

A-Engrossed  
House Bill 3347

HB 3347 - 3 Amendment  
Hand Engrossed 5/7/13  
By Erin Sculer

Ordered by the House April 24  
Including House Amendments dated April 24

Sponsored by Representative HOYLE

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.

Prohibits motor vehicle manufacturer, distributor or importer from [*coercing or*] requiring dealer to construct new dealer facility or materially alter or remodel existing dealer facility within [10] seven years after date on which dealer previously constructed, materially altered or remodeled existing dealer facility if existing dealer facility complies with manufacturer's, distributor's or importer's approved brand image standards or plans that existed at time dealer [*facility was*] constructed, materially altered or remodeled dealer facility or if manufacturer, distributor or importer makes certain demonstrations or provides certain incentives.

Prohibits manufacturer, distributor or importer from requiring dealer to enter into agreement or incentive program to lease or purchase certain goods or services from manufacturer, distributor or importer or from vendor that manufacturer, distributor or importer designates. Specifies that prohibition does not allow dealer to infringe upon manufacturer's, distributor's or importer's intellectual property or to erect signs that do not conform with manufacturer's, distributor's or importer's intellectual property usage guidelines.

Specifies method for determining compensation to dealer for warranty service and parts.

Prohibits manufacturer, distributor or importer from increasing price of motor vehicle or imposing surcharge to recover costs of paying dealer's claims for labor or parts under terms of warranty service agreement.

A BILL FOR AN ACT

1  
2 Relating to agreements with motor vehicle dealerships; creating new provisions; and amending ORS  
3 ~~650.120~~ and 650.158.

4 “SECTION 1. Section 2 of this 2013 Act is added to and made a part  
5 of ORS 650.120 to 650.170.

6 “SECTION 2. (1)(a) Except as provided in paragraph (b) of this  
7 subsection, a manufacturer, distributor or importer may not require  
8 a dealer to construct a new dealer facility or materially alter or re-  
9 model an existing dealer facility within seven years after the date on  
10 which the dealer previously constructed, materially altered or remod-  
11 eled the existing dealer facility if the existing dealer facility complies  
12 with the manufacturer's, distributor's or importer's approved brand  
13 image standards or plans that existed at the time the dealer con-  
14 structed, materially altered or remodeled the existing dealer facility.

15 “(b) A manufacturer, distributor or importer may require a dealer  
16 to construct a new dealer facility or materially alter or remodel an  
17 existing dealer facility within seven years after the dealer constructed,  
18 materially altered or remodeled the existing dealer facility:

19 “(A) If the manufacturer, distributor or importer demonstrates that  
20 the manufacturer's, distributor's or importer's requirement is rea-  
21 sonable and justifiable in light of:

1       “(i) The projected cost of the construction, material alteration or  
2 remodel;

3       “(ii) Existing and reasonably foreseeable economic conditions;

4       “(iii) Financial expectations;

5       “(iv) The availability of additional vehicle allocation; and

6       “(v) The dealer’s market for vehicle sales;

7       “(B) In order to comply with a health or safety law or with a tech-  
8 nological requirement that is necessary to sell or service a motor ve-  
9 hicle that the dealer sells or services under the terms of the dealer’s  
10 franchise; or

11       “(C) By means of a written agreement separate from the franchise  
12 agreement if the manufacturer, distributor or importer provides  
13 money, credit, an allowance, an incentive or a reimbursement to the  
14 dealer to compensate for all or a substantial portion of the cost of  
15 constructing a new dealer facility or materially altering or remodeling  
16 an existing dealer facility.

17       “(c) Paragraph (a) of this subsection does not prohibit a dealer from  
18 voluntarily agreeing with a manufacturer, distributor or importer to  
19 construct a new dealer facility or materially alter or remodel an ex-  
20 isting dealer facility in return for separate and valuable consideration.  
21 For the purposes of this paragraph, renewing a dealer’s franchise is  
22 not separate and valuable consideration.

23       “(d) For purposes of this subsection:

24       “(A) ‘Materially alter’ means a significant architectural or struc-  
25 tural modification to a dealer facility that is directly related to effec-  
26 tively selling or servicing motor vehicles of the type that the dealer’s  
27 franchise agreement or license permits the dealer to sell or service.

28       “(B) ‘Materially alter’ does not include routine maintenance, such  
29 as interior painting, that is reasonably necessary to keep a dealer fa-  
30 cility in attractive condition.

31       “(2)(a) Except as provided in paragraph (b) of this subsection, a

1 manufacturer, distributor or importer may not require a dealer to  
2 purchase goods or services for constructing, materially altering or re-  
3 modeling a dealer facility from a vendor that the manufacturer, dis-  
4 tributor or importer selects, identifies or designates without giving the  
5 dealer an option to obtain goods or services of substantially similar  
6 quality and design from a vendor that the dealer chooses, subject to  
7 the manufacturer's, distributor's or importer's approval in advance.  
8 The manufacturer, distributor or importer may not withhold approval  
9 unreasonably.

