Chapter 650

2009 EDITION

Franchise Transactions

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GOODS AND SERVICES

(Generally)

650.005 Definitions for ORS 650.005 to 650.100. As used in ORS 650.005 to 650.100, unless the context requires otherwise:

(1) "Area franchise" means a contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for a valuable consideration, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

(2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Director" means Director of the Department of Consumer and Business Services.

(4) "Franchise" means a contract or agreement, whether oral or written, by which:

(a) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;

(b) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor of such plan or system; and

(c) The franchisee is required to give to the franchisor a valuable consideration for the right to transact business pursuant to the plan or system. Payment for trading stamps in itself is not consideration for the right to transact business pursuant to a plan or system.

(5) "Franchisee" means a person to whom a franchise is sold by a franchisor.

(6) "Franchisor" means a person, including a subfranchisor, who sells a franchise for $100 or more to a franchisee or subfranchisor.

(7) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

(8) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of a franchise or interest in a franchise for value, but does not include the renewal or extension of an existing franchise without any material change in the terms thereof if there is no interruption in the operation of the franchised business by the franchisee.

(9) "Subfranchisor" means a person to whom an area franchise is sold by a franchisor. [1973 c.509 §1; 1987 c.414 §77; 1993 c.744 §16]

650.010 Franchise sellers required to maintain books and records; filings with director. Every person who offers to sell a franchise in this state shall maintain a complete set of books, records and accounts of any such sale and the disposition of the proceeds thereof, and shall, at such times as the Director of the Department of Consumer and Business Services may require, file in the office of the director a report, stating the names of each person to whom a franchise has been sold by the person filing the report, the amount of the proceeds derived and the disposition. [1973 c.509 §3]

650.015 When franchise sale or offer for sale is made in this state. (1) A sale or offer to sell a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(2) An offer to sell a franchise is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. Acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(3) An offer to sell a franchise is not made in this state merely because:

(a) The publisher circulates or there is circulated on behalf of the publisher in this state any bona fide newspaper or other publication of general, regular and paid circulation outside this state during the past 12 months; or

(b) A radio or television program originating outside this state is received in this state. [1973 c.509 §2]

650.020 Liability of franchise seller; defenses; amount of recovery; attorney fees; joint and several liability; limitation on action; indemnification of corporation; right of contribution. (1) Any person who sells a franchise is liable as provided in subsection (3) of this section to the franchisee if the seller:

(a) Employs any device, scheme or artifice to defraud; or

(b) Makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(2) It shall be an affirmative defense to any action for legal or equitable remedies brought under subsection (1) of this section if the franchisee knew of the untruth or omission.

(3) The franchisee may recover any amounts to which the franchisee would be entitled upon an action for a rescission. Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Every person who directly or indirectly controls a franchisor liable under subsection (1) of this section, every partner, officer or director of the franchisor, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the sale of a franchise is also liable jointly and severally to the same extent as the franchisor, unless the nonseller did not know, and, in the exercise of reasonable care, could not have known, of the existence of the facts on which the liability is based.

(6) An action may not be commenced under this section more than three years after the sale.

(7) A corporation which is liable under ORS 650.005 to 650.100 shall have a right of indemnification against any of its principal executive officers, directors and controlling persons whose willful violation of any provision of ORS 650.005 to 650.100 gave rise to the liability. All persons liable under ORS 650.005 to 650.100 shall have a right of contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except:

(a) A person willfully misrepresenting or failing to disclose shall not have any right of contribution against any other person guilty merely of a negligent violation; and

(b) A principal executive officer, director, or controlling person shall not have any right of contribution against the corporation to which the person sustains that relationship. [1973 c.509 §4; 1979 c.284 §185; 1995 c.696 §40]

(Administration)

650.050 Rules. In accordance with this section and ORS chapter 183, the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 650.005 to 650.100. [1973 c.509 §5]

650.055 General duties and powers of director. The Director of the Department of Consumer and Business Services may:

(1) Undertake the investigations, including investigations outside this state, that the director considers necessary to:

(a) Determine whether a person:

(A) Has failed to comply with ORS 650.010;

(B) Has engaged in, is engaging in or is about to engage in an act or practice that would give rise to liability under ORS 650.020; or

(C) Has violated, is violating or is about to violate a rule of the director adopted under ORS 650.050.

(b) Aid in the enforcement of ORS 650.005 to 650.100 or in the formulation of rules and forms that carry out ORS 650.005 to 650.100.

(2) Require a person to file a statement in writing, under oath or otherwise, concerning the matter being investigated.

(3) When the director has reason to believe that a person has failed to comply with ORS 650.010, issue an order to comply.

(4) When the director has reason to believe that a person has engaged in, is engaging in or is about to engage in an act or practice that would give rise to liability under ORS 650.020, issue an order to cease and desist from the act or practice.

(5) When the director has reason to believe that a person has violated, is violating or is about to violate a rule of the director adopted under ORS 650.050, issue an order to cease and desist from the violation.

(6) Publish information concerning any:

(a) Failure to comply with ORS 650.010;

(b) Act or practice that gives rise to liability under ORS 650.020;

(c) Violation of a rule of the director adopted under ORS 650.050; or

(d) Person who:

(A) Fails to comply with ORS 650.010;

(B) Commits an act or practice that gives rise to liability under ORS 650.020; or

(C) Violates a rule of the director adopted under ORS 650.050. [1973 c.509 §6; 2005 c.339 §1]

650.057 Orders issued under ORS 650.055. (1) The Director of the Department of Consumer and Business Services shall serve an order under ORS 650.055 on the person named in the order.

(2) An order issued under ORS 650.055 becomes effective upon service on the person named in the order.

(3) ORS 183.413 to 183.470 apply to orders issued under ORS 650.055.

(4) Notwithstanding subsection (3) of this section, a person may not obtain a hearing on the order unless the person requests the hearing within 20 days of service of the order.

(5) A person who does not request a contested case hearing may not obtain judicial review of the order.

(6) The director may vacate or modify an order issued under ORS 650.055 at any time. A modified order is effective upon service on the person named in the order. [2005 c.339 §3]

650.060 Investigative powers of director; protection against unreasonable investigation; contempt. (1) For the purpose of any investigation or proceeding under ORS 650.005 to 650.100, the Director of the Department of Consumer and Business Services or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant or material to the investigation or proceeding.

(2) Any person who is served with a subpoena or is subject to an order to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or other documents or records as provided in ORS 650.005 to 650.100 may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C.

(3) Except to the extent judicial relief may have been granted under subsection (2) of this section, if any person disobeys a subpoena issued under subsection (1) of this section, or if any witness refuses to testify or produce evidence before the director on any matter on which the witness may be lawfully interrogated, the circuit court of any county, upon application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1973 c.509 §7; 1977 c.358 §10; 1979 c.284 §186]

650.065 Injunctive relief; attorney fees; appointment of receiver or conservator; conditions of awarding damages and injunctive relief. (1) Whenever the Director of the Department of Consumer and Business Services determines that any person has engaged in, or is about to engage in, any act or practice which the director believes would give rise to liability under ORS 650.020, the director may bring suit in the name of the State of Oregon in any circuit court of this state to enjoin the acts or practices. Upon a proper showing, the court shall grant a permanent or temporary injunction or restraining order and may appoint a receiver or conservator for the defendant or the defendant's assets. The court shall not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in any suit authorized by subsection (1) of this section a claim for any amount the franchisee could recover under ORS 650.020 or a claim for damages on behalf of other persons injured by any act or practice against which an injunction or restraining order is sought. The court may award appropriate relief to the franchisee or such other persons if the court finds that enforcement of the right of the franchisee or other persons by private civil action or suit, whether by class action or otherwise, would be so burdensome or expensive as to be impractical. [1973 c.509 §8; 1981 c.897 §85; 1995 c.696 §41]

650.070 Director as agent for service of process. Except as provided in ORS 650.080, the Director of the Department of Consumer and Business Services is an agent for the service of any process, notice or demand required to be served in a proceeding under ORS 650.005 to 650.100 for:

(1) Every person who sells or offers to sell a franchise in this state; and

(2) Every person, whether a resident or nonresident of this state, who has engaged in conduct that is subject to a proceeding under ORS 650.020. [1973 c.509 §9]

650.075 Manner of executing service of process; effect of initial service. (1) The service referred to in ORS 650.070 shall be made by:

(a) Serving the Director of the Department of Consumer and Business Services or a clerk on duty at the Department of Consumer and Business Services a copy of the

process, notice or demand, with any papers required by law to be delivered in connection with the service, or by mailing to the department a copy of the process, notice or demand by certified or registered mail, and a fee of $2 for each party being served;

(b) Transmittal of notice of the service on the director, together with one copy of each of the papers required by law to be delivered in connection with the service, by certified mail to the person being served:

(A) At such person's address, if any, as it appears in the records of the director; and

(B) At any address the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice to the person to be served; and

(c) Filing with the appropriate court or other body, as part of the return of service, the return mailing receipt and an affidavit of the person initiating the proceedings that there has been compliance with this section and ORS 650.070.

