

C-Engrossed
Senate Bill 827

Ordered by the House June 30
Including Senate Amendments dated March 26 and House Amendments
dated May 23 and June 30

Sponsored by COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT (at the request of Oregon
Automobile Dealers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Prohibits manufacturer, distributor or importer from selling or leasing motor vehicles to retail customers in Oregon. Prohibits manufacturer, distributor or importer from owning business in Oregon that sells or leases motor vehicles to retail customers in Oregon. Creates exceptions.]

Modifies certain exemptions from prohibition on various activities by motor vehicle manufacturers, distributors and importers.

A BILL FOR AN ACT

1
2 Relating to motor vehicle franchises; creating new provisions; and amending ORS 650.120 and
3 650.130.

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

5 **SECTION 1.** If Senate Bill 826 becomes law, ORS 650.120, as amended by section 1, chapter 216,
6 Oregon Laws 2001 (Enrolled Senate Bill 826), is amended to read:

7 650.120. For the purposes of ORS 650.120 to 650.170:

8 (1) "Dealer" means any person who has been issued a vehicle dealer certificate under ORS
9 822.020 and pursuant to a franchise from a manufacturer, distributor or importer engages in buying,
10 selling, leasing or exchanging new motor vehicles.

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

13 (3) "Distributor" means a person who sells or distributes motor vehicles **other than motor**
14 **homes** to motor vehicle dealers.

15 (4) "Fleet owner" means a person in this state who at one time buys or leases for use in a
16 business:

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

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

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

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

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

24 (c) The franchisee's business is substantially associated with the trademark, trade name, com-
25 mercial symbol or advertisements designating the franchisor or the products distributed by the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 franchisor;

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

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

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

8 (6) "Franchisee" means a dealer to whom a franchise is granted.

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

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

13 (9) "Manufacturer" means a person who manufactures or assembles motor vehicles or who
14 manufactures or installs on previously assembled truck chassis special bodies or equipment, other
15 than motor homes, that when installed forms an integral part of the motor vehicle and constitutes
16 a major manufacturing alteration and which completed unit is owned by the manufacturer.

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

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

26 (a) Cooking;

27 (b) Refrigeration or ice box;

28 (c) Self-contained toilet;

29 (d) Heating or air conditioning;

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

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

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

34 (13) "Relevant market area" means:

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

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

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

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

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

45 (b) For a dealer primarily of motor vehicles with a gross vehicle weight rating of 8,500 pounds

1 or more, a circular area around an existing dealership of:

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

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

5 (14) "Replacement dealer" means any person who, at a dealership where the former dealer was
6 franchised by the same manufacturer, distributor or importer, has been issued a vehicle dealer cer-
7 tificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer
8 engages in buying, selling, leasing or exchanging new motor vehicles.

9 **SECTION 2.** If Senate Bill 826 becomes law, ORS 650.130, as amended by section 2, chapter 216,
10 Oregon Laws 2001 (Enrolled Senate Bill 826), is amended to read:

11 650.130. Notwithstanding the terms of any franchise or other agreement, it shall be unlawful for
12 any manufacturer, distributor or importer to:

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

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

19 (3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new
20 motor vehicle, part or accessory covered by the franchise if the vehicle, part or accessory is ad-
21 vertised as being available for delivery or is being delivered to another dealer. This subsection is
22 not violated, however, if a failure to deliver is the result of a cause beyond the control of the
23 manufacturer, distributor or importer.

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

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

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

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

35 (8) Initiate an audit to determine the validity of paid claims for dealer compensation or any
36 charge-backs for warranty parts or service compensation more than one year following the date of
37 payment. Parties shall cooperate to ensure that permitted audits are concluded within 90 days of
38 initiation.

39 (9) Initiate an audit to determine the validity of paid claims for dealer compensation or any
40 charge-backs for consumer or dealer incentives more than two years following the date of payment.
41 Parties shall cooperate to ensure that permitted audits are concluded within 90 days of initiation.

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

1 state.

2 (11) Have an ownership interest in, operate or control, directly or indirectly, a business that
3 sells or leases a motor vehicle to a person in Oregon except to a franchisee of the manufacturer,
4 distributor or importer. It is not a violation of this subsection if:

5 (a) A manufacturer, distributor or importer:

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

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

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

12 (iii) While the manufacturer, distributor or importer maintains an ownership interest in, oper-
13 ates or controls the business, the manufacturer, distributor or importer offers the business for sale
14 to any qualified independent person at a fair and reasonable price.

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

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

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

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

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

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

26 (D) Has an ownership interest in, operates or controls, directly or indirectly, a business that
27 *[is a dealership in this state, the primary business of which is the leasing or renting of]* **primarily**
28 **leases or rents** motor vehicles for a period of 12 months or less **and the only motor vehicles that**
29 **the business sells are motor vehicles that have been:**

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

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

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

34 **(ii) Is a business that sells or leases motor vehicles to retail lessees in Oregon.**

35 **(F) Has an ownership interest in, operates or controls, directly or indirectly, a business**
36 **that makes a sale or lease of a motor vehicle that is not a violation of subsection (12) of this**
37 **section.**

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

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

43 (B) When the manufacturer acquires an ownership interest in the dealership, the distance from
44 the manufacturer's dealership to the dealership of a dealer that buys, sells, leases, trades, stores,
45 takes on consignment or in any other manner deals in the single line-make of the manufacturer and

1 in which the manufacturer has no ownership interest is not less than 15 miles;

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

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

6 (E) On January 1, 2000:

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

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

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

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

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

17 (B) A driver training program;

18 (C) A nonprofit corporation;

19 (D) A qualified vendor;

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

21 (F) A current retail lessee;

22 (G) A fleet owner;

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

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

27 (b) The sale or lease is by a business in this state[, *the primary business of which is the leasing*
28 *or renting of*] **that primarily leases or rents motor vehicles for a period of 12 months or less and**
29 **the only motor vehicles that the business sells are motor vehicles that have been:**

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

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

32 **(c) The sale or lease is by a subsidiary of a manufacturer, distributor or importer that**
33 **finances the sale or lease of motor vehicles and the sale or lease is to a person who previ-**
34 **ously leased the vehicle from the subsidiary.**

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

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

40 (A) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
41 rating of less than 8,500 pounds provided for commercial or government fleets; or

42 (B) Warranty repairs and services performed on motor vehicles with a gross vehicle weight
43 rating of 8,500 pounds or more if, after the effective date of this 2001 Act, a manufacturer, distrib-
44 utor or importer of only motor vehicles with a gross vehicle weight rating of 8,500 pounds or more
45 has:

1 (i) Obtained written permission from the dealers in the relevant market area to perform the re-
2 pairs or services; or

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

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

10 **SECTION 3. The amendments to ORS 650.120 and 650.130 by sections 1 and 2 of this 2001**
11 **Act apply to conduct occurring on or after the effective date of this 2001 Act.**

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