10 "(b) A dealer may not select a vendor from which to obtain goods  
11 and services for constructing a new dealer facility or materially al-  
12 tering or remodeling an existing dealer facility if a manufacturer,  
13 distributor or importer provides money, credit, an allowance or a re-  
14 imbursement to compensate for all or a substantial portion of the cost  
15 of upgrading or improving a dealer facility or for using a specific ma-  
16 terial, good or service to upgrade or improve a dealer facility.

17 "(c) This subsection does not permit a dealer or vendor to:

18 "(A) Directly or indirectly or in any way infringe upon, eliminate  
19 or impair a manufacturer's, distributor's or importer's intellectual  
20 property rights or reasonable business requirements; or

21 "(B) Erect or maintain signs that do not conform to the  
22 manufacturer's, distributor's or importer's intellectual property usage  
23 guidelines."

1 with a manufacturer, distributor or importer to construct a new dealer facility or materially  
2 alter or remodel an existing dealer facility in return for separate and valuable consideration.  
3 For the purposes of this paragraph, renewing a dealer's franchise is not separate and valu-  
4 able consideration.

5 (d) For purposes of this subsection:

6 (A) "Materially alter" means a significant architectural or structural modification to a  
7 dealer facility that is directly related to effectively selling or servicing motor vehicles of the  
8 type that the dealer's franchise agreement or license permits the dealer to sell or service.

9 (B) "Materially alter" does not include routine maintenance, such as interior painting,  
10 that is reasonably necessary to keep a dealer facility in attractive condition.

11 (18)(a) Except as provided in paragraph (b) of this subsection, require a dealer to pur-  
12 chase goods or services for constructing, materially altering or remodeling a dealer facility  
13 from a vendor that the manufacturer, distributor or importer selects, identifies or designates  
14 without giving the dealer an option to obtain goods or services of substantially similar qual-  
15 ity and design from a vendor that the dealer chooses, subject to the manufacturer's,  
16 distributor's or importer's approval in advance. The manufacturer, distributor or importer  
17 may not withhold approval unreasonably.

18 (b) A dealer may not select a vendor from which to obtain goods and services for con-  
19 structing a new dealer facility or materially altering or remodeling an existing dealer facility  
20 if a manufacturer, distributor or importer provides money, credit, an allowance or a re-  
21 imbursement to compensate for all or a substantial portion of the cost of upgrading or im-  
22 proving a dealer facility or for using a specific material, good or service to upgrade or  
23 improve a dealer facility.

24 (c) This subsection does not permit a dealer to:

25 (A) Directly or indirectly infringe upon, eliminate or impair a manufacturer's,  
26 distributor's or importer's intellectual property rights or reasonable business requirements;  
27 or

28 (B) Erect or maintain signs that do not conform to the manufacturer's, distributor's or  
29 importer's intellectual property usage guidelines.

30 ~~SECTION 25~~ ORS 650.158 is amended to read:

31 650.158. (1) Each manufacturer, distributor or importer shall specify in writing to each of [its]  
32 the manufacturer's, distributor's or importer's dealers in this state:

33 (a) The dealer's obligations for predelivery preparation and warranty service on the  
34 manufacturer's, distributor's or importer's motor vehicles [of the manufacturer, distributor or  
35 importer];

36 (b) The schedule of compensation [to be paid] the manufacturer, distributor or importer will  
37 pay the dealer for parts, work and service in connection with predelivery preparation and warranty  
38 service; and

39 (c) The time allowances for [the performance of the] performing predelivery preparation and  
40 warranty service.

41 (2)(a) A schedule of compensation [shall] **must** include reasonable compensation for diagnostic  
42 work, repair service and labor. Time allowances for [the diagnosis and performance of] **diagnosing**  
43 and performing predelivery and warranty service [shall] **must** be reasonable and adequate for the  
44 work to be performed. [The hourly rate paid to a dealer shall not be] A manufacturer, distributor  
45 or importer may not pay an hourly rate to a dealer that is less than the rate [charged by] the

1 dealer charges [to] nonwarranty customers for nonwarranty service and repairs. Reimbursement for  
2 parts, other than parts used to repair the living facilities of motor homes, [purchased by] that the  
3 dealer purchases for use in performing predelivery and warranty service [shall] must be the  
4 amount [charged by] the dealer [to] charges nonwarranty customers, as long as [that] the amount  
5 is not unreasonable.

