

D R A F T

SUMMARY

Requires motor vehicle manufacturers, distributors and importers to reimburse dealers for service related to vehicle recall at same rate as warranty work. Specifies that if dealer is subject to prohibition on selling or driving motor vehicle that is subject to recall and manufacturer, distributor or importer does not have remedy for defect that led to recall or parts to remedy defect, manufacturer, distributor or importer must compensate dealer at specified rate for time during which remedy or parts are not available and motor vehicle remains subject to prohibition.

Prohibits manufacturer, distributor or importer from recovering costs from dealer's claim for service in connection with vehicle recall by reducing payments from incentive program or removing dealer from incentive program or other means.

Requires dealer to disclose in writing to person that purchases used motor vehicle all manufacturer recalls to which used motor vehicle remains subject for defects that have not been remedied. Provides that dealer may make disclosure by printing and providing to person report for used motor vehicle from federal governmental database that lists by vehicle identification number motor vehicles that are subject to manufacturer's recall.

A BILL FOR AN ACT

1
2 Relating to service in connection with recalled motor vehicles; creating new
3 provisions; and amending ORS 650.158.

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

5 **SECTION 1.** ORS 650.158 is amended to read:

6 650.158. (1) Each manufacturer, distributor or importer shall specify in
7 writing to each of the manufacturer's, distributor's or importer's dealers in
8 this state:

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

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

4 (c) The time allowances for performing predelivery preparation and war-
5 ranty service.

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

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

27 (B) A manufacturer, distributor or importer may contest the dealer's
28 proposal with evidence that the dealer's proposal is not accurate or on the
29 basis that the dealer's proposal does not reasonably conform with the hourly
30 rate or the amount for parts that other dealers charge nonwarranty custom-
31 ers in the same line-make in market areas that are contiguous to the dealer's

1 market area or with other relevant evidence. In contesting a dealer's pro-
2 posal based on evidence from other dealers in the contiguous market area,
3 a manufacturer, distributor or importer shall rely on evidence from at least
4 three other dealers in the contiguous market area or three dealers in an
5 economically similar market within the manufacturer's, distributor's or
6 importer's region.

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

8 (i) Repairs for a manufacturer's, distributor's or importer's specials, spe-
9 cial events or promotional discounts for retail customer repairs;

10 (ii) Parts sold at wholesale;

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

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

16 (v) Vehicle reconditioning.

17 (c) The hourly rate or the amount for parts that a dealer charges non-
18 warranty customers that the dealer proposes under paragraph (b)(A) of this
19 subsection becomes effective 30 days after the manufacturer, distributor or
20 importer approves the hourly rate or the amount for parts. For purposes of
21 this paragraph, a manufacturer, distributor or importer approves the dealer's
22 proposal if the manufacturer, distributor or importer does not contest the
23 proposed hourly rate or amount for parts within 30 days after the dealer
24 submits the proposal.

25 (d) If a manufacturer, distributor or importer contests a dealer's proposal,
26 the manufacturer, distributor or importer shall propose an adjustment to the
27 dealer's proposal not later than 30 days after the dealer submits the dealer's
28 proposal.

29 (e) Once per year, a manufacturer, distributor or importer may verify the
30 dealer's hourly rate or the amount for parts the dealer charges nonwarranty
31 customers. If the manufacturer, distributor or importer finds that the dealer's

1 hourly rate or the amount for parts has decreased, the manufacturer, dis-
2 tributor or importer may reduce the dealer's compensation under this sub-
3 section prospectively.

