

B-Engrossed House Bill 2127

Ordered by the Senate April 21
Including House Amendments dated April 4 and Senate Amendments
dated April 21

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Commerce and Consumer Protection for Oregon Auto Dealer Association)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Makes changes to the law that says what rights car makers and car dealers have in franchises. (Flesch Readability Score: 80.0).

Makes various changes to the laws that govern franchise agreements between motor vehicle dealers and manufacturers, distributors and importers.

A BILL FOR AN ACT

Relating to motor vehicle dealer franchises; creating new provisions; and amending ORS 650.120, 650.130, 650.132, 650.133, 650.158, 650.161 and 650.162.

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

SECTION 1. ORS 650.120 is amended to read:

650.120. For the purposes of ORS 650.120 to 650.170:

(1) "Dealer" means any person *[who]* **that** has been issued a vehicle dealer certificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer engages in buying, selling, leasing or exchanging new motor vehicles.

(2) "Dealership" means the location from which a dealer buys, sells, leases, trades, stores, takes on consignment or in any other manner deals in new motor vehicles.

(3) "Distributor" means:

(a) A person *[who]* **that** sells or distributes motor vehicles other than motor homes to motor vehicle dealers[.]; **and**

(b) **A subsidiary, affiliate, branch or division of a person described in paragraph (a) of this subsection.**

(4) "Fleet owner" means a person in this state *[who]* **that** at one time buys or leases for use in a business:

(a) 15 or more motor vehicles with a gross vehicle weight rating of less than 8,500 pounds; or

(b) 50 or more vehicles with a gross vehicle weight rating of 8,500 pounds or more.

(5) "Franchise" means a contract or agreement under which:

(a) The franchisee is granted the right to sell, lease and exchange new motor vehicles manufactured, distributed or imported by the franchisor;

(b) The franchisee's business is an independent business operating as a component of a distribution or marketing system prescribed in substantial part by the franchisor;

(c) The franchisee's business is substantially associated with the trademark, trade name, com-

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.

mercial symbol or advertisements designating the franchisor or the products distributed by the franchisor;

(d) The franchisee's business is substantially reliant on the franchisor for a continued supply of motor vehicles, parts and accessories;

(e) The franchisee is granted the right to perform warranty repairs authorized by the franchisor; and

(f) The franchisee is granted the right to sell, install and exchange parts, equipment and accessories manufactured, distributed or imported by the franchisor for use in or on motor vehicles.

(6) "Franchisee" means a dealer *[to whom a franchise]* **that** is granted **a franchise**.

(7) "Franchisor" means a manufacturer, distributor or importer *[who]* **that** grants a franchise to a dealer.

(8) "Importer" means a person *[who]* **that** transports or arranges for the transportation of any foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means:

(a) A person *[who]* **that**:

(A) Manufactures or assembles motor vehicles *[or who manufactures or installs on previously assembled truck chassis special bodies or equipment, other than motor homes, that when installed forms an integral part of the motor vehicle and constitutes a major manufacturing alteration and which completed unit is owned by the manufacturer.]; or*

(B) **Manufactures or installs a special body or equipment on a previously assembled truck chassis, the combination of which is a major manufacturing alteration of the previously assembled truck chassis and forms an integrated motor vehicle, other than a motor home, that the person owns; and**

(b) **A subsidiary, affiliate, branch or division of a person described in paragraph (a) of this subsection.**

(10) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle without the accessory or optional equipment.

(11) "Motor home" means a motor vehicle that is designed to provide temporary living quarters, *[and]* **that** is built into an integral part of, or is permanently attached to, a self-propelled motor vehicle chassis or van. *The vehicle must contain]* **and that has** permanently installed independent life support systems *[and]* **that** provide at least four of the following facilities:

(a) Cooking;

(b) Refrigeration or **an** ice box;

(c) **A** self-contained toilet;

(d) Heating or air conditioning;

(e) A potable water supply system including a faucet and sink; or

(f) A separate 110-120 volt electrical power supply or liquefied petroleum gas supply.

(12) "Motor vehicle" means:

(a) A self-propelled device, other than a motor home, used:

(A) For transportation of persons or property upon a public highway; or

(B) In construction; or

(b) A trailer with a gross vehicle weight rating of 20,000 pounds or more that is used for com-

mercial transportation on a public highway.

(13) "Predecessor in interest" means a manufacturer, distributor or importer that transferred to another manufacturer, distributor or importer, whether through sale or other means, the right to manufacture, distribute or import motor vehicles using the manufacturer's, distributor's or importer's trademark, service mark, trade name, logotype or other commercial symbol.

(14) "Qualified vendor" means a person with a contract or agreement to sell goods or services to a manufacturer, distributor or importer.

(15) "Relevant market area" means:

(a) For a dealer primarily of motor vehicles with a gross vehicle weight rating of less than 8,500 pounds, a circular area around an existing dealership of:

(A) Not less than a 10-mile radius from the dealership site;

(B) Not less than a 15-mile radius from the dealership site if the population is less than 250,000 within a 10-mile radius from the existing dealership and 150,000 or more within a 15-mile radius from the existing dealership;

(C) Not less than a 20-mile radius from the dealership site if the population is less than 150,000 within a 15-mile radius from the existing dealership; or

(D) The area of sales and service responsibility determined under the franchise agreement if the area is larger than the areas provided for in this paragraph.

