

House Bill 3347

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 **as introduced**.

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 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.

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.

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
3 650.130 and 650.158.

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

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

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

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

13 (2) Coerce or attempt to coerce a dealer to enter **into** any agreement or sales promotion pro-
14 gram by threatening to cancel the [*franchise of the dealer*] **dealer's franchise**.

15 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new
16 motor vehicle, part or accessory covered by the franchise if the **manufacturer, importer or dis-**
17 **tributor advertises the** vehicle, part or accessory [*is advertised as being*] **as** available for delivery
18 or [*is being delivered*] **delivers the vehicle, part or accessory** to another dealer. This subsection
19 does not apply if the failure to deliver is the result of a cause beyond the control of the manufac-
20 turer, distributor or importer.

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

24 (5) Unreasonably refuse to compensate the dealer for work or services **the dealer** performed and
25 expenses **the dealer** incurred in accordance with the dealer's delivery, preparation and warranty

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 obligations under the terms of a franchise or agreement.

2 (6) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign
 3 or contest, or purchase any promotional materials, display devices or display decorations or mate-
 4 rials at the **dealer's** expense [*of the dealer*].

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

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

15 (9) Initiate an audit to determine the validity of paid claims for dealer compensation or any
 16 charge-backs for consumer or dealer incentives more than one year [*following*] **after** the date of
 17 payment unless the manufacturer, distributor or importer has reasonable grounds to believe that the
 18 dealer submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit
 19 more than one year [*following*] **after** the date of payment, the manufacturer, distributor or importer
 20 may charge back to the dealer only the amount of a claim that the manufacturer, distributor or
 21 importer proves was fraudulent. Parties shall cooperate to ensure that permitted audits are con-
 22 cluded within 60 days [*of*] **after** initiation.

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

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

32 (a) A manufacturer, distributor or importer:

33 (A) Has an ownership interest in, operates or controls, directly or indirectly, a business that is
 34 a dealership in [*this state*] **Oregon** and is a business that:

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

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

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

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

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

45 (ii) Has made, or is obligated to make within 12 months, a significant capital investment in the

1 dealership that is subject to loss;

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

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

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

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

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

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

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

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

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

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

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

24 (B) [*When the manufacturer acquires an ownership interest in the dealership,*] The distance from
25 the manufacturer's dealership to the dealership of a dealer that buys, sells, leases, trades, stores,
26 takes on consignment or in any other manner deals in the single line-make of the manufacturer and
27 in which the manufacturer has no ownership interest is not less than 15 miles **at the time the**
28 **manufacturer acquires an ownership interest in the dealership;**

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

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

33 (E) On January 1, 2000:

34 (i) [*There were no*] **Not** more than four dealers [*in the state*] of the manufacturer's single line-
35 make **existed in Oregon;** and

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

39 (12) Sell or lease a motor vehicle to a person in [*this state*] **Oregon** other than to a business
40 described in subsection (11) of this section or to a franchisee of the manufacturer, distributor or
41 importer. [*It is not a violation of*] **A manufacturer, distributor or importer does not violate** this
42 subsection if:

