

# Senate Bill 982

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**.

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; amending ORS  
3 646A.300, 646A.302, 646A.304, 646A.306, 646A.308, 646A.310, 646A.312, 646A.314, 646A.316 and  
4 646A.318; repealing ORS 646A.320 and 646A.322; and prescribing an effective date.

5 The Legislative Assembly finds and declares that:

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

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

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

### Be It Enacted by the People of the State of Oregon:

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

16 646A.300. As used in ORS 646A.300 to 646A.322:

17 [(1) "Catalog" means a catalog published in any medium, including an electronic catalog.]

18 [(2) "Change in competitive circumstances" means an event, act or omission that has a material  
19 detrimental effect on a retailer's ability to compete with another retailer that sells the same brand of  
20 farm implements.]

21 [(3) "Current model" means a model that is listed in the supplier's current sales manual or any  
22 supplements to the manual.]

23 [(4) "Current net price" means:]

24 [(a) The price of parts or farm implements that are listed in a supplier's price list or catalog that  
25 is in effect at the time a contract is canceled or discontinued, less any applicable trade, volume or cash  
26 discounts, or at the time that a retailer made a warranty claim.]

**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 price listed for superseded parts in a supplier's price list or catalog at the time a retailer***  
 2 ***purchased the parts.]***

3       ***[(5) "Current signs" means principal outdoor signs that:]***

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

5       ***[(b) Identify the supplier; and]***

6       ***[(c) Identify the retailer as representing the supplier or the supplier's farm implements or machin-***  
 7 ***ery.]***

8       ***[(6) "Dealership" means a location from which a retailer buys, sells, leases, trades, stores, takes***  
 9 ***on consignment or in any other manner deals in farm implements.]***

10       ***[(7) "Distributor" means a person who sells or distributes new farm implements to a retailer.]***

11       ***[(8) "Farm implements" means:]***

12       ***[(a) Any vehicle designed or adapted and used exclusively for agricultural operations and only***  
 13 ***incidentally operated or used upon the highways;]***

14       ***[(b) Auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural op-***  
 15 ***erations;]***

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

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

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

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

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

24       ***[(11) "Manufacturer" means a person that manufactures or assembles new or unused farm imple-***  
 25 ***ments.]***

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

27       ***[(13) "Retailer" means any person that engages in the business of retailing farm implements, ma-***  
 28 ***chinery or repair parts in this state.]***

29       ***[(14) "Retailer agreement" means an agreement between a supplier and a retailer that provides for***  
 30 ***the rights and obligations of the supplier and retailer with respect to selling or purchasing farm im-***  
 31 ***plements.]***

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

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

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

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

37       ***[(a) A wholesaler, manufacturer, manufacturer's representative or distributor.]***

38       ***[(b) A successor in interest of a manufacturer, manufacturer's representative or distributor, in-***  
 39 ***cluding, but not limited to:]***

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

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

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

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

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

1 (1) “Current net parts cost” means the current net parts price for a repair part, less any  
 2 trade or cash discounts a supplier gives to a dealer on the dealer’s orders of repair parts in  
 3 the ordinary course of business.

4 (2) “Current net parts price” means:

5 (a) The price for a repair part listed in a supplier’s price list or catalog that is in effect:

6 (A) At the time a dealer agreement between the supplier and a dealer terminates or ex-  
 7 pires; or

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

9 (b) The price that is in effect, at the time the dealer agreement terminates or expires,  
 10 for a part that performs the same function as a superseded repair part but is listed in the  
 11 supplier’s price list or catalog under a different part number.

12 (3) “Dealer” means a person that engages primarily in the business of selling, leasing,  
 13 servicing or repairing equipment at retail or selling repair parts at retail.

14 (4) “Dealer agreement” means an agreement that sets forth the rights and obligations  
 15 of a supplier and a dealer with respect to:

16 (a) Selling and purchasing equipment and repair parts;

17 (b) Submitting and paying warranty claims; and

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

20 (A) Prohibit in a dealer agreement; or

21 (B) Address specifically.

22 (5) “Dealership” means a retail business in which a dealer engages under the terms of a  
 23 dealer agreement to sell or lease equipment and repair parts or to repair and service equip-  
 24 ment.

25 (6) “Demonstrator” means equipment in a dealer’s inventory that the dealer has not sold  
 26 at retail but has used to show features or capabilities of the same type of equipment to a  
 27 potential customer without charge to the potential customer, or in accordance with a  
 28 short-term rental agreement, and with the intent to encourage the potential customer to  
 29 purchase the equipment.

30 (7)(a) “Equipment” means:

31 (A) An all-terrain vehicle, utility task vehicle or recreational off-highway vehicle, re-  
 32 gardless of the type of use for each vehicle; and

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

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

36 (ii) Planting, cultivating, irrigating, harvesting or producing agricultural or forestry  
 37 products;

38 (iii) Raising, feeding, tending to or harvesting the products of livestock, or conducting  
 39 any activity related to raising, feeding, tending to or harvesting the products of livestock;  
 40 or

41 (iv) Construction, mining or other industry or utilities and applications related to con-  
 42 struction, mining or other industry or utilities.

