

A-Engrossed
House Bill 3164

Ordered by the House April 21
Including House Amendments dated April 21

Sponsored by Representatives BENTZ, HOYLE; Representatives CLEM, EVANS, GILLIAM, HUFFMAN, KOMP, OLSON (at the request of Pacific Northwest Hardware and Implement Association)

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.

Specifies conditions under which farm implement supplier has good cause to terminate, cancel or not renew retailer agreement, or to **cause** change [*retailer's*] **in** competitive circumstances **for retailer**. Changes period during which retailer may cure deficiencies in retailer's performance of retailer agreement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to retailer agreements for farm implement purchasing; creating new provisions; amending
3 ORS 646A.300, 646A.312 and 646A.322; and declaring an emergency.

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

5 **SECTION 1.** ORS 646A.300 is amended to read:

6 646A.300. As used in ORS 646A.300 to 646A.322:

7 (1) "Catalog" [*includes catalogs*] **means a catalog** published in any medium, including **an** elec-
8 tronic [*catalogs*] **catalog**.

9 (2) "Change in competitive circumstances" means **an event, act or omission that has** a mate-
10 rial detrimental effect on a retailer's ability to compete with another retailer [*who*] **that** sells the
11 same brand of farm implements, **whether or not a retailer agreement allows or provides for the**
12 **event, act or omission**.

13 (3) "Current model" means a model **that is** listed in the supplier's current sales manual or any
14 supplements to the manual.

15 (4) "Current net price" means:

16 (a) The price of parts or farm implements **that are** listed in [*the*] **a** supplier's price list or cat-
17 alog **that is** in effect at the time [*the*] **a** contract is canceled or discontinued, less any applicable
18 trade, volume or cash discounts, or [*when the*] **at the time that a** retailer made a warranty claim.

19 (b) [*For superseded parts,*] The price listed **for superseded parts** in [*the*] **a** supplier's price list
20 or catalog [*when the*] **at the time a** retailer purchased the parts.

21 (5) "Current signs" means [*the*] principal outdoor signs that:

22 (a) [*The*] **A** supplier requires a retailer to obtain;

23 (b) Identify the supplier; and

24 (c) Identify the retailer as representing the supplier or the supplier's farm implements or ma-
25 chinery.

26 (6) "Dealership" means [*the*] **a** location from which a retailer buys, sells, leases, trades, stores,

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 takes on consignment or in any other manner deals in farm implements.

2 (7) "Distributor" means a person who sells or distributes new farm implements to a retailer.

3 (8) "Farm implements" means:

4 (a) Any vehicle designed or adapted and used exclusively for agricultural operations and only
5 incidentally operated or used upon the highways;

6 (b) Auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural
7 operations;

8 (c) Other consumer products **used** for agricultural purposes, including lawn and garden equip-
9 ment powered by an engine, **that a supplier supplies to a** [*supplied by the supplier to the*] retailer
10 [*pursuant to*] **under** a retailer agreement;

11 (d) Attachments and accessories used in [*the*] planting, cultivating, irrigating, harvesting and
12 marketing [*of*] agricultural, horticultural or livestock products; and

13 (e) Outdoor power equipment, including, but not limited to, self-propelled equipment used to
14 maintain lawns and gardens or used in landscape, turf or golf course maintenance.

15 (9) "F.O.B." has the meaning given that term in ORS 72.3190.

16 (10) "Inventory" means farm implements, machinery and repair parts.

17 (11) "Manufacturer" means a person [*who*] **that** manufactures or assembles new or unused farm
18 implements.

19 (12) "Net cost" means the price [*the*] **a** retailer actually [*paid for the*] **paid a supplier for** mer-
20 chandise [*to the supplier*].

21 (13) "Retailer" means any person [*engaged*] **that engages** in the business of retailing farm im-
22 plements, machinery or repair parts in this state.

23 (14) "Retailer agreement" means an agreement between a supplier and a retailer that provides
24 for the rights and obligations of the [*parties*] **supplier and retailer** with respect to [*purchase or sale*
25 *of*] **selling or purchasing** farm implements.

26 (15) "Specialized tool" means a tool that:

27 (a) [*The*] **A** supplier requires a retailer to obtain; and

28 (b) Is [*unique to the diagnosis or repair of*] **uniquely suited for the purpose of diagnosing or**
29 **repairing** the supplier's farm implements or machinery.

30 (16) "Supplier" means:

31 (a) A wholesaler, manufacturer, manufacturer's representative or distributor.

