

D R A F T

SUMMARY

Regulates business relationship between equipment suppliers and equipment dealers in this state. Specifies notice requirements and requires good cause for terminating dealer agreement or other aspects of business relationship. Specifies actions that constitute good cause and prohibits dealer from taking certain actions.

Specifies procedure and conditions under which supplier must repurchase equipment upon termination of dealer agreement.

Specifies requirements for reimbursing dealer for service and repair parts for warranty claims.

Authorizes dealer to bring action to assert dealer's rights under Act and specifies liability to which supplier is subject for violating provisions of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to commerce in certain types of equipment; creating new provisions;
3 amending ORS 646A.300, 646A.302, 646A.304, 646A.306, 646A.308, 646A.310,
4 646A.312, 646A.314, 646A.316 and 646A.318; repealing ORS 646A.320 and
5 646A.322; and prescribing an effective date.

6 The Legislative Assembly finds and declares that:

7 (1) Retail distribution, sales and rental of agricultural, construction,
8 utility, industrial, mining, outdoor power, forestry and lawn and garden
9 equipment that uses independent dealers operating under contract with sup-
10 pliers is of vital importance to the public interest and welfare and the
11 economy of this state;

12 (2) Regulating the business relationship between equipment suppliers and
13 equipment dealers is necessary to ensure the efficient and uninterrupted flow
14 of commerce and the smooth functioning of the economy of this state; and

1 (3) A violation of the regulations set forth in this Act is a violation of
2 an important public policy of this state.

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

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

5 646A.300. As used in ORS 646A.300 to 646A.322:

6 [(1) “Catalog” means a catalog published in any medium, including an
7 electronic catalog.]

8 [(2) “Change in competitive circumstances” means an event, act or omission
9 that has a material detrimental effect on a retailer’s ability to compete with
10 another retailer that sells the same brand of farm implements.]

11 [(3) “Current model” means a model that is listed in the supplier’s current
12 sales manual or any supplements to the manual.]

13 [(4) “Current net price” means:]

14 [(a) The price of parts or farm implements that are listed in a supplier’s
15 price list or catalog that is in effect at the time a contract is canceled or dis-
16 continued, less any applicable trade, volume or cash discounts, or at the time
17 that a retailer made a warranty claim.]

18 [(b) The price listed for superseded parts in a supplier’s price list or catalog
19 at the time a retailer purchased the parts.]

20 [(5) “Current signs” means principal outdoor signs that:]

21 [(a) A supplier requires a retailer to obtain;]

22 [(b) Identify the supplier; and]

23 [(c) Identify the retailer as representing the supplier or the supplier’s farm
24 implements or machinery.]

25 [(6) “Dealership” means a location from which a retailer buys, sells, leases,
26 trades, stores, takes on consignment or in any other manner deals in farm
27 implements.]

28 [(7) “Distributor” means a person who sells or distributes new farm imple-
29 ments to a retailer.]

30 [(8) “Farm implements” means:]

31 [(a) Any vehicle designed or adapted and used exclusively for agricultural

1 *operations and only incidentally operated or used upon the highways;]*

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

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

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

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

13 *[(9) "F.O.B." has the meaning given that term in ORS 72.3190.]*

14 *[(10) "Inventory" means farm implements, machinery and repair parts.]*

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

17 *[(12) "Net cost" means the price a retailer actually paid a supplier for*
18 *merchandise.]*

19 *[(13) "Retailer" means any person that engages in the business of retailing*
20 *farm implements, machinery or repair parts in this state.]*

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

24 *[(15) "Specialized tool" means a tool that:]*

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

26 *[(b) Is uniquely suited for the purpose of diagnosing or repairing the*
27 *supplier's farm implements or machinery.]*

28 *[(16) "Supplier" means:]*

29 *[(a) A wholesaler, manufacturer, manufacturer's representative or distribu-*
30 *tor.]*

31 *[(b) A successor in interest of a manufacturer, manufacturer's representative*

1 *or distributor, including, but not limited to:]*

2 *[(A) A purchaser of assets or shares of stock;]*

3 *[(B) A corporation or entity that results from a merger, liquidation or re-*
4 *organization; or]*

5 *[(C) A receiver or trustee.]*

6 *[(c) The assignee of a supplier.]*

7 *[(17) "Warranty claim" means a claim for payment that a retailer submits*
8 *to a supplier for service or parts the retailer provided to a customer under a*
9 *warranty that the supplier issued.]*

10 **(1) "Current net parts cost" means the current net parts price for**
11 **a repair part, less any trade or cash discounts a supplier gives to a**
12 **dealer on the dealer's orders of repair parts in the ordinary course of**
13 **business.**

14 **(2) "Current net parts price" means:**

15 **(a) The price for a repair part listed in a supplier's price list or**
16 **catalog that is in effect:**

17 **(A) At the time a dealer agreement between the supplier and a**
18 **dealer terminates or expires; or**

19 **(B) At the time a dealer submits a warranty claim for a repair part**
20 **under ORS 646A.314.**

21 **(b) The price that is in effect, at the time the dealer agreement**
22 **terminates or expires, for a part that performs the same function as**
23 **a superseded repair part but is listed in the supplier's price list or**
24 **catalog under a different part number.**

25 **(3) "Dealer" means a person that engages primarily in the business**
26 **of selling, leasing, servicing or repairing equipment at retail or selling**
27 **repair parts at retail.**

28 **(4) "Dealer agreement" means an agreement that sets forth the**
29 **rights and obligations of a supplier and a dealer with respect to:**

30 **(a) Selling and purchasing equipment and repair parts;**

31 **(b) Submitting and paying warranty claims; and**

1 (c) Any other aspect of the business relationship between a supplier
2 and a dealer that provisions in ORS 646A.300 to 646A.322 do not:

3 (A) Prohibit in a dealer agreement; or

4 (B) Address specifically.

5 (5) "Dealership" means a retail business in which a dealer engages
6 under the terms of a dealer agreement to sell or lease equipment and
7 repair parts or to repair and service equipment.

8 (6) "Demonstrator" means equipment in a dealer's inventory that
9 the dealer has not sold at retail but has used to show features or ca-
10 pabilities of the same type of equipment to a potential customer
11 without charge to the potential customer, or in accordance with a
12 short-term rental agreement, and with the intent to encourage the
13 potential customer to purchase the equipment.

14 (7)(a) "Equipment" means:

15 (A) An all-terrain vehicle, utility task vehicle or recreational off-
16 highway vehicle, regardless of the type of use for each vehicle; and

17 (B) Machinery, an implement, an attachment or an accessory used
18 for or in connection with:

19 (i) Landscaping or maintaining lawns, gardens or golf courses;

20 (ii) Planting, cultivating, irrigating, harvesting or producing agri-
21 cultural or forestry products;

22 (iii) Raising, feeding, tending to or harvesting the products of live-
23 stock, or conducting any activity related to raising, feeding, tending
24 to or harvesting the products of livestock; or

25 (iv) Construction, mining or other industry or utilities and appli-
26 cations related to construction, mining or other industry or utilities.

27 (b) "Equipment" does not include a trailer or self-propelled vehicle
28 for transporting persons or property on a street or highway.

29 (8) "Family member" means a person's spouse, child, son-in-law,
30 daughter-in-law or lineal descendant.

31 (9) "Good cause" has the meaning given that term in ORS 646A.308.

1 (10) "Inventory" means equipment, repair parts, data processing
2 hardware and software and specialized tools for servicing or repair.