43 (b) “Equipment” does not include a trailer or self-propelled vehicle for transporting per-  
 44 sons or property on a street or highway.

45 (8) “Family member” means a person’s spouse, child, son-in-law, daughter-in-law or lineal

1 descendant.

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

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

5 (11) "Net equipment cost" means the price a dealer paid to a supplier for equipment, plus:

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

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

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

16 (13) "Repair parts" means components, kits, replacement parts and similar items, in-  
17 cluding superseded items and parts for repairing equipment.

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

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

22 (b) Has a total annual average sales volume of equipment from a single-line supplier that  
23 exceeds \$25 million in the five years before an applicable date set forth in the dealer agree-  
24 ment for determining sales volume, except that the total annual average sales volume may  
25 increase each year by an amount that is equivalent to \$25 million multiplied by the percent-  
26 age of increase in the United States Bureau of Labor's producer price index for construction  
27 machinery, or a similar price index, in the period from January of the preceding year to  
28 January of the current year.

29 (15) "Single-line dealer agreement" means an agreement that sets forth the respective  
30 rights and obligations of a single-line supplier and a single-line dealer with respect to pur-  
31 chasing and selling equipment for construction, forestry, industry and mining.

32 (16) "Single-line supplier" means a supplier that sells equipment for construction,  
33 forestry, industry and mining that constitutes 75 percent of the new equipment for con-  
34 struction, forestry, industry and mining that is in a single-line dealer's inventory.

35 (17) "Supplier" means:

36 (a) A person that is engaged in the business of manufacturing, assembling or distributing  
37 equipment or repair parts;

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

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

41 (d) A person that purchases the assets or stock of a person described in paragraph (a)  
42 of this subsection; and

43 (e) A corporation that survives a merger with a person described in paragraph (a) of this  
44 subsection or that survives the person's liquidation or reorganization.

45 (18) "Terminate" means to end by cancelling, discontinuing or failing to renew.

1       **(19) “Warranty claim” means a claim for payment that a dealer submits to a supplier for**  
 2 **service or parts that the dealer provided to a customer under a warranty that the supplier**  
 3 **issued.**

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

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

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

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

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

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

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

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

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

29       646A.304. *[(1) If a retailer agreement is terminated, canceled or discontinued, unless the retailer*  
 30 *elects to keep the farm implements, machinery and repair parts under a contractual right to do so, the*  
 31 *supplier shall pay the retailer for the farm implements, machinery and repair parts or, if the retailer*  
 32 *owes any sums to the supplier, credit the cost of the farm implements, machinery and repair parts to*  
 33 *the retailer’s account. The payment or credit shall be as follows:]*

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

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

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

5       [(B) *This paragraph applies to parts purchased by the retailer from the supplier and held by the*  
6 *retailer on or after the date of the cancellation or discontinuance of the retailer agreement.]*

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

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

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

11       [(iii) *The retailer failed to return after being offered a reasonable opportunity to return the repair*  
12 *part at a price not less than 100 percent of the net price of the repair part as listed in the then current*  
13 *price list or catalog.]*

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

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

17       [(vi) *Are not resalable as new parts without new packaging or reconditioning because of their*  
18 *condition.]*

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

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

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

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

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

30       [(ii) *The retailer possesses on the date of the agreement's termination, cancellation or discontinua-*  
31 *tion.]*

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

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

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

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

37       [(c) *The payment or credit shall be the net cost of the hardware and software, less 20 percent per*  
38 *year that the retailer possessed the hardware and software.]*

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

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

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

45       [(c)(A) *If a tool is new and unused and used for the supplier's current models, the payment or*

1 *credit shall be the net cost of the tool.]*

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

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

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

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

10 *[(5) A supplier shall provide all payments or allowances due under this section within 90 calendar*  
11 *days of the retailer's return of the farm implements, machinery, repair parts, computer and communi-*  
12 *cations hardware, computer software, specialized tools or current signs. A supplier who does not pro-*  
13 *vide a payment or allowance within 90 calendar days of the retailer's return of the farm implements,*  
14 *machinery, repair parts, computer and communications hardware, computer software, specialized tools*  
15 *or current signs shall pay the retailer interest of 18 percent per annum on the past due amount until*  
16 *paid.]*