(b) For a dealer primarily of motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, a circular area around an existing dealership of:

(A) Not less than a 25-mile radius from the dealership site; or

(B) The area of sales and service responsibility determined under the franchise agreement if the area is larger than the area provided for in subparagraph (A) of this paragraph.

(16) "Replacement dealer" means any person *[who]* **that**, at a dealership where the former dealer was franchised by the same manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's predecessor in interest, has been issued a vehicle dealer certificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's predecessor in interest, engages in buying, selling, leasing or exchanging new motor vehicles.

(17) "Site-control agreement" means an agreement between a franchisor and franchisee pursuant to which the franchisor would:

(a) Control the use and development of a dealership site other than as permitted in ORS 650.120 to 650.170;

(b) Require a franchisee to establish or maintain an exclusive dealership under a franchise agreement with the franchisor by not investing in, managing or sharing another dealership with a different franchisor; or

(c) Restrict the ability of a franchisee, or if the franchisee leases the dealership, the ability of the franchisee's lessor, to transfer, assign, sell, lease, develop or change the use of the dealership site.

(18) "Successor in interest" means a manufacturer, distributor or importer that acquires, whether through purchase, transfer or other means, the right to manufacture, distribute or import motor vehicles using the trademark, service mark, trade name, logotype or other commercial symbol of another manufacturer, distributor or importer.

SECTION 2. ORS 650.130 is amended to read:

650.130. Notwithstanding the terms of any franchise or other agreement, a manufacturer, dis-

1 tributor or importer may not:

2 (1) Require or attempt to require a dealer to accept delivery of any motor vehicle, part, acces-
3 sory or any other commodity that the dealer did not voluntarily order. This subsection does not
4 apply to recall safety and emissions campaign parts that the dealer did not voluntarily order or to
5 any vehicle features, parts, accessories or other components mandated by federal, state or local law.

6 (2) Coerce or attempt to coerce a dealer to enter into any agreement or sales promotion pro-
7 gram by threatening to cancel the dealer's franchise.

8 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new
9 motor vehicle, part or accessory covered by the franchise if the manufacturer, distributor or
10 importer advertises the vehicle, part or accessory as available for delivery or is delivering the ve-
11 hicle, part or accessory to another dealer. This subsection does not apply if the failure to deliver
12 results from a cause beyond the control of the manufacturer, distributor or importer.

13 (4) Prevent or attempt to prevent a dealer from making reasonable changes in a dealership's
14 capital structure or the means by which a dealer finances the dealership, provided that the dealer
15 meets any reasonable capital requirement of the manufacturer, distributor or importer.

16 (5) Unreasonably refuse to compensate a dealer for work or services the dealer performed and
17 expenses the dealer incurred in accordance with the dealer's delivery, preparation and warranty
18 obligations under the terms of a franchise or agreement.

19 (6) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign
20 or contest, or to purchase any promotional materials, display devices or display decorations or ma-
21 terials at the dealer's expense.

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

24 (8) Initiate an audit to determine the validity of paid claims for dealer compensation, or for any
25 charge-backs for warranty parts, [or] service compensation **or consumer or dealer incentives**,
26 more than one year following the date of payment unless the manufacturer, distributor or importer
27 has reasonable grounds to believe that the dealer submitted a fraudulent claim. If a manufacturer,
28 distributor or importer initiates an audit more than one year following the date of payment, the
29 manufacturer, distributor or importer may charge back to the dealer only the amount of a claim that
30 the manufacturer, distributor or importer proves was fraudulent. Parties shall cooperate to ensure
31 that permitted audits conclude not more than 60 days after the audits begin.

32 *[(9) Initiate an audit to determine the validity of paid claims for dealer compensation, or for any*
33 *charge-backs for consumer or dealer incentives, more than one year following the date of payment un-*
34 *less the manufacturer, distributor or importer has reasonable grounds to believe that the dealer sub-*
35 *mitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit more than one*
36 *year following the date of payment, the manufacturer, distributor or importer may charge back to the*
37 *dealer only the amount of a claim that the manufacturer, distributor or importer proves was fraudulent.*
38 *Parties shall cooperate to ensure that permitted audits conclude not more than 60 days after the audits*
39 *begin.]*

40 *[(10)]* (9) Unfairly compete with a dealer in any matters the franchise governs including, but not
41 limited to, the sale or allocation of vehicles or other franchisor products, or the execution of dealer
42 programs or benefits. This subsection applies if the manufacturer, distributor or importer has an
43 ownership interest in, operates or controls, directly or indirectly, a business that is a dealer in this
44 state.

45 (10) **Implement or modify a system for selling or leasing motor vehicles that does not:**

(a) Use customer dealer selection or other objective criteria to allocate the motor vehicles, if the manufacturer, distributor or importer designs or controls the system; and

(b) Make available to dealers a description of the rules and requirements for making reservations through the system, or changes to the rules and requirements, at least 30 days before implementing the system or making the change.