3 (11) "Net equipment cost" means the price a dealer paid to a sup-
4 plier for equipment, plus:

5 (a) Freight expenses, at the cost stated in the invoice for the
6 equipment or, if the invoice does not state a cost, at the rates in effect
7 on the effective date on which a dealer agreement terminates, if the
8 dealer paid freight from the supplier's location to the dealer's location;
9 and

10 (b) A reimbursement for labor costs the dealer incurred in prepar-
11 ing the equipment for retail sale or rental, at the labor rate the dealer
12 charges customers for performing repair work not under warranty,
13 except that if a supplier has specified a reasonable time for preparing
14 the equipment, the reimbursement must be equal to the labor rate
15 described in this paragraph multiplied by the time the supplier speci-
16 fies.

17 (12) "New equipment" means equipment that a dealer can return
18 to a supplier under a single-line dealer agreement at the time the
19 single-line dealer agreement terminates.

20 (13) "Repair parts" means components, kits, replacement parts and
21 similar items, including superseded items and parts for repairing
22 equipment.

23 (14) "Single-line dealer" means a dealer that:

24 (a) Purchases equipment for construction, industry, forestry or
25 mining from a single-line supplier in an amount that constitutes 75
26 percent or more of the dealer's new equipment for construction, in-
27 dustry, forestry or mining, calculated on the basis of net equipment
28 cost; and

29 (b) Has a total annual average sales volume of equipment from a
30 single-line supplier that exceeds \$25 million in the five years before an
31 applicable date set forth in the dealer agreement for determining sales

1 volume, except that the total annual average sales volume may in-
2 crease each year by an amount that is equivalent to \$25 million
3 multiplied by the percentage of increase in the United States Bureau
4 of Labor's producer price index for construction machinery, or a sim-
5 ilar price index, in the period from January of the preceding year to
6 January of the current year.

7 (15) "Single-line dealer agreement" means an agreement that sets
8 forth the respective rights and obligations of a single-line supplier and
9 a single-line dealer with respect to purchasing and selling equipment
10 for construction, forestry, industry and mining.

11 (16) "Single-line supplier" means a supplier that sells equipment for
12 construction, forestry, industry and mining that constitutes 75 percent
13 of the new equipment for construction, forestry, industry and mining
14 that is in a single-line dealer's inventory.

15 (17) "Supplier" means:

16 (a) A person that is engaged in the business of manufacturing, as-
17 sembling or distributing equipment or repair parts;

18 (b) A successor in interest to a person described in paragraph (a)
19 of this subsection;

20 (c) A person that functions as a receiver, trustee, assignee or
21 liquidator for a person described in paragraph (a) of this subsection;

22 (d) A person that purchases the assets or stock of a person de-
23 scribed in paragraph (a) of this subsection; and

24 (e) A corporation that survives a merger with a person described in
25 paragraph (a) of this subsection or that survives the person's liqui-
26 dation or reorganization.

27 (18) "Terminate" means to end by cancelling, discontinuing or fail-
28 ing to renew.

29 (19) "Warranty claim" means a claim for payment that a dealer
30 submits to a supplier for service or parts that the dealer provided to
31 a customer under a warranty that the supplier issued.

1 **SECTION 2.** ORS 646A.302 is amended to read:

2 646A.302. [*The obligations of a supplier under ORS 646A.300 to 646A.322*
3 *apply to the supplier's successor in interest or assignee. A successor in interest*
4 *includes a purchaser of assets or shares, a surviving corporation or other entity*
5 *resulting from a merger or liquidation, a receiver and a trustee of the original*
6 *supplier.*]

7 **(1) ORS 646A.300 to 646A.322 supplement and do not supplant the**
8 **terms of a dealer agreement that provides greater protection to a**
9 **dealer.**

10 **(2) If a dealer agreement applies to more than one of a dealer's**
11 **business locations, the provisions of ORS 646A.300 to 646A.322 control**
12 **over the provisions of the dealer agreement with respect to a repur-**
13 **chase of equipment and repair parts from a dealer that closes a busi-**
14 **ness location.**

15 **(3) A provision of ORS 646A.300 to 646A.322 that gives a supplier a**
16 **right to act or refrain from acting applies only if a dealer agreement**
17 **gives a dealer the same right to act or refrain from acting.**

18 **(4) Unless a provision of ORS 646A.300 to 646A.322 provides other-**
19 **wise, a supplier may not, by means of a dealer agreement or other**
20 **contract or agreement, modify a prohibition or other provision set**
21 **forth in ORS 646A.300 to 646A.322.**

22 **(5) ORS 646A.300 to 646A.322 do not expand a supplier's rights under**
23 **a dealer agreement.**

24 **(6) If a person purchases or licenses all or substantially all of the**
25 **inventory, intellectual property or goodwill of a supplier, the supplier's**
26 **product line or a division of the supplier, for the purposes of ORS**
27 **646A.300 to 646A.322, the person has purchased or licensed all or sub-**
28 **stantially all of a supplier's assets as described in ORS 646A.300 (17)(d)**
29 **and is subject to the extent of the person's purchase to ORS 646A.300**
30 **to 646A.322 and any dealer agreement that is in effect between the**
31 **supplier and a dealer.**

1 **SECTION 3.** ORS 646A.304 is amended to read:

2 646A.304. *[(1) If a retailer agreement is terminated, canceled or discontinued, unless the retailer elects to keep the farm implements, machinery and repair parts under a contractual right to do so, the supplier shall pay the retailer for the farm implements, machinery and repair parts or, if the retailer owes any sums to the supplier, credit the cost of the farm implements, machinery and repair parts to the retailer's account. The payment or credit shall be as follows:]*

9 *[(a) The payment or the credit for the unused complete farm implements and machinery in new condition shall be in a sum equal to 100 percent of the net cost of all complete farm implements and machinery that are current models and that have been purchased by the retailer from the supplier within the 24 months immediately preceding notice of intent to cancel or discontinue the retailer agreement. The payment or credit shall include the transportation charges to the retailer and from the retailer to the supplier, if the charges have been paid by the retailer or invoiced to the retailer's account by the supplier, and a reasonable reimbursement for services performed in connection with assembly or predelivery inspection of the implements or machinery. The supplier assumes ownership of the farm implements and machinery F.O.B. the dealership.]*

21 *[(b) The payment or credit for equipment used for demonstration or rental and that is in new condition shall equal the depreciated value of the equipment to which the supplier and retailer have agreed.]*

24 *[(c)(A) The payment or credit for repair parts shall be a sum equal to 95 percent of the current net prices of the repair parts, including superseded parts, plus the charges for transportation from the retailer to the destination designated by the supplier that the retailer paid or the supplier invoiced to the retailer's account. The supplier assumes ownership of the repair parts F.O.B. the dealership.]*

30 *[(B) This paragraph applies to parts purchased by the retailer from the supplier and held by the retailer on or after the date of the cancellation or*

1 *discontinuance of the retailer agreement.]*

2 *[(C) This paragraph does not apply to repair parts that:]*

3 *[(i) The supplier identified as not returnable when the retailer ordered the*
4 *parts.]*

5 *[(ii) The retailer purchased in a set of multiple parts, unless the set is*
6 *complete and in resalable condition.]*

7 *[(iii) The retailer failed to return after being offered a reasonable opportu-*
8 *nity to return the repair part at a price not less than 100 percent of the net*
9 *price of the repair part as listed in the then current price list or catalog.]*

10 *[(iv) Have a limited storage life or are otherwise subject to deterioration,*
11 *including but not limited to rubber items, gaskets and batteries and repair*
12 *parts in broken or damaged packages.]*

13 *[(v) Are single repair parts priced as a set of two or more items.]*

14 *[(vi) Are not resalable as new parts without new packaging or recondi-*
15 *tioning because of their condition.]*

16 *[(D) The supplier shall also pay the retailer or credit to the retailer's ac-*
17 *count a sum equal to five percent of the current net price of all parts returned*
18 *for the handling, packing and loading of the parts, unless the supplier elects*
19 *to list the inventory and perform packing and loading of the parts itself.]*