17 *[(6) This section supplements any retailer agreement between the retailer and the supplier covering*  
18 *the return of farm implements, machinery, repair parts, computer and communications hardware, com-*  
19 *puter software, specialized tools or current signs. The retailer may elect to pursue either the retailer's*  
20 *remedy under the retailer agreement or the remedy provided under this section. An election by the*  
21 *retailer to pursue the remedy under the retailer agreement does not bar the retailer's right to the rem-*  
22 *edy provided under this section as to those farm implements, machinery, repair parts, computer and*  
23 *communications hardware, computer software, specialized tools or current signs not affected by the*  
24 *retailer agreement. This section does not affect the right of a supplier to charge back to the retailer's*  
25 *account amounts previously paid or credited as a discount incident to the retailer's purchase of*  
26 *goods.]*

27 *[(7) This section does not apply to farm implements, machinery, repair parts, computer and com-*  
28 *munications hardware, computer software, specialized tools or current signs that a retailer acquired*  
29 *from a source other than the supplier.]*

30 **(1) A dealer shall give a supplier written notice of the dealer's intent to terminate a**  
31 **dealer agreement at least 30 days before terminating the dealer agreement.**

32 **(2)(a) Except as otherwise provided in this section, a supplier shall give a dealer written**  
33 **notice of the supplier's intent at least 180 days before terminating the dealer agreement,**  
34 **withdrawing a dealer's authorization to sell a product line or type of equipment or an au-**  
35 **thorization to sell a product line or type of equipment at one or more of the dealer's business**  
36 **locations or substantially changing the dealer's competitive circumstances.**

37 **(b) A notice under paragraph (a) of this subsection must specify good cause for the ter-**  
38 **mination, the withdrawal or the change, along with supporting evidence or reasons the sup-**  
39 **plier has for believing the supplier has good cause. The notice must state that the dealer has**  
40 **not less than 60 days in which to cure any deficiency that constitutes good cause.**

41 **(c) If a dealer cures the deficiency described in a notice under paragraph (a) of this**  
42 **subsection, the supplier may not proceed with the termination, withdrawal or change.**

43 **(3) If the supplier determines that good cause exists under ORS 646A.308 (1)(j) for ter-**  
44 **minating a dealer agreement, for withdrawing a dealer's authorization to sell a product line**  
45 **or type of equipment or an authorization to sell a product line or type of equipment at one**

1 or more of the dealer's business locations or for substantially changing the dealer's com-  
2 petitive circumstances, the supplier shall give the dealer notice of the supplier's determi-  
3 nation at least two years before terminating the dealer agreement, withdrawing the  
4 authorization or substantially changing the dealer's competitive circumstances. If within the  
5 two-year period the dealer meets or complies with the supplier's reasonable standards and  
6 performance objectives, the supplier may not proceed with the termination, withdrawal or  
7 change.

8 (4)(a) If a supplier has authority under a dealer agreement, a contract or another  
9 agreement to approve the sale or transfer of a dealership or a change in the equity owner-  
10 ship of a dealer and the authority is not otherwise prohibited by law, the supplier shall ap-  
11 prove or disapprove a sale, transfer or change in equity ownership within 60 days after  
12 receiving a request for approval from the dealer. If the supplier does not act on the dealer's  
13 request within the 60-day period, the sale, transfer or change in equity ownership is ap-  
14 proved.

15 (b) If an individual with a controlling interest in a dealer dies, the individual's estate or  
16 another person with authority to sell or transfer the dealership or change the equity own-  
17 ership of the dealer has not less than 180 days within which to submit to a supplier a request  
18 under paragraph (a) of this subsection. The supplier shall approve or disapprove the request  
19 as provided in paragraph (a) of this subsection. During the 180-day period, the supplier may  
20 not terminate the dealer agreement, may not withdraw a dealer's authorization to sell a  
21 product line or type of equipment or an authorization to sell a product line or type of  
22 equipment at one or more of the dealer's business locations and may not substantially  
23 change the dealer's competitive circumstances.

24 (5) If a supplier disapproves a request from a dealer under subsection (4) of this section,  
25 the supplier shall provide the dealer with a written notice that states the reasons for the  
26 disapproval. If the dealer's request is for a sale or transfer of the dealership, the supplier  
27 may disapprove the request only if the persons to which the dealer proposes to sell or  
28 transfer the dealership do not meet criteria for entering into a dealership agreement with  
29 the supplier that the supplier applies consistently and without favor to other prospective  
30 dealers.

31 (6)(a) The duties set forth in subsections (2) to (5) of this section do not apply to a sup-  
32 plier or a dealer under the circumstances described in this section if the supplier has a  
33 single-line dealer agreement with the dealer.

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

37 (c) A notice under paragraph (b) of this subsection must specify good cause for the ter-  
38 mination or the change, along with supporting evidence or reasons the single-line supplier  
39 has for believing the single-line supplier has good cause, and must state that the single-line  
40 dealer has not less than 60 days in which to cure any deficiency that constitutes good cause.  
41 If a single-line dealer cures the deficiency described in a notice under paragraph (b) of this  
42 subsection, the single-line supplier may not proceed with the termination or change.