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

(a) The manufacturer, distributor or importer:

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

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

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

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

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

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

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

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

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

(C) As of January 1, 2000, had an ownership interest in, operated or controlled, directly or indirectly, a business that is a dealership in this state that sells motor vehicles with a gross vehicle weight rating of 8,500 pounds or more.

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

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

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

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

(ii) Is a business that sells or leases motor vehicles to retail lessees in [Oregon] **this state**.

(F) Has an ownership interest in, operates or controls, directly or indirectly, a business that makes a sale or lease of a motor vehicle in a manner that does not violate subsection (12) of this section.

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

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

1 terest in the dealership;

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

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

7 (D) The manufacturer's franchises authorize a dealer of the manufacturer's single line-make to
8 operate as many dealerships within a defined geographic area as the dealer and manufacturer agree
9 on; and

10 (E) On January 1, 2000:

11 (i) There were no more than four dealers of the manufacturer's single line-make in this state;
12 and

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

16 (12) Sell or lease a motor vehicle to a person in this state other than to a business described
17 in subsection (11) of this section or to a franchisee of the manufacturer, distributor or importer. A
18 manufacturer, distributor or importer does not violate this subsection if:

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

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

22 (B) A driver training program;

23 (C) A nonprofit corporation;

24 (D) A qualified vendor;

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

26 (F) A current retail lessee;

27 (G) A fleet owner;

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

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

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

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

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

37 (c) The sale or lease is by a subsidiary of a manufacturer, distributor or importer that finances
38 the sale or lease of motor vehicles and the sale or lease is to a person that previously leased the
39 vehicle from the subsidiary.

40 (13)(a) Own, operate or control a business or enter into any contract, agreement or other writ-
41 ten instrument that permits the manufacturer, distributor or importer to compensate a person that
42 is not a dealer for performing warranty repairs and services if the business is located within a
43 dealer's relevant market area.

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

45 (A) Warranty repairs and services performed on motor vehicles with a gross vehicle weight

rating of less than 8,500 pounds provided for commercial or government fleets; or

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

(i) Obtained written permission from the dealers in the relevant market area to perform the repairs or services; or

(ii) Authorized a person that owns or leases the motor vehicles for use in the person's business to perform the repairs or services.

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

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

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

(A) Granting or renewing a franchise;

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

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

(D) Approving the relocation, or granting a new franchise for relocation, of an existing dealership; or

(E) Obtaining fair and reasonable compensation under ORS 650.145 upon the termination, cancellation, nonrenewal or discontinuance of any franchise.

(b) Paragraph (a) of this subsection does not prohibit enforcement of a voluntary agreement between a franchisee and a manufacturer, distributor or importer for which separate and valuable consideration that does not include any of the items listed in paragraph (a) of this subsection has been offered and accepted.

(17) Take any adverse action against a dealer for violating a prohibition that the manufacturer, distributor or importer imposes on the dealer's exporting a motor vehicle or selling a motor vehicle for resale because the dealer sold a motor vehicle to a customer that exported or resold the motor vehicle in violation of the prohibition, unless the manufacturer, distributor or importer provided the dealer with written notice of the prohibition and the dealer knew or reasonably should have known at the time the dealer sold the motor vehicle to the customer that the customer intended to export or resell the vehicle in violation of the prohibition. A dealer that registers or causes a motor vehicle to be registered in this state or another state and that collects or causes to be collected any sales or use tax required in this state establishes a rebuttable presumption that the dealer did not have reason to know that the customer intended to export or resell the motor vehicle.

(18)(a) Charge a fee to a consumer to sell, lease, provide, update or finance or offer to sell, lease, provide, update or finance, except as provided in paragraph (b) of this subsection:

(A) A subscription service that uses components and hardware that are already installed on a motor vehicle, and that would operate after activation without ongoing cost or support, in exchange for a recurring payment, other than a payment for a lease or under a retail installment contract, as defined in ORS 83.510, from a retail customer; or

(B) A convenience or safety function, such as heated seats or driver assistance, in return for a payment from a retail customer.

(b) Paragraph (a) of this subsection does not prohibit a manufacturer, distributor or importer from:

(A) Charging a fee to a consumer to sell, lease, provide, update or finance or offering to sell, lease, provide, update or finance a motor vehicle or a product, service or financing through a dealer;

(B) Providing a motor vehicle, product or service for occasional promotional or charitable purposes;

(C) Arranging or providing emergency roadside service; or

(D) Offering or providing a free trial of a subscription service described in paragraph (a)(A) of this subsection.

(c) This subsection does not apply to:

(A) Any electronic wireless communication system installed in a motor vehicle; or

(B) An information or entertainment service, navigation system, satellite radio, roadside assistance or other driver assistance, or automation features that rely on cellular networks or other data networks for operation.

