

D R A F T

SUMMARY

Prohibits motor vehicle manufacturer, distributor or importer from requiring dealer to advertise, promote, offer or sell extended service contracts, extended maintenance plans, or similar products or services that manufacturer, distributor or importer provides, originates, sponsors or endorses.

Specifies costs and expenses for which manufacturer, distributor or importer must compensate dealer if manufacturer, distributor or importer terminates motor vehicle line-make or terminates, cancels, fails to renew or discontinues dealer's franchise. Prohibits manufacturer, distributor or importer from denying claim or charging back claim because dealer fails to comply with specific claim processing procedure if dealer resubmits claim in compliance with procedure within 60 days, or from recovering costs for compensating dealer for warranty parts and service.

A BILL FOR AN ACT

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2 Relating to motor vehicle dealerships; creating new provisions; and amending
3 ORS 650.145 and 650.158.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part**
6 **of ORS 650.120 to 650.170.**

7 **SECTION 2. (1)(a) A manufacturer, distributor or importer may**
8 **not, through any of the methods described in paragraph (b) of this**
9 **subsection, directly or indirectly coerce or attempt to coerce a dealer**
10 **to advertise, promote, offer or sell an extended service contract, an**
11 **extended maintenance plan, a guaranteed asset protection waiver or**
12 **other arrangement that pays a purchaser the remaining balance on a**
13 **note secured by a motor vehicle if the motor vehicle is lost, stolen or**
14 **damaged beyond repair, or a similar product or service, if the man-**

1 **ufacturer, distributor or importer provides, originates, sponsors or**
2 **endorses the product or service.**

3 **(b) Prohibited methods for coercing or attempting to coerce a dealer**
4 **include, but are not limited to:**

5 **(A) Stating to a dealer that the dealer's failure to advertise, pro-**
6 **mote, offer or sell the products or services described in paragraph (a)**
7 **of this subsection will substantially and adversely affect the dealer's**
8 **business or the dealer's relationship with the manufacturer, distribu-**
9 **tor or importer;**

10 **(B) Requiring the dealer in a franchise agreement to advertise,**
11 **promote, offer or sell the products or services described in paragraph**
12 **(a) of this subsection;**

13 **(C) Measuring the dealer's performance in a franchise on the basis**
14 **of whether, or the extent to which, the dealer advertises, promotes,**
15 **offers or sells the products or services described in paragraph (a) of**
16 **this subsection; or**

17 **(D) Requiring the dealer to advertise, promote, offer or sell the**
18 **products or services described in paragraph (a) of this subsection to**
19 **the exclusion of other, similar products or services that a person other**
20 **than the manufacturer, distributor or importer offers.**

21 **(2) The prohibition in subsection (1) of this section does not affect**
22 **a manufacturer's, distributor's or importer's right or ability to:**

23 **(a) Provide incentives to a dealer that voluntarily decides to ad-**
24 **vertise, promote, offer or sell the products or services described in**
25 **subsection (1)(a) of this section; or**

26 **(b) Require a dealer that sells a product or service that is similar**
27 **to the products or services described in subsection (1)(a) of this sec-**
28 **tion, but that the manufacturer, distributor or importer does not**
29 **provide, originate, sponsor or endorse, to notify a customer in writing,**
30 **and to obtain the customer's acknowledgment, that the manufacturer,**
31 **distributor or importer does not provide, originate, sponsor or endorse**

1 **the product or service.**

2 **SECTION 3.** ORS 650.145 is amended to read:

3 650.145. (1) As used in subsection (2) of this section, “fair and reasonable
4 compensation” means the amount [*originally paid by the*] a dealer **originally**
5 **paid for vehicles** minus any incentive payments, model close-out allowances
6 or any other programs [*applicable*] **that apply** to the vehicles.

7 [*(2) Upon the termination, cancellation, nonrenewal or discontinuance of*
8 *any franchise, the dealer shall be allowed fair and reasonable compensation*
9 *by the manufacturer, distributor or importer for the following:*]

10 **(2) A manufacturer, distributor or importer that terminates, can-**
11 **cels, fails to renew or discontinues a franchise shall pay or allow a**
12 **dealer fair and reasonable compensation for:**

13 (a) All new vehicles manufactured in the current calendar year and any
14 subsequent calendar year in the motor vehicle inventory **the dealer** pur-
15 chased from the manufacturer, distributor or importer that [*have not been*]
16 **were not** materially altered, substantially damaged or driven for more than
17 300 miles;

18 (b) All new vehicles in the motor vehicle inventory that [*have not been*]
19 **were not** materially altered or substantially damaged, [*provided that*] **if** the
20 vehicles:

21 (A) [*If motor vehicles with*] **Have** a gross vehicle weight rating of less
22 than 8,500 pounds[, *were not*] **and were:**

23 (i) Driven for **not** more than 300 miles[, *were*];