(2) After completion of initial service upon the director, no additional documents need be served upon the director to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process. [1973 c.509 §10; 1987 c.603 §27]

650.080 When personal service of process required. The method of service referred to in ORS 650.075 may not be used if personal service can be used. [1973 c.509 §11]

650.085 Other civil or criminal remedies unaffected. Nothing in ORS 650.005 to 650.100 limits any statutory or common-law rights of a person to bring an action in any court for an act involved in the sale of franchises, or the right of the state to punish a person for a violation of any law. [1973 c.509 §12]

650.095 Civil penalties. (1) In addition to any other liability or penalty provided by law, the Director of the Department of Consumer and Business Services may impose a civil penalty on a person for violation of a rule adopted under ORS 650.050 or an order issued under ORS 650.055.

(2)(a) The director shall impose a civil penalty under this section in the manner provided in ORS 183.745.

(b)(A) The civil penalty may not exceed $10,000 for each violation.

(B) In the case of a continuing violation:

(i) Each day that the violation continues is a separate violation.

(ii) The civil penalty may not exceed $50,000. [2005 c.339 §4]

650.100 Disposition of civil penalties. All penalties recovered under ORS 650.095 shall be paid into the State Treasury and credited to the General Fund and are available for general government expenses. [2005 c.339 §5]

MOTOR VEHICLE DEALERSHIPS

650.120 Definitions for ORS 650.120 to 650.170. For the purposes of ORS 650.120 to 650.170:

(1) "Dealer" means any person who 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 person who sells or distributes motor vehicles other than motor homes to motor vehicle dealers.

(4) "Fleet owner" means a person in this state who 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 franchise 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, commercial 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 is granted.

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

(8) "Importer" means a person who 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 person who 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.

(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 is built into an integral part of, or is permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must contain permanently installed independent life support systems and provide at least four of the following facilities:

(a) Cooking;

(b) Refrigeration or ice box;

(c) 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 commercial 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, 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) "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. [1980 c.3 §1; 1993 c.216 §1; 1999 c.660 §1; 2001 c.216 §1; 2001 c.825 §1; 2003 c.411 §1; 2005 c.211 §1; 2009 c.627 §3; 2009 c.790 §11]

Note: Section 7 (2), chapter 627, Oregon Laws 2009, provides:

Sec. 7. (2) The amendments to ORS 650.120, 650.140 and 650.150 by sections 3 to 5 of this 2009 Act apply to motor vehicle dealership franchises canceled, terminated or not continued on or after the effective date of this 2009 Act [June 26, 2009] and to motor vehicle dealership franchises canceled, terminated or not continued in bankruptcy proceedings pending or filed on or after the effective date of this 2009 Act. [2009 c.627 §7(2)]

650.130 Prohibited conduct by manufacturer, distributor or importer. Notwithstanding the terms of any franchise or other agreement, a manufacturer, distributor or importer may not:

(1) Require or attempt to require a dealer to accept delivery of any motor vehicle, part, accessory or any other commodity not voluntarily ordered by the dealer. This subsection does not apply to recall safety and emissions campaign parts not voluntarily ordered by the dealer or any vehicle features, parts, accessories or other components mandated by federal, state or local law.

(2) Coerce or attempt to coerce a dealer to enter any agreement or sales promotion program by threatening to cancel the franchise of the dealer.

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

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

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

(6) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices or display decorations or materials at the expense of the dealer.

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

(8) Initiate an audit to determine the validity of paid claims for dealer compensation or any charge-backs for warranty parts or service compensation more than one year following the date of payment unless the manufacturer, distributor or importer has reasonable grounds to believe that the dealer submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit more than one year following the date of payment, the manufacturer, distributor or importer may charge back to the dealer only the amount of a claim that the manufacturer, distributor or importer proves was fraudulent. Parties shall cooperate to ensure that permitted audits are concluded within 60 days of initiation.

(9) Initiate an audit to determine the validity of paid claims for dealer compensation or any charge-backs for consumer or dealer incentives more than one year following the date of payment unless the manufacturer, distributor or importer has reasonable grounds to believe that the dealer submitted a fraudulent claim. If a manufacturer, distributor or importer initiates an audit more than one year following the date of payment, the manufacturer, distributor or importer may charge back to the dealer only the amount of a claim that the manufacturer, distributor or importer proves was fraudulent. Parties shall cooperate to ensure that permitted audits are concluded within 60 days of initiation.

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

(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 except to a franchisee of the manufacturer, distributor or importer. It is not a violation of this subsection if:

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

(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.

(F) Has an ownership interest in, operates or controls, directly or indirectly, a business that makes a sale or lease of a motor vehicle that is not a violation of 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 interest in the dealership;

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

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

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

(E) On January 1, 2000:

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

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

(12) Sell or lease a motor vehicle to a person in this state other than to a business described in subsection (11) of this section or to a franchisee of the manufacturer, distributor or importer. It is not a violation of this subsection if:

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

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

(B) A driver training program;

(C) A nonprofit corporation;

(D) A qualified vendor;

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

(F) A current retail lessee;

(G) A fleet owner;

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

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

(b) The sale or lease is by a business in this state 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:

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

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

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

(13)(a) Own, operate or control a business or enter into any contract, agreement or other written instrument permitting a person that is not a dealer to be compensated by the manufacturer, distributor or importer for performing warranty repairs and services if the business is located within a dealer's relevant market area.

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

(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 the repairs or services to be performed by a person who owns or leases the motor vehicles for use in the person's business.

(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. [1980 c.3 §2; 1989 c.716 §5; 1999 c.660 §2; 2001 c.216 §2; 2001 c.825 §2; 2003 c.411 §2]

650.140 Good cause required to terminate dealer franchise; protest of termination; notice; when reasons for termination required. (1) Notwithstanding the terms of any franchise or other agreement, it is unlawful for any manufacturer, distributor or importer to cancel, terminate or refuse to continue any franchise without showing good cause, provided the dealer protests the termination by filing a complaint in court of competent jurisdiction within the time period specified in subsection (3) of this section.

(2) In determining if good cause exists pursuant to subsection (1) of this section, the court shall consider such factors as:

(a) The amount of business transacted by the dealer as compared to the amount of business available to the dealer.

(b) The investment necessarily made and obligations necessarily incurred by the franchisee in performance of the franchise.

(c) The permanency of the investment.

(d) The adequacy of the franchisee's new motor vehicle sales and service facilities, equipment and parts.

(e) The qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles.

(f) The failure of the franchisee to substantially comply in good faith with those requirements of the franchise that are reasonable.

(3) Notwithstanding the terms of any franchise or other agreement, a franchisor shall give a franchisee 60 days' written notice stating the specific reasons for cancellation, termination or noncontinuance of a franchise, provided that a franchisor need only give 30 days' written notice concerning the following reasons:

(a) Misrepresentation by the franchisee in applying for the franchise.

(b) Insolvency of the franchisee, or filing of any petition by or against the franchisee, under any bankruptcy or receivership law.

(c) Conviction of a felony, provided that conviction after a plea nolo contendere shall be considered a conviction for purposes of this subsection.

(d) Failure of the dealer to maintain its operation open for business for seven consecutive business days or for eight business days out of any 15-business-day period.

(4)(a) If a manufacturer, distributor or importer cancels, terminates or refuses to continue any franchise with the dealer for any reason other than good cause pursuant to the terms of the franchise agreement or

for good cause as that term is used in this section, and the manufacturer, distributor or importer did not cancel at the same time a franchise with another motor vehicle dealership of the same line-make within the dealer's relevant market area, the manufacturer, distributor or importer, or where applicable the manufacturer's, distributor's or importer's successor in interest, shall provide the dealer with the specific reasons why the dealer's franchise was canceled, terminated or not continued and another dealer's franchise of the same line-make within the dealer's relevant market area was retained or renewed.