SECTION 3. ORS 650.132 is amended to read:

650.132. (1)(a) A manufacturer, distributor or importer may not, through any of the methods described in paragraph (b) of this subsection, directly or indirectly coerce or attempt to coerce a dealer to:

(A) Advertise, promote, offer or sell an extended service contract, an extended maintenance plan, a guaranteed asset protection waiver or other arrangement that pays a purchaser the remaining balance on a note secured by a motor vehicle if the motor vehicle is lost, stolen or damaged beyond repair, or a similar product or service, if the manufacturer, distributor or importer provides, originates, sponsors or endorses the product or service[.];

(B) Install on the dealer's premises an electric vehicle charging station for the primary purpose of allowing the public to charge electric vehicles; or

(C) Accept a new plan or system for allocating or scheduling a delivery of a motor vehicle, part or accessory, or a modification to an existing plan or system, if the new or modified plan or system is not fair, reasonable and equitable for all dealers of the manufacturer's, distributor's or importer's line-make.

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

(A) Stating to a dealer that the dealer's failure to advertise, promote, offer or sell the products or services described in paragraph (a)(A) of this subsection will substantially and adversely affect the dealer's business or the dealer's relationship with the manufacturer, distributor or importer;

(B) Requiring the dealer in a franchise agreement to advertise, promote, offer or sell the products or services described in paragraph (a)(A) of this subsection, **install the electric vehicle**

1 **charging station described in paragraph (a)(B) of this subsection or accept the plan or sys-**
 2 **tem described in paragraph (a)(C) of this subsection;**

3 (C) Measuring the dealer's performance in a franchise on the basis of whether, or the extent to
 4 which, the dealer advertises, promotes, offers or sells the products or services described in para-
 5 graph (a)(A) of this subsection, **installs the electric vehicle charging station described in para-**
 6 **graph (a)(B) of this subsection or accepts the plan or system described in paragraph (a)(C)**
 7 **of this subsection; [or]**

8 (D) Requiring the dealer to advertise, promote, offer or sell the products or services described
 9 in paragraph (a)(A) of this subsection to the exclusion of other, similar products or services that a
 10 person other than the manufacturer, distributor or importer offers[.];

11 **(E) Using force or a threat of force;**

12 **(F) Withholding or threatening to withhold motor vehicles or parts from the dealer, or**
 13 **offering or providing motor vehicles or parts to the dealer at a price that is higher than the**
 14 **price that the manufacturer, distributor or importer offers or provides to other dealers of**
 15 **the manufacturer's, distributor's or importer's line-make; or**

16 **(G) Refusing to offer to the dealer or to allow the dealer to earn incentives on the same**
 17 **terms that the manufacturer, distributor or importer offers or provides to other dealers of**
 18 **the manufacturer's, distributor's or importer's line-make.**

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

21 (a) Provide incentives to a dealer that voluntarily decides to advertise, promote, offer or sell the
 22 products or services described in subsection (1)(a)(A) of this section **or to install the electric ve-**
 23 **hicle charging station described in subsection (1)(a)(B) of this section;** or

24 (b) Require a dealer that sells a product or service that is similar to the products or services
 25 described in subsection (1)(a)(A) of this section, but that the manufacturer, distributor or importer
 26 does not provide, originate, sponsor or endorse, to notify a customer in writing, and to obtain the
 27 customer's acknowledgment, that the manufacturer, distributor or importer does not provide, origi-
 28 nate, sponsor or endorse the product or service.

29 **(3) A manufacturer, distributor or importer is not coercing a dealer if the manufacturer,**
 30 **distributor or importer requires the dealer to comply with reasonably necessary standards**
 31 **to fulfill the dealer's sales and service obligations.**

32 **(4) At a dealer's written request, a manufacturer, distributor or importer shall describe**
 33 **in writing the basis for allocating or scheduling for delivery a motor vehicle, part or acces-**
 34 **sory among all the dealers of the manufacturer's, distributor's or importer's line-make.**

35 **(5) A manufacturer, distributor or importer need not pay or make available incentives**
 36 **or other benefits to a dealer that has not qualified for the incentives or benefits on the same**
 37 **terms that the manufacturer, distributor or importer applies uniformly and equitably to all**
 38 **of the dealers of the manufacturer's, distributor's or importer's line-make.**

39 **SECTION 4.** ORS 650.133 is amended to read:

40 650.133. (1)(a) Except as provided in paragraph (b) of this subsection, a manufacturer, distributor
 41 or importer may not require a dealer to construct a new dealer facility or materially alter or re-
 42 model an existing dealer facility within seven years after the date on which the dealer previously
 43 constructed, materially altered or remodeled the existing dealer facility if the existing dealer facility
 44 complies with the manufacturer's, distributor's or importer's approved brand image standards or
 45 plans that existed at the time the dealer constructed, materially altered or remodeled the existing

1 dealer facility.

2 (b) A manufacturer, distributor or importer may require a dealer to construct a new dealer fa-
3 cility or materially alter or remodel an existing dealer facility within seven years after the dealer
4 constructed, materially altered or remodeled the existing dealer facility:

5 (A) If the manufacturer, distributor or importer demonstrates that the manufacturer's,
6 distributor's or importer's requirement is reasonable and justifiable in light of:

7 (i) The projected cost of the construction, material alteration or remodel;

8 (ii) Existing and reasonably foreseeable economic conditions;

9 (iii) Financial expectations;

10 (iv) The availability of additional vehicle allocation; and

11 (v) The dealer's market for vehicle sales;

12 (B) In order to comply with a health or safety law or with a technological requirement that is
13 necessary to sell or service a motor vehicle that the dealer sells or services under the terms of the
14 dealer's franchise; or

15 (C) By means of a written agreement separate from the franchise agreement if the manufacturer,
16 distributor or importer provides money, credit, an allowance, an incentive or a reimbursement to the
17 dealer to compensate for all or a substantial portion of the cost of constructing a new dealer facility
18 or materially altering or remodeling an existing dealer facility.