43 (d) If the good cause a single-line supplier specifies for terminating a single-line dealer  
44 agreement is a failure to achieve or maintain market share for the single-line supplier's  
45 equipment in accordance with a target the single-line supplier sets, the single-line supplier

1 **shall work with the single-line dealer for a reasonable time to achieve the single-line dealer's**  
 2 **market share target.**

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

4 646A.306. *[(1) A supplier shall repurchase the inventory of a retailer, as if the supplier had ter-*  
 5 *minated the retailer agreement, as follows:]*

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

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

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

12 *[(3) Nothing in ORS 646A.300 to 646A.322 requires the repurchase of inventory by the supplier:]*

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

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

17 **(1) If an individual with a controlling interest in a single-line dealer dies and a family**  
 18 **member of the individual submits a request to a single-line supplier to operate the dealership**  
 19 **under a new single-line dealer agreement, the single-line supplier shall approve or disapprove**  
 20 **the request within 90 days after receiving the request. If the single-line supplier disapproves**  
 21 **the request, the single-line supplier shall notify the family member in writing and state the**  
 22 **reasons for the single-line supplier's disapproval.**

23 **(2) If a single-line supplier and a single-line dealer have executed an agreement that**  
 24 **designates the single-line dealer's successor in interest in the event an individual with a**  
 25 **controlling interest in the single-line dealer dies and the agreement is in effect at the time**  
 26 **of the individual's death, the agreement controls even if the agreement does not designate**  
 27 **a family member of the individual as the successor in interest.**

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

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

33 646A.308. *[(1) If, upon the cancellation of a retailer agreement by the retailer or the supplier, the*  
 34 *supplier fails to make payment as required by ORS 646A.304 or 646A.306, the supplier shall be liable*  
 35 *in a civil action to be brought by the retailer or by the retailer's spouse, heir or heirs for the payments*  
 36 *required under ORS 646A.304 or 646A.306.]*

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

39 **(1) A supplier has good cause to terminate a dealer agreement, to revoke an authori-**  
 40 **zation to sell a product line, a type of equipment or all of a supplier's equipment at all or**  
 41 **any of the dealer's business locations or to substantially change the dealer's competitive**  
 42 **circumstances if a dealer:**

43 **(a) Fails to substantially comply with requirements in a dealer agreement that are rea-**  
 44 **sonable and essential, that do not differ from requirements in dealer agreements with other**  
 45 **similarly situated dealers and that the supplier does not enforce in a manner that differs**

1 among dealers.

2 (b) Transfers a controlling ownership interest in a dealership without the supplier's  
3 consent.

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

8 (d) Adds, removes or otherwise changes business locations without the supplier's prior  
9 written approval, unless the supplier does not require prior written approval for the change.

10 (e) Defaults substantially under a chattel mortgage agreement or security agreement  
11 with the supplier.

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

16 (g) Fails to operate in the normal course of business for seven consecutive days or oth-  
17 erwise abandons the dealership.

18 (h) Pleads guilty to or was convicted of a felony that is related to the business relation-  
19 ship between the dealer and the supplier.

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

22 (j) Fails consistently to meet or comply with reasonable standards and performance ob-  
23 jectives that:

24 (A) The supplier imposes on the basis of the supplier's experience in comparable markets;  
25 and

26 (B) Do not differ in substance or in the manner of enforcement from standards that the  
27 supplier imposes on other similarly situated dealers.

28 (2) Subsection (1) of this section does not apply to a dealer that has a single-line dealer  
29 agreement with a supplier. Good cause for terminating a single-line dealer agreement or  
30 substantially changing a single-line dealer's competitive circumstances exists only if the  
31 single-line dealer:

32 (a) Fails to substantially comply with requirements in the single-line dealer agreement  
33 that do not differ from requirements in single-line dealer agreements with other similarly  
34 situated single-line dealers.

35 (b) Transfers an interest in the dealership or allows a partner, a major shareholder or  
36 another individual with a substantial ownership interest in or control of the single-line dealer  
37 to withdraw from the dealership or substantially reduce the partner's or shareholder's in-  
38 terest, unless the single-line supplier consents to the transfer, withdrawal or reduction.

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

41 (d) Adds or changes business locations without a single-line supplier's prior written ap-  
42 proval, which the single-line supplier may not withhold unreasonably.

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

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

1 (g) Fails to operate in the normal course of business for seven consecutive days or oth-  
2 erwise abandons the dealership.

3 (h) Pleads guilty to or was convicted of a felony that is related to the business relation-  
4 ship between the single-line dealer and the single-line supplier.

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

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

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

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

15 646A.310. [(1) A supplier may not:]

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

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

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

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

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

27 [(c) Require:]

28 [(A) As a condition of renewal or extension of a retailer agreement that the retailer complete sub-  
29 stantial renovation of the retailer's place of business, or acquire new or additional space to serve as  
30 the retailer's place of business, unless the supplier provides at least one year's written notice of the  
31 condition which states all grounds supporting the condition.]