32 (b) A successor in interest of a manufacturer, manufacturer's representative or distributor, in-
33 cluding, but not limited to:

34 (A) A purchaser of assets or shares of stock;

35 (B) A corporation or entity [*resulting*] **that results** from **a** merger, liquidation or reorganization;

36 or

37 (C) A receiver or trustee.

38 (c) The assignee of a supplier.

39 (17) "Warranty claim" means a claim for payment [*submitted by*] **that** a retailer **submits** to a
40 supplier for service or parts **the retailer** provided to a customer under a warranty [*issued by*] **that**
41 the supplier **issued**.

42 **SECTION 2.** ORS 646A.312 is amended to read:

43 646A.312. (1) As used in this section:

44 (a) "Good cause" means a retailer's:

45 [(A) *Failing to comply with a term of a retail agreement that is the same as a term in the supplier's*

1 *agreements with similarly situated retailers, including failure to meet marketing criteria;]*

2 **(A) Failing to comply with a term in a retailer agreement that also appears in a retailer**
3 **agreement that similarly situated retailers have with the same supplier, including a term**
4 **that requires the retailer to meet marketing criteria;**

5 (B) Transferring a controlling ownership interest in the retailer's business without the supplier's
6 consent;

7 (C) Making a material misrepresentation or falsification of a record, contract, report or other
8 document that the retailer has submitted to the supplier;

9 (D) Filing a voluntary petition in bankruptcy;

10 (E) Being placed involuntarily in bankruptcy and not discharging the bankruptcy within 60 days
11 after the filing;

12 (F) Becoming insolvent;

13 (G) Being placed in a receivership;

14 (H) Pleading guilty to, being convicted of or being imprisoned for a felony;

15 (I) Failing to operate in the normal course of business for seven consecutive business days or
16 terminating business;

17 (J) Relocating or establishing a new or additional place or places of business without the
18 supplier's consent;

19 (K) Failing to satisfy a payment obligation as *[it]* **the payment obligation** comes due and pay-
20 able to the supplier;

21 (L) Failing to promptly account to the supplier for any proceeds *[of the sale of]* **from selling**
22 farm implements or otherwise failing to hold the proceeds in trust for the benefit of the supplier;

23 (M) Consistently engaging in business practices that are detrimental to the consumer or sup-
24 plier, including, but not limited to, excessive pricing, misleading advertising or *[failure]* **failing** to
25 provide service and replacement parts or to perform warranty obligations;

26 (N) Inadequately representing the supplier, causing lack of performance in sales, service or
27 warranty areas, and failing to achieve satisfactory market penetration at levels **that are** consistent
28 with similarly situated retailers based on available documented information;

29 (O) Consistently failing to meet building and housekeeping requirements; or

30 (P) Consistently failing to comply with the licensing laws that apply to the supplier's products
31 and services.

32 (b) "Similarly situated retailer" means a retailer **that**:

33 (A) **Is** in a similar geographic area;

34 (B) *[With]* **Has** similar sales volumes; and

35 (C) **Is** in a similar market for farm implements, machinery and repair parts.

36 *[(2) With good cause, a supplier, directly or through an officer, agent or employee, may terminate,*
37 *cancel, fail to renew or substantially change the competitive circumstances of a retailer agreement. The*
38 *termination, cancellation, nonrenewal or change becomes effective upon notice to the retailer. The notice*
39 *shall state the reasons constituting good cause for the termination, cancellation, nonrenewal or*
40 *change.]*

41 *[(3)(a) Except as provided in subsection (2) of this section, a supplier shall give a retailer 90 cal-*
42 *endar days' written notice of the supplier's intent to terminate, cancel or fail to renew a retailer*
43 *agreement or change the competitive circumstances of a retailer agreement.]*

44 *[(b) The notice shall:]*

45 *[(A) State the reasons for termination, cancellation, nonrenewal or change; and]*

1 *[(B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency.]*

2 *[(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.]*

3 *[(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination, cancellation,*
4 *failure to renew or change in competitive circumstances becomes effective on the date specified in the*
5 *notice.]*

6 *[(4)(a) Notwithstanding subsection (3) of this section, a supplier shall give a retailer one year's*
7 *written notice of the retailer's failure to meet reasonable marketing criteria.]*

8 *[(b) The notice shall:]*

9 *[(A) State the reasonable marketing criteria that the retailer has failed to meet; and]*

10 *[(B) Provide the retailer one year in which to meet the criteria.]*

11 *[(c)(A) If the retailer fails to meet the criteria within the year, the supplier may give notice of the*
12 *termination, cancellation, failure to renew the retail agreement or change to the retail agreement.]*