24 (ii) Purchased directly from the manufacturer, distributor or importer
25 within [*120*] **180** days of the effective date of the termination, cancellation,
26 nonrenewal or discontinuance; and [*were either*]

27 (iii) Paid for or drafted on the dealer’s financing source; or

28 (B) [*If motor vehicles with*] **Have** a gross vehicle weight rating of 8,500
29 pounds or more[, *were not*] **and were:**

30 (i) Driven **for not** more than 3,500 miles[, *were*];

31 (ii) Purchased directly from the manufacturer, distributor or importer

1 within one year of the effective date of the termination, cancellation,
2 nonrenewal or discontinuance; and *[were either]*

3 (iii) Paid for or drafted on the dealer's financing source;

4 (c) Supplies and parts inventory **that the dealer** purchased from the
5 manufacturer, distributor or importer and **that are** listed in the
6 manufacturer's, distributor's or importer's current parts catalog;

7 (d) Equipment, furnishings and signs **that the** *[purchased from the]* man-
8 ufacturer, distributor or importer *[and required by the manufacturer, distrib-*
9 *utor or importer]* **required the dealer to purchase and** that *[have not*
10 *been]* **were not** materially altered, or substantially damaged or depreciated
11 *[over]* **by more than** 50 percent of the original value; *[and]*

12 (e) Special tools **required by the manufacturer that the dealer** pur-
13 chased from the manufacturer, distributor or importer within three years of
14 the date of termination, cancellation, nonrenewal or discontinuance and *[re-*
15 *quired by the manufacturer that have not been]* **that were not** materially al-
16 tered, or substantially damaged or depreciated *[over]* **by more than** 50
17 percent of the original value*[.]; and*

18 (f) **The lesser of one year's lease payments or the amount remaining**
19 **due on a lease or contract for a management computer system that**
20 **the manufacturer, distributor or importer required the dealer to use,**
21 **if the dealer will no longer use the management computer system be-**
22 **cause the manufacturer, distributor or importer terminated, canceled,**
23 **failed to renew or discontinued the dealer's franchise.**

24 (3) *[Nothing in this section is intended to]* **This section does not** modify
25 *[the]* a manufacturer's, distributor's or importer's contractual right of setoff.

26 (4) *[Upon the termination, cancellation, nonrenewal or discontinuance of a*
27 *franchise, the]* **In addition to any other payments required under this**
28 **section, a** manufacturer, distributor or importer, **after terminating,**
29 **canceling, failing to renew or discontinuing a dealer's franchise,** shall
30 *[also]* pay to the dealer a sum equal to the current, fair rental value of the
31 dealer's established place of business for a period of one year *[from]* **after**

1 the effective date of termination, cancellation, nonrenewal or
2 discontinuance, or **a sum equal to the current, fair rental value for the**
3 remaining period of *[any]* **the dealer's** lease, whichever is less.

4 (5) Subsection (4) of this section *[shall apply]* **applies** only to the extent
5 that *[the]* **a dealer uses the** dealer's established place of business *[is used*
6 *for performance of]* **to perform** sales and service obligations under the
7 manufacturer's, distributor's or importer's franchise agreement.

8 *[(6) In the event that termination is by the dealer, the payment required by*
9 *subsection (4) of this section is not required.]*

10 (6) **A manufacturer, distributor or importer need not make the**
11 **payment described in subsection (4) of this section if the dealer ter-**
12 **minates, cancels, fails to renew or discontinues the franchise.**

13 (7) This section *[shall]* **does** not relieve a new motor vehicle dealer, lessor
14 or other owner of an established place of business from *[the]* **an** obligation
15 *[of mitigating]* **to mitigate** damages.

16 (8) **If a manufacturer, distributor or importer terminates, cancels,**
17 **fails to renew or discontinues a dealer's franchise because the man-**
18 **ufacturer, distributor or importer has terminated a line-make, the**
19 **manufacturer, distributor or importer shall compensate the dealer for**
20 **expenses the dealer incurred within three years before the termination**
21 **date of the line-make to finish constructing, altering or remodeling**
22 **the dealer's facility to meet the manufacturer's, distributor's or**
23 **importer's requirements or to participate in an incentive program. For**
24 **the purposes of this subsection:**

25 (a) **A dealer finishes constructing, altering or remodeling the**
26 **dealer's facility when the dealer gives final written approval of the**
27 **construction, alteration or remodeling or received a certificate of oc-**
28 **cupancy; and**

29 (b) **Expenses the dealer incurred to finish constructing, altering or**
30 **remodeling the dealer's facility are the actual costs the dealer in-**
31 **curred, less:**

1 (A) Any assistance the dealer received from the manufacturer, dis-
2 tributor or importer within three years before the termination date
3 of the line-make; and

4 (B) An amount for depreciation equivalent to one thirty-ninth of
5 the total cost of the construction, alteration or remodeling per year,
6 beginning in the year after the dealer finishes the construction, al-
7 tering or remodeling, in accordance with applicable provisions of the
8 Internal Revenue Code.

