

Senate Bill 714

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**.

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 ORS 650.130.

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

4 **SECTION 1.** ORS 650.130 is amended to read:

5 650.130. Notwithstanding the terms of any franchise or other agreement, a manufacturer, dis-
6 tributor or importer may not:

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

12 (2) Coerce or attempt to coerce a dealer to enter **into** any agreement or sales promotion pro-
13 gram by threatening to cancel the **dealer's** franchise [*of the dealer*].

14 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new
15 motor vehicle, part or accessory covered by the franchise if the **manufacturer, distributor or**
16 **importer advertises the** vehicle, part or accessory [*is advertised as being*] **as** available for delivery
17 or is [*being delivered*] **delivering the vehicle, part or accessory** to another dealer. This subsection
18 does not apply if the failure to deliver [*is the result of*] **results from** a cause beyond the control of
19 the manufacturer, distributor or importer.

20 (4) Prevent or attempt to prevent a dealer from making reasonable changes in [*the*] **a**
21 **dealership's** capital structure [*of a dealership*] or the means by which **a dealer finances** the deal-
22 ership [*is financed*], provided that the dealer meets any reasonable capital requirement of the man-
23 ufacturer, distributor or importer.

24 (5) Unreasonably refuse to compensate [*the*] **a** dealer for work or services **the dealer** performed
25 and expenses **the dealer** incurred in accordance with the dealer's delivery, preparation and war-
26 ranty obligations under the terms of a franchise or agreement.

27 (6) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign
28 or contest, or **to** purchase any promotional materials, display devices or display decorations or ma-
29 terials at the **dealer's** expense [*of the dealer*].

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

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

9 (9) Initiate an audit to determine the validity of paid claims for dealer compensation, or **for** any
10 charge-backs for consumer or dealer incentives, more than one year following the date of payment
11 unless the manufacturer, distributor or importer has reasonable grounds to believe that the dealer
12 submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit more than
13 one year following the date of payment, the manufacturer, distributor or importer may charge back
14 to the dealer only the amount of a claim that the manufacturer, distributor or importer proves was
15 fraudulent. Parties shall cooperate to ensure that permitted audits [*are concluded within 60 days of*
16 *initiation*] **conclude not more than 60 days after the audits begin.**

17 (10) Unfairly compete with a dealer in any matters [*governed by*] the franchise **governs** includ-
18 ing, but not limited to, the sale or allocation of vehicles or other franchisor products, or the exe-
19 cution of dealer programs or benefits. This subsection applies if the manufacturer, distributor or
20 importer has an ownership interest in, operates or controls, directly or indirectly, a business that
21 is a dealer in this state.

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

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

27 (A) Has an ownership interest in, operates or controls, directly or indirectly, a business that is
28 a dealership in this state and is a business that:

29 (i) A franchisee owned, operated or controlled before the manufacturer, distributor or importer
30 acquired the ownership interest in or began to operate or control the business;

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

33 (iii) **The manufacturer, distributor or importer offers for sale to a qualified independent**
34 **person at a fair and reasonable price** while the manufacturer, distributor or importer maintains
35 an ownership interest in, operates or controls the business[, *the manufacturer, distributor or importer*
36 *offers the business for sale to any qualified independent person at a fair and reasonable price*].

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

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

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

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

43 (iv) Operates the dealership under a franchise through which the person will within 15 years
44 acquire full ownership of the dealership under reasonable terms and conditions.

45 (C) As of January 1, 2000, had an ownership interest in, operated or controlled, directly or in-

1 directly, a business that is a dealership in this state that sells motor vehicles with a gross vehicle
2 weight rating of 8,500 pounds or more.

3 (D) Has an ownership interest in, operates or controls, directly or indirectly, a business that
4 primarily leases or rents motor vehicles for a period of 12 months or less and the only motor vehi-
5 cles that the business sells are motor vehicles that have been:

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

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

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

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

11 (F) Has an ownership interest in, operates or controls, directly or indirectly, a business that
12 makes a sale or lease of a motor vehicle [*that is not a violation of*] **in a manner that does not vi-**
13 **olate** subsection (12) of this section.