19 (c) Paragraph (a) of this subsection does not prohibit a dealer from voluntarily agreeing with a
20 manufacturer, distributor or importer to construct a new dealer facility or materially alter or re-
21 model an existing dealer facility in return for separate and valuable consideration. For the purposes
22 of this paragraph, renewing a dealer's franchise is not separate and valuable consideration.

23 (d) For purposes of this subsection:

24 (A) "Materially alter" means a significant architectural or structural modification to a dealer
25 facility that is directly related to effectively selling or servicing motor vehicles of the type that the
26 dealer's franchise agreement or license permits the dealer to sell or service.

27 (B) "Materially alter" does not include routine maintenance, such as interior painting, that is
28 reasonably necessary to keep a dealer facility in attractive condition.

29 (2)(a) Except as provided in paragraph (b) of this subsection, a manufacturer, distributor or
30 importer may not require a dealer to purchase goods or services for constructing, materially altering
31 or remodeling a dealer facility from a vendor that the manufacturer, distributor or importer selects,
32 identifies or designates without giving the dealer an option to obtain goods or services of substan-
33 tially similar quality and design from a vendor that the dealer chooses, subject to the
34 manufacturer's, distributor's or importer's **written** approval in advance. The manufacturer, distrib-
35 utor or importer may not withhold approval unreasonably[.] **and must approve or disapprove**
36 **within 20 business days after a dealer's written request to purchase goods and services from**
37 **a source other than a source the manufacturer, distributor or importer selects, identifies**
38 **or designates. If the manufacturer, distributor or importer does not disapprove the dealer's**
39 **request in writing within 20 business days after receiving the request, the request is ap-**
40 **proved.**

41 (b) A dealer may not select a vendor from which to obtain goods and services for constructing
42 a new dealer facility or materially altering or remodeling an existing dealer facility if a manufac-
43 turer, distributor or importer provides money, credit, an allowance or a reimbursement to compen-
44 sate for all or a substantial portion of the cost of upgrading or improving a dealer facility or for
45 using a specific material, good or service to upgrade or improve a dealer facility.

(c) This subsection does not permit a dealer or vendor to:

(A) Directly or indirectly or in any way infringe upon, eliminate or impair a manufacturer's, distributor's or importer's intellectual property rights or reasonable business requirements; or

(B) Erect or maintain signs that do not conform to the manufacturer's, distributor's or importer's intellectual property usage guidelines.

(3) A manufacturer, distributor or importer has the burden of proof in a dispute with a dealer over whether:

(a) A requirement the manufacturer, distributor or importer imposes under subsection (1)(b) of this section is reasonable and justifiable or is necessary to comply with a health or safety law or technological requirement; or

(b) A disapproval of a request to purchase goods or services under subsection (2)(a) of this section was reasonable.

SECTION 5. ORS 650.158 is amended to read:

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

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

(b) The schedule of compensation the manufacturer, distributor or importer will pay the dealer for *[parts, work and service]* **diagnostic work, repair service, parts and labor** in connection with predelivery preparation and warranty service; and

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

(2)(a) A schedule of compensation must include reasonable compensation for diagnostic work, repair service, **parts and labor and must reasonably, adequately and fairly compensate the dealer for the work, service, parts and labor.** Time allowances for diagnosing and performing predelivery and warranty service must be reasonable and adequate for the work to be performed. A manufacturer, distributor or importer may not pay an hourly rate to a dealer that is less than the rate the dealer charges nonwarranty customers for nonwarranty service and repairs. Reimbursement for parts, other than parts used to repair the living facilities of motor homes, that the dealer purchases for use in performing predelivery and warranty service must be the amount the dealer charges nonwarranty customers, as long as the amount is not unreasonable.

(b)(A) For purposes of this subsection and subject to subparagraphs (B) *[and (C)]* **to (D)** of this paragraph, to determine compensation under this subsection, a dealer shall propose an hourly rate and an amount for parts that the dealer charges nonwarranty customers by submitting to the manufacturer, distributor or importer copies of 100 sequential nonwarranty service repair invoices that customers paid or 90 consecutive days' worth of nonwarranty service invoices that customers paid, whichever is less, for repairs the dealer made not more than 180 days before the dealer's submission. If the manufacturer, distributor or importer does not contest the dealer's proposal and the dealer otherwise complies with the provisions of this paragraph, the dealer's proposal is presumed to be fair and reasonable.

(B) A manufacturer, distributor or importer may contest the dealer's proposal with evidence that the dealer's proposal is not accurate or on the basis that the dealer's proposal does not reasonably conform with the hourly rate or the amount for parts that other dealers charge nonwarranty customers in the same line-make in market areas that are contiguous to the dealer's market area or with other relevant evidence. In contesting a dealer's proposal based on evidence from other dealers in the contiguous market area, a manufacturer, distributor or importer shall rely on evidence from

1 at least three other dealers in the contiguous market area or three dealers in an economically sim-
 2 ilar market within the manufacturer's, distributor's or importer's region.