4 (3)(a) A manufacturer, distributor or importer shall include, in written
5 notices of vehicle recalls to motor vehicle owners and dealers, the expected
6 date by which necessary parts and equipment will be available to the dealers
7 to correct the defect or defects. A manufacturer, distributor or importer
8 shall [*adequately*] compensate a dealer for repair service the dealer performs
9 under the recall **in accordance with the compensation standards speci-**
10 **fied in subsection (2) of this section.**

11 (b)(A) **If a manufacturer, distributor or importer has prohibited a**
12 **dealer from selling or driving a motor vehicle that is subject to a recall**
13 **and the manufacturer, distributor or importer does not have a remedy**
14 **for the defect that led to the recall or parts to remedy the defect, the**
15 **manufacturer, distributor or importer shall compensate the dealer at**
16 **the rate of at least 2.43 percent of the motor vehicle's value during**
17 **each month or portion of each month during which the remedy or the**
18 **parts are not available and the motor vehicle remains subject to the**
19 **manufacturer's, distributor's or importer's prohibition on selling or**
20 **driving the motor vehicle.**

21 (B) **For purposes of determining a vehicle's value under subpara-**
22 **graph (A) of this paragraph, the manufacturer, distributor or importer**
23 **shall use the average retail value for the motor vehicle's make and**
24 **model and mileage, as shown in a nationally recognized and distrib-**
25 **uted appraisal guide for motor vehicles.**

26 (c) **The requirement to compensate a dealer for service in con-**
27 **nection with a vehicle recall under this subsection applies only to:**

28 (A) **Used motor vehicles that are subject to a vehicle recall under**
29 **federal law or regulations to remedy defects in vehicle safety or**
30 **emissions or that are subject to a manufacturer's, distributor's or**
31 **importer's prohibition on selling or driving the motor vehicle; and**

1 **(B) Manufacturers, distributors or importers that have authorized**
2 **the dealer as a franchisee for the line-make of motor vehicles that is**
3 **subject to the vehicle recall.**

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

5 (a) Pay or credit a dealer for labor or parts, **or compensation under**
6 **subsection (3)(b) of this section, that** the dealer claims under this section
7 within 30 days after approving the dealer's claim;

8 (b) Approve or disapprove, in the manner the manufacturer, distributor
9 or importer specifies, all claims **under this section** that a dealer makes for
10 labor or parts within 30 days after receiving the claim;

11 (c) Treat as approved any claim that a manufacturer, distributor or
12 importer did not approve or disapprove within 30 days after the manufac-
13 turer, distributor or importer received the claim and pay or credit the dealer
14 for the claim within 60 days after receiving the claim; and

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

17 (5) A manufacturer, distributor or importer may not:

18 (a) Recover all or a portion of cost of compensating a dealer for warranty
19 parts or service **or service in connection with a vehicle recall** by reducing
20 the amount due a dealer or by imposing a separate charge, surcharge, ad-
21 ministrative fee or other fee.

22 **(b) Reduce amounts due to a dealer under an incentive program or**
23 **remove the dealer from an incentive program as a means of recovering**
24 **all or a portion of the cost of a dealer's claim for reimbursement for**
25 **warranty service or service in connection with a vehicle recall.**

26 **(c) Otherwise recover from a dealer compensation that a manufac-**
27 **turer, distributor or importer owes or has paid to the dealer in con-**
28 **nection with the dealer's claim for reimbursement for warranty**
29 **service or service in connection with a vehicle recall.**

30 [(b)] (d) Deny or charge back a dealer's claim solely because a dealer
31 failed to comply with a specific claim processing procedure because of a

1 clerical or administrative error that does not affect the legitimacy of the
2 dealer's claim, if the dealer resubmits the claim in compliance with the
3 manufacturer's, distributor's or importer's claim processing procedure within
4 45 days after the manufacturer, distributor or importer initially denies or
5 charges back the claim.

6 **SECTION 2. (1) A motor vehicle dealer shall disclose in writing to**
7 **a person that purchases a used motor vehicle all manufacturer recalls**
8 **to which the used motor vehicle remains subject for defects that have**
9 **not been remedied.**

10 **(2) A dealer may make the disclosure required under subsection (1)**
11 **of this section by printing and providing to the person a report for the**
12 **used motor vehicle from a federal governmental database that lists by**
13 **vehicle identification number motor vehicles that are subject to a**
14 **manufacturer's recall.**

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