(b) The information required by paragraph (a) of this subsection must include the criteria and data used in making the determination to cancel, terminate or not continue, or to retain or renew, the franchise, and must be provided within a reasonable period of time not to exceed 30 days after the manufacturer, distributor or importer gives notice of the cancellation, termination or refusal to continue. [1980 c.3 §3; 2009 c.627 §4]

Note: See note under 650.120.

650.145 Compensation due dealer upon termination of franchise. (1) As used in subsection (2) of this section, "fair and reasonable compensation" means the amount originally paid by the dealer minus any incentive payments, model close-out allowances or any other programs applicable to the vehicles.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of any franchise, the dealer shall be allowed fair and reasonable compensation by the manufacturer, distributor or importer for the following:

(a) All new vehicles manufactured in the current calendar year and any subsequent calendar year in the motor vehicle inventory purchased from the manufacturer, distributor or importer that have not been materially altered, substantially damaged or driven for more than 300 miles;

(b) All new vehicles in the motor vehicle inventory that have not been materially altered or substantially damaged, provided that the vehicles:

(A) If motor vehicles with a gross vehicle weight rating of less than 8,500 pounds, were not driven for more than 300 miles, were purchased directly from the manufacturer, distributor or importer within 120 days of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source; or

(B) If motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, were not driven more than 3,500 miles, were purchased directly from the manufacturer, distributor or importer within one year of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source;

(c) Supplies and parts inventory purchased from the manufacturer, distributor or importer and listed in the manufacturer's, distributor's or importer's current parts catalog;

(d) Equipment, furnishings and signs purchased from the manufacturer, distributor or importer and required by the manufacturer, distributor or importer that have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value; and

(e) Special tools purchased from the manufacturer, distributor or importer within three years of the date of termination, cancellation, nonrenewal or discontinuance and required by the manufacturer that have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value.

(3) Nothing in this section is intended to modify the manufacturer's, distributor's or importer's contractual right of setoff.

(4) Upon the termination, cancellation, nonrenewal or discontinuance of a franchise, the manufacturer, distributor or importer shall also pay to the dealer a sum equal to the current, fair rental value of the dealer's established place of business for a period of one year from the effective date of termination, cancellation, nonrenewal or discontinuance or the remaining period of any lease, whichever is less.

(5) Subsection (4) of this section shall apply only to the extent that the dealer's established place of business is used for performance of sales and service obligations under the manufacturer's, distributor's or importer's franchise agreement.

(6) In the event that termination is by the dealer, the payment required by subsection (4) of this section is not required.

(7) This section shall not relieve a new motor vehicle dealer, lessor or other owner of an established place of business from the obligation of mitigating damages. [1989 c.716 §2; 2001 c.216 §3; 2007 c.71 §203; 2009 c.627 §1]

650.150 Enjoining establishment of certain franchises or relocation of existing dealership in same market area; complaint; determination of good cause; when offer of new franchise or relocated dealership required; notice to existing or former dealerships; attorney fees. (1) A dealer or former dealer may enjoin a man-

ufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, from franchising an additional motor vehicle dealership of the same line-make within the dealer's or former dealer's relevant market area for good cause, provided that the dealer files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection (6) of this section. For purposes of this section, "relevant market area" has the meaning given that term in ORS 650.120, but other factors such as actual sales and service area must be considered.

(2) A dealer or former dealer may enjoin a manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, from relocating an existing motor vehicle dealership of the same line-make within the dealer's or former dealer's relevant market area for good cause, provided that the dealer or former dealer files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection (6) of this section. This subsection does not apply to an existing dealership or to the dealership of a replacement dealer that is relocating to a site within a one-mile radius of its existing site if the relevant market area of the existing or replacement dealership is not more than 10 miles, within a two-mile radius of its existing site if the relevant market area of the existing or replacement dealership is not more than 15 miles and within a three-mile radius of the existing site if the relevant market area of the existing or replacement dealership is more than 15 miles.

(3)(a) A dealer or former dealer may enjoin a manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, from franchising a replacement dealer to operate a dealership of the same line-make within the dealer's or former dealer's relevant market area for good cause, provided that the franchising of the replacement dealer has not occurred within one year of the expiration or termination of the former franchise and the dealer files a complaint with a court of competent jurisdiction within 60 days of receiving the notice specified in subsection (6) of this section. For the purposes of this section, "relevant market area" has the meaning given that term in ORS 650.120, but other factors such as actual sales and service area must be considered.

(b) Notwithstanding paragraph (a) of this subsection, when good cause exists as provided in subsection (5) of this section, a dealer or former dealer may enjoin a manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, under this subsection within five years of the expiration or termination of the former franchise without regard to when the franchising of the replacement dealer took place or will take place.

(4) In determining whether good cause exists pursuant to subsection (1), (2) or (3) of this section, the court may consider all factors that the court considers relevant, but in any case shall consider the following factors:

(a) Whether threats or other coercive action, oral or written, were made to or taken against the dealer by the manufacturer, distributor or importer.

(b) Whether the dealer is asked to terminate one franchise in order to keep another franchise.

(c) Whether the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, breached the terms or provisions of a franchise.

(d) Whether the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, engaged in conduct prohibited under ORS 650.130.

(e) Whether the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, canceled, terminated or refused to continue a franchise without good cause under ORS 650.140.

(f) Whether there will be an unjustifiable adverse effect upon existing dealers because of the grant of the new franchise or the relocation of an existing franchise. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors:

(A) The extent, nature and permanency of the investment of the existing motor vehicle dealers and the proposed motor vehicle dealer.

(B) The effect on the retail motor vehicle business in the relevant market area.

(C) The growth or decline in population and in new motor vehicle registrations in the relevant market area.

(g) The effect on consumers in the relevant market area. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors in the relevant market area:

(A) The adequacy and convenience of existing motor vehicle sales facilities and service facilities.

(B) The supply of motor vehicle parts and qualified service personnel.

(C) The existence of competition among existing dealers.

(5)(a) Notwithstanding subsection (4) of this section, good cause as used in this section shall be deemed to exist without consideration of any other factors when a dealer or former dealer's franchise was canceled, terminated or not continued for any reason other than good cause pursuant to the terms of the franchise agreement or as a result of the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, having breached the terms of the franchise agreement.

(b) A manufacturer, distributor or importer, or a manufacturer's, distributor's or importer's successor in interest, enjoined for good cause under this subsection shall offer the franchise sought to be granted or relocated to the dealer or former dealer whose franchise was canceled, terminated or not continued. The dealer or former dealer shall have 60 days within which to accept or reject the offer required under this paragraph. Only after a dealer or former dealer has declined, rejected or failed to respond to the offer required under this paragraph, may the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, offer to grant the franchise to another dealer or replacement dealer or relocate an existing motor vehicle dealership.

(6) A manufacturer, distributor or importer must give a dealer or former dealer at least 60 days' written notice prior to franchising a new dealership of the same line-make or authorizing the relocation of another dealership of the same line-make within the relevant market area of the dealer's or former dealer's dealership. Notice under this subsection must be given to all dealers and former dealers of the same line-make within the relevant market area of the site of the proposed new or relocated dealership.

(7) If a dealer or former dealer enjoins or files an action to enforce rights arising under this section against a manufacturer, distributor or importer, or a manufacturer's, distributor's or importer's successor in interest, the manufacturer, distributor or importer, or the manufacturer's, distributor's or importer's successor in interest, shall pay the dealer's or former dealer's court costs and attorney fees if the dealer or former dealer prevails regardless of whether a new dealership was actually established. [1980 c.3 §4; 1985 c.67 §1; 1993 c.216 §2; 1999 c.660 §3; 2009 c.627 §5]

Note: See note under 650.120.

650.153 Liability of franchisor for repair of motor vehicle that becomes inoperative prior to sale to consumer. (1) If a new motor vehicle becomes inoperative prior to being sold to a consumer, the franchisor is liable for the repair of the motor vehicle if the motor vehicle is inoperative due to a mechanical failure that is not the result of negligence on the part of the franchisee.

(2) Whenever a new motor vehicle becomes inoperative, the franchisee shall notify the franchisor and request authorization from the franchisor to repair the vehicle.