9 **SECTION 4.** ORS 650.158 is amended to read:

10 650.158. (1) Each manufacturer, distributor or importer shall specify in
11 writing to each of the manufacturer's, distributor's or importer's dealers in
12 this state:

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

15 (b) The schedule of compensation the manufacturer, distributor or
16 importer will pay the dealer for parts, work and service in connection with
17 predelivery preparation and warranty service; and

18 (c) The time allowances for performing predelivery preparation and war-
19 ranty service.

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

30 (b)(A) For purposes of this subsection and subject to subparagraphs (B)
31 and (C) of this paragraph, to determine compensation under this subsection,

1 a dealer shall propose an hourly rate and an amount for parts that the dealer
2 charges nonwarranty customers by submitting to the manufacturer, distrib-
3 utor or importer copies of 100 sequential nonwarranty service repair invoices
4 that customers paid or 90 consecutive days' worth of nonwarranty service
5 invoices that customers paid, whichever is less, for repairs **the dealer** made
6 not more than 180 days before the dealer's submission. If the manufacturer,
7 distributor or importer does not contest the dealer's proposal and the dealer
8 otherwise complies with the provisions of this paragraph, the dealer's pro-
9 posal is presumed to be fair and reasonable.

10 (B) A manufacturer, distributor or importer may contest the dealer's
11 proposal with evidence that the dealer's proposal is not accurate or on the
12 basis that the dealer's proposal does not reasonably conform with the hourly
13 rate or the amount for parts that other dealers charge nonwarranty custom-
14 ers in the same line-make in market areas that are contiguous to the dealer's
15 market area or with other relevant evidence. In contesting a dealer's pro-
16 posal based on evidence from other dealers in the contiguous market area,
17 a manufacturer, distributor or importer shall rely on evidence from at least
18 three other dealers in the contiguous market area or three dealers in an
19 economically similar market within the manufacturer's, distributor's or
20 importer's region.

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

22 (i) Repairs for a manufacturer's, distributor's or importer's specials, spe-
23 cial events or promotional discounts for retail customer repairs;

24 (ii) Parts sold at wholesale;

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

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

30 (v) Vehicle reconditioning.

31 (c) The hourly rate or the amount for parts that a dealer charges non-

1 warranty customers that the dealer proposes under paragraph (b)(A) of this
2 subsection becomes effective 30 days after the manufacturer, distributor or
3 importer approves the hourly rate or the amount for parts. For purposes of
4 this paragraph, a manufacturer, distributor or importer approves the dealer's
5 proposal if the manufacturer, distributor or importer does not contest the
6 proposed hourly rate or amount for parts within 30 days after the dealer
7 submits the proposal.

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

12 (e) Once per year, a manufacturer, distributor or importer may verify the
13 dealer's hourly rate or the amount for parts the dealer charges nonwarranty
14 customers. If the manufacturer, distributor or importer finds that the dealer's
15 hourly rate or the amount for parts has decreased, the manufacturer, dis-
16 tributor or importer may reduce the dealer's compensation under this sub-
17 section prospectively.

18 (3) A manufacturer, distributor or importer shall include, in written no-
19 tices of vehicle recalls to motor vehicle owners and dealers, the expected
20 date by which necessary parts and equipment will be available to the dealers
21 to correct the defect or defects. A manufacturer, distributor or importer
22 shall adequately compensate a dealer for repair service the dealer performs
23 under the recall.

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

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

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

30 (c) Treat as approved any claim that a manufacturer, distributor or
31 importer did not approve or disapprove within 30 days after the manufac-

1 turer, distributor or importer received the claim and pay or credit the dealer
2 for the claim within 60 days after receiving the claim; and

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

5 **(5) A manufacturer, dealer or importer may not:**

6 **(a) Recover all or a portion of cost of compensating a dealer for**
7 **warranty parts or service by reducing the amount due a dealer or by**
8 **imposing a separate charge, surcharge, administrative fee or other fee.**

9 **(b) Deny or charge back a dealer's claim solely because a dealer**
10 **failed to comply with a specific claim processing procedure because**
11 **of a clerical or administrative error that does not affect the legitimacy**
12 **of the dealer's claim, if the dealer resubmits the claim in compliance**
13 **with the manufacturer's, distributor's or importer's claim processing**
14 **procedure within 60 days after the manufacturer, distributor or**
15 **importer initially denies or charges back the claim.**

16 **SECTION 5. (1) Section 2 of this 2015 Act applies to franchise**
17 **agreements that a dealer enters into or renews with a manufacturer,**
18 **distributor or importer on or after the effective date of this 2015 Act.**

19 **(2) The amendments to ORS 650.145 and 650.158 by sections 3 and 4**
20 **of this 2015 Act apply to terminations of franchises that occur on or**
21 **after the effective date of this 2015 Act.**

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