20 *[(d) Upon the payment or allowance of credit to the retailer's account of the*
21 *sum under this subsection, the title to the farm implements, farm machinery*
22 *or repair parts shall pass to the supplier making the payment or allowing the*
23 *credit and the supplier shall be entitled to the possession of the farm imple-*
24 *ments, machinery or repair parts.]*

25 *[(2)(a) If a retailer agreement is terminated, canceled or discontinued, the*
26 *supplier shall, upon request of the retailer, pay the retailer for:]*

27 *[(A) Computer and communications hardware that:]*

28 *[(i) The supplier required the retailer to purchase within the preceding five*
29 *years; and]*

30 *[(ii) The retailer possesses on the date of the agreement's termination, can-*
31 *cellation or discontinuation.]*

1 *[(B) Computer software that:]*

2 *[(i) The supplier required the retailer to purchase from the supplier; and]*

3 *[(ii) The retailer used exclusively to support the retailer's dealings with the*
4 *supplier.]*

5 *[(b) If the retailer owes any sums to the supplier, the supplier may credit*
6 *the cost of the hardware and software to the retailer's account.]*

7 *[(c) The payment or credit shall be the net cost of the hardware and soft-*
8 *ware, less 20 percent per year that the retailer possessed the hardware and*
9 *software.]*

10 *[(d) This subsection does not apply if the retailer exercises a contractual*
11 *right to keep the hardware or software.]*

12 *[(3)(a) If a retailer agreement is terminated, canceled or discontinued, the*
13 *supplier shall pay the retailer for the retailer's specialized tools.]*

14 *[(b) If the retailer owes any sums to the supplier, the supplier may credit*
15 *the cost of the specialized tools to the retailer's account.]*

16 *[(c)(A) If a tool is new and unused and used for the supplier's current*
17 *models, the payment or credit shall be the net cost of the tool.]*

18 *[(B) If a tool is not new and unused and used for the supplier's current*
19 *models, the payment or credit shall be the net cost of the tool, less 20 percent*
20 *per year that the retailer possessed the tool.]*

21 *[(4)(a) If a retailer agreement is terminated, canceled or discontinued, the*
22 *supplier shall pay the retailer for the retailer's current signs.]*

23 *[(b) If the retailer owes any sums to the supplier, the supplier may credit*
24 *the cost of the signs to the retailer's account.]*

25 *[(c) The payment or credit shall be the net cost of the sign, less 20 percent*
26 *per year that the retailer possessed the sign.]*

27 *[(5) A supplier shall provide all payments or allowances due under this*
28 *section within 90 calendar days of the retailer's return of the farm implements,*
29 *machinery, repair parts, computer and communications hardware, computer*
30 *software, specialized tools or current signs. A supplier who does not provide*
31 *a payment or allowance within 90 calendar days of the retailer's return of the*

1 *farm implements, machinery, repair parts, computer and communications*
2 *hardware, computer software, specialized tools or current signs shall pay the*
3 *retailer interest of 18 percent per annum on the past due amount until paid.]*

4 *[(6) This section supplements any retailer agreement between the retailer*
5 *and the supplier covering the return of farm implements, machinery, repair*
6 *parts, computer and communications hardware, computer software, specialized*
7 *tools or current signs. The retailer may elect to pursue either the retailer's*
8 *remedy under the retailer agreement or the remedy provided under this section.*
9 *An election by the retailer to pursue the remedy under the retailer agreement*
10 *does not bar the retailer's right to the remedy provided under this section as*
11 *to those farm implements, machinery, repair parts, computer and communi-*
12 *cations hardware, computer software, specialized tools or current signs not*
13 *affected by the retailer agreement. This section does not affect the right of a*
14 *supplier to charge back to the retailer's account amounts previously paid or*
15 *credited as a discount incident to the retailer's purchase of goods.]*

16 *[(7) This section does not apply to farm implements, machinery, repair*
17 *parts, computer and communications hardware, computer software, specialized*
18 *tools or current signs that a retailer acquired from a source other than the*
19 *supplier.]*

20 **(1) A dealer shall give a supplier written notice of the dealer's in-**
21 **tent to terminate a dealer agreement at least 30 days before termi-**
22 **nating the dealer agreement.**

23 **(2)(a) Except as otherwise provided in this section, a supplier shall**
24 **give a dealer written notice of the supplier's intent at least 180 days**
25 **before terminating the dealer agreement, withdrawing a dealer's au-**
26 **thorization to sell a product line or type of equipment or an authori-**
27 **zation to sell a product line or type of equipment at one or more of**
28 **the dealer's business locations or substantially changing the dealer's**
29 **competitive circumstances.**

30 **(b) A notice under paragraph (a) of this subsection must specify**
31 **good cause for the termination, the withdrawal or the change, along**

1 with supporting evidence or reasons the supplier has for believing the
2 supplier has good cause. The notice must state that the dealer has not
3 less than 60 days in which to cure any deficiency that constitutes good
4 cause.

5 (c) If a dealer cures the deficiency described in a notice under par-
6 agraph (a) of this subsection, the supplier may not proceed with the
7 termination, withdrawal or change.

8 (3) If the supplier determines that good cause exists under ORS
9 646A.308 (1)(j) for terminating a dealer agreement, for withdrawing a
10 dealer's authorization to sell a product line or type of equipment or
11 an authorization to sell a product line or type of equipment at one or
12 more of the dealer's business locations or for substantially changing
13 the dealer's competitive circumstances, the supplier shall give the
14 dealer notice of the supplier's determination at least two years before
15 terminating the dealer agreement, withdrawing the authorization or
16 substantially changing the dealer's competitive circumstances. If
17 within the two-year period the dealer meets or complies with the
18 supplier's reasonable standards and performance objectives, the sup-
19 plier may not proceed with the termination, withdrawal or change.

20 (4)(a) If a supplier has authority under a dealer agreement, a con-
21 tract or another agreement to approve the sale or transfer of a deal-
22 ership or a change in the equity ownership of a dealer and the
23 authority is not otherwise prohibited by law, the supplier shall approve
24 or disapprove a sale, transfer or change in equity ownership within 60
25 days after receiving a request for approval from the dealer. If the
26 supplier does not act on the dealer's request within the 60-day period,
27 the sale, transfer or change in equity ownership is approved.

28 (b) If an individual with a controlling interest in a dealer dies, the
29 individual's estate or another person with authority to sell or transfer
30 the dealership or change the equity ownership of the dealer has not
31 less than 180 days within which to submit to a supplier a request under

1 paragraph (a) of this subsection. The supplier shall approve or disap-
2 prove the request as provided in paragraph (a) of this subsection.
3 During the 180-day period, the supplier may not terminate the dealer
4 agreement, may not withdraw a dealer's authorization to sell a prod-
5 uct line or type of equipment or an authorization to sell a product line
6 or type of equipment at one or more of the dealer's business locations
7 and may not substantially change the dealer's competitive circum-
8 stances.

9 (5) If a supplier disapproves a request from a dealer under sub-
10 section (4) of this section, the supplier shall provide the dealer with a
11 written notice that states the reasons for the disapproval. If the
12 dealer's request is for a sale or transfer of the dealership, the supplier
13 may disapprove the request only if the persons to which the dealer
14 proposes to sell or transfer the dealership do not meet criteria for
15 entering into a dealership agreement with the supplier that the sup-
16 plier applies consistently and without favor to other prospective deal-
17 ers.

18 (6)(a) The duties set forth in subsections (2) to (5) of this section
19 do not apply to a supplier or a dealer under the circumstances de-
20 scribed in this section if the supplier has a single-line dealer agree-
21 ment with the dealer.