(3) If the franchisor refuses or fails to authorize repair of the inoperative motor vehicle within 30 business days after receiving notice under subsection (2) of this section, ownership of the new motor vehicle shall revert back to the franchisor, and the franchisee shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(4) If the franchisor is unable to deliver to the franchisee the parts needed to repair an inoperative new motor vehicle within 30 business days after receiving notice under subsection (2) of this section, ownership of the new motor vehicle shall revert to the franchisor, and the franchisee shall have no obligation, financial or otherwise, with respect to the motor vehicle. [1999 c.660 §8; 2005 c.22 §453]

650.155 Liability of manufacturer for damages to vehicles before delivery to carrier. (1) Notwithstanding the terms of any franchise, the manufacturer is liable for any and all damage to new motor vehicles before delivery to a carrier or transporter.

(2) Whenever a new motor vehicle is damaged in transit, the dealer shall:

(a) Notify the manufacturer of the damage within three business days from the date of delivery to the dealer or within any additional time as specified in the franchise; and

(b) Request from the manufacturer authorization to replace the components, parts and accessories damaged or to otherwise repair the damage.

(3) If the manufacturer refuses or fails to authorize repair of any damage within 10 days after receipt of notification under subsection (2) of this section, or within any additional time as specified in the franchise, ownership of the new motor vehicle shall revert to the manufacturer, and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(4) A manufacturer shall disclose in writing to a dealer, at the time of delivery of a new motor vehicle, the nature and ex-

tent of any and all damage and post-manufacturing repairs.

(5) If the total value of repairs to a new motor vehicle by the manufacturer's authorized agent and a dealer equals or exceeds the amount specified under subsection (6) of this section, the manufacturer may either repurchase the motor vehicle from the dealer, or provide reasonable and adequate compensation to the dealer to assist in sale or disposition of the new motor vehicle, as long as the dealer has complied with all other contractual agreements with regard to damaged vehicles. If the manufacturer repurchases the motor vehicle, the dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(6) A dealer shall disclose, in writing, to a purchaser of the new motor vehicle prior to entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds $1,000, as calculated at the rate of the dealer's authorized warranty rate for labor and parts. Replacement of glass, tires, bumpers or any comparable nonwelded component is not considered damage and repair for purposes of this section. For purposes of this subsection, "comparable nonwelded component" does not include a fender, hood, trunk lid or door. [1989 c.716 §3; 1999 c.660 §4; 2003 c.411 §3; 2009 c.627 §2]

650.158 Predelivery preparation and warranty service; notice to dealers; schedule of compensation; claims by dealers. (1) Each manufacturer, distributor or importer shall specify in writing to each of its dealers in this state:

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

(b) The schedule of compensation to be paid the dealer for parts, work and service in connection with predelivery preparation and warranty service; and

(c) The time allowances for the performance of the predelivery preparation and warranty service.

(2) A schedule of compensation shall include reasonable compensation for diagnostic work, repair service and labor. Time allowances for the diagnosis and performance of predelivery and warranty service shall be reasonable and adequate for the work to be performed. The hourly rate paid to a dealer shall not be less than the rate charged by the dealer to nonwarranty customers for nonwarranty service and repairs. Reimbursement for parts, other than parts used to repair the living facilities of motor homes, purchased by the dealer for use in performing predelivery and warranty service shall be the amount charged by the dealer to nonwarranty customers, as long as that amount is not unreasonable.

(3) A manufacturer, distributor or importer shall include, in written notices of vehicle recalls to motor vehicle owners and dealers, the expected date by which necessary parts and equipment will be available to the dealers for the correction of the defect or defects. A manufacturer, distributor or importer shall adequately compensate a dealer for repair service performed under the recall.

(4) All claims made by dealers under this section for labor and parts shall be paid or credited to the dealer within 30 days following their approval. All such claims shall be either approved or disapproved within 30 days after their receipt in the manner specified by the manufacturer, distributor or importer. Any claim not specifically disapproved in writing or through electronic communication within 30 days after receipt shall be considered approved, and payment shall be made within 30 days. The dealer shall be notified in writing of the grounds for disapproval of any claim. [1991 c.609 §3; 1999 c.660 §5]

650.160 [1980 c.3 §5; repealed by 1991 c.609 §4]

650.162 Transfer, assignment or sale of interest in dealership or franchise; notices; approval of franchisor; right of first refusal. (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 include completed application forms and related information generally used by the manufacturer, distributor or importer to conduct a review of transfers, assignments or sales and a copy of all agreements regarding the transfer, assignment or sale.

(2) Within 60 days of 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 specify approval or disapproval of the transfer, assignment or sale. If the transfer, assignment or sale is disapproved, the notice shall 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 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 quali-

fications 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 receiving a notice sent under subsection (1) of this section, the transfer, assignment or sale shall be considered approved and shall take effect.

(5) A manufacturer, distributor or importer may exercise a right of first refusal if the right is included in the franchise agreement, the transfer, assignment or sale consists of more than 50 percent of the dealer's ownership of the franchise and all of the following requirements are met:

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

(b) The exercise of the right of first refusal will result in the dealer and any owner of the dealer receiving consideration, terms and conditions that are either the same as or better than those contracted to receive under the transfer, assignment or sale.

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

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

(i) A spouse;

(ii) A child or stepchild;

(iii) A grandchild or stepgrandchild;

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

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

(vi) A parent or stepparent;

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

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

(D) A trust established or to be established:

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

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

(d) The manufacturer, distributor or importer pays the reasonable expenses, including attorney fees, that are incurred by the transferee, assignee or buyer before the manufacturer, distributor or importer exercises a right of first refusal. A manufacturer, distributor or importer may require the transferee, assignee or buyer to provide an accounting of expenses incurred prior to issuing payment. [1999 c.660 §9]

650.165 Prohibited franchise conditions. It shall be a violation of ORS 650.120 to 650.170 for a franchisor to require a franchisee to agree to the inclusion of a term or condition in a franchise, or in any lease or agreement ancillary or collateral to a franchise, as a condition to the offer, grant or renewal of such franchise, lease or agreement, that:

(1) Requires the franchisee to waive trial by jury in actions involving the franchisor.

(2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prevents a franchisee from bringing an action in a particular forum otherwise available under the law.

(3) Requires that disputes between the franchisor and franchisee be submitted to arbitration or to any other binding alternative dispute resolution procedure. However, any such franchise, lease or agreement may authorize the submission of a dispute to arbitration or to binding alternative dispute resolution if the franchisor and franchisee voluntarily agree to submit such dispute to arbitration or binding alternative dispute resolution at the time the dispute arises.

(4) Adversely alters to a substantial degree the rights and obligations of a franchisee under any existing franchise contract. [1989 c.716 §4; 1999 c.660 §6; 2007 c.71 §204]

650.167 Violation of ORS 650.140 or 650.150 as irreparable injury. In any action brought by a dealer against a manufacturer, distributor or importer under ORS 650.120 to 650.170, any violation of ORS 650.140 or 650.150 by a manufacturer, distributor or importer may be considered an irreparable injury to the dealer for determining if a temporary restraining order should be issued. [1991 c.609 §2]

650.170 Dealer's remedy. (1) Any dealer injured, or threatened with injury, by a manufacturer, distributor or importer as a result of a violation of ORS 650.120 to 650.170 may sue to enjoin such illegal, or threatened illegal conduct.

(2) The court, in an action brought under ORS 650.120 to 650.170, may award damages to a dealer who demonstrates an actual loss

of money as a result of illegal conduct by a manufacturer, distributor or importer.

(3) Any action for damages under ORS 650.120 to 650.170 shall be brought within two years of the injury. In any action brought under ORS 650.120 to 650.170, the court may award reasonable attorney fees and costs to the prevailing party. [1980 c.3 §6]

MOTOR FUEL FRANCHISES

650.200 Definitions for ORS 650.200 to 650.250. As used in ORS 650.200 to 650.250, unless the context requires otherwise:

(1) "Affiliate" means any person who, other than by means of a franchise, controls, is controlled by or is under common control with any other person.

(2) "Company operated station" means a motor fuel service station operated by a franchisor with employees of the franchisor or by a commission manager of the franchisor for the sale of motor fuel to the general public for ultimate consumption.

(3) "Contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(4) "Control" means the direct or indirect ownership of or the right to exercise a directing influence over more than 50 percent of the beneficial interest in any person.

