the manufacturer has no ownership interest is not less than 15 miles;

(C) The manufacturer complies with the area restrictions in ORS 650.120 and 650.150;

(D) The manufacturer's franchises authorize a dealer of the single line-make of the manufacturer to operate as many dealerships within a defined geographic area as the dealer and manufacturer agree on; and

(E) On January 1, 2000:

(i) There were no more than four dealers in the state of the manufacturer's single line-make; and

(ii) Of the dealers in this state of the manufacturer's single line-make, at least one was a franchisee that owned and operated at least two dealerships within the geographic area authorized by franchises with the manufacturer.

(12) Sell or lease a motor vehicle to a person in this state other than to a business described in subsection (11) of this section or to a franchisee of the manufacturer, distributor or importer. It is not a violation of this subsection if:

(a) The manufacturer, distributor or importer sells or leases a motor vehicle to:

(A) An employee, retired employee or family member of an employee or retired employee of the manufacturer, distributor or importer;

(B) A driver training program;

(C) A nonprofit corporation;

(D) A qualified vendor;

(E) A public agency as defined in ORS 537.515;

(F) A current retail lessee;

(G) A fleet owner;

(H) A business acting as a vehicle dealer under ORS chapter 822 that sells motor vehicles only to other vehicle dealers; or

(I) The customers of a business acting as a vehicle dealer under ORS chapter 822 that sells motor vehicles only to other vehicle dealers.

(b) The sale or lease is by a business in this state that primarily leases or rents motor vehicles for a period of 12 months or less and the only motor vehicles that the business sells are motor vehicles that have been:

(A) Owned by the business for 180 days or more; or

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

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

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

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

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

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

(i) Obtained written permission from the dealers in the relevant market area to perform the repairs or services; or

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

(14) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any franchise agreement because the dealer owns, has an investment in, participates in the management of or holds a franchise agreement with another manufacturer, distributor or importer at a different

dealership site, or has franchises with more than one manufacturer, distributor or importer sharing the same dealership site, facilities, personnel or display space before October 23, 1999.

(15) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any franchise agreement because the dealer owns, has an investment in, participates in the management of or holds a franchise agreement with another manufacturer, distributor or importer at a different dealership site, or has franchises with more than one manufacturer, distributor or importer sharing the same dealership site, facilities, personnel or display space on or after the effective date of this 2011 Act, provided the dealer complies with the manufacturer's, distributor's or importer's reasonable capitalization and financial requirements, reasonable space and facility requirements and other requirements that are justified taking into account the reasonable business considerations of the manufacturer, distributor or importer and the dealer, and provided there is no change in the principal management of the dealership site.

(16)(a) Require a prospective franchisee to enter into a site-control agreement as a condition of:

- (A) Granting or renewing a franchise;**
- (B) Approving the addition of a line-make of a manufacturer;**
- (C) Approving the sale, transfer or assignment of a franchise agreement;**
- (D) Approving the relocation, or granting a new franchise for relocation, of an existing dealership; or**
- (E) Obtaining fair and reasonable compensation under ORS 650.145 upon the termination, cancellation, nonrenewal or discontinuance of any franchise.**

(b) Nothing in paragraph (a) of this subsection prohibits enforcement of a voluntary agreement between a franchisee and a manufacturer, distributor or importer for which separate and valuable consideration that does not include any of the items listed in paragraph (a) of this subsection has been offered and accepted.

SECTION 3. ORS 650.140 is amended to read:

650.140. (1) Notwithstanding the terms of any franchise or other agreement, it 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 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) Notwithstanding the terms of any franchise or other agreement, a franchisee's unwillingness to agree to a site-control agreement does not constitute good cause under this section.

[(4)(a)] **(5)(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 4. The amendments to ORS 650.120, 650.130 and 650.140 by sections 1, 2 and 3 of this 2011 Act apply to motor vehicle dealerships existing on or after the effective date of this 2011 Act.

Passed by Senate April 19, 2011

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 18, 2011

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State