3 **(C) A manufacturer, distributor or importer shall use time allowances that are reason-**
 4 **able and adequate for a qualified technician to make a diagnosis and perform work or service.**
 5 **The manufacturer, distributor or importer may not unreasonably deny a written request**
 6 **from a dealer for a modification of the manufacturer's, distributor's or importer's time al-**
 7 **lowance for a specific warranty repair, or for an additional time allowance for diagnostic**
 8 **work or repair work on a specific vehicle that is covered by a warranty, if the dealer includes**
 9 **with the request information and documentation that the manufacturer, distributor or**
 10 **importer reasonably requires to assess the merits of the request.**

11 [(C)] **(D) A dealer may not include in [the dealer's proposal] a proposal described in subpara-**
 12 **graph (A) of this paragraph:**

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

15 (ii) Parts sold at wholesale;

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

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

19 (v) Vehicle reconditioning.

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

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

29 (e) **Not more than** once per year, a manufacturer, distributor or importer may verify the
 30 dealer's hourly rate or the amount for parts the dealer charges nonwarranty customers **and a dealer**
 31 **may propose an increase in the manner provided in paragraph (b)(A) of this subsection in the**
 32 **hourly rate or the amount the dealer charges for parts.** If the manufacturer, distributor or
 33 importer finds that the dealer's hourly rate or the amount for parts has decreased, the manufacturer,
 34 distributor or importer may reduce the dealer's compensation under this subsection prospectively.
 35 **If the manufacturer, distributor or importer does not contest the dealer's proposed increase**
 36 **in the manner provided in paragraph (b)(B) of this subsection, the increase becomes effective**
 37 **as provided in paragraph (c) of this subsection.**

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

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

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

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

(c) Allow a dealer to correct and resubmit a claim for labor or parts within 30 days after receiving the manufacturer's, distributor's or importer's disapproval;

[(c)] **(d) Treat as approved any claim, or resubmission of a corrected claim,** that a manufacturer, distributor or importer did not approve or disapprove within 30 days after the manufacturer, distributor or importer received the claim **or resubmission** and pay or credit the dealer for the claim within 60 days after receiving the claim **or resubmission**; and

[(d)] **(e) Notify the dealer in writing of the manufacturer's, distributor's or importer's grounds for disapproving a claim.**

(5) A manufacturer, distributor or importer may:

(a) Require reasonable documentation as substantiation for a dealer's claim under this section;

(b) Audit a dealer's claim under this section within one year after the date on which the manufacturer, distributor or importer paid the claim; and

(c) Charge back a dealer's claim under this section that is unsubstantiated, false or fraudulent.

[(5)] **(6) A manufacturer, distributor or importer may not:**

(a) Recover all or a portion of cost of compensating a dealer for warranty parts or service by reducing the amount due a dealer or by imposing a separate charge, surcharge, administrative fee or other fee.

(b) Deny or charge back a dealer's claim solely because a dealer failed to comply with a specific claim processing procedure because of a clerical or administrative error that does not affect the legitimacy of the dealer's claim, if the dealer resubmits the claim in compliance with the manufacturer's, distributor's or importer's claim processing procedure within 45 days after the manufacturer, distributor or importer initially denies or charges back the claim.

(c) Deny a dealer's claim solely because an owner who brought a motor vehicle to the dealer for a repair under warranty drove the motor vehicle for additional miles while awaiting service or a repair that the dealer could not complete because parts for the service or repair were not available.

(d) Reduce a payment for a dealer's claim solely on the basis of a national market norm or market average.

(e) Limit or restrict the number of repairs a motor vehicle owner may obtain from a dealer on the basis of a national index or average of failure rates for the motor vehicle.

(7)(a) Except as provided in paragraph (b) of this subsection, if a manufacturer, distributor or importer supplies a part to a dealer for the purpose of replacing the part or making a repair under warranty to a motor vehicle in the manufacturer's, distributor's or importer's line-make, but the manufacturer, distributor or importer does not sell the part to the dealer, the manufacturer, distributor or importer shall compensate the dealer at the equivalent of the dealer's average percentage markup on the part as if the manufacturer, distributor or importer had sold the part to the dealer at the price listed for the part in the manufacturer's, distributor's or importer's current parts catalog.

(b) The requirement set forth in paragraph (a) of this subsection does not apply to entire engine assemblies, propulsion engine assemblies, entire transmission assemblies or electric batteries. If the manufacturer, distributor or importer supplies the dealer with an assembly

1 or battery described in this paragraph but does not sell the assembly or battery to the dealer,
 2 the manufacturer, distributor or importer shall compensate the dealer in an amount that is
 3 equivalent to 30 percent of what the dealer would have paid for the assembly or battery had
 4 the manufacturer, distributor or importer sold the assembly or battery to the dealer at the
 5 price listed in the manufacturer's, distributor's or importer's current parts catalog.