22 (b) Except as provided in ORS 646A.308 (3), a single-line supplier
23 shall notify a single-line dealer at least 90 days before terminating a
24 single-line dealer agreement or substantially changing the single-line
25 dealer's competitive circumstances.

26 (c) A notice under paragraph (b) of this subsection must specify
27 good cause for the termination or the change, along with supporting
28 evidence or reasons the single-line supplier has for believing the
29 single-line supplier has good cause, and must state that the single-line
30 dealer has not less than 60 days in which to cure any deficiency that
31 constitutes good cause. If a single-line dealer cures the deficiency de-

1 scribed in a notice under paragraph (b) of this subsection, the single-
2 line supplier may not proceed with the termination or change.

3 (d) If the good cause a single-line supplier specifies for terminating
4 a single-line dealer agreement is a failure to achieve or maintain
5 market share for the single-line supplier's equipment in accordance
6 with a target the single-line supplier sets, the single-line supplier shall
7 work with the single-line dealer for a reasonable time to achieve the
8 single-line dealer's market share target.

9 **SECTION 4.** ORS 646A.306 is amended to read:

10 646A.306. *[(1) A supplier shall repurchase the inventory of a retailer, as if
11 the supplier had terminated the retailer agreement, as follows:]*

12 *[(a) Upon the death of a retailer whose business is owned as a tenancy by
13 the entirety, at the option of the spouse or the heir or heirs of the retailer.]*

14 *[(b) Upon the death of a stockholder of a corporation operating as a retailer,
15 at the option of the heir or heirs of the stockholder and upon the consent of
16 the board of directors.]*

17 *[(2) The surviving spouse or the heir or heirs may exercise the option under
18 this section not later than one year from the date of the death of the retailer
19 or the stockholder.]*

20 *[(3) Nothing in ORS 646A.300 to 646A.322 requires the repurchase of in-
21 ventory by the supplier:]*

22 *[(a) If the supplier and the corporation acting as a retailer enter into a new
23 retailer agreement to operate the retail dealership.]*

24 *[(b) If the supplier and the surviving spouse or the heir or heirs of the
25 retailer enter into a new retailer agreement to operate the retail dealership.]*

26 (1) **If an individual with a controlling interest in a single-line dealer
27 dies and a family member of the individual submits a request to a
28 single-line supplier to operate the dealership under a new single-line
29 dealer agreement, the single-line supplier shall approve or disapprove
30 the request within 90 days after receiving the request. If the single-line
31 supplier disapproves the request, the single-line supplier shall notify**

1 **the family member in writing and state the reasons for the single-line**
2 **supplier's disapproval.**

3 **(2) If a single-line supplier and a single-line dealer have executed**
4 **an agreement that designates the single-line dealer's successor in in-**
5 **terest in the event an individual with a controlling interest in the**
6 **single-line dealer dies and the agreement is in effect at the time of the**
7 **individual's death, the agreement controls even if the agreement does**
8 **not designate a family member of the individual as the successor in**
9 **interest.**

10 **(3) This section does not authorize the personal representative, heir**
11 **or family member of an individual with a controlling interest in a**
12 **single-line dealer to operate a dealership or perform a single-line**
13 **dealership agreement without specific written authorization from the**
14 **single-line supplier specified in the single-line dealer agreement.**

15 **SECTION 5.** ORS 646A.308 is amended to read:

16 *646A.308. [(1) If, upon the cancellation of a retailer agreement by the*
17 *retailer or the supplier, the supplier fails to make payment as required by ORS*
18 *646A.304 or 646A.306, the supplier shall be liable in a civil action to be*
19 *brought by the retailer or by the retailer's spouse, heir or heirs for the pay-*
20 *ments required under ORS 646A.304 or 646A.306.]*

21 *[(2) A person who brings an action under this section must commence the*
22 *action in the county in which the principal place of business of the retailer is*
23 *located.]*

24 **(1) A supplier has good cause to terminate a dealer agreement, to**
25 **revoke an authorization to sell a product line, a type of equipment or**
26 **all of a supplier's equipment at all or any of the dealer's business lo-**
27 **cations or to substantially change the dealer's competitive circum-**
28 **stances if a dealer:**

29 **(a) Fails to substantially comply with requirements in a dealer**
30 **agreement that are reasonable and essential, that do not differ from**
31 **requirements in dealer agreements with other similarly situated deal-**

1 **ers and that the supplier does not enforce in a manner that differs**
2 **among dealers.**

3 **(b) Transfers a controlling ownership interest in a dealership with-**
4 **out the supplier's consent.**

5 **(c) Files a voluntary petition in bankruptcy, is the subject of an**
6 **involuntary petition in bankruptcy that the dealer has not discharged**
7 **within 30 days after the filing date, closes out or sells a substantial**
8 **part of the assets related to the dealership or begins a dissolution or**
9 **liquidation of the dealership.**

10 **(d) Adds, removes or otherwise changes business locations without**
11 **the supplier's prior written approval, unless the supplier does not re-**
12 **quire prior written approval for the change.**

13 **(e) Defaults substantially under a chattel mortgage agreement or**
14 **security agreement with the supplier.**

15 **(f) Revokes a guarantee of an obligation to the supplier, unless the**
16 **revocation occurs in connection with or after a transfer of the dealer's**
17 **entire ownership interest in the dealership and the supplier does not**
18 **require the dealer to execute a new guarantee of the obligation in**
19 **connection with the transfer.**

20 **(g) Fails to operate in the normal course of business for seven**
21 **consecutive days or otherwise abandons the dealership.**

22 **(h) Pleads guilty to or was convicted of a felony that is related to**
23 **the business relationship between the dealer and the supplier.**

24 **(i) Engages in conduct that injures or is detrimental to the dealer's**
25 **customers, the public welfare or the reputation or representation of**
26 **the supplier's equipment.**

27 **(j) Fails consistently to meet or comply with reasonable standards**
28 **and performance objectives that:**

29 **(A) The supplier imposes on the basis of the supplier's experience**
30 **in comparable markets; and**

31 **(B) Do not differ in substance or in the manner of enforcement**

1 from standards that the supplier imposes on other similarly situated
2 dealers.

3 (2) Subsection (1) of this section does not apply to a dealer that has
4 a single-line dealer agreement with a supplier. Good cause for termi-
5 nating a single-line dealer agreement or substantially changing a
6 single-line dealer's competitive circumstances exists only if the
7 single-line dealer:

8 (a) Fails to substantially comply with requirements in the single-
9 line dealer agreement that do not differ from requirements in single-
10 line dealer agreements with other similarly situated single-line
11 dealers.

12 (b) Transfers an interest in the dealership or allows a partner, a
13 major shareholder or another individual with a substantial ownership
14 interest in or control of the single-line dealer to withdraw from the
15 dealership or substantially reduce the partner's or shareholder's in-
16 terest, unless the single-line supplier consents to the transfer, with-
17 drawal or reduction.

18 (c) Closes out or sells a substantial part of the assets related to the
19 dealership or begins a dissolution or liquidation of the dealership.

20 (d) Adds or changes business locations without a single-line
21 supplier's prior written approval, which the single-line supplier may
22 not withhold unreasonably.

23 (e) Defaults substantially under a chattel mortgage agreement or
24 security agreement with the single-line supplier.

25 (f) Revokes or discontinues a guarantee of an obligation to the
26 single-line supplier.

27 (g) Fails to operate in the normal course of business for seven
28 consecutive days or otherwise abandons the dealership.

29 (h) Pleads guilty to or was convicted of a felony that is related to
30 the business relationship between the single-line dealer and the
31 single-line supplier.