32 [(B) A retailer to complete a renovation or acquisition in less than a reasonable time.]

33 [(C) A retailer to waive a right to bring an action to enforce the provisions of ORS 646A.300 to  
34 646A.322.]

35 [(d) Discriminate among similarly situated retailers in this state with respect to the prices charged  
36 for equipment of like grade and quality sold to them by the supplier.]

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

39 [(f) Prevent or attempt to prevent any retailer or any officer, member, partner or stockholder of any  
40 retailer from selling or transferring any interest to any other party or parties.]

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

43 [(h) Withhold consent to a transfer of an interest in a dealership unless the retailer's area of re-  
44 sponsibility or trade area does not afford sufficient sales potential to reasonably support a retailer.]

45 [(i) Unreasonably withhold consent to the sale, transfer or assignment of the retailer's interest or

1 *power of management or control in the retailer's business.]*

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

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

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

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

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

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

12 *[(c)(A) As used in this paragraph, "act of nature" means an unanticipated grave natural disaster*  
13 *or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which*  
14 *could not have been prevented or avoided by the exercise of due care or foresight.]*

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

17 *[(i) Prudent and reasonable restrictions on extension of credit by the supplier to the retailer;]*

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

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

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

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

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

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

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

26 *[(A) A supplier from using differentials resulting from the differing quantities in which equipment*  
27 *is sold or delivered.]*

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

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

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

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

33 *[(C) The change by the retailer does not result in a change of the controlling interest in the exec-*  
34 *utive management or board of directors, or of any guarantors of the retailer.]*

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

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

39 *[(h) Subsection (1)(j) of this section does not apply if the retailer and supplier agreed to rights of*  
40 *succession.]*

41 *[(i) Notwithstanding subsection (1)(f), (h), (i) and (j) of this section, a supplier may withhold consent*  
42 *to a transfer of interest in a retailer if, with due regard to regional market conditions and distribution*  
43 *economies, the retailer's area of responsibility or trade does not afford sufficient sales potential to*  
44 *reasonably support a retailer.]*

45 **(1)(a) If a dealer or a supplier terminates a dealer agreement and the dealer does not**

1 intend to retain any of the equipment or repair parts the dealer purchased from the supplier,  
2 the supplier shall pay the dealer or, if the dealer owes the supplier any outstanding balance,  
3 shall credit to the dealer's account:

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

6 (B) One hundred percent of the net equipment cost, less a reasonable amount for depre-  
7 ciation, for all demonstrators that the dealer did not sell and that are undamaged.

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

10 (D) Five percent of the current net parts price of all repair parts the dealer returns to  
11 the supplier as compensation for handling, packing and loading the repair parts, unless the  
12 supplier elects to handle, pack and load the repair parts.

13 (E) The fair market value of data processing hardware and software, including hardware  
14 and software for communications between the dealer and the supplier, that the supplier re-  
15 quired the dealer to purchase or acquire. For the purposes of this subparagraph, "fair mar-  
16 ket value" means the cost the dealer paid to acquire hardware and software that meets and  
17 does not exceed the minimum requirements the supplier specified, plus the cost of shipping,  
18 handling and set-up fees, less an amount for straight-line depreciation over three years.

19 (F) Seventy-five percent of the net cost of any specialized tools the dealer purchased in  
20 the 15 years before the date on which the dealer agreement terminated to meet the supplier's  
21 requirements for servicing or repairing the supplier's equipment, if the tools are:

22 (i) Uniquely suited for the supplier's product line; and

23 (ii) Complete and in good operating condition.

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

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

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

33 (3)(a) A supplier shall pay a dealer for equipment, demonstrators and repair parts de-  
34 scribed in subsection (1) of this section within 90 days after the supplier receives the equip-  
35 ment, demonstrators and repair parts from the dealer.

36 (b) If a supplier does not pay a dealer in accordance with paragraph (a) of this subsection,  
37 the supplier shall pay the dealer interest at the lesser of 12 percent per annum or the max-  
38 imum rate allowed by law.

39 (c) Notwithstanding paragraphs (a) and (b) of this subsection, a supplier may withhold  
40 from a dealer a payment otherwise required under this subsection during any period after  
41 the termination or expiration of a dealer agreement in which the dealer fails to comply with  
42 a contractual requirement to remove signage that indicates that the dealer is authorized to  
43 sell, repair or service the supplier's equipment.

44 (4) Notwithstanding any provision to the contrary in the Uniform Commercial Code, a  
45 dealer retains title to and has a first and prior lien against inventory that the dealer returns

1 to a supplier under this section until the supplier pays the dealer all amounts for the in-  
 2 ventory that the supplier owes to the dealer. Until the supplier pays the dealer, the supplier  
 3 holds the inventory and any proceeds from the inventory in trust for the dealer. Title and  
 4 the right to possess the inventory passes to the supplier only at the time the supplier pays  
 5 the dealer or credits the dealer's account.