6 **SECTION 6.** ORS 650.161 is amended to read:

7 650.161. (1) As used in this section:

8 (a) "Do not drive order" means a notice in which a manufacturer advises owners of a vehicle
 9 not to drive the vehicle until the owner has obtained a repair for a safety defect in the vehicle.

10 (b) "Stop sale order" means a notice in which a manufacturer prohibits a franchisee from leasing
 11 or selling at wholesale or retail a [used] vehicle in the franchisee's inventory because of a federal
 12 recall for a safety defect or a failure to comply with a federal safety standard or a federal emissions
 13 standard.

14 (c) "Valuation" means the average trade-in value shown in an independent third-party guide for
 15 the year, make and model of a [used] vehicle.

16 (2) A manufacturer shall compensate the manufacturer's franchisees for all labor and parts the
 17 manufacturer requires the franchisees to use to perform repairs on vehicles that are subject to a
 18 recall. The manufacturer shall compensate franchisees in accordance with the standards and process
 19 for compensation set forth in ORS 650.158.

20 (3)(a) Subject to the conditions set forth in paragraphs (b) and (c) of this subsection, a man-
 21 ufacturer shall compensate a dealer at a prorated rate of least 1.5 percent of the valuation of a
 22 [used] vehicle that is subject to a recall during each month in which the dealer holds the vehicle for
 23 sale while awaiting parts or a remedy that is necessary to repair or service the vehicle.

24 (b) The manufacturer shall pay the compensation described in paragraph (a) of this subsection:

25 (A) If the [used] vehicle is subject to a federal recall for a safety defect or a failure to comply
 26 with a federal safety standard or a federal emissions standard;

27 (B) If the manufacturer issued a do not drive order or stop sale order for the [used] vehicle;

28 (C) If the manufacturer has authorized the dealer to sell and service new vehicles of the same
 29 line-make as the [used] vehicle that is subject to the recall;

30 (D) If the dealer had the [used] vehicle in the dealer's inventory at the time the manufacturer
 31 issued the do not drive order or stop sale order or if the dealer received the [used] vehicle as a
 32 trade-in as part of a consumer's purchase of [a new] **another** vehicle after the manufacturer issued
 33 the do not drive order or stop sale order;

34 (E) If a part or remedy necessary to repair or service the [used] vehicle is not reasonably
 35 available within 30 days after the manufacturer issued an initial recall notice; and

36 (F) For a period that begins 30 days after the date on which the manufacturer issued the do not
 37 drive order or stop sale order and that ends on the earlier of the following dates:

38 (i) The date on which the manufacturer makes available to the dealer a part or remedy that is
 39 necessary to repair the [used] vehicle that is subject to the recall; or

40 (ii) The date on which the dealer sells, trades or otherwise disposes of the [used] vehicle that
 41 is subject to the recall.

42 (c) A manufacturer may direct the manner and method by which a dealer must demonstrate that
 43 the dealer had a [used] vehicle that was subject to a recall in the dealer's inventory as required
 44 under paragraph (b)(D) of this subsection. The manufacturer may not require a demonstration that
 45 is unreasonable or unduly burdensome or require information that is unreasonably or unduly bur-

densome for the dealer to provide.

(d) This subsection does not require a manufacturer to provide total compensation to a dealer that exceeds the valuation of a *[used]* vehicle that is subject to a recall.

(4) A claim for compensation that a franchisee makes under subsection (2) of this section or that a dealer makes under subsection (3) of this section is subject to the same requirements and limitations to which a claim for compensation under ORS 650.158 is subject unless:

(a) The manufacturer compensates the franchisee or the dealer under a national program that provides compensation for recall service or repairs that is equal to or greater than the compensation the manufacturer would provide under subsection (3) of this section; or

(b) The manufacturer and franchisee or dealer agree to different compensation.

(5)(a) A manufacturer may not reduce compensation that the manufacturer owes to a franchisee by means of a chargeback, reducing the amount the manufacturer owes a franchisee under or removing a franchisee from an incentive program or any other means solely because the franchisee submitted a claim for or received compensation under this section.

(b) This subsection does not prohibit a manufacturer from modifying or discontinuing an incentive program or other program prospectively or from making ordinary business decisions.

(c) A franchisee may contest the amount of compensation a manufacturer provides under this section in accordance with the procedures set forth in ORS 650.158.

(6) A remedy that a dealer obtains under this section is exclusive and may not be combined with other compensation or remedies that are available under state or federal law or state or federal compensation programs.

SECTION 7. ORS 650.162 is amended to read:

650.162. (1) To transfer, assign or sell the ownership or management, or any interest in the ownership or management, of a dealer, dealership or franchise, the dealer shall notify the franchisor of the decision to transfer, assign or sell. The notice *[shall]* **must** include completed application forms and related information *[generally used by]* the manufacturer, distributor or importer **generally uses** to conduct a review of transfers, assignments or sales and **must include** a copy of all agreements regarding the transfer, assignment or sale.

(2) Within 60 days *[of]* **after** receiving notice sent under subsection (1) of this section, a franchisor shall send a notice by certified mail to the dealer. The notice sent under this subsection *[shall]* **must** specify approval or disapproval of the transfer, assignment or sale. If the transfer, assignment or sale is disapproved, the notice *[shall]* **must** set forth material reasons for the disapproval.

