

D R A F T

SUMMARY

Prevents motor vehicle manufacturer, distributor or importer from taking certain adverse actions against motor vehicle dealer because dealer sold motor vehicle to customer that exported motor vehicle or resold motor vehicle for export. Specifies exceptions.

A BILL FOR AN ACT

1
2 Relating to motor vehicle dealerships; creating new provisions; and amending
3 ORS 650.130.

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,
7 a manufacturer, distributor or importer may not:

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

15 (2) Coerce or attempt to coerce a dealer to enter **into** any agreement or
16 sales promotion program by threatening to cancel the **dealer's** franchise [*of*
17 *the dealer*].

18 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable
19 quantity, any new motor vehicle, part or accessory covered by the franchise
20 if the **manufacturer, distributor or importer advertises the** vehicle, part

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 or accessory [*is advertised as being*] **as** available for delivery or is [*being*
2 *delivered*] **delivering the vehicle, part or accessory** to another dealer. This
3 subsection does not apply if the failure to deliver [*is the result of*] **results**
4 **from** a cause beyond the control of the manufacturer, distributor or
5 importer.

6 (4) Prevent or attempt to prevent a dealer from making reasonable
7 changes in [*the*] **a dealership's** capital structure [*of a dealership*] or the
8 means by which **a dealer finances** the dealership [*is financed*], provided that
9 the dealer meets any reasonable capital requirement of the manufacturer,
10 distributor or importer.

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

15 (6) Coerce or attempt to coerce a dealer to participate monetarily in any
16 advertising campaign or contest, or **to** purchase any promotional materials,
17 display devices or display decorations or materials at the **dealer's** expense
18 [*of the dealer*].

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

21 (8) Initiate an audit to determine the validity of paid claims for dealer
22 compensation, or **for** any charge-backs for warranty parts or service com-
23 pensation, more than one year following the date of payment unless the
24 manufacturer, distributor or importer has reasonable grounds to believe that
25 the dealer submitted a fraudulent claim. If a manufacturer, distributor or
26 importer initiates an audit more than one year following the date of pay-
27 ment, the manufacturer, distributor or importer may charge back to the
28 dealer only the amount of a claim that the manufacturer, distributor or
29 importer proves was fraudulent. Parties shall cooperate to ensure that per-
30 mitted audits [*are concluded within 60 days of initiation*] **conclude not more**
31 **than 60 days after the audits begin.**

1 (9) Initiate an audit to determine the validity of paid claims for dealer
2 compensation, or **for** any charge-backs for consumer or dealer incentives,
3 more than one year following the date of payment unless the manufacturer,
4 distributor or importer has reasonable grounds to believe that the dealer
5 submitted a fraudulent claim. If a manufacturer, distributor or importer ini-
6 tiates an audit more than one year following the date of payment, the man-
7 ufacturer, distributor or importer may charge back to the dealer only the
8 amount of a claim that the manufacturer, distributor or importer proves was
9 fraudulent. Parties shall cooperate to ensure that permitted audits [*are con-*
10 *cluded within 60 days of initiation*] **conclude not more than 60 days after**
11 **the audits begin.**

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

18 (11) Have an ownership interest in, operate or control, directly or indi-
19 rectly, a business that sells or leases a motor vehicle to a person in Oregon
20 except to a franchisee of the manufacturer, distributor or importer. [*It is not*
21 *a violation of*] **A manufacturer, distributor or importer does not violate**
22 **this subsection if:**

23 (a) [A] **The manufacturer, distributor or importer:**

24 (A) Has an ownership interest in, operates or controls, directly or indi-
25 rectly, a business that is a dealership in this state and is a business that:

26 (i) A franchisee owned, operated or controlled before the manufacturer,
27 distributor or importer acquired the ownership interest in or began to oper-
28 ate or control the business;

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

31 (iii) **The manufacturer, distributor or importer offers for sale to a**

1 **qualified independent person at a fair and reasonable price** while the
2 manufacturer, distributor or importer maintains an ownership interest in,
3 operates or controls the business[, *the manufacturer, distributor or importer*
4 *offers the business for sale to any qualified independent person at a fair and*
5 *reasonable price*].

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

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

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

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

12 (iv) Operates the dealership under a franchise through which the person
13 will within 15 years acquire full ownership of the dealership under reason-
14 able terms and conditions.