(5)(a) "Franchise" means any contract:

(A) Between a refiner and a motor fuel distributor;

(B) Between a refiner and a motor fuel retailer;

(C) Between a motor fuel distributor and another motor fuel distributor; or

(D) Between a motor fuel distributor and a motor fuel retailer,

under which a refiner or motor fuel distributor authorizes or permits a motor fuel retailer or motor fuel distributor to use, in connection with the sale, consignment or distribution of motor fuel, a trademark which is owned or controlled by such refiner or motor fuel distributor or by a refiner which supplies motor fuel to the motor fuel distributor which authorizes or permits such use.

(b) "Franchise" includes:

(A) Any contract under which a motor fuel retailer or motor fuel distributor is authorized or permitted to occupy leased marketing premises, to be employed in connection with the sale, consignment or distribution of motor fuel under a trademark which is owned or controlled by such refiner or motor fuel distributor or by a refiner which supplies motor fuel to the motor fuel distributor which authorizes or permits such occupancy;

(B) Any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed under a trademark owned or controlled by a refiner or motor fuel distributor or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned and controlled on such date by a refiner or motor fuel distributor; and

(C) The unexpired portion of any franchise, as defined in this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provisions of law which permits such transfer or assignment without regard to any provision of the franchise.

(6) "Franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(7) "Franchisee" means a motor fuel retailer or motor fuel distributor who is authorized or permitted under a franchise to use a trademark in connection with the sale, consignment or distribution of motor fuel.

(8) "Franchisor" means a refiner or motor fuel distributor who, under a franchise, authorizes or permits a retailer or motor fuel distributor to use a trademark in connection with the sale, consignment or distribution of motor fuel.

(9) "Leased marketing premises" means marketing premises owned, leased or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment or distribution of motor fuel.

(10) "Marketing premises" means in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment or distribution of motor fuel.

(11) "Motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads and highways.

(12) "Motor fuel distributor" means any person, including any affiliate of such person, who:

(a) Purchases motor fuel for sale, consignment or distribution to another; or

(b) Receives motor fuel on consignment for distribution to the distributor's own mo-

tor fuel accounts or to accounts of the distributor's supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier or who receives motor fuel on consignment for sale to the general public for ultimate consumption.

(13) "Motor fuel retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(14) "Refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. [1987 c.917 §1]

650.205 Prohibited conduct by franchisor. Notwithstanding the terms of any franchise, a franchisor shall not:

(1) Require any franchisee to meet unreasonable mandatory minimum sales volume requirements for fuel or other products;

(2) Alter the franchise premises during the effective term of the franchise without the consent of the franchisee. This subsection does not apply to alterations required by law;

(3) Interfere with any franchisee's right to assistance of counsel on any matter or to join or be active in any trade association;

(4) Set or compel, directly or indirectly, the retail price at which the franchisee sells motor fuel or other products; and

(5)(a) With respect to credit cards issued by the franchisor, chargeback any credit card invoice to a motor fuel franchisee unless the franchisor provides the cardholder's last-known address, the reason for chargeback, a refund or credit for any credit card handling fee collected on the transaction by the franchisor from the franchisee, and the original invoice of the credit card charge or the legal equivalent if the franchisor has previously received the invoice or a copy thereof. The cardholder's address need not be provided if the chargeback is based on any alleged unlawful, fraudulent or deceptive act of the franchisee or an employee of the franchisee, or if the cardholder claims no legal responsibility for payment of the charge because it involved the unauthorized use of a credit card.

(b) The terms and conditions governing a motor fuel franchisee's acceptance of a franchisor issued credit card, including the reasons for which a chargeback may be made, shall be established in writing and a copy thereof provided to the franchisee. The franchisor or its agent shall provide at least 30 days' prior written notice to a franchisee before implementing any change to previously disclosed terms and conditions if such change may increase the franchisee's cost of accepting the franchisor issued credit card or if such change adds to or amends the reasons for which a chargeback may occur.

(c) No credit card invoice for a franchisor issued credit card shall be charged back after 90-days from the date a charge invoice was submitted to the franchisor, except that a chargeback may be made beyond the 90-day period if the cardholder or franchisor alleges fraudulent or other unlawful actions by the franchisee or an employee thereof in making the sale, or if the cardholder refuses payment to the franchisor pursuant to rights granted under §170 of the Federal Truth-in-Lending Act (15 U.S.C. 1666i), or any rule issued under §5 of the Federal Trade Commission Act (15 U.S.C. 46), unless the cardholder's refusal to pay is the fault of the franchisor. [1987 c.917 §5]

650.210 Rights and prohibitions governing relationship between franchisor and franchisee. Without limiting the other provisions of ORS 650.200 to 650.250, the following specific rights and prohibitions shall govern the relationship between the franchisor and the franchisee. It shall be unlawful and a violation of ORS 650.200 to 650.250 for any franchisor to:

(1) Require a franchisee to purchase or lease goods or services of a franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition. This subsection does not apply to the initial inventory of the franchise. A determination of whether such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds and do not substantially affect competition shall be guided by the decisions of the courts of the United States in interpreting and applying the antitrust laws of the United States.

(2) Sell, rent or offer to sell or rent to a franchisee any product, service or property at a price not set in good faith as defined in ORS 71.2010 (2)(t).

(3) Require a franchisee to assent to a release, assignment, novation or waiver which would relieve any person from liability imposed by ORS 650.200 to 650.250.

(4) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value at the time of expiration of the franchise of the franchisee's resalable inventory, supplies, equipment and furnishings purchased from the franchisor, not including personalized materials that have no value to the franchisor and inventory,

supplies, equipment and furnishings not reasonably required in the conduct of the franchise business. A franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(5) Impose on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving the standard of conduct to be reasonable. [1987 c.917 §9; 2009 c.181 §107]

650.215 Prohibited conduct in offer, sale or purchase of franchise. It is unlawful for any person in connection with the offer, sale or purchase of any franchise directly or indirectly:

(1) To sell or offer to sell a franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact.

(2) To employ any device, scheme or artifice to defraud.

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. [1987 c.917 §10]

650.220 Consent of franchisor to sale, assignment or transfer of franchise; conditions for trial franchise. (1) Notwithstanding the terms of any franchise, a franchisor shall not prohibit or unreasonably withhold its consent to any sale, assignment or other transfer of the franchise by a franchisee to a qualified third party.

(2) If the franchisor consents to the proposed sale, assignment or other transfer and the proposed third party has not previously been a party to a franchise with the franchisor, the franchisor at its option may require the third party to accept in lieu of the assigned franchise a trial franchise as defined in The Petroleum Marketing Practices Act, (15 U.S.C. 2803), on the terms and conditions then generally being extended by the franchisor to similarly situated franchisees. Entry into the trial franchise shall terminate the franchise proposed to be sold, assigned or transferred. [1987 c.917 §2]

650.225 Death of franchisee; when franchisor required to enter into new franchise with designee of franchisee; notice; qualifications; possession of franchise premises. (1) Following the death of a motor fuel retailer franchisee and notwithstanding the terms of the franchise, the franchisor, in the case of leased marketing premises, shall enter into a new franchise with the designee of the motor fuel retailer franchisee on the terms and conditions then generally being extended by the franchisor to similarly situated motor fuel retailers if:

(a) Prior to the death of a motor fuel retailer franchisee, the motor fuel retailer franchisee notifies the franchisor in writing of the designee, who shall be the surviving spouse, adult child, or adult stepchild of the motor fuel retailer franchisee or in the absence of a designation, the motor fuel retailer franchisee's surviving spouse, if any;

(b) At the time of the motor fuel retailer franchisee's death, the designee meets the qualifications then being required by the franchisor for its motor fuel retailer franchisees; and

(c) Within 10 days following the motor fuel retailer franchisee's death, the designee enters into a new franchise with the franchisor on the terms and conditions then generally being extended by the franchisor to similarly situated motor fuel retailer franchisees, except that for the part of the term of the new lease equal to the unexpired portion of decedent franchisee's prior lease, the rent shall be the same as under the prior lease.