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

7 (a) A repair part intended for retail sale that is in a broken or damaged package, except  
 8 that the supplier shall repurchase a repair part in a broken or damaged package at 85 per-  
 9 cent of the current net parts cost for the repair part if the aggregated current net parts cost  
 10 for all of the repair parts the dealer holds is \$75 or more.

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

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

16 (d) Inventory that the dealer intends to and has a contractual right to retain.

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

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

21 (g) Equipment or repair parts that the dealer acquired from a source other than the  
 22 supplier, unless the dealer ordered the equipment or repair parts through the supplier or the  
 23 supplier invoiced the dealer for the equipment or repair parts.

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

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

27 (B) The date on which the dealer receives from the supplier all information, documenta-  
 28 tion or supporting materials the dealer requires to comply with the supplier's return policy,  
 29 unless the supplier did not notify the dealer at the time the supplier terminated the dealer  
 30 agreement that the dealer must return the equipment or repair parts within 90 days.

31 (6) This section does not affect a supplier's security interest in inventory that a dealer  
 32 holds. A repurchase under this section is not subject to any law that regulates bulk sales  
 33 or to the claims of secured or unsecured creditors of the supplier or an assignee of the  
 34 supplier until after the dealer has received full payment or credit due under this section.

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

36 646A.312. [(1) As used in this section:]

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

38 [(A) Failing to comply with a term in a retailer agreement that also appears in a retailer agreement  
 39 that similarly situated retailers have with the same supplier, including a term that requires the retailer  
 40 to meet marketing criteria;]

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

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

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

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

3        *[(F) Becoming insolvent;]*

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

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

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

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

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

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

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

17       *[(N) Inadequately representing the supplier, causing lack of performance in sales, service or war-*  
 18 *ranty areas, and failing to achieve satisfactory market penetration at levels that are consistent with*  
 19 *similarly situated retailers based on available documented information;]*

20       *[(O) Consistently failing to meet building and housekeeping requirements; or]*

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

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

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

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

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

27       *[(2)(a) A supplier that has a basis for asserting good cause may, directly or through an officer,*  
 28 *agent or employee, terminate, cancel or not renew a retailer agreement or may cause a change in com-*  
 29 *petitive circumstances for a retailer. Except as provided in subsections (3) and (4) of this section, a*  
 30 *termination, cancellation, nonrenewal or change in competitive circumstances becomes effective upon*  
 31 *notice to the retailer. The notice must state the reasons that constitute good cause for the termination,*  
 32 *cancellation, nonrenewal or change in competitive circumstances.]*

33       *[(b) A provision or allowance in a retailer agreement for an event, act or omission may be con-*  
 34 *sidered but does not control whether the event, act or omission resulted in a change in competitive*  
 35 *circumstances.]*

36       *[(3)(a) If a supplier's basis for asserting good cause is a retailer's failure under subsection (1)(a)(A)*  
 37 *of this section, other than a failure to meet marketing criteria, the supplier shall give the retailer 90*  
 38 *calendar days' written notice of the supplier's intent to terminate, cancel or not renew the retailer*  
 39 *agreement or to cause a change in competitive circumstances for the retailer.]*

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

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

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

44       *[(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.]*

45       *[(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination, cancellation,*

1 *nonrenewal or change in competitive circumstances becomes effective on the date specified in the*  
2 *notice.]*

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

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

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

10 *[(B) Provide that the retailer has one year in which to cure a claimed deficiency.]*

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

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

15 **A supplier may not:**

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

19 **(2) Require a dealer to purchase other goods or services as a condition of having access**  
20 **to equipment, repair parts or other goods or services, except that a supplier may require a**  
21 **dealer to purchase repair parts, special tools and training services that are reasonably nec-**  
22 **essary to maintain the safety or quality of equipment that the dealer purchases from the**  
23 **supplier.**

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

26 **(a) Conditioning the supplier's approval of a dealer's development or acquisition of a**  
27 **dealership location on the dealer's agreement not to purchase equipment from another sup-**  
28 **plier; and**

29 **(b) Requiring a dealer to maintain a separate facility, financial statement or sales staff**  
30 **to sell different lines of equipment or equipment the dealer purchases from other suppliers.**

31 **(4) Refuse to deliver to a dealer, in reasonable quantities and within a reasonable time**  
32 **after receiving the dealer's order, equipment that the supplier represents as available for**  
33 **immediate delivery in advertisements or by other means or that the supplier agrees to supply**  
34 **under the terms of a dealer agreement, unless the supplier's refusal results from:**

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

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

37 **(c) A bona fide shortage of materials that delays or halts production or reduces pro-**  
38 **duction volume;**