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

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

- 1 (B) A driver training program;
- 2 (C) A nonprofit corporation;
- 3 (D) A qualified vendor;
- 4 (E) A public agency as defined in ORS 537.515;
- 5 (F) A current retail lessee;
- 6 (G) A fleet owner;
- 7 (H) A business acting as a vehicle dealer under ORS chapter 822 that sells motor vehicles only
- 8 to other vehicle dealers; or
- 9 (I) The customers of a business acting as a vehicle dealer under ORS chapter 822 that sells
- 10 motor vehicles only to other vehicle dealers.
- 11 (b) The sale or lease is by a business in *[this state]* **Oregon** that primarily leases or rents motor
- 12 vehicles for a period of 12 months or less and the only motor vehicles that the business sells are
- 13 motor vehicles that have been:
 - 14 (A) Owned by the business for 180 days or more; or
 - 15 (B) Driven more than 10,000 miles while owned by the business.
- 16 (c) The sale or lease is by a subsidiary of a manufacturer, distributor or importer that finances
- 17 the sale or lease of motor vehicles and the sale or lease is to a person who previously leased the
- 18 vehicle from the subsidiary.
- 19 (13)(a) Own, operate or control a business, or enter into any contract, agreement or other
- 20 written instrument permitting a person that is not a dealer to be compensated by the manufacturer,
- 21 distributor or importer for performing warranty repairs and services, if the business **or the person**
- 22 is located within a dealer's relevant market area.
- 23 (b) Paragraph (a) of this subsection does not apply to:
 - 24 (A) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
 - 25 rating of less than 8,500 pounds provided for commercial or government fleets; or
 - 26 (B) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
 - 27 rating of 8,500 pounds or more if, after January 1, 2002, a manufacturer, distributor or importer of
 - 28 only motor vehicles with a gross vehicle weight rating of 8,500 pounds or more has:
 - 29 (i) Obtained written permission from the dealers in the relevant market area to perform the re-
 - 30 pairs or services; or
 - 31 (ii) Authorized the repairs or services to be performed by a person who owns or leases the motor
 - 32 vehicles for use in the person's business.
- 33 (14) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any
- 34 franchise agreement because the dealer owns, has an investment in, participates in the management
- 35 of or holds a franchise agreement with another manufacturer, distributor or importer at a different
- 36 dealership site, or has franchises with more than one manufacturer, distributor or importer
- 37 *[sharing]* **that shares** the same dealership site, facilities, personnel or display space before October
- 38 23, 1999.
- 39 (15) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any
- 40 franchise agreement because the dealer owns, has an investment in, participates in the management
- 41 of or holds a franchise agreement with another manufacturer, distributor or importer at a different
- 42 dealership site, or has franchises with more than one manufacturer, distributor or importer sharing
- 43 the same dealership site, facilities, personnel or display space on or after January 1, 2012, provided
- 44 **that** the dealer complies with the manufacturer's, distributor's or importer's reasonable capitaliza-
- 45 tion and financial requirements, reasonable space and facility requirements and other requirements

1 that are justified, taking into account the reasonable business considerations of the manufacturer,
 2 distributor or importer and the dealer, and provided [*there is no change in*] **that** the principal man-
 3 agement of the dealership site **does not change**.

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

5 (A) Granting or renewing a franchise;

6 (B) Approving the addition of a line-make of a manufacturer;

7 (C) Approving the sale, transfer or assignment of a franchise agreement;

8 (D) Approving the relocation, or granting a new franchise for relocation, of an existing dealer-
 9 ship; or

10 (E) Obtaining fair and reasonable compensation under ORS 650.145 upon the termination, can-
 11 cellation, nonrenewal or discontinuance of any franchise.

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

16 (17)(a) **Except as provided in paragraph (b) of this subsection, require a dealer to:**

17 (A) **Construct a new dealer facility or materially alter or remodel an existing dealer fa-**
 18 **ility within 10 years after the date on which the dealer previously constructed, materially**
 19 **altered or remodeled the existing dealer facility if the existing dealer facility complies with**
 20 **the manufacturer's, distributor's or importer's approved brand image standards or plans**
 21 **that existed at the time the dealer facility was constructed, materially altered or remodeled;**
 22 **or**

23 (B) **Enter into an agreement or incentive program to lease or purchase from the man-**
 24 **ufacturer, distributor or importer, or from a vendor that the manufacturer, distributor or**
 25 **importer or an affiliate of the manufacturer, distributor or importer selects, identifies or**
 26 **designates:**

27 (i) **Goods or services related to constructing, materially altering or remodeling a dealer**
 28 **facility; or**

29 (ii) **Signage or an element of the manufacturer's, distributor's or importer's brand image.**

30 (b) **The manufacturer, distributor or importer may require a dealer to perform the**
 31 **actions described in paragraph (a) of this subsection if the manufacturer, distributor or**
 32 **importer:**

33 (A) **Requires the dealer to construct, materially alter or remodel a dealer facility in order**
 34 **to comply with a health or safety law or with a technological requirement that is necessary**
 35 **to sell or service a motor vehicle that the dealer sells or services under the terms of the**
 36 **dealer's franchise;**

