

Senate Bill 713

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

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 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

1
2 Relating to motor vehicle dealerships; creating new provisions; and amending ORS 650.145 and
3 650.158.

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 of ORS 650.120 to**
6 **650.170.**

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

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

17 **(A) Stating to a dealer that the dealer's failure to advertise, promote, offer or sell the**
18 **products or services described in paragraph (a) of this subsection will substantially and ad-**
19 **versely affect the dealer's business or the dealer's relationship with the manufacturer, dis-**
20 **tributor or importer;**

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

23 **(C) Measuring the dealer's performance in a franchise on the basis of whether, or the**
24 **extent to which, the dealer advertises, promotes, offers or sells the products or services de-**
25 **scribed in paragraph (a) of this subsection; or**

26 **(D) Requiring the dealer to advertise, promote, offer or sell the products or services de-**
27 **scribed in paragraph (a) of this subsection to the exclusion of other, similar products or**

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 **services that a person other than the manufacturer, distributor or importer offers.**

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

4 **(a) Provide incentives to a dealer that voluntarily decides to advertise, promote, offer or**
5 **sell the products or services described in subsection (1)(a) of this section; or**

6 **(b) Require a dealer that sells a product or service that is similar to the products or**
7 **services described in subsection (1)(a) of this section, but that the manufacturer, distributor**
8 **or importer does not provide, originate, sponsor or endorse, to notify a customer in writing,**
9 **and to obtain the customer's acknowledgment, that the manufacturer, distributor or**
10 **importer does not provide, originate, sponsor or endorse the product or service.**

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

12 650.145. (1) As used in subsection (2) of this section, "fair and reasonable compensation" means
13 the amount [*originally paid by the*] a dealer **originally paid for vehicles** minus any incentive pay-
14 ments, model close-out allowances or any other programs [*applicable*] **that apply** to the vehicles.

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

18 **(2) A manufacturer, distributor or importer that terminates, cancels, fails to renew or**
19 **discontinues a franchise shall pay or allow a dealer fair and reasonable compensation for:**

20 (a) All new vehicles manufactured in the current calendar year and any subsequent calendar
21 year in the motor vehicle inventory **the dealer** purchased from the manufacturer, distributor or
22 importer that [*have not been*] **were not** materially altered, substantially damaged or driven for more
23 than 300 miles;

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

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

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

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

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

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

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

35 (ii) Purchased directly from the manufacturer, distributor or importer within one year of the
36 effective date of the termination, cancellation, nonrenewal or discontinuance; and [*were either*]

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

38 (c) Supplies and parts inventory **that the dealer** purchased from the manufacturer, distributor
39 or importer and **that are** listed in the manufacturer's, distributor's or importer's current parts cat-
40 alog;

41 (d) Equipment, furnishings and signs **that the** [*purchased from the*] manufacturer, distributor or
42 importer [*and required by the manufacturer, distributor or importer*] **required the dealer to pur-**
43 **chase and** that [*have not been*] **were not** materially altered, or substantially damaged or depreciated
44 [*over*] **by more than** 50 percent of the original value; [*and*]

45 (e) Special tools **required by the manufacturer that the dealer** purchased from the manufac-

1 turer, distributor or importer within three years of the date of termination, cancellation, nonrenewal
 2 or discontinuance and *[required by the manufacturer that have not been]* **that were not** materially
 3 altered, or substantially damaged or depreciated *[over]* **by more than** 50 percent of the original
 4 value[.]; and

5 **(f) The lesser of one year's lease payments or the amount remaining due on a lease or**
 6 **contract for a management computer system that the manufacturer, distributor or importer**
 7 **required the dealer to use, if the dealer will no longer use the management computer system**
 8 **because the manufacturer, distributor or importer terminated, canceled, failed to renew or**
 9 **discontinued the dealer's franchise.**

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

12 (4) *[Upon the termination, cancellation, nonrenewal or discontinuance of a franchise, the]* **In ad-**
 13 **dition to any other payments required under this section, a** manufacturer, distributor or
 14 importer, **after terminating, canceling, failing to renew or discontinuing a dealer's franchise,**
 15 shall *[also]* pay to the dealer a sum equal to the current, fair rental value of the dealer's established
 16 place of business for a period of one year *[from]* **after** the effective date of termination, cancellation,
 17 nonrenewal or discontinuance, or **a sum equal to the current, fair rental value for** the remaining
 18 period of *[any]* **the dealer's** lease, whichever is less.

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

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

24 **(6) A manufacturer, distributor or importer need not make the payment described in**
 25 **subsection (4) of this section if the dealer terminates, cancels, fails to renew or discontinues**
 26 **the franchise.**

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

29 **(8) If a manufacturer, distributor or importer terminates, cancels, fails to renew or dis-**
 30 **continues a dealer's franchise because the manufacturer, distributor or importer has termi-**
 31 **nated a line-make, the manufacturer, distributor or importer shall compensate the dealer for**
 32 **expenses the dealer incurred within three years before the termination date of the line-make**
 33 **to finish constructing, altering or remodeling the dealer's facility to meet the**
 34 **manufacturer's, distributor's or importer's requirements or to participate in an incentive**
 35 **program. For the purposes of this subsection:**

36 **(a) A dealer finishes constructing, altering or remodeling the dealer's facility when the**
 37 **dealer gives final written approval of the construction, alteration or remodeling or received**
 38 **a certificate of occupancy; and**