(3) A manufacturer, distributor or importer may not unreasonably withhold approval of a transfer, assignment or sale. *[It is unreasonable for]* A manufacturer, distributor or importer *[to reject]* **unreasonably withholds approval for a transfer, assignment or sale if the manufacturer, distributor or importer rejects** a prospective transferee, assignee or buyer who is of good moral character and who otherwise meets the manufacturer's, distributor's or importer's written and reasonable standards or qualifications relating to the prospective transferee's, assignee's or buyer's:

(a) Business experience and performance; and

(b) Financial qualifications.

(4) If the manufacturer, distributor or importer does not respond within 60 days *[of]* **after** receiving a notice sent under subsection (1) of this section, the transfer, assignment or sale *[shall be considered approved and shall take effect]* **is approved and takes effect.**

(5) A manufacturer, distributor or importer may exercise a right of first refusal if the right is

1 included in the franchise agreement, the transfer, assignment or sale consists of more than 50 per-
 2 cent of the dealer's ownership of the franchise and all of the following requirements are met:

3 (a) The manufacturer, distributor or importer sends a notice by certified mail to the dealer
 4 within 60 days [of] **after** receiving a notice under subsection (1) of this section specifying that the
 5 franchisor is exercising a right of first refusal.

6 (b) The exercise of the right of first refusal will result in the dealer and any owner of the dealer
 7 receiving consideration, terms and conditions that are either the same as or better than [*those con-*
 8 *tracted to*] **the consideration, terms and conditions the dealer and owner would** receive under
 9 the transfer, assignment or sale.

10 (c) The transferee, assignee or buyer is not any of the following:

11 (A) Any of the following family members of any owner of the dealer:

12 (i) A spouse;

13 (ii) A child or stepchild;

14 (iii) A grandchild or stepgrandchild;

15 (iv) The spouse of a child, stepchild, grandchild or stepgrandchild;

16 (v) A brother or sister or a stepbrother or stepsister; or

17 (vi) A parent or stepparent;

18 (B) A manager employed by the dealer who is otherwise qualified to be a dealer;

19 (C) A partnership or corporation controlled by any of the family members listed in paragraph
 20 (c)(A) of this subsection; or

21 (D) A trust established or to be established:

22 (i) For the purposes of allowing the transferee, assignee or buyer to continue to qualify as such
 23 under the manufacturer's, distributor's or importer's standards; or

24 (ii) To provide for the succession of the franchise to qualified designated family members or a
 25 qualified manager in the event of the death or incapacity of the dealer.

26 (d) The manufacturer, distributor or importer pays the reasonable expenses, including attorney
 27 fees, that are incurred by the transferee, assignee or buyer before the manufacturer, distributor or
 28 importer exercises a right of first refusal. A manufacturer, distributor or importer may require the
 29 transferee, assignee or buyer to provide an accounting of expenses incurred prior to issuing pay-
 30 ment.

31 **(6) A manufacturer, distributor or importer may not exercise or threaten to exercise a**
 32 **right of first refusal in bad faith.**

33 **SECTION 8. Section 9 of this 2025 Act is added to and made a part of ORS 650.120 to**
 34 **650.170.**

35 **SECTION 9. A franchisor shall indemnify a franchisee or former franchisee or a succes-**
 36 **sor in interest to the franchisee or former franchisee for damages, attorney fees, court ex-**
 37 **periences and related expenses that the franchisee or former franchisee reasonably incurs for**
 38 **a claim:**

39 **(1) That results from a defect in the condition, a characteristic or the design of a motor**
 40 **vehicle, or in a tool or process the franchisor used in manufacturing or assembling a motor**
 41 **vehicle, or in a component, part, accessory or equipment the franchisor assembled into or**
 42 **installed in or on a motor vehicle;**

43 **(2) For injury or damages from a service system, procedure or method that the**
 44 **franchisor requires or required the franchisee or former franchisee to use, if the franchisee**
 45 **or former franchisee used the system, procedure or method properly and in accordance with**

1 the franchisor's training or instructions;

2 (3) For injury or damages from a franchisor's disclosure or improper use of protected
3 dealer data, as defined in ORS 650.123;

4 (4) For which the franchisee or former franchisee would have a right of indemnity or
5 contribution against the franchisor under applicable law or under a franchise, even if the
6 franchise expired or was terminated; or

7 (5) For injury or damages as a result of the franchisee's or former franchisee's use of
8 an electronic system for managing protected dealer data, as defined in ORS 650.123, that the
9 franchisor requires or required the franchisee or former franchisee to use and the use vio-
10 lated a federal law or a law of this state, unless the franchisee or former franchisee, or an
11 agent or employee of the franchisee or former franchisee willfully or intentionally used the
12 system in violation of federal law or a law of this state.

13 **SECTION 10.** Section 9 of this 2025 Act and the amendments to ORS 650.120, 650.130,
14 650.132, 650.133, 650.158, 650.161 and 650.162 by sections 1 to 7 of this 2025 Act apply to fran-
15 chises that a franchisor and franchisee enter into or renew on or after the effective date of
16 this 2025 Act.