39 **(d) A freight embargo or other transportation difficulty that delays shipments; or**

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

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

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

1       **(b) The price of equipment or repair parts with the same or a similar grade or quality**  
 2 **and identical branding if the discrimination has or could have the effect of substantially**  
 3 **limiting competition, tends to create a monopoly in any line of commerce, or injures, de-**  
 4 **stroys or prevents competition with a dealer that agrees to, or knowingly receives the ben-**  
 5 **efit of, the discrimination, except that a supplier may discriminate in pricing on the basis**  
 6 **of:**

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

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

10       **(C) The volume of equipment and repair parts that the dealer purchases or the market**  
 11 **share that the dealer has obtained.**

12       **(6) Prevent a dealer, by contract or otherwise, from changing the dealer’s capital struc-**  
 13 **ture, ownership or financing, except that the 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 the dealer agreement**  
 16 **and that the supplier imposes on similarly situated dealers; and**

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

20       **(7) Prohibit a dealer from closing a business location unless the closure results in re-**  
 21 **ducing by more than one-third the business locations through which the dealer sells the**  
 22 **supplier’s equipment.**

23       **(8) Prohibit a dealer from moving a business location, unless the supplier reasonably de-**  
 24 **termines that the change in the dealer’s business location will impair the business of another**  
 25 **dealer that sells the supplier’s equipment.**

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

29       **(10) Terminate a dealer agreement, product line or authorization to sell the supplier’s**  
 30 **equipment or substantially change the dealer’s competitive circumstances without good**  
 31 **cause or because the dealer refused to accept a new or amended dealer agreement.**

32       **(11) Require a dealer to agree to a release, assignment, waiver or novation that estops**  
 33 **liability or releases any person from liability under ORS 646A.300 to 646A.322.**

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

35       646A.314. *[(1) If a supplier enters into an agreement to establish a new retailer or dealership or*  
 36 *to relocate a retailer or dealership, and the agreement assigns an area of responsibility, the supplier*  
 37 *must give written notice of the agreement by certified mail to any retailer or dealership within an as-*  
 38 *signed area of responsibility that is within or contiguous to the area of the new or relocated retailer*  
 39 *or dealership.]*

40       *[(2) If a supplier enters into an agreement to establish a new retailer or dealership or to relocate*  
 41 *a retailer or dealership, and the agreement does not assign an area of responsibility, the supplier must*  
 42 *give written notice of the agreement by certified mail to any retailer or dealership within a 75-mile*  
 43 *radius of the new or relocated retailer or dealership.]*

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

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

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

2       ***[(c)(A) If the agreement assigns an area of responsibility, the name and address of retailers and***  
3 ***dealerships with assigned areas of responsibility that are within or contiguous to the area of the new***  
4 ***or relocated retailer or dealership; or]***

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

7       **(1)(a) A supplier shall accept or reject in writing a warranty claim from a dealer within**  
8 **30 days after the date on which the supplier receives the warranty claim if:**

9       **(A) The dealer complies with reasonable policies and procedures established by the sup-**  
10 **plier for warranty claim reimbursement;**

11       **(B) The supplier permits the warranty claim under the supplier's policies for warranty**  
12 **claim reimbursement; and**

13       **(C) The dealer submitted the warranty claim:**

14       **(i) At any time during which a dealer agreement is in effect between the supplier and the**  
15 **dealer; or**

16       **(ii) Within 60 days after the date on which a dealer agreement terminates or expires, if**  
17 **the warranty claim is for work the dealer performed before the dealer agreement terminated**  
18 **or expired.**

19       **(b) A supplier's policies and procedures for warranty claim reimbursement are not rea-**  
20 **sonable if the policies and procedures conflict with the requirements of this section.**

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

23       **(3)(a) If a supplier rejects a warranty claim, the supplier shall provide in a written re-**  
24 **jection notice reasons for the rejection that are consistent with the reasons the supplier**  
25 **gives for rejecting warranty claims from other dealers, with the terms of the dealer agree-**  
26 **ment and with respect to how the dealer applies similar terms in dealer agreements with**  
27 **other dealers.**

28       **(b) If a supplier rejects a warranty claim because a dealer failed to follow procedural or**  
29 **technical requirements for submitting the warranty claim, the dealer may resubmit the**  
30 **warranty claim in accordance with the requirements within 30 days after the dealer receives**  
31 **the supplier's notice of rejection. A warranty claim that a dealer resubmits under this par-**  
32 **agraph is subject to the provisions of subsection (1) of this section.**

33       **(c) If the supplier fails to accept or reject a warranty claim in accordance with sub-**  
34 **section (1) of this section, the supplier has effectively accepted the warranty claim and shall**  
35 **pay or credit the dealer as provided in subsection (2) of this section.**