(2) Until the designee enters into a new franchise as provided in subsection (1) of this section, the franchisor shall be entitled to possess and to operate the marketing premises for the franchisor's own account. [1987 c.917 §3]

650.230 Transfer of franchise to corporation in which franchisee has controlling interest; conditions. Notwithstanding the terms of any franchise, no franchisor may prohibit or prevent the sale, assignment or other transfer of a franchise to a corporation in which the franchisee has and maintains a controlling interest if the franchisee offers in writing personally to guarantee the performance of the obligations under the franchise. In the event of a sale, assignment or transfer under this section, the franchisor may require the corporation to assume in writing all of the franchisee's obligations to the franchisor under the franchise and may require the franchisee to maintain a controlling interest in the corporation and actively operate the marketing premises during the time that the franchise with the corporation continues. [1987 c.917 §4]

650.235 Franchisor prohibited from requiring operation of service station in excess of 16 hours per day; exceptions. (1) A franchisor, as a condition for renewal of a franchisee lease or a supply agreement, shall not require a franchisee to operate a service station for the sale of motor fuel to the public for ultimate consumption in excess of 16 hours per day.

(2) This section shall not apply:

(a) If specific hours of business or operation are required under the franchisor's

prime lease or license from any governmental entity, airport, parking, marine or port authority, shopping center or any private investor not affiliated with or controlled by the franchisor;

(b) If the service station is located within one-fourth mile of access to any limited access highway of the federal highway system;

(c) To hours of operation exceeding 16 hours per day that have been agreed upon by the franchisor and the franchisee; or

(d) If the franchisor uniformly requires a 24-hour operation by all of its franchisees. [1987 c.917 §7]

650.240 When transfer of motor fuel a sale in commerce. For purposes of ORS 646.040, the transfer of motor fuel from a franchisor to a company operated station or a franchisee shall be a sale in commerce. [1987 c.917 §6]

650.245 Principle of good faith. Without limiting the other provisions of ORS 650.200 to 650.250, the principle of good faith shall govern the relationship and dealings of the parties with each other. [1987 c.917 §8]

650.250 Injunctive relief or damages; limitation on commencement of action; attorney fees. (1) Any person who is injured in the person's business or property by reason of a violation of ORS 650.200 to 650.250 may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, for injunctive relief or to recover the damages sustained by the person. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1987 c.917 §11; 1995 c.696 §42]

RECREATIONAL VEHICLE FRANCHISES

650.300 Definitions for ORS 650.300 to 650.480. As used in ORS 650.300 to 650.480:

(1) "Area of sales responsibility" means the geographic area for which a grantor has granted a dealer the exclusive right to sell recreational vehicles manufactured or distributed by the grantor.

(2) "Camper" has the meaning given that term in ORS 801.180.

(3) "Consumer" means a purchaser or lessee, other than for purposes of resale, of a product.

(4) "Dealer" means a person that:

(a) Is certified under ORS 822.020 as a vehicle dealer in this state; and

(b) Sells or leases recreational vehicles to the motoring public in this state.

(5) "Dealership agreement" means a written agreement pursuant to which a grantor grants a dealer the right:

(a) To sell or lease recreational vehicles or recreational vehicle services offered by the grantor; or

(b) To use a trade name, trademark, service mark, logo or other commercial symbol in the sale or distribution of recreational vehicles offered by the grantor.

(6) "Distributor" means a person that purchases new recreational vehicles for resale to a dealer.

(7) "Family" means:

(a) A parent, sibling, spouse, child, nephew, niece or grandchild of a dealer if the dealer is an individual; or

(b) The spouse of the dealer's parent, sibling, child, nephew, niece or grandchild.

(8) "Fifth wheel hitch" has the meaning given that term in ORS 801.275.

(9) "Grantor" means a manufacturer or distributor of recreational vehicles.

(10) "Line make" means new recreational vehicles that:

(a) A grantor or dealer offers for sale, lease or distribution under the grantor's trade name, trademark, service mark, logo or other commercial symbol;

(b) Are intended for sale or lease to a specific segment of the motoring public based upon the vehicles' decor, equipment, features, price, size and weight;

(c) Have bodies, chassis and frames that, in the view of the motoring public, place the recreational vehicles in the same distinct class of recreational vehicle;

(d) Have lengths and interior floor plans that distinguish the recreational vehicles from recreational vehicles with substantially the same decor, equipment, features, price and weight; and

(e) A dealership agreement authorizes a dealer to sell or lease.

(11) "Manufacturer" means a person engaged in the manufacture of new recreational vehicles.

(12) "Motor home" has the meaning given that term in ORS 801.350.

(13) "Net invoice cost" means the price a dealer paid for a product, less any rebate or discount, plus taxes the dealer paid on the product and any sums the dealer paid to transport the product to the dealer.

(14) "Product" means a recreational vehicle or an accessory, part, equipment, machine, tool or sign of or for a recreational vehicle.

(15) "Proprietary part or accessory" means a part or accessory of or for a recreational vehicle manufactured by or for a grantor and sold to dealers only by the grantor.

(16) "Recreational vehicle" means a vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal or emergency purposes, including but not limited to a travel trailer, trailer towed with a fifth wheel hitch, camper, camping trailer, fold-up camping trailer, pop-up, tent camper, truck camper and motor home. "Recreational vehicle" does not include a bus as defined in ORS 184.675 with a chassis length of not less than 35 feet that has been converted into a motor coach.

(17) "Travel trailer" has the meaning given that term in ORS 801.565.

(18) "Warrantor" means a person that makes a warranty.

(19) "Warranty" means a warranty made to a consumer for a new product, without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures such as repair or replacement. "Warranty" does not include a service contract, insurance or extended warranty sold for separate consideration by a dealer or other person not under the control of a manufacturer. [2003 c.377 §1]

650.310 Good cause; determination. When determining whether good cause exists for an action, a person shall consider:

(1) Concerning the dealer affected by the action:

(a) The extent of the dealer's sales and leases of recreational vehicles in the area of sales responsibility;

(b) The nature and extent of the dealer's investment in the dealer's business;

(c) Whether the dealer's service facilities, equipment, parts, supplies and personnel are adequate to carry out the responsibilities assigned to the dealer in the dealership agreement;

(d) The extent and quality of the warranty service performed by the dealer; and

(e) The extent to which the dealer performed the obligations imposed by the dealership agreement.

(2) The economic effect the action may have on communities located within the affected dealer's area of sales responsibility. [2003 c.377 §2]

650.320 Dealership agreement. (1) A dealership agreement shall:

(a) Contain a provision that the law of this state governs the agreement;

(b) Assign the dealer an area of sales responsibility;

(c) If the dealer is an individual, include the designation of a member of the dealer's family to succeed to the dealer's interests in the dealer's business and dealership agreement upon the dealer's death, incapacity or retirement; and

(d) Inform the dealer of the dealer's obligations:

(A) To perform warranty service;

(B) To prepare products for delivery to the consumer; and

(C) To deliver products to the consumer.

(2) Upon a dealer's request, a grantor shall reconsider the scope of the dealer's area of sales responsibility once a year.

(3) During the term of a dealership agreement, a grantor may not:

(a) Change the dealer's area of sales responsibility; or

(b) Authorize another dealer to sell or lease the same line make in the area of sales responsibility.

(4) Subsection (3)(b) of this section does not apply if:

(a) Good cause exists to authorize another dealer in the same area of sales responsibility; and

(b) The area of sales responsibility will support the existing dealer and the new dealer. [2003 c.377 §3]

650.330 Comparable terms and conditions; grantor sales to public. (1) As used in this section, "terms and conditions" includes rebates, discounts or any other program that may affect the ultimate price of a product.

(2) If dealers compete for the sale or lease of recreational vehicles to the motoring public, a grantor shall offer to sell products to the dealers at the same prices and on the same terms and conditions.

(3) A grantor may not sell a recreational vehicle to the motoring public. [2003 c.377 §4]

650.340 Termination, cancellation or failure to renew; notice; grounds. (1) Without good cause, a grantor may not:

(a) Terminate, cancel or fail to renew a dealership agreement.

(b) During the term of a dealership agreement, take an action that has a substantial adverse effect on a dealer's ability to sell or lease recreational vehicles, including changing the dealer's area of sales responsibility.

(2) A grantor shall give a dealer at least 120 days' written notice of termination or cancellation of or failure to renew the dealer's dealership agreement.