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

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

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

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

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

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

29 (F) Has an ownership interest in, operates or controls, directly or indi-
30 rectly, a business that makes a sale or lease of a motor vehicle [*that is not*
31 *a violation of*] **in a manner that does not violate** subsection (12) of this

1 section.

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

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

8 (B) When the manufacturer acquires an ownership interest in the dealer-
9 ship, the distance from the manufacturer's dealership to the dealership of a
10 dealer that buys, sells, leases, trades, stores, takes on consignment or in any
11 other manner deals in the single line-make of the manufacturer and in which
12 the manufacturer has no ownership interest is not less than 15 miles;

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

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

19 (E) On January 1, 2000:

20 (i) There were no more than four dealers [*in the state*] of the
21 manufacturer's single line-make **in this state**; and

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

26 (12) Sell or lease a motor vehicle to a person in this state other than to
27 a business described in subsection (11) of this section or to a franchisee of
28 the manufacturer, distributor or importer. [*It is not a violation of*] **A man-**
29 **ufacturer, distributor or importer does not violate** this subsection if:

30 (a) The manufacturer, distributor or importer sells or leases a motor ve-
31 hicle to:

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

3 (B) A driver training program;

4 (C) A nonprofit corporation;

5 (D) A qualified vendor;

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

7 (F) A current retail lessee;

8 (G) A fleet owner;

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

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

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

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

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

18 (c) The sale or lease is by a subsidiary of a manufacturer, distributor or
19 importer that finances the sale or lease of motor vehicles and the sale or
20 lease is to a person [*who*] **that** previously leased the vehicle from the sub-
21 sidiary.

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

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

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

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

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

7 (ii) Authorized [*the repairs or services to be performed by*] a person [*who*]
8 **that** owns or leases the motor vehicles for use in the person's business to
9 **perform the repairs or services.**

10 (14) Terminate, cancel, fail to renew or fail to approve the sale, transfer
11 or assignment of any franchise agreement because the dealer owns, has an
12 investment in, participates in the management of or holds a franchise
13 agreement with another manufacturer, distributor or importer at a different
14 dealership site, or has franchises with more than one manufacturer, distrib-
15 utor or importer sharing the same dealership site, facilities, personnel or
16 display space before October 23, 1999.

17 (15) Terminate, cancel, fail to renew or fail to approve the sale, transfer
18 or assignment of any franchise agreement because the dealer owns, has an
19 investment in, participates in the management of or holds a franchise
20 agreement with another manufacturer, distributor or importer at a different
21 dealership site, or has franchises with more than one manufacturer, distrib-
22 utor or importer sharing the same dealership site, facilities, personnel or
23 display space on or after January 1, 2012, provided the dealer complies with
24 the manufacturer's, distributor's or importer's reasonable capitalization and
25 financial requirements, reasonable space and facility requirements and other
26 requirements that are justified taking into account the reasonable business
27 considerations of the manufacturer, distributor or importer and the dealer,
28 and provided there is no change in the principal management of the dealer-
29 ship site.

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

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

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

14 **(17)(a) Except as provided in paragraph (b) of this subsection, take**
15 **or threaten to take adverse action against a dealer that sold or leased**
16 **a motor vehicle to a customer that exported the motor vehicle to an-**
17 **other country or resold the motor vehicle for the purposes of exporting**
18 **the motor vehicle. Actions that the manufacturer, distributor or**
19 **importer may not take include, but are not limited to:**

- 20 (A) **Imposing charge backs;**
21 (B) **Reducing or manipulating vehicle allocations to the dealer's**
22 **disadvantage;**
23 (C) **Withholding payments; or**
24 (D) **Terminating or threatening to terminate a franchise.**

25 (b) Paragraph (a) of this subsection does not apply if the manufac-
26 turer, distributor or importer can prove that the dealer knew or rea-
27 sonably should have known that a customer intended to export, or
28 intended to resell for export, the motor vehicle the dealer sold to the
29 customer. In determining whether the dealer knew or should reason-
30 ably have known of the customer's intent, the dealer is presumed to
31 be unaware of the customer's intent if the dealer sold the motor ve-

1 hicle to a resident of the United States who registered and titled the
2 motor vehicle in a state or district within the United States.

3 SECTION 2. The amendments to ORS 650.130 by section 1 of this
4 2015 Act apply to franchise agreements that a dealer enters into or
5 renews with a manufacturer, distributor or importer on or after the
6 effective date of this 2015 Act.

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