

# House Bill 3164

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 **as introduced**.

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

## A BILL FOR AN ACT

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

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 a retailer's competitive circumstances" means **an event, act or omission that**  
10 **has** a material detrimental effect on a retailer's ability to compete with another retailer [*who*] **that**  
11 **sells the same brand of farm implements, whether or not a retailer agreement allows or provides**  
12 **for the 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19 (b) [*For superseded parts,*] The price **of superseded parts that are** listed in [*the*] a supplier's  
20 price list 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,  
27 takes on consignment or in any other manner deals in farm implements.

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

29 (8) "Farm implements" means:

30 (a) Any vehicle designed or adapted and used exclusively for agricultural operations and only

**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 incidentally operated or used upon the highways;

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) Is [*unique to the diagnosis or repair of*] **used exclusively to diagnose or repair** the supplier's  
25 farm implements or machinery.

26 (16) "Supplier" means:

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

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

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

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

33 (C) A receiver or trustee.

34 (c) The assignee of a supplier.

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

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

39 646A.312. (1) As used in this section:

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

41 (A) Failing to comply with a term of a retail agreement that is the same as a term in [*the*] **a**  
42 supplier's agreements with similarly situated retailers, including **a retailer's** failure to meet mar-  
43 keting criteria;

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

1 (C) Making a material misrepresentation or falsification of a record, contract, report or other  
 2 document that the retailer has submitted to *[the]* a supplier;

3 (D) Filing a voluntary petition in bankruptcy;

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

6 (F) Becoming insolvent;

7 (G) Being placed in a receivership;

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

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

11 (J) Relocating or establishing a new or additional place or places of business without *[the]* a  
 12 supplier's consent;

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

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

17 (M) Consistently engaging in business practices that are detrimental to *[the]* a consumer or  
 18 supplier, including, but not limited to, excessive pricing, misleading advertising or *[failure]* **failing**  
 19 to provide service and replacement parts or to perform warranty obligations;

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

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

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

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

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

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

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

30 (2) With good cause, a supplier, directly or through an officer, agent or employee, may termi-  
 31 nate, cancel[,] **or not** *[fail to]* renew **a retailer agreement**, or *[substantially]* **effect a** change *[the]*  
 32 **in a retailer's** competitive circumstances *[of a retailer agreement]*. **Except as provided in sub-**  
 33 **sections (3) and (4) of this section, a** *[The]* termination, cancellation, nonrenewal or change be-  
 34 comes effective upon notice to the retailer. The notice *[shall]* **must** state *[the]* reasons  
 35 *[constituting]* **that constitute** good cause for the termination, cancellation, nonrenewal or change.

36 (3)(a) **If a supplier cites a provision of subsection (1)(a)(A) of this section, other than a**  
 37 **retailer's failure to meet marketing criteria, as good cause for terminating, cancelling or not**  
 38 **renewing a retailer agreement or for effecting a change in a retailer's competitive circum-**  
 39 **stances, [except as provided in subsection (2) of this section, a] the** supplier shall give a retailer 90  
 40 calendar days' written notice of the supplier's intent to terminate, cancel or *[fail to]* **not** renew *[a]*  
 41 **the** retailer agreement or **to effect a change in the retailer's** *[the]* competitive circumstances *[of*  
 42 *a retailer agreement]*.

43 (b) The notice *[shall]* **described in paragraph (a) of this subsection must**:

44 (A) State the reasons for *[termination, cancellation, nonrenewal or change]* **terminating, can-**  
 45 **celling or not renewing the retailer agreement or for effecting a change in the retailer's**

1 **competitive circumstances; and**

2 (B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency **in the**  
 3 **retailer's performance of a term of the retailer agreement.**

4 (c) If the retailer cures the deficiency **described in paragraph (b)(B) of this subsection** within  
 5 60 calendar days, the notice is void.

6 (d) If the retailer fails to cure the deficiency **described in paragraph (b)(B) of this subsection**  
 7 within 60 calendar days, the termination, cancellation, *[failure to renew]* **nonrenewal** or change in  
 8 **the retailer's** competitive circumstances becomes effective on the date specified in the notice.

9 (4)(a) **If a supplier cites a retailer's failure to meet marketing criteria under subsection**  
 10 **(1)(a)(A) of this section or a provision of subsection (1)(a)(N) of this section as good cause**  
 11 **for terminating, cancelling or not renewing a retailer agreement or for effecting a change**  
 12 **in a retailer's competitive circumstances, [Notwithstanding subsection (3) of this section, a] the**  
 13 supplier shall give a retailer *[one year's]* **18 months'** written notice of the *[retailer's failure to meet*  
 14 *reasonable marketing criteria]* **supplier's intent to terminate, cancel or not renew the retailer**  
 15 **agreement or to effect a change in the retailer's competitive circumstances.**

16 (b) The notice *[shall]* **described in paragraph (a) of this subsection must:**

17 (A) State the *[reasonable marketing criteria that the retailer has failed to meet]* **reasons for ter-**  
 18 **minating, cancelling or not renewing the retailer agreement or for effecting a change in the**  
 19 **retailer's competitive circumstances; and**

20 (B) Provide the retailer one year in which to *[meet the criteria]* **cure a claimed deficiency in**  
 21 **the retailer's performance of the retailer agreement.**

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

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

26 (c) **If the retailer cures the deficiency described in paragraph (b)(B) of this subsection**  
 27 **within one year, the notice is void.**

28 (d) **If the retailer fails to cure the deficiency described in paragraph (b)(B) of this sub-**  
 29 **section within one year, the termination, cancellation, nonrenewal or change in the retailer's**  
 30 **competitive circumstances becomes effective on the date specified in the notice.**

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

32 646A.322. (1)(a) *[Any]* **A** party to a retailer agreement **that is** aggrieved by the conduct of *[the*  
 33 *other]* **another** party to the agreement under ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318  
 34 or 646A.320 may seek arbitration of the issues under ORS 36.600 to 36.740. Unless the parties agree  
 35 to different arbitration rules, the arbitration *[shall]* **must** be conducted pursuant to the commercial  
 36 arbitration rules of the American Arbitration Association. If the parties agree, the arbitration *[shall*  
 37 *be]* **is** the parties' only remedy and the findings and conclusions of the arbitrator or panel of  
 38 arbitrators *[shall be]* **are** binding upon *[both]* **the** parties.

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

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

41 (B) Reasonable attorney fees; and

42 (C) Injunctive relief against unlawful termination, cancellation, nonrenewal or **a change in a**  
 43 **retailer's** competitive circumstances.

44 (2) Notwithstanding subsection (1) of this section, *[any]* **a** retailer has a civil cause of action in  
 45 circuit court against a supplier for damages sustained by the retailer as a consequence of the

1 supplier's violation of ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320, together  
2 with:

3 (a) The actual costs of the action;

4 (b) Reasonable attorney fees; and

5 (c) Injunctive relief against unlawful termination, cancellation, nonrenewal or **a change in the**  
6 **retailer's** competitive circumstances.

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

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

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

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