(3) In a notice of termination, cancellation or failure to renew, the grantor shall state:

(a) The reasons for the termination, cancellation or failure to renew;

(b) That the dealer has 30 days from the dealer's receipt of the notice to notify the grantor in writing of the dealer's intent to cure any deficiencies that formed the basis for the termination, cancellation or failure to renew;

(c) That, if the dealer notifies the grantor as provided in paragraph (b) of this subsection, the dealer has 120 days from the dealer's receipt of the notice of termination, cancellation or failure to renew within which to cure the deficiencies;

(d) That, upon a written request by the dealer showing good cause for an extension of the 120-day period, the grantor may give the dealer up to an additional 60 days within which to cure the deficiencies; and

(e) That, if the dealer cures the deficiencies, the grantor will rescind the notice of termination, cancellation or failure to renew.

(4) If a dealer that notifies a grantor of the dealer's intent to cure the deficiencies on which a grantor based a termination, cancellation or failure to renew cures the deficiencies within the time prescribed by the grantor, the grantor shall rescind the notice of termination, cancellation or failure to renew.

(5) Subsections (2) to (4) of this section do not apply if the reason for the termination, cancellation or failure to renew is the dealer's bankruptcy, insolvency or assignment of assets for the benefit of creditors.

(6) Notwithstanding subsection (2) of this section, a termination or cancellation of or failure to renew a dealership agreement:

(a) Takes effect 30 days after the dealer receives notice of termination, cancellation or failure to renew and the grounds for termination, cancellation or failure to renew is:

(A) A felony conviction of the dealer or a principal owner of the dealer;

(B) The closing of the dealership for 10 consecutive business days, except if the closing is due to:

(i) An act of God;

(ii) A strike, lockout or other labor dispute;

(iii) A scheduled seasonal or holiday closing; or

(iv) A cause over which the dealer has no control; or

(C) Suspension or revocation of or failure to renew the dealer's certificate under ORS 822.020.

(b) Takes effect 31 days after the dealer receives the notice of termination, cancellation or failure to renew if:

(A) The dealer did not notify the grantor as provided in subsection (3)(b) of this section; and

(B) On the 31st day after receiving the notice of termination, cancellation or failure to renew, the dealer does not possess new recreational vehicles from the grantor that the dealer has not sold or leased to a consumer.

(7) A dealer may cancel a dealership agreement by giving 30 days' written notice of cancellation to the grantor. [2003 c.377 §5]

650.350 Dealer's rights upon termination, cancellation or failure to renew. (1) Upon the termination or cancellation of or failure to renew a dealership agreement by the grantor, the grantor shall, at the dealer's request and within 30 days of the termination, cancellation or failure to renew, purchase from the dealer:

(a) All new recreational vehicles that the dealer purchased from the grantor within 12 months prior to the effective date of the termination, cancellation or failure to renew and for which a consumer has not obtained a title as defined in ORS 801.526;

(b) If accompanied by the original invoice, all current and undamaged proprietary parts and accessories that the dealer purchased from the grantor within 120 days prior to the effective date of the termination, cancellation or failure to renew; and

(c) All functioning equipment, machines and tools and all current signs that the dealer purchased from the grantor at the grantor's request in the five years before termination, cancellation or failure to renew and that cannot continue to be used in the normal course of the dealer's business.

(2) Subsection (1)(a) of this section does not apply to a recreational vehicle that:

(a) The dealer has sold or leased to a consumer or that has been used for more than demonstration or materially altered; or

(b) Has been damaged to the extent requiring disclosure to a consumer under ORS 650.420.

(3) For the purposes of subsection (1)(a) of this section:

(a) If a new recreational vehicle has not been damaged, the sum due for the recreational vehicle is the net invoice cost.

(b) If a new recreational vehicle has been damaged but less than to the extent requiring disclosure to a consumer under ORS 650.420, the sum due for the recreational vehicle is the net invoice cost less the cost to repair the vehicle.

(4) The sum due for a proprietary part or accessory under subsection (1)(b) of this section is 105 percent of the net invoice cost plus the cost to the dealer to transport the part or accessory to the grantor.

(5) The sum due for equipment, machines, tools and signs under subsection (1)(c) of this section is the net invoice cost of the equipment, machines, tools and signs.

(6) A grantor shall pay a dealer the sum due in full within 30 days of receiving a product from a dealer under this section. [2003 c.377 §6; 2005 c.47 §1]

650.360 Coercion prohibited. (1) As used in this section, "coerce" includes threatening to terminate, cancel or fail to renew a dealership agreement without good cause.

(2) A grantor may not coerce, or attempt to coerce, a dealer:

(a) To purchase a product that the dealer did not order;

(b) To enter into an agreement with the grantor; or

(c) To take any action that is unfair to the dealer.

(3) A grantor may not require a dealer to enter into an agreement that requires the dealer to submit to binding arbitration. [2003 c.377 §7]

650.370 Transfer by dealer. (1) A dealer shall give a grantor 30 days' notice in writing before the dealer transfers an interest in a dealership agreement or ownership of a business that is the subject of a dealership agreement.

(2) The dealer shall include in a notice under this section the identity, financial ability and qualifications of the proposed transferee and any other information required by the dealership agreement.

(3)(a) The dealer may not transfer the business to the transferee if a grantor, within 30 days after receiving the dealer's notice, notifies the dealer that the grantor has reasonable grounds to object to the proposed transferee.

(b) If the grantor does not notify the dealer as provided in this subsection, the grantor shall accept the transfer.

(c) As used in this subsection, "reasonable grounds to object" includes, but is not limited to, a proposed transferee's conviction of a felony or a lack of creditworthiness or experience to operate the business. [2003 c.377 §8]

650.380 Dealer's successor. (1) A grantor shall permit a dealer who is an individual to change the dealer's designation of a member of the dealer's family to succeed to the dealer's interest in the dealer's business and dealership agreement.

(2) Upon the dealer's death, incapacity or retirement, the grantor shall accept the transfer of the dealer's interest in the dealer's business and dealership agreement to the member of the family designated by the dealer.

(3) Subsection (2) of this section does not apply if the grantor notifies the designated family member that the grantor has reasonable grounds to object to the designated family member.

(4) As used in this section and ORS 650.370, "reasonable grounds to object" includes, but is not limited to, the designated family member's conviction of a felony or a lack of creditworthiness, experience to operate the business or licenses or certificates necessary to operate the business.

(5) A designated family member's right to succeed to the dealer's interest in the dealer's business and dealership agreement does not include the right to relocate the dealer's business or change the terms of the dealership agreement. [2003 c.377 §9]

650.390 Dealer compensation for warranty service; disapproval of warranty service claims; recall notice requirements. (1) A warrantor shall, for a warranty provided by the warrantor:

(a) Provide reasonable compensation to a dealer for diagnostic and repair services;

(b) Allow a dealer reasonable periods for completing diagnostic and repair services;

(c) Inform a dealer in writing of:

(A) The compensation that the warrantor will pay the dealer to perform warranty service; and

(B) The time period that the warrantor will allow the dealer to perform warranty service;

(d) Reimburse the dealer in an amount equal to 130 percent of the dealer's cost of warranty parts, plus the dealer's shipping expense to return warranty parts to the supplier of the parts, where "warranty parts" includes parts for which a parts supplier provides a separate warranty directly to a consumer and where "cost" means not less than the same price a dealer pays to a warrantor or supplier for the same part when purchased for a nonwarranty repair;

(e) Approve or disapprove a dealer's warranty service claim within 30 days of the dealer's submission of the claim to the warrantor; and

(f) Fulfill all warranty obligations.

(2) In determining the dealer's compensation for warranty service, the warrantor shall:

(a) Consider the prevailing rate for labor charged by other dealers in the communities served by the dealer's area of sales responsibility; and

(b) Pay the dealer a rate for labor that is not less than the reasonable rate the dealer charges to consumers for nonwarranty service.

(3) A dealer shall submit a warranty service claim to the warrantor within 30 days of the dealer's completion of the warranty service.

(4) A dealer shall notify the warrantor if the dealer is unable to perform a warranty service.

(5) If the warrantor approves a dealer's warranty service claim or fails to disapprove the claim within 30 days after submission, the warrantor shall pay the warranty service claim within 45 days of the submission of the claim.

(6) A warrantor may not disapprove a dealer's warranty service claim without good cause.

(7) A warrantor may disapprove a dealer's warranty service claim if the dealer:

(a) Failed to comply in a material respect with the warrantor's written policies and procedures for the performance of warranty service;

(b) Failed to properly account for the dealer's warranty service; or

(c) Misrepresented warranty service performed or parts used.