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

17 (A) The manufacturer has, directly or indirectly, no more than 45 percent of the ownership in-
18 terest in the dealership;

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

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

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

27 (E) On January 1, 2000:

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

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

33 (12) Sell or lease a motor vehicle to a person in this state other than to a business described
34 in subsection (11) of this section or to a franchisee of the manufacturer, distributor or importer. [*It*
35 *is not a violation of*] **A manufacturer, distributor or importer does not violate** this subsection
36 if:

37 (a) The manufacturer, distributor or importer sells or leases a motor vehicle to:

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

40 (B) A driver training program;

41 (C) A nonprofit corporation;

42 (D) A qualified vendor;

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

44 (F) A current retail lessee;

45 (G) A fleet owner;

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

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

5 (b) The sale or lease is by a business in this state that primarily leases or rents motor vehicles
6 for a period of 12 months or less and the only motor vehicles that the business sells are motor ve-
7 hicles that have been:

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

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

10 (c) The sale or lease is by a subsidiary of a manufacturer, distributor or importer that finances
11 the sale or lease of motor vehicles and the sale or lease is to a person *[who]* **that** previously leased
12 the vehicle from the subsidiary.

13 (13)(a) Own, operate or control a business or enter into any contract, agreement or other writ-
14 ten instrument *[permitting a person that is not a dealer to be compensated by]* **that permits** the
15 manufacturer, distributor or importer **to compensate a person that is not a dealer** for performing
16 warranty repairs and services if the business is located within a dealer's relevant market area.

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

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

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

23 (i) Obtained written permission from the dealers in the relevant market area to perform the re-
24 pairs or services; or

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

27 (14) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any
28 franchise agreement because the dealer owns, has an investment in, participates in the management
29 of or holds a franchise agreement with another manufacturer, distributor or importer at a different
30 dealership site, or has franchises with more than one manufacturer, distributor or importer sharing
31 the same dealership site, facilities, personnel or display space before October 23, 1999.

32 (15) Terminate, cancel, fail to renew or fail to approve the sale, transfer or assignment of any
33 franchise agreement because the dealer owns, has an investment in, participates in the management
34 of or holds a franchise agreement with another manufacturer, distributor or importer at a different
35 dealership site, or has franchises with more than one manufacturer, distributor or importer sharing
36 the same dealership site, facilities, personnel or display space on or after January 1, 2012, provided
37 the dealer complies with the manufacturer's, distributor's or importer's reasonable capitalization and
38 financial requirements, reasonable space and facility requirements and other requirements that are
39 justified taking into account the reasonable business considerations of the manufacturer, distributor
40 or importer and the dealer, and provided there is no change in the principal management of the
41 dealership site.

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

43 (A) Granting or renewing a franchise;

44 (B) Approving the addition of a line-make of a manufacturer;

45 (C) Approving the sale, transfer or assignment of a franchise agreement;

1 (D) Approving the relocation, or granting a new franchise for relocation, of an existing dealer-
 2 ship; or

3 (E) Obtaining fair and reasonable compensation under ORS 650.145 upon the termination, can-
 4 cellation, nonrenewal or discontinuance of any franchise.

5 (b) [*Nothing in*] Paragraph (a) of this subsection [*prohibits*] **does not prohibit** enforcement of a
 6 voluntary agreement between a franchisee and a manufacturer, distributor or importer for which
 7 separate and valuable consideration that does not include any of the items listed in paragraph (a)
 8 of this subsection has been offered and accepted.

9 **(17)(a) Except as provided in paragraph (b) of this subsection, take or threaten to take**
 10 **adverse action against a dealer that sold or leased a motor vehicle to a customer that ex-**
 11 **ported the motor vehicle to another country or resold the motor vehicle for the purposes**
 12 **of exporting the motor vehicle. Actions that the manufacturer, distributor or importer may**
 13 **not take include, but are not limited to:**

14 (A) **Imposing charge backs;**

15 (B) **Reducing or manipulating vehicle allocations to the dealer’s disadvantage;**

16 (C) **Withholding payments; or**

17 (D) **Terminating or threatening to terminate a franchise.**

18 (b) Paragraph (a) of this subsection does not apply if the manufacturer, distributor or
 19 importer can prove that the dealer knew or reasonably should have known that a customer
 20 intended to export, or intended to resell for export, the motor vehicle the dealer sold to the
 21 customer. In determining whether the dealer knew or should reasonably have known of the
 22 customer’s intent, the dealer is presumed to be unaware of the customer’s intent if the
 23 dealer sold the motor vehicle to a resident of the United States who registered and titled the
 24 motor vehicle in a state or district within the United States.

25 **SECTION 2. The amendments to ORS 650.130 by section 1 of this 2015 Act apply to fran-**
 26 **chise agreements that a dealer enters into or renews with a manufacturer, distributor or**
 27 **importer on or after the effective date of this 2015 Act.**

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