13 *[(B) A termination, cancellation, failure to renew or change under this paragraph is effective 180*
14 *calendar days after the supplier gives notice.]*

15 **(2) A supplier that has a basis for asserting good cause may, directly or through an of-**
16 **ficer, agent or employee, terminate, cancel or not renew a retailer agreement or may cause**
17 **a change in competitive circumstances for a retailer. Except as provided in subsections (3)**
18 **and (4) of this section, a termination, cancellation, nonrenewal or change in competitive**
19 **circumstances becomes effective upon notice to the retailer. The notice must state the rea-**
20 **sons that constitute good cause for the termination, cancellation, nonrenewal or change in**
21 **competitive circumstances.**

22 **(3)(a) If a supplier's basis for asserting good cause is a retailer's failure under subsection**
23 **(1)(a)(A) of this section, other than a failure to meet marketing criteria, the supplier shall**
24 **give the retailer 90 calendar days' written notice of the supplier's intent to terminate, cancel**
25 **or not renew the retailer agreement or to cause a change in competitive circumstances for**
26 **the retailer.**

27 **(b) The notice described in paragraph (a) of this subsection must:**

28 **(A) State the supplier's reasons for terminating, canceling or not renewing the retailer**
29 **agreement or for causing a change in competitive circumstances for the retailer; and**

30 **(B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency.**

31 **(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.**

32 **(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination,**
33 **cancellation, nonrenewal or change in competitive circumstances becomes effective on the**
34 **date specified in the notice.**

35 **(4)(a) If a supplier's basis for asserting good cause is a retailer's failure to meet mar-**
36 **keting criteria under subsection (1)(a)(A) of this section or a provision of subsection (1)(a)(N)**
37 **of this section, the supplier shall give the retailer 18 months' written notice of the supplier's**
38 **intent to terminate, cancel or not renew the retailer agreement or to cause a change in**
39 **competitive circumstances for the retailer.**

40 **(b) The notice described in paragraph (a) of this subsection must:**

41 **(A) State the supplier's reasons for terminating, canceling or not renewing the retailer**
42 **agreement or for causing a change in competitive circumstances for the retailer; and**

43 **(B) Provide that the retailer has one year in which to cure a claimed deficiency.**

44 **(c) If the retailer cures the claimed deficiency within one year, the notice is void.**

45 **(d) If the retailer fails to cure the claimed deficiency within one year, the termination,**

1 **cancellation, nonrenewal or change in competitive circumstances becomes effective on the**
2 **date specified in the notice.**

3 **SECTION 3.** ORS 646A.322 is amended to read:

4 646A.322. (1)(a) [*Any*] **A** party to a retailer agreement **that is** aggrieved by the conduct of [*the*
5 *other*] **another** party to the agreement under ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318
6 or 646A.320 may seek arbitration of the issues under ORS 36.600 to 36.740. Unless the parties agree
7 to different arbitration rules, the arbitration [*shall*] **must** be conducted pursuant to the commercial
8 arbitration rules of the American Arbitration Association. If the parties agree, the arbitration [*shall*
9 *be*] **is** the parties' only remedy and the findings and conclusions of the arbitrator or panel of
10 arbitrators [*shall be*] **are** binding upon [*both*] **the** parties.

11 (b) The arbitrator or arbitrators may award the prevailing party:

12 (A) The costs of witness fees and other fees in the case;

13 (B) Reasonable attorney fees; and

14 (C) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in com-
15 petitive circumstances.

16 (2) Notwithstanding subsection (1) of this section, [*any*] **a** retailer has a civil cause of action in
17 circuit court against a supplier for damages sustained by the retailer as a consequence of the
18 supplier's violation of ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320, together
19 with:

20 (a) The actual costs of the action;

21 (b) Reasonable attorney fees; and

22 (c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in com-
23 petitive circumstances.

24 (3) A supplier bears the burden of proving that a retailer's area of responsibility or trade area
25 does not afford sufficient sales potential to reasonably support the retailer. The supplier's proof must
26 be in writing.

27 (4) The remedies set forth in this section are not exclusive and are in addition to any other
28 remedies permitted by law, unless the parties have chosen binding arbitration under subsection (1)
29 of this section.

30 **SECTION 4.** The amendments to ORS 646A.300, 646A.312 and 646A.322 by sections 1 to 3
31 of this 2015 Act apply to retailer agreements that are executed or renewed on and after the
32 effective date of this 2015 Act.

33 **SECTION 5.** This 2015 Act being necessary for the immediate preservation of the public
34 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
35 on its passage.

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