(8) If a warrantor disapproves a dealer's claim for a defective part on the basis that the part is not defective, the warrantor may:

(a) Return the part to the dealer at the warrantor's expense; or

(b) Pay the dealer not less than the same price the dealer pays to a warrantor or supplier for the part when purchased for a nonwarranty repair.

(9) A warrantor that issues a recall shall include in a recall notice to dealers and owners of new recreational vehicles the date by which the warrantor expects to make available to dealers parts and equipment necessary to correct the defects for which the warrantor issued the recall. The warrantor shall compensate dealers for repairs that dealers make to correct the defects.

(10) A grantor or warrantor may not:

(a) Misrepresent a dealer's obligation to perform or pay for warranty service; or

(b) Require a dealer to provide a warranty to a consumer for a recreational vehicle or other product.

(11) A warrantor may audit a dealer's records of a claim for warranty service for a period of one year from the date the dealer submitted the claim. If, during an audit, the warrantor discovers a fraudulent claim, the warrantor may extend the audit period for up to one additional year. [2003 c.377 §10; 2007 c.653 §2]

650.400 Recalls. (1) A grantor or warrantor shall:

(a) Assume the liability imposed upon a dealer because of defects in products the grantor or warrantor supplied to the dealer; and

(b) Notify a dealer of:

(A) A recall of a product.

(B) The dates by which parts and equipment, including tires and chassis and parts of chassis, will be available to remedy defects.

(2) If a grantor or warrantor notifies a consumer of a recall of a product, the grantor or warrantor shall inform the consumer of the dates on which parts and equipment, including tires and chassis and parts of chassis, will be available to remedy defects.

(3)(a) If a grantor provides parts to a dealer to perform services pursuant to the grantor's recall of a product, after the dealer performs the services, the dealer may return, and the grantor shall accept, unused parts in excess of the dealer's needs.

(b) If a dealer returns parts under this subsection, the grantor shall credit the dealer's account with the cost of the parts.

(4) If a warrantor provides parts to a dealer to perform services pursuant to the

warrantor's recall of a product, after the dealer performs the services, the dealer may return, and the warrantor shall accept, unused parts in excess of the dealer's needs. [2003 c.377 §11]

650.410 Dealer's warranty obligations. (1) A dealer shall:

(a) Perform warranty service in a timely and competent manner on a recreational vehicle that the dealer did not sell or lease if:

(A) The vehicle is of the same line make the dealer offers; and

(B) The grantor or warrantor has agreed to compensate the dealer for performing the warranty service; and

(b) Complete all predelivery inspections required by the dealership agreement.

(2) A dealer may not intentionally misrepresent the terms of a warranty. [2003 c.377 §12]

650.420 Required disclosures. (1) Before delivering a new recreational vehicle to a dealer, the grantor shall notify the dealer of:

(a) Uncorrected damage to the vehicle.

(b) Corrected damage that exceeded six percent of the net invoice cost of the vehicle to the dealer.

(2) Before selling or leasing a new recreational vehicle to a consumer, the dealer shall:

(a) Disclose to the consumer any structural damage to the recreational vehicle; and

(b) Obtain the consumer's written acknowledgment of the disclosure.

(3) Subsections (1) and (2) of this section do not apply if the damage is to the following components and the grantor or dealer has replaced the components with substantially identical components:

(a) Audio equipment.

(b) Appliances.

(c) Bumpers.

(d) Decorations.

(e) Furniture.

(f) Glass.

(g) In-dash components.

(h) Instrument panels.

(i) Paint.

(j) Tires.

(k) Video equipment.

(L) Wheels.

(4) If a grantor selects the carrier to deliver a recreational vehicle to a dealer, the grantor must compensate the dealer for the dealer's cost of repairing damage to the recreational vehicle caused by the carrier. [2003 c.377 §13]

650.430 Damaged or defective vehicles. (1) Within three days of receiving a damaged or defective recreational vehicle from the grantor, the dealer shall:

(a) Notify the grantor in writing of the damage or defect; and

(b)(A) Ask the grantor to permit the dealer to repair the damage or correct the defect at the expense of the grantor; or

(B) Reject the vehicle.

(2) A dealer may reject a vehicle if, within 10 days of receiving the dealer's notice, the grantor does not permit a dealer to repair the damage or correct the defect at the grantor's expense.

(3) If a dealer rejects a vehicle, the grantor must repurchase the vehicle within 10 business days. The repurchase price shall include the costs of delivery and financing necessary to keep the vehicle in stock.

(4) Rejection of a vehicle releases the dealer from any obligation to the grantor to pay for the vehicle.

(5) A dealership agreement may extend the term by which a dealer must notify the grantor of a damaged or defective vehicle. [2003 c.377 §14]

650.440 Grantor's ownership, operation or control of dealership. (1) A grantor may not sell a recreational vehicle to or through a dealer without having entered into a dealership agreement with the dealer.

(2) A grantor may not own, operate or control a dealership in this state.

(3) Notwithstanding subsection (2) of this section, a grantor may own, operate or control a dealership in this state if:

(a)(A) The ownership, operation or control does not exceed a period of one year or, if the grantor can show good cause, two years; and

(B) The dealership is for sale at a reasonable price and under reasonable terms and conditions;

(b) The grantor has entered into a bona fide agreement with a person who, under the dealership agreement:

(A) Must make a significant investment, subject to loss, in the dealership; and

(B) May reasonably expect to acquire the dealership in a reasonable time and under reasonable terms and conditions; or

(c) The grantor owned, operated or controlled the dealership on January 1, 2003. [2003 c.377 §15]

650.450 Indemnification; grantor and dealer. (1) Notwithstanding any dealership agreement:

(a) A grantor shall indemnify a dealer against and hold the dealer harmless from any cost, loss or damage, including attorney fees, arising out of a claim, action or judgment based on the grantor's negligence or intentional misconduct.

(b) A dealer shall indemnify a grantor against and hold the grantor harmless from any cost, loss or damage, including attorney fees, arising out of a claim, action or judgment based on the dealer's negligence or intentional misconduct.

(2)(a) A dealer shall notify the grantor of a claim or action that is subject to subsection (1)(a) of this section within 10 days of the dealer's receipt of the claim or service of summons.

(b) A grantor shall notify the dealer of a claim or action that is subject to subsection (1)(b) of this section within 10 days of the grantor's receipt of the claim or service of summons. [2003 c.377 §16]

650.460 Indemnification; warrantor and dealer. (1) Notwithstanding any agreement to the contrary:

(a) A warrantor shall indemnify a dealer against and hold the dealer harmless from any cost, loss or damage, including attorney fees, arising out of a claim, action or judgment based on the warrantor's negligence or intentional misconduct.

(b) A dealer shall indemnify a warrantor against and hold the warrantor harmless from any cost, loss or damage, including attorney fees, arising out of a claim, action or judgment based on the dealer's negligence or intentional misconduct.

(2)(a) A dealer shall notify the warrantor of a claim or action that is subject to subsection (1)(a) of this section within 10 days of the dealer's receipt of the claim or service of summons.

(b) A warrantor shall notify the dealer of a claim or action that is subject to subsection (1)(b) of this section within 10 days of the warrantor's receipt of the claim or service of summons. [2003 c.377 §17]

650.470 Remedies; grantor and dealer; attorney fees. (1) A dealer injured by a grantor's violation of ORS 650.320, 650.330, 650.340, 650.350, 650.360, 650.370, 650.380, 650.400, 650.420, 650.430, 650.440 or 650.450 may bring a civil action against the grantor to recover the dealer's actual damages.

(2) A grantor injured by a dealer's violation of ORS 650.370, 650.410, 650.420 or 650.450 may bring a civil action against the dealer to recover the grantor's actual damages.

(3) The court shall award reasonable attorney fees to the prevailing party in an action under this section.

(4) In an action between a grantor and a dealer, the grantor bears the burden of proving:

(a) Good cause for the grantor's act; and

(b) The unsuitability of a dealer's designated successor or proposed transferee. [2003 c.377 §18]

650.480 Remedies; warrantor and dealer; attorney fees. (1) A dealer injured by a warrantor's violation of ORS 650.390, 650.400, 650.410 or 650.460 may bring a civil action against the warrantor to recover the dealer's actual damages.

(2) A warrantor injured by a dealer's violation of ORS 650.410 or 650.460 may bring a civil action against the dealer to recover the warrantor's actual damages.

(3) The court shall award reasonable attorney fees to the prevailing party in an action under this section. [2003 c.377 §19]