6 (b)(A) For purposes of this subsection and subject to subparagraphs (B) and (C) of this  
7 paragraph, to determine compensation under this subsection, a dealer shall propose an  
8 hourly rate and an amount for parts that the dealer charges nonwarranty customers by  
9 submitting to the manufacturer, distributor or importer copies of 100 sequential nonwar-  
10 ranty service repair invoices that customers paid or 90 consecutive days' worth of nonwar-  
11 ranty service invoices that customers paid, whichever is less, for repairs made not  
12 more than 180 days before the dealer's submission. ~~the dealer submits a pro-~~  
13

If the manufacturer, distributor or importer does not contest

14 the dealer's proposal and the dealer otherwise complies with the provisions of this paragraph,  
15 the dealer's proposal is presumed to be fair and reasonable.

16 (B) A manufacturer, distributor or importer may contest the dealer's proposal with evi-  
17 dence that the dealer's proposal is not accurate or on the basis that the dealer's proposal  
18 does not reasonably conform with the hourly rate or the amount for parts that other dealers  
19 charge nonwarranty customers in the same line-make in market areas that are contiguous  
20 to the dealer's market area or with other relevant evidence. In contesting a dealer's proposal  
21 based on evidence from other dealers in the contiguous market area, a manufacturer, dis-  
22 tributor or importer shall rely on evidence from at least three other dealers in the contig-  
23 uous market area or three dealers in an economically similar market within the  
24 manufacturer's, distributor's or importer's region.

25 (C) A dealer may not include in the dealer's proposal:

26 " (i) Repairs for a manufacturer's, distributor's or importer's specials,  
27 special events or promotional discounts for retail customer repairs;".

28 (ii) Parts sold at wholesale;

29 (iii) Routine maintenance that a retail customer warranty does not cover, such as fluids,  
30 filters and belts that a dealer uses in performing work other than repairs;

31 (iv) Nuts, bolts, fasteners and similar items that do not have an individual part number;  
32 and

33 (v) Vehicle reconditioning.

34 (c) The hourly rate or the amount for parts that a dealer charges nonwarranty custom-  
35 ers that the dealer proposes under paragraph (b)(A) of this subsection becomes effective 30  
36 days after the manufacturer, distributor or importer approves the hourly rate or the amount  
37 for parts. For purposes of this paragraph, a manufacturer, distributor or importer  
38 approves the dealer's proposal if the manufacturer, distributor or importer  
39 does not contest the proposed hourly rate or amount for parts within 30 days  
40 after the dealer submits the proposal."

1 under this subsection prospectively.

2 (3) A manufacturer, distributor or importer shall include, in written notices of vehicle recalls  
3 to motor vehicle owners and dealers, the expected date by which necessary parts and equipment  
4 will be available to the dealers [for the correction of] to correct the defect or defects. A manufac-  
5 turer, distributor or importer shall adequately compensate a dealer for repair service [performed]  
6 the dealer performs under the recall.

7 [(4) All claims made by dealers under this section for labor and parts shall be paid or credited to  
8 the dealer within 30 days following their approval. All such claims shall be either approved or disap-  
9 proved within 30 days after their receipt in the manner specified by the manufacturer, distributor or  
10 importer. Any claim not specifically disapproved in writing or through electronic communication within  
11 30 days after receipt shall be considered approved, and payment shall be made within 30 days. The  
12 dealer shall be notified in writing of the grounds for disapproval of any claim.]

13 (4) A manufacturer, distributor or importer shall:

14 (a) Pay or credit a dealer for labor or parts the dealer claims under this section within  
15 30 days after approving the dealer's claim;

16 (b) Approve or disapprove, in the manner the manufacturer, distributor or importer  
17 specifies, all claims that a dealer makes for labor or parts within 30 days after receiving the  
18 claim;

19 (c) Treat as approved any claim that a manufacturer, distributor or importer did not  
20 approve or disapprove within 30 days after the manufacturer, distributor or importer re-  
21 ceived the claim and pay or credit the dealer for the claim within 60 days after receiving the  
22 claim; and

23 (d) Notify the dealer in writing of the manufacturer's, distributor's or importer's grounds  
24 for disapproving a claim.

25 "SECTION 4. Section 2 of this 2013 Act and the amendments to ORS  
26 650.158 by section 3 of this 2013 Act apply to:".

27 (1) Programs that dealers participate in under the terms of a contract that the dealer  
28 and a manufacturer, distributor or importer execute on or after the effective date of this  
29 2013 Act;

30 (2) Claims for reimbursement for labor or parts that a dealer makes under the terms of  
31 any contract or agreement that the dealer enters into with a manufacturer, distributor or  
32 importer on or after the effective date of this 2013 Act; and

33 (3) Other contracts or agreements that manufacturers, distributors or importers enter  
34 into on or after the effective date of this 2013 Act.