1 (i) Fails to achieve or maintain market share for the single-line
2 supplier's equipment in accordance with a target that the single-line
3 supplier sets.

4 (3) If a single-line supplier determines that good cause exists under
5 subsection (2)(b) to (h) of this section for terminating a single-line
6 dealer agreement or substantially changing a single-line dealer's
7 competitive circumstances, the single-line supplier does not need to
8 give the single-line dealer notice and an opportunity to cure under
9 ORS 646A.304 (6).

10 (4) A provision in a dealer agreement that allows for an event, act
11 or omission does not control whether the event, act or omission re-
12 sulted in a substantial change in a dealer's competitive circumstances.

13 **SECTION 6.** ORS 646A.310 is amended to read:

14 646A.310. *[(1) A supplier may not:]*

15 *[(a) Coerce or compel any retailer to:]*

16 *[(A) Order any farm implements or parts.]*

17 *[(B) Accept delivery of farm implements with special features or accessories*
18 *not included in the base list price of the farm implements as publicly adver-*
19 *tised by the supplier.]*

20 *[(C) Enter into any agreement, whether written or oral, supplementary to*
21 *an existing retailer agreement with the supplier, unless the supplementary*
22 *agreement or amendment to the agreement is applicable to all other similarly*
23 *situated retailers in the state.]*

24 *[(b) Refuse to deliver in reasonable quantities and within a reasonable time*
25 *after receipt of the retailer's order, to any retailer having a retailer agreement*
26 *for the retail sale of new equipment sold or distributed by the supplier,*
27 *equipment covered by the retailer agreement represented by the supplier to be*
28 *available for immediate delivery.]*

29 *[(c) Require:]*

30 *[(A) As a condition of renewal or extension of a retailer agreement that the*
31 *retailer complete substantial renovation of the retailer's place of business, or*

1 *acquire new or additional space to serve as the retailer's place of business,*
2 *unless the supplier provides at least one year's written notice of the condition*
3 *which states all grounds supporting the condition.]*

4 [(B) *A retailer to complete a renovation or acquisition in less than a rea-*
5 *sonable time.]*

6 [(C) *A retailer to waive a right to bring an action to enforce the provisions*
7 *of ORS 646A.300 to 646A.322.]*

8 [(d) *Discriminate among similarly situated retailers in this state with re-*
9 *spect to the prices charged for equipment of like grade and quality sold to them*
10 *by the supplier.]*

11 [(e) *Unreasonably withhold consent for a retailer to change the capital*
12 *structure of the retailer's business or the means by which the retailer finances*
13 *the business.]*

14 [(f) *Prevent or attempt to prevent any retailer or any officer, member, part-*
15 *ner or stockholder of any retailer from selling or transferring any interest to*
16 *any other party or parties.]*

17 [(g) *Require a retailer to assent to a release, assignment, novation, waiver*
18 *or estoppel which would relieve any person from liability imposed by ORS*
19 *646A.300 to 646A.322.]*

20 [(h) *Withhold consent to a transfer of an interest in a dealership unless the*
21 *retailer's area of responsibility or trade area does not afford sufficient sales*
22 *potential to reasonably support a retailer.]*

23 [(i) *Unreasonably withhold consent to the sale, transfer or assignment of*
24 *the retailer's interest or power of management or control in the retailer's*
25 *business.]*

26 [(j) *In the event of the death or incapacity of the retailer or the principal*
27 *owner of the retailer's business, unreasonably withhold consent to the transfer*
28 *of the retailer's interest in the business to a person who meets the reasonable*
29 *financial, business experience and character standards of the supplier.]*

30 [(2)(a) *Subsection (1)(a)(A) of this section does not apply if a law requires*
31 *a retailer to order farm implements or parts.]*

1 *[(b) Subsection (1)(a)(B) of this section does not apply if:]*

2 *[(A) A law requires a supplier to supply farm implements with special*
3 *features;]*

4 *[(B) The special features or accessories are safety features; or]*

5 *[(C) The retailer ordered the farm implements without coercion or*
6 *compulsion.]*

7 *[(c)(A) As used in this paragraph, “act of nature” means an unanticipated*
8 *grave natural disaster or other natural phenomenon of an exceptional, inevi-*
9 *table and irresistible character, the effects of which could not have been pre-*
10 *vented or avoided by the exercise of due care or foresight.]*

11 *[(B) Notwithstanding subsection (1)(b) of this section, a supplier may refuse*
12 *to deliver equipment if the refusal is due to:]*

13 *[(i) Prudent and reasonable restrictions on extension of credit by the sup-*
14 *plier to the retailer;]*

15 *[(ii) An act of nature;]*

16 *[(iii) A work stoppage or delay due to a strike or labor difficulty;]*

17 *[(iv) A bona fide shortage of materials;]*

18 *[(v) A freight embargo; or]*

19 *[(vi) Any other cause over which the supplier has no control.]*

20 *[(C) Subparagraph (B) of this paragraph applies only if the supplier bases*
21 *delivery on ordering histories with priority given to the sequence in which the*
22 *orders are received.]*

23 *[(d) Subsection (1)(d) of this section does not prohibit:]*

24 *[(A) A supplier from using differentials resulting from the differing quan-*
25 *tities in which equipment is sold or delivered.]*

26 *[(B) A retailer from offering a lower price in order to meet an equally low*
27 *price of a competitor or the services or facilities furnished by a competitor.]*

28 *[(e) Subsection (1)(e) of this section applies only if:]*

29 *[(A) The retailer meets the reasonable capital requirements imposed by the*
30 *supplier;]*

31 *[(B) The retailer agreed to the capital requirements; or]*

1 [(C) *The change by the retailer does not result in a change of the control-*
2 *ling interest in the executive management or board of directors, or of any*
3 *guarantors of the retailer.*]

4 [(f) *If a supplier does not accept a sale, transfer or assignment, the supplier*
5 *shall provide written notice of the supplier's objection and specific reasons for*
6 *withholding consent.*]

7 [(g) *Notwithstanding subsection (1)(f) of this section, a retailer may not sell,*
8 *transfer or assign the retailer's interest or power of management or control*
9 *without the written consent of the supplier.*]

10 [(h) *Subsection (1)(j) of this section does not apply if the retailer and sup-*
11 *plier agreed to rights of succession.*]

12 [(i) *Notwithstanding subsection (1)(f), (h), (i) and (j) of this section, a sup-*
13 *plier may withhold consent to a transfer of interest in a retailer if, with due*
14 *regard to regional market conditions and distribution economies, the retailer's*
15 *area of responsibility or trade does not afford sufficient sales potential to rea-*
16 *sonably support a retailer.*]

17 **(1)(a) If a dealer or a supplier terminates a dealer agreement and**
18 **the dealer does not intend to retain any of the equipment or repair**
19 **parts the dealer purchased from the supplier, the supplier shall pay the**
20 **dealer or, if the dealer owes the supplier any outstanding balance,**
21 **shall credit to the dealer's account:**

22 **(A) One hundred percent of the net equipment cost for all new**
23 **equipment that the dealer did not sell and that is undamaged.**

24 **(B) One hundred percent of the net equipment cost, less a reason-**
25 **able amount for depreciation, for all demonstrators that the dealer did**
26 **not sell and that are undamaged.**

27 **(C) Ninety percent of the current net parts cost for new repair parts**
28 **that the dealer did not sell and that are undamaged.**

29 **(D) Five percent of the current net parts price of all repair parts**
30 **the dealer returns to the supplier as compensation for handling,**
31 **packing and loading the repair parts, unless the supplier elects to**

1 handle, pack and load the repair parts.