36       **(4) A supplier shall compensate a dealer for a warranty claim on the basis of a calculation**  
37 **in which the dealer's established labor rate for performing service to retail customers not**  
38 **under warranty is multiplied by the reasonable and customary time for completing the re-**  
39 **quired service, expressed as hours and fractions of hours. Before making a warranty claim,**  
40 **the dealer shall inform the supplier of the dealer's labor rate. The supplier shall reimburse**  
41 **the dealer for repair parts the dealer uses at the current net parts cost plus 15 percent and**  
42 **the cost of freight for the repair parts.**

43       **(5) A dealer may submit a warranty claim for payment in accordance with this section**  
44 **for any service the dealer performs on, or repair parts the dealer uses for, equipment of the**  
45 **supplier that the dealer has in inventory or equipment of a customer of the dealer at the**

1 supplier's specific request, including work the dealer performs in connection with a product  
 2 improvement program.

3 (6) A supplier may audit a warranty claim that a dealer submits to the supplier for one  
 4 year after the date on which the supplier pays the warranty claim and may require the dealer  
 5 to reimburse the supplier for any amounts the supplier paid on a warranty claim that the  
 6 audit shows the dealer misrepresented. If an audit shows that a dealer misrepresented a  
 7 warranty claim, the supplier may audit each warranty claim the dealer submitted to the  
 8 supplier in the three years before the date on which the audit showed the misrepresentation.

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

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

15 (B) A lump sum payment for all of the dealer's outstanding warranty claims for labor  
 16 made within 90 days after the supplier sells new equipment to the dealer.

17 (b) This subsection does not affect a supplier's obligation to reimburse a dealer for repair  
 18 parts in accordance with subsection (4) of this section.

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

20 646A.316. *[Unless otherwise agreed:]*

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

23 *[(a) Diagnostic services;]*

24 *[(b) Repair services;]*

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

26 *[(d) Labor.]*

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

29 *[(3) For repair parts on warranty service, a supplier may not pay a retailer less than the amount*  
 30 *that the retailer paid for the parts plus a reasonable allowance for the shipping and handling of the*  
 31 *parts.]*

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

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

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

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

37 (3) Require a legal action or arbitration proceeding to occur or be brought in a jurisdic-  
 38 tion outside a state in which a dealer is located; or

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

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

41 646A.318. *[(1) A supplier shall approve or disapprove a warranty claim in writing within 30 cal-*  
 42 *endar days of the supplier's receipt of the claim.]*

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

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

3       [(4) A supplier that disapproves a warranty claim shall, in the writing required by subsection (1)  
4 of this section, notify the retailer of the reasons for the disapproval.]

5       [(5) If a supplier disapproves a warranty claim because the retailer failed to comply with proce-  
6 dures for submitting the claim prescribed by the retailer agreement, the retailer may resubmit the claim  
7 within 30 calendar days of the retailer's receipt of the supplier's disapproval.]

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

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

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

14       [(c) A supplier may:]

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

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

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

19       **(1) A supplier that refuses to repurchase inventory from a dealer under ORS 646A.310 is**  
20 **liable to the dealer for an amount that is equivalent to 110 percent of the amount the sup-**  
21 **plier would have owed the dealer if the supplier had complied with ORS 646A.310 in a timely**  
22 **manner, plus the cost of any freight the dealer paid, any interest that has accrued under**  
23 **ORS 646A.310 (3)(b), the costs of arbitration or court proceedings and reasonable attorney**  
24 **fees.**

25       **(2) A dealer may elect to pursue a remedy under a dealer agreement or under the pro-**  
26 **visions of ORS 646A.300 to 646A.322. An election to pursue a remedy under a dealer agree-**  
27 **ment does not bar a dealer from pursuing any other legal or equitable remedy available to**  
28 **the dealer, including a remedy under ORS 646A.300 to 646A.322.**

29       **(3) A dealer may bring an action in a circuit court of this state against a supplier that**  
30 **violates ORS 646A.300 to 646A.322 and may receive damages the dealer sustained as a con-**  
31 **sequence of the supplier's violation, including, but not limited to, damages for lost profits,**  
32 **plus costs and attorney fees. The dealer may also seek, and a court may grant, an injunction**  
33 **or other equitable relief against an unlawful termination of a dealer agreement or an un-**  
34 **lawful change in the dealer's competitive circumstances.**

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

37       **SECTION 11. ORS 646A.320 and 646A.322 are repealed.**

38       **SECTION 12. The amendments to ORS 646A.300, 646A.302, 646A.304, 646A.306, 646A.308,**  
39 **646A.310, 646A.312, 646A.314, 646A.316 and 646A.318 by sections 1 to 10 of this 2017 Act apply**  
40 **to dealer agreements that dealers enter into or renew and actions subject to ORS 646A.300**  
41 **to 646A.322 that suppliers or dealers take on or after the effective date of this 2017 Act.**

42       **SECTION 13. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
43 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**