37 (B) **Provides:**

38 (i) **A lump-sum payment to assist the dealer in constructing, materially altering or re-**
 39 **modeling a dealer facility or in leasing or purchasing goods or services related to con-**
 40 **structing, materially altering or remodeling a dealer facility, or signage or an element of the**
 41 **manufacturer's, distributor's or importer's brand image, if the payment does not require the**
 42 **dealer to purchase or sell a specific number of motor vehicles;**

43 (ii) **Reasonable reimbursement, under written terms, for a substantial portion of the**
 44 **dealer's cost in constructing, materially altering or remodeling a dealer facility or purchas-**
 45 **ing signage or an element of the manufacturer's, distributor's or importer's brand image;**

1 (iii) Reimbursement, under a written incentive program agreement with reasonable
 2 terms, for more than half of the dealer's cost of goods used in constructing, materially al-
 3 tering or remodeling a dealer facility;

4 (D) Has intellectual property rights in signage or materials that are part of a moveable
 5 interior display that the dealer leases or purchases; or

6 (C) Participates in a program or has a written agreement with the dealer in which the
 7 dealer agrees to construct a new dealer facility and:

8 (i) The agreement was in effect before the effective date of this 2013 Act; or

9 (ii) The program began before the effective date of this 2013 Act.

10 **SECTION 2.** ORS 650.158 is amended to read:

11 650.158. (1) Each manufacturer, distributor or importer shall specify in writing to each of *[its]*
 12 **the manufacturer's, distributor's or importer's** dealers in this state:

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

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

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

21 (2) A schedule of compensation *[shall]* **must** include reasonable compensation for diagnostic
 22 work, repair service and labor. Time allowances for *[the diagnosis and performance of]* **diagnosing**
 23 **and performing** predelivery and warranty service *[shall]* **must** be reasonable and adequate for the
 24 work to be performed. *[The hourly rate paid to a dealer shall not be]* **A manufacturer, distributor**
 25 **or importer may not pay an hourly rate to a dealer that is** less than the rate *[charged by]* the
 26 dealer **charges** *[to]* nonwarranty customers for nonwarranty service and repairs. Reimbursement
 27 for parts, other than parts used to repair the living facilities of motor homes, *[purchased by]* **that**
 28 the dealer **purchases** for use in performing predelivery and warranty service *[shall]* **must** be the
 29 amount *[charged by]* the dealer *[to]* **charges** nonwarranty customers, as long as *[that]* **the** amount
 30 is not unreasonable.

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

36 *[(4) All claims made by dealers under this section for labor and parts shall be paid or credited to*
 37 *the dealer within 30 days following their approval. All such claims shall be either approved or disap-*
 38 *proved within 30 days after their receipt in the manner specified by the manufacturer, distributor or*
 39 *importer. Any claim not specifically disapproved in writing or through electronic communication within*
 40 *30 days after receipt shall be considered approved, and payment shall be made within 30 days. The*
 41 *dealer shall be notified in writing of the grounds for disapproval of any claim.]*

42 (4) **A manufacturer, distributor or importer shall:**

43 (a) **Pay or credit a dealer for labor or parts the dealer claims under this section within**
 44 **30 days after approving the dealer's claim;**

45 (b) **Approve or disapprove, in the manner the manufacturer, distributor or importer**

1 specifies, all claims that a dealer makes for labor or parts within 30 days after receiving the
2 claim;

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

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

9 (5)(a) A manufacturer, distributor or importer may not increase the price of a motor
10 vehicle or impose a surcharge for the purpose of recovering the manufacturer's, distributor's
11 or importer's cost of paying a claim for labor or parts that a dealer makes under this sec-
12 tion.

13 (b) Paragraph (a) of this subsection does not prohibit a manufacturer, distributor or
14 importer from increasing the price of a motor vehicle in the ordinary course of the
15 manufacturer's, distributor's or importer's business.

16 SECTION 3. The amendments to ORS 650.130 and 650.158 by sections 1 and 2 of this 2013
17 Act apply to:

18 (1) Programs that dealers participate in under the terms of a contract that the dealer
19 and a manufacturer, distributor or importer execute on or after the effective date of this
20 2013 Act;

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

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

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