2 (E) The fair market value of data processing hardware and soft-
3 ware, including hardware and software for communications between
4 the dealer and the supplier, that the supplier required the dealer to
5 purchase or acquire. For the purposes of this subparagraph, “fair
6 market value” means the cost the dealer paid to acquire hardware and
7 software that meets and does not exceed the minimum requirements
8 the supplier specified, plus the cost of shipping, handling and set-up
9 fees, less an amount for straight-line depreciation over three years.

10 (F) Seventy-five percent of the net cost of any specialized tools the
11 dealer purchased in the 15 years before the date on which the dealer
12 agreement terminated to meet the supplier’s requirements for servic-
13 ing or repairing the supplier’s equipment, if the tools are:

14 (i) Uniquely suited for the supplier’s product line; and

15 (ii) Complete and in good operating condition.

16 (b) For the purpose of calculating the amount due to a dealer, a
17 demonstrator is subject to reimbursement under paragraph (a)(B) of
18 this subsection if the demonstrator has less than 50 total hours of use.

19 (c) The payments required under this subsection apply only to
20 equipment, demonstrators and repair parts that the dealer previously
21 purchased from the supplier and held on the date that the dealer
22 agreement terminated or expired.

23 (2) A supplier and a dealer shall each pay 50 percent of the cost of
24 freight, at truckload rates, that is necessary to return equipment and
25 repair parts to the supplier under this section.

26 (3)(a) A supplier shall pay a dealer for equipment, demonstrators
27 and repair parts described in subsection (1) of this section within 90
28 days after the supplier receives the equipment, demonstrators and re-
29 pair parts from the dealer.

30 (b) If a supplier does not pay a dealer in accordance with paragraph
31 (a) of this subsection, the supplier shall pay the dealer interest at the

1 lesser of 12 percent per annum or the maximum rate allowed by law.

2 (c) Notwithstanding paragraphs (a) and (b) of this subsection, a
3 supplier may withhold from a dealer a payment otherwise required
4 under this subsection during any period after the termination or ex-
5 piration of a dealer agreement in which the dealer fails to comply with
6 a contractual requirement to remove signage that indicates that the
7 dealer is authorized to sell, repair or service the supplier's equipment.

8 (4) Notwithstanding any provision to the contrary in the Uniform
9 Commercial Code, a dealer retains title to and has a first and prior lien
10 against inventory that the dealer returns to a supplier under this
11 section until the supplier pays the dealer all amounts for the inventory
12 that the supplier owes to the dealer. Until the supplier pays the
13 dealer, the supplier holds the inventory and any proceeds from the
14 inventory in trust for the dealer. Title and the right to possess the
15 inventory passes to the supplier only at the time the supplier pays the
16 dealer or credits the dealer's account.

17 (5) This section does not require a supplier to repurchase from a
18 dealer:

19 (a) A repair part intended for retail sale that is in a broken or
20 damaged package, except that the supplier shall repurchase a repair
21 part in a broken or damaged package at 85 percent of the current net
22 parts cost for the repair part if the aggregated current net parts cost
23 for all of the repair parts the dealer holds is \$75 or more.

24 (b) A repair part that the supplier cannot, without reconditioning,
25 resell as new.

26 (c) Inventory for which the dealer cannot provide, to the supplier's
27 satisfaction, evidence of title that is free and clear of claims, liens or
28 encumbrances, unless title to the inventory will become free and clear
29 of claims, liens or encumbrances once the supplier pays any amounts
30 due to claimants or lienholders.

31 (d) Inventory that the dealer intends to and has a contractual right

1 to retain.

2 (e) Equipment or repair parts, other than demonstrators, that are
3 sold or are damaged, incomplete or not new.

4 (f) Equipment or repair parts that the dealer ordered on or after the
5 date on which the dealer agreement terminated or expired.

6 (g) Equipment or repair parts that the dealer acquired from a
7 source other than the supplier, unless the dealer ordered the equip-
8 ment or repair parts through the supplier or the supplier invoiced the
9 dealer for the equipment or repair parts.

10 (h) Equipment or repair parts that the dealer does not return to the
11 supplier within 90 days after the later of:

12 (A) The effective date on which a dealer agreement terminated or
13 expired; or

14 (B) The date on which the dealer receives from the supplier all in-
15 formation, documentation or supporting materials the dealer requires
16 to comply with the supplier's return policy, unless the supplier did not
17 notify the dealer at the time the supplier terminated the dealer
18 agreement that the dealer must return the equipment or repair parts
19 within 90 days.

20 (6) This section does not affect a supplier's security interest in in-
21 ventory that a dealer holds. A repurchase under this section is not
22 subject to any law that regulates bulk sales or to the claims of secured
23 or unsecured creditors of the supplier or an assignee of the supplier
24 until after the dealer has received full payment or credit due under
25 this section.

26 **SECTION 7.** ORS 646A.312 is amended to read:

27 646A.312. [(1) As used in this section:]

28 [(a) "Good cause" means a retailer's:]

29 [(A) Failing to comply with a term in a retailer agreement that also appears
30 in a retailer agreement that similarly situated retailers have with the same
31 supplier, including a term that requires the retailer to meet marketing

1 *criteria;]*

2 *[(B) Transferring a controlling ownership interest in the retailer's business*
3 *without the supplier's consent;]*

4 *[(C) Making a material misrepresentation or falsification of a record, con-*
5 *tract, report or other document that the retailer has submitted to the*
6 *supplier;]*

7 *[(D) Filing a voluntary petition in bankruptcy;]*

8 *[(E) Being placed involuntarily in bankruptcy and not discharging the*
9 *bankruptcy within 60 days after the filing;]*

10 *[(F) Becoming insolvent;]*

11 *[(G) Being placed in a receivership;]*

12 *[(H) Pleading guilty to, being convicted of or being imprisoned for a*
13 *felony;]*

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

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

18 *[(K) Failing to satisfy a payment obligation as the payment obligation*
19 *comes due and payable to the supplier;]*

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

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

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

31 *[(O) Consistently failing to meet building and housekeeping requirements;*

1 or]

2 [(P) Consistently failing to comply with the licensing laws that apply to the
3 supplier's products and services.]

4 [(b) "Similarly situated retailer" means a retailer that:]

5 [(A) Is in a similar geographic area;]

6 [(B) Has similar sales volumes; and]

7 [(C) Is in a similar market for farm implements, machinery and repair
8 parts.]

9 [(2)(a) A supplier that has a basis for asserting good cause may, directly
10 or through an officer, agent or employee, terminate, cancel or not renew a
11 retailer agreement or may cause a change in competitive circumstances for a
12 retailer. Except as provided in subsections (3) and (4) of this section, a termi-
13 nation, cancellation, nonrenewal or change in competitive circumstances be-
14 comes effective upon notice to the retailer. The notice must state the reasons
15 that constitute good cause for the termination, cancellation, nonrenewal or
16 change in competitive circumstances.]

17 [(b) A provision or allowance in a retailer agreement for an event, act or
18 omission may be considered but does not control whether the event, act or
19 omission resulted in a change in competitive circumstances.]