39 **(b) Expenses the dealer incurred to finish constructing, altering or remodeling the**
 40 **dealer's facility are the actual costs the dealer incurred, less:**

41 **(A) Any assistance the dealer received from the manufacturer, distributor or importer**
 42 **within three years before the termination date of the line-make; and**

43 **(B) An amount for depreciation equivalent to one thirty-ninth of the total cost of the**
 44 **construction, alteration or remodeling per year, beginning in the year after the dealer fin-**
 45 **ishes the construction, altering or remodeling, in accordance with applicable provisions of**

1 **the Internal Revenue Code.**

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

3 650.158. (1) Each manufacturer, distributor or importer shall specify in writing to each of the
4 manufacturer's, distributor's or importer's dealers in this state:

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

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

9 (c) The time allowances for performing predelivery preparation and warranty service.

10 (2)(a) A schedule of compensation must include reasonable compensation for diagnostic work,
11 repair service and labor. Time allowances for diagnosing and performing predelivery and warranty
12 service must be reasonable and adequate for the work to be performed. A manufacturer, distributor
13 or importer may not pay an hourly rate to a dealer that is less than the rate the dealer charges
14 nonwarranty customers for nonwarranty service and repairs. Reimbursement for parts, other than
15 parts used to repair the living facilities of motor homes, that the dealer purchases for use in per-
16 forming predelivery and warranty service must be the amount the dealer charges nonwarranty cus-
17 tomers, as long as the amount is not unreasonable.

18 (b)(A) For purposes of this subsection and subject to subparagraphs (B) and (C) of this para-
19 graph, to determine compensation under this subsection, a dealer shall propose an hourly rate and
20 an amount for parts that the dealer charges nonwarranty customers by submitting to the manufac-
21 turer, distributor or importer copies of 100 sequential nonwarranty service repair invoices that
22 customers paid or 90 consecutive days' worth of nonwarranty service invoices that customers paid,
23 whichever is less, for repairs **the dealer** made not more than 180 days before the dealer's sub-
24 mission. If the manufacturer, distributor or importer does not contest the dealer's proposal and the
25 dealer otherwise complies with the provisions of this paragraph, the dealer's proposal is presumed
26 to be fair and reasonable.

27 (B) A manufacturer, distributor or importer may contest the dealer's proposal with evidence that
28 the dealer's proposal is not accurate or on the basis that the dealer's proposal does not reasonably
29 conform with the hourly rate or the amount for parts that other dealers charge nonwarranty cus-
30 tomers in the same line-make in market areas that are contiguous to the dealer's market area or
31 with other relevant evidence. In contesting a dealer's proposal based on evidence from other dealers
32 in the contiguous market area, a manufacturer, distributor or importer shall rely on evidence from
33 at least three other dealers in the contiguous market area or three dealers in an economically sim-
34 ilar market within the manufacturer's, distributor's or importer's region.

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

36 (i) Repairs for a manufacturer's, distributor's or importer's specials, special events or promo-
37 tional discounts for retail customer repairs;

38 (ii) Parts sold at wholesale;

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

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

42 (v) Vehicle reconditioning.

43 (c) The hourly rate or the amount for parts that a dealer charges nonwarranty customers that
44 the dealer proposes under paragraph (b)(A) of this subsection becomes effective 30 days after the
45 manufacturer, distributor or importer approves the hourly rate or the amount for parts. For pur-

1 poses of this paragraph, a manufacturer, distributor or importer approves the dealer's proposal if the
 2 manufacturer, distributor or importer does not contest the proposed hourly rate or amount for parts
 3 within 30 days after the dealer submits the proposal.

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

7 (e) Once per year, a manufacturer, distributor or importer may verify the dealer's hourly rate
 8 or the amount for parts the dealer charges nonwarranty customers. If the manufacturer, distributor
 9 or importer finds that the dealer's hourly rate or the amount for parts has decreased, the manufac-
 10 turer, distributor or importer may reduce the dealer's compensation under this subsection
 11 prospectively.

12 (3) A manufacturer, distributor or importer shall include, in written notices of vehicle recalls
 13 to motor vehicle owners and dealers, the expected date by which necessary parts and equipment
 14 will be available to the dealers to correct the defect or defects. A manufacturer, distributor or
 15 importer shall adequately compensate a dealer for repair service the dealer performs under the re-
 16 call.

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

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

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

22 (c) Treat as approved any claim that a manufacturer, distributor or importer did not approve
 23 or disapprove within 30 days after the manufacturer, distributor or importer received the claim and
 24 pay or credit the dealer for the claim within 60 days after receiving the claim; and

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

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

28 **(a) Recover all or a portion of cost of compensating a dealer for warranty parts or ser-**
 29 **vice by reducing the amount due a dealer or by imposing a separate charge, surcharge, ad-**
 30 **ministrative fee or other fee.**

31 **(b) Deny or charge back a dealer's claim solely because a dealer failed to comply with a**
 32 **specific claim processing procedure because of a clerical or administrative error that does**
 33 **not affect the legitimacy of the dealer's claim, if the dealer resubmits the claim in compli-**
 34 **ance with the manufacturer's, distributor's or importer's claim processing procedure within**
 35 **60 days after the manufacturer, distributor or importer initially denies or charges back the**
 36 **claim.**

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

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