

B-Engrossed
House Bill 3347

Ordered by the House May 13
Including House Amendments dated April 24 and May 13

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 requiring dealer to construct new dealer facility or materially alter or remodel existing dealer facility within 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 constructed, materially altered or remodeled dealer facility *[or if]* **unless** 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
3 650.158.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 650.120 to**
6 **650.170.**

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

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

17 **(A) If the manufacturer, distributor or importer demonstrates that the manufacturer's,**
18 **distributor's or importer's requirement is reasonable and justifiable in light of:**

19 **(i) The projected cost of the construction, material alteration or remodel;**

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 (ii) Existing and reasonably foreseeable economic conditions;

2 (iii) Financial expectations;

3 (iv) The availability of additional vehicle allocation; and

4 (v) The dealer's market for vehicle sales;

5 (B) In order to comply with a health or safety law or with a technological requirement
6 that is necessary to sell or service a motor vehicle that the dealer sells or services under
7 the terms of the dealer's franchise; or

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

13 (c) Paragraph (a) of this subsection does not prohibit a dealer from voluntarily agreeing
14 with a manufacturer, distributor or importer to construct a new dealer facility or materially
15 alter or remodel an existing dealer facility in return for separate and valuable consideration.
16 For the purposes of this paragraph, renewing a dealer's franchise is not separate and valu-
17 able consideration.

18 (d) For purposes of this subsection:

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

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

24 (2)(a) Except as provided in paragraph (b) of this subsection, a manufacturer, distributor
25 or importer may not require a dealer to purchase goods or services for constructing, mate-
26 rially altering or remodeling a dealer facility from a vendor that the manufacturer, distrib-
27 utor or importer selects, identifies or designates without giving the dealer an option to
28 obtain goods or services of substantially similar quality and design from a vendor that the
29 dealer chooses, subject to the manufacturer's, distributor's or importer's approval in ad-
30 vance. The manufacturer, distributor or importer may not withhold approval unreasonably.

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

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

38 (A) Directly or indirectly or in any way infringe upon, eliminate or impair a
39 manufacturer's, distributor's or importer's intellectual property rights or reasonable busi-
40 ness requirements; or

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

43 **SECTION 3.** ORS 650.158 is amended to read:

44 650.158. (1) Each manufacturer, distributor or importer shall specify in writing to each of *its*
45 the manufacturer's, distributor's or importer's dealers in this state:

1 (a) The dealer's obligations for predelivery preparation and warranty service on **the**
2 **manufacturer's, distributor's or importer's** motor vehicles [*of the manufacturer, distributor or*
3 *importer*];

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

7 (c) The time allowances for [*the performance of the*] **performing** predelivery preparation and
8 warranty service.

9 (2)(a) A schedule of compensation [*shall*] **must** include reasonable compensation for diagnostic
10 work, repair service and labor. Time allowances for [*the diagnosis and performance of*] **diagnosing**
11 **and performing** predelivery and warranty service [*shall*] **must** be reasonable and adequate for the
12 work to be performed. [*The hourly rate paid to a dealer shall not be*] **A manufacturer, distributor**
13 **or importer may not pay an hourly rate to a dealer that is** less than the rate [*charged by*] the
14 dealer **charges** [*to*] nonwarranty customers for nonwarranty service and repairs. Reimbursement for
15 parts, other than parts used to repair the living facilities of motor homes, [*purchased by*] **that** the
16 dealer **purchases** for use in performing predelivery and warranty service [*shall*] **must** be the
17 amount [*charged by*] the dealer [*to*] **charges** nonwarranty customers, as long as [*that*] **the** amount
18 is not unreasonable.

19 (b)(A) **For purposes of this subsection and subject to subparagraphs (B) and (C) of this**
20 **paragraph, to determine compensation under this subsection, a dealer shall propose an**
21 **hourly rate and an amount for parts that the dealer charges nonwarranty customers by**
22 **submitting to the manufacturer, distributor or importer copies of 100 sequential nonwar-**
23 **ranty service repair invoices that customers paid or 90 consecutive days' worth of nonwar-**
24 **ranty service invoices that customers paid, whichever is less, for repairs made not more**
25 **than 180 days before the dealer's submission. If the manufacturer, distributor or importer**
26 **does not contest the dealer's proposal and the dealer otherwise complies with the provisions**
27 **of this paragraph, the dealer's proposal is presumed to be fair and reasonable.**

28 (B) **A manufacturer, distributor or importer may contest the dealer's proposal with evi-**
29 **dence that the dealer's proposal is not accurate or on the basis that the dealer's proposal**
30 **does not reasonably conform with the hourly rate or the amount for parts that other dealers**
31 **charge nonwarranty customers in the same line-make in market areas that are contiguous**
32 **to the dealer's market area or with other relevant evidence. In contesting a dealer's proposal**
33 **based on evidence from other dealers in the contiguous market area, a manufacturer, dis-**
34 **tributor or importer shall rely on evidence from at least three other dealers in the contig-**
35 **uous market area or three dealers in an economically similar market within the**
36 **manufacturer's, distributor's or importer's region.**

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

38 (i) **Repairs for a manufacturer's, distributor's or importer's specials, special events or**
39 **promotional discounts for retail customer repairs;**

40 (ii) **Parts sold at wholesale;**

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

43 (iv) **Nuts, bolts, fasteners and similar items that do not have an individual part number;**
44 **and**

45 (v) **Vehicle reconditioning.**

1 (c) The hourly rate or the amount for parts that a dealer charges nonwarranty custom-
2 ers that the dealer proposes under paragraph (b)(A) of this subsection becomes effective 30
3 days after the manufacturer, distributor or importer approves the hourly rate or the amount
4 for parts. For purposes of this paragraph, a manufacturer, distributor or importer approves
5 the dealer's proposal if the manufacturer, distributor or importer does not contest the pro-
6 posed hourly rate or amount for parts within 30 days after the dealer submits the proposal.

7 (d) If a manufacturer, distributor or importer successfully contests a dealer's proposal,
8 the manufacturer, distributor or importer shall propose an adjustment to the dealer's pro-
9 posal not later than 30 days after the dealer submits the dealer's proposal.

10 (e) Once per year, a manufacturer, distributor or importer may verify the dealer's hourly
11 rate or the amount for parts the dealer charges nonwarranty customers. If the manufac-
12 turer, distributor or importer finds that the dealer's hourly rate or the amount for parts has
13 decreased, the manufacturer, distributor or importer may reduce the dealer's compensation
14 under this subsection prospectively.

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

20 [*(4) All claims made by dealers under this section for labor and parts shall be paid or credited to*
21 *the dealer within 30 days following their approval. All such claims shall be either approved or disap-*
22 *proved within 30 days after their receipt in the manner specified by the manufacturer, distributor or*
23 *importer. Any claim not specifically disapproved in writing or through electronic communication within*
24 *30 days after receipt shall be considered approved, and payment shall be made within 30 days. The*
25 *dealer shall be notified in writing of the grounds for disapproval of any claim.*]

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

27 (a) Pay or credit a dealer for labor or parts the dealer claims under this section within
28 30 days after approving the dealer's claim;

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

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

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

38 **SECTION 4.** Section 2 of this 2013 Act and the amendments to ORS 650.158 by section 3
39 of this 2013 Act apply to:

40 (1) Programs that dealers participate in under the terms of a contract that the dealer
41 and a manufacturer, distributor or importer execute on or after the effective date of this
42 2013 Act;

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

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