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

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

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

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

31 [(c) If the retailer cures the deficiency within 60 calendar days, the notice

1 *is void.]*

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

5 *[(4)(a) If a supplier's basis for asserting good cause is a retailer's failure*
6 *to meet marketing criteria under subsection (1)(a)(A) of this section or a pro-*
7 *vision of subsection (1)(a)(N) of this section, the supplier shall give the retailer*
8 *18 months' written notice of the supplier's intent to terminate, cancel or not*
9 *renew the retailer agreement or to cause a change in competitive circumstances*
10 *for the retailer.]*

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

12 *[(A) State the supplier's reasons for terminating, canceling or not renewing*
13 *the retailer agreement or for causing a change in competitive circumstances for*
14 *the retailer; and]*

15 *[(B) Provide that the retailer has one year in which to cure a claimed de-*
16 *ficiency.]*

17 *[(c) If the retailer cures the claimed deficiency within one year, the notice*
18 *is void.]*

19 *[(d) If the retailer fails to cure the claimed deficiency within one year, the*
20 *termination, cancellation, nonrenewal or change in competitive circumstances*
21 *becomes effective on the date specified in the notice.]*

22 **A supplier may not:**

23 **(1) Coerce, compel or require a dealer to accept equipment or repair**
24 **parts that the dealer has not ordered voluntarily unless otherwise**
25 **provided by law or unless the equipment or repair parts are safety**
26 **features for other equipment or repair parts.**

27 **(2) Require a dealer to purchase other goods or services as a con-**
28 **dition of having access to equipment, repair parts or other goods or**
29 **services, except that a supplier may require a dealer to purchase repair**
30 **parts, special tools and training services that are reasonably necessary**
31 **to maintain the safety or quality of equipment that the dealer pur-**

1 chases from the supplier.

2 (3) Coerce a dealer into refusing to purchase another supplier's
3 equipment by methods that include, but are not limited to:

4 (a) Conditioning the supplier's approval of a dealer's development
5 or acquisition of a dealership location on the dealer's agreement not
6 to purchase equipment from another supplier; and

7 (b) Requiring a dealer to maintain a separate facility, financial
8 statement or sales staff to sell different lines of equipment or equip-
9 ment the dealer purchases from other suppliers.

10 (4) Refuse to deliver to a dealer, in reasonable quantities and within
11 a reasonable time after receiving the dealer's order, equipment that
12 the supplier represents as available for immediate delivery in adver-
13 tisements or by other means or that the supplier agrees to supply
14 under the terms of a dealer agreement, unless the supplier's refusal
15 results from:

16 (a) A reasonable and prudent restriction on an extension of credit
17 to the dealer;

18 (b) A strike, labor difficulty or other work stoppage that delays
19 delivery;

20 (c) A bona fide shortage of materials that delays or halts production
21 or reduces production volume;

22 (d) A freight embargo or other transportation difficulty that delays
23 shipments; or

24 (e) Another cause over which the supplier does not have control
25 that limits production, transportation or delivery of the equipment.

26 (5) Discriminate, directly or indirectly, against a dealer and in favor
27 of another dealer in the same product line with respect to:

28 (a) Filling the dealer's order for equipment that is for retail sale
29 or lease and that is covered under a dealer agreement;

30 (b) The price of equipment or repair parts with the same or a sim-
31 ilar grade or quality and identical branding if the discrimination has

1 or could have the effect of substantially limiting competition, tends
2 to create a monopoly in any line of commerce, or injures, destroys or
3 prevents competition with a dealer that agrees to, or knowingly re-
4 ceives the benefit of, the discrimination, except that a supplier may
5 discriminate in pricing on the basis of:

6 (A) Differences in cost for manufacturing, selling or delivering the
7 equipment or repair parts;

8 (B) A good faith attempt to meet the price of a competitor; or

9 (C) The volume of equipment and repair parts that the dealer pur-
10 chases or the market share that the dealer has obtained.

11 (6) Prevent a dealer, by contract or otherwise, from changing the
12 dealer's capital structure, ownership or financing, except that the
13 supplier may require the dealer to:

14 (a) Give notice to the supplier before making the change;

15 (b) Meet reasonable capitalization standards that are specified in
16 the dealer agreement and that the supplier imposes on similarly situ-
17 ated dealers; and

18 (c) Not change the person that has actual or effective control of a
19 majority of the dealer's outstanding voting stock or that has other
20 equity interests with general voting rights.

21 (7) Prohibit a dealer from closing a business location unless the
22 closure results in reducing by more than one-third the business lo-
23 cations through which the dealer sells the supplier's equipment.

24 (8) Prohibit a dealer from moving a business location, unless the
25 supplier reasonably determines that the change in the dealer's busi-
26 ness location will impair the business of another dealer that sells the
27 supplier's equipment.

28 (9) Amend a dealer agreement without the dealer's prior written
29 consent or include in the dealer agreement a provision to which a
30 supplier may deem a dealer to have consented under all circumstances.

31 (10) Terminate a dealer agreement, product line or authorization to

1 **sell the supplier's equipment or substantially change the dealer's**
2 **competitive circumstances without good cause or because the dealer**
3 **refused to accept a new or amended dealer agreement.**

4 **(11) Require a dealer to agree to a release, assignment, waiver or**
5 **novation that estops liability or releases any person from liability un-**
6 **der ORS 646A.300 to 646A.322.**

7 **SECTION 8.** ORS 646A.314 is amended to read:

8 646A.314. *[(1) If a supplier enters into an agreement to establish a new*
9 *retailer or dealership or to relocate a retailer or dealership, and the agreement*
10 *assigns an area of responsibility, the supplier must give written notice of the*
11 *agreement by certified mail to any retailer or dealership within an assigned*
12 *area of responsibility that is within or contiguous to the area of the new or*
13 *relocated retailer or dealership.]*

14 *[(2) If a supplier enters into an agreement to establish a new retailer or*
15 *dealership or to relocate a retailer or dealership, and the agreement does not*
16 *assign an area of responsibility, the supplier must give written notice of the*
17 *agreement by certified mail to any retailer or dealership within a 75-mile ra-*
18 *dius of the new or relocated retailer or dealership.]*

19 *[(3) A notice required by this section shall contain:]*

20 *[(a) The new location of the retailer or dealership;]*

21 *[(b) The date that the retailer or dealership will commence business at the*
22 *new location; and]*

23 *[(c)(A) If the agreement assigns an area of responsibility, the name and*
24 *address of retailers and dealerships with assigned areas of responsibility that*
25 *are within or contiguous to the area of the new or relocated retailer or deal-*
26 *ership; or]*

27 *[(B) If the agreement does not assign an area of responsibility, the name*
28 *and address of retailers and dealerships within a 75-mile radius of the new*
29 *or relocated retailer or dealership.]*

30 **(1)(a) A supplier shall accept or reject in writing a warranty claim**
31 **from a dealer within 30 days after the date on which the supplier re-**

1 ceives the warranty claim if:

2 (A) The dealer complies with reasonable policies and procedures
3 established by the supplier for warranty claim reimbursement;

4 (B) The supplier permits the warranty claim under the supplier's
5 policies for warranty claim reimbursement; and

6 (C) The dealer submitted the warranty claim:

7 (i) At any time during which a dealer agreement is in effect be-
8 tween the supplier and the dealer; or

9 (ii) Within 60 days after the date on which a dealer agreement ter-
10 minates or expires, if the warranty claim is for work the dealer per-
11 formed before the dealer agreement terminated or expired.

12 (b) A supplier's policies and procedures for warranty claim re-
13 imbursement are not reasonable if the policies and procedures conflict
14 with the requirements of this section.

15 (2) A supplier shall pay a dealer or credit a dealer's account the full
16 amount of any warranty claim the supplier approves within 30 days
17 after accepting the warranty claim.

18 (3)(a) If a supplier rejects a warranty claim, the supplier shall pro-
19 vide in a written rejection notice reasons for the rejection that are
20 consistent with the reasons the supplier gives for rejecting warranty
21 claims from other dealers, with the terms of the dealer agreement and
22 with respect to how the dealer applies similar terms in dealer agree-
23 ments with other dealers.

24 (b) If a supplier rejects a warranty claim because a dealer failed to
25 follow procedural or technical requirements for submitting the war-
26 ranty claim, the dealer may resubmit the warranty claim in accord-
27 ance with the requirements within 30 days after the dealer receives the
28 supplier's notice of rejection. A warranty claim that a dealer resub-
29 mits under this paragraph is subject to the provisions of subsection (1)
30 of this section.

31 (c) If the supplier fails to accept or reject a warranty claim in ac-

1 cordance with subsection (1) of this section, the supplier has effec-
2 tively accepted the warranty claim and shall pay or credit the dealer
3 as provided in subsection (2) of this section.

4 (4) A supplier shall compensate a dealer for a warranty claim on the
5 basis of a calculation in which the dealer's established labor rate for
6 performing service to retail customers not under warranty is multi-
7 plied by the reasonable and customary time for completing the re-
8 quired service, expressed as hours and fractions of hours. Before
9 making a warranty claim, the dealer shall inform the supplier of the
10 dealer's labor rate. The supplier shall reimburse the dealer for repair
11 parts the dealer uses at the current net parts cost plus 15 percent and
12 the cost of freight for the repair parts.

13 (5) A dealer may submit a warranty claim for payment in accord-
14 ance with this section for any service the dealer performs on, or repair
15 parts the dealer uses for, equipment of the supplier that the dealer has
16 in inventory or equipment of a customer of the dealer at the supplier's
17 specific request, including work the dealer performs in connection
18 with a product improvement program.

19 (6) A supplier may audit a warranty claim that a dealer submits to
20 the supplier for one year after the date on which the supplier pays the
21 warranty claim and may require the dealer to reimburse the supplier
22 for any amounts the supplier paid on a warranty claim that the audit
23 shows the dealer misrepresented. If an audit shows that a dealer mis-
24 represented a warranty claim, the supplier may audit each warranty
25 claim the dealer submitted to the supplier in the three years before
26 the date on which the audit showed the misrepresentation.

27 (7)(a) A dealer may choose to accept reimbursement for a warranty
28 claim for the dealer's labor costs under terms and conditions that
29 differ from the requirements of this section if the dealer agreement
30 between the supplier and the dealer requires the supplier to compen-
31 sate the dealer by means of:

1 (A) A discount of not less than five percent of the retail price of
2 equipment the supplier sells to the dealer; or

3 (B) A lump sum payment for all of the dealer's outstanding war-
4 ranty claims for labor made within 90 days after the supplier sells new
5 equipment to the dealer.

6 (b) This subsection does not affect a supplier's obligation to reim-
7 burse a dealer for repair parts in accordance with subsection (4) of this
8 section.

9 **SECTION 9.** ORS 646A.316 is amended to read:

10 646A.316. [*Unless otherwise agreed:*]

11 [(1) *On a warranty claim, a supplier shall provide reasonable compensation*
12 *for the retailer's costs, including but not limited to:*]

13 [(a) *Diagnostic services;*]

14 [(b) *Repair services;*]

15 [(c) *Repair parts; and*]

16 [(d) *Labor.*]

17 [(2) *For labor on warranty service, a supplier may not pay a retailer an*
18 *hourly rate that is less than the rate that the retailer charges for nonwarranty*
19 *service.*]

20 [(3) *For repair parts on warranty service, a supplier may not pay a retailer*
21 *less than the amount that the retailer paid for the parts plus a reasonable al-*
22 *lowance for the shipping and handling of the parts.*]

23 [(4) *A supplier must allow a reasonable time for a retailer to complete*
24 *warranty service.*]

25 **A provision of a dealer agreement is void if the provision purports**
26 **to:**

27 (1) **Waive a provision of ORS 646A.300 to 646A.322;**

28 (2) **Subject or otherwise apply the law of another state to the dealer**
29 **agreement or to a matter to which ORS 646A.300 to 646A.322 applies;**

30 (3) **Require a legal action or arbitration proceeding to occur or be**
31 **brought in a jurisdiction outside a state in which a dealer is located;**

1 or

2 **(4) Require a dealer to pay attorney fees that a supplier incurred.**

3 **SECTION 10.** ORS 646A.318 is amended to read:

4 646A.318. *[(1) A supplier shall approve or disapprove a warranty claim in*
5 *writing within 30 calendar days of the supplier's receipt of the claim.]*

6 *[(2) If a supplier does not approve or disapprove a warranty claim in*
7 *writing within 30 calendar days of the supplier's receipt of the claim, the*
8 *supplier shall pay the claim within 60 calendar days of receipt of the claim.]*

9 *[(3) A supplier that approves a warranty claim shall pay the claim within*
10 *30 calendar days of the claim's approval.]*

11 *[(4) A supplier that disapproves a warranty claim shall, in the writing re-*
12 *quired by subsection (1) of this section, notify the retailer of the reasons for*
13 *the disapproval.]*

14 *[(5) If a supplier disapproves a warranty claim because the retailer failed*
15 *to comply with procedures for submitting the claim prescribed by the retailer*
16 *agreement, the retailer may resubmit the claim within 30 calendar days of the*
17 *retailer's receipt of the supplier's disapproval.]*

18 *[(6) A supplier may not disapprove a warranty claim as untimely if the*
19 *claim covers service or parts provided while a retailer agreement was in*
20 *effect.]*

21 *[(7)(a) For one year after payment of a warranty claim, the supplier may*
22 *audit records that support the claim.]*

23 *[(b) A supplier may not audit a record that supports a claim more than one*
24 *year after paying the claim unless an audit has disclosed that the retailer*
25 *submitted a false claim.]*

26 *[(c) A supplier may:]*

27 *[(A) Adjust a claim paid in error;]*

28 *[(B) Require a retailer to return payment made on a false claim; and]*

29 *[(C) If the retailer owes an amount to the supplier, credit the amount of a*
30 *claim to the retailer's account.]*

31 **(1) A supplier that refuses to repurchase inventory from a dealer**

1 under ORS 646A.310 is liable to the dealer for an amount that is
2 equivalent to 110 percent of the amount the supplier would have owed
3 the dealer if the supplier had complied with ORS 646A.310 in a timely
4 manner, plus the cost of any freight the dealer paid, any interest that
5 has accrued under ORS 646A.310 (3)(b), the costs of arbitration or court
6 proceedings and reasonable attorney fees.

7 (2) A dealer may elect to pursue a remedy under a dealer agreement
8 or under the provisions of ORS 646A.300 to 646A.322. An election to
9 pursue a remedy under a dealer agreement does not bar a dealer from
10 pursuing any other legal or equitable remedy available to the dealer,
11 including a remedy under ORS 646A.300 to 646A.322.

12 (3) A dealer may bring an action in a circuit court of this state
13 against a supplier that violates ORS 646A.300 to 646A.322 and may re-
14 ceive damages the dealer sustained as a consequence of the supplier's
15 violation, including, but not limited to, damages for lost profits, plus
16 costs and attorney fees. The dealer may also seek, and a court may
17 grant, an injunction or other equitable relief against an unlawful ter-
18 mination of a dealer agreement or an unlawful change in the dealer's
19 competitive circumstances.

20 (4) The remedies set forth in this section are not exclusive and are
21 in addition to and not in lieu of any other remedies available to a
22 dealer under law.

23 SECTION 11. ORS 646A.320 and 646A.322 are repealed.

24 SECTION 12. The amendments to ORS 646A.300, 646A.302, 646A.304,
25 646A.306, 646A.308, 646A.310, 646A.312, 646A.314, 646A.316 and 646A.318
26 by sections 1 to 10 of this 2017 Act apply to dealer agreements that
27 dealers enter into or renew and actions subject to ORS 646A.300 to
28 646A.322 that suppliers or dealers take on or after the effective date
29 of this 2017 Act.

30 SECTION 13. This 2017 Act takes effect on the 91st day after the
31 date on which the 2017 regular session of the Seventy-ninth Legislative

1 **Assembly adjourns sine die.**

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