

CHAPTER 329

AN ACT

HB 3347

Relating to agreements with motor vehicle dealerships; creating new provisions; and amending ORS 650.158.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 650.120 to 650.170.

SECTION 2. (1)(a) Except as provided in paragraph (b) of this subsection, a manufacturer, distributor or importer may not require a dealer to construct a new dealer facility or materially alter or remodel an existing dealer facility within seven years after the date on which the dealer previously constructed, materially altered or remodeled the existing dealer facility if the existing dealer facility complies with the manufacturer's, distributor's or importer's approved brand image standards or plans that existed at the time the dealer constructed, materially altered or remodeled the existing dealer facility.

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

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

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

(ii) Existing and reasonably foreseeable economic conditions;

(iii) Financial expectations;

(iv) The availability of additional vehicle allocation; and

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

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

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

(c) Paragraph (a) of this subsection does not prohibit a dealer from voluntarily agreeing with a manufacturer, distributor or importer to construct a new dealer facility or materially alter

or remodel an existing dealer facility in return for separate and valuable consideration. For the purposes of this paragraph, renewing a dealer's franchise is not separate and valuable consideration.

(d) For purposes of this subsection:

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

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

(2)(a) Except as provided in paragraph (b) of this subsection, a manufacturer, distributor or importer may not require a dealer to purchase goods or services for constructing, materially altering or remodeling a dealer facility from a vendor that the manufacturer, distributor or importer selects, identifies or designates without giving the dealer an option to obtain goods or services of substantially similar quality and design from a vendor that the dealer chooses, subject to the manufacturer's, distributor's or importer's approval in advance. The manufacturer, distributor or importer may not withhold approval unreasonably.

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

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

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

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

SECTION 3. ORS 650.158 is amended to read:

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

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

(b) The schedule of compensation *[to be paid]* **the manufacturer, distributor or importer will pay** 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]* **performing** predelivery preparation and warranty service.

(2)(a) A schedule of compensation *[shall]* **must** include reasonable compensation for diagnostic work, repair service and labor. Time allowances for *[the diagnosis and performance of]* **diagnosing and performing** predelivery and warranty service *[shall]* **must** be reasonable and adequate for the work to be performed. *[The hourly rate paid to a dealer shall not be]* **A manufacturer, distributor or importer may not pay an hourly rate to a dealer that is less than the rate** *[charged by]* the dealer **charges** *[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]* **that** the dealer **purchases** for use in performing predelivery and warranty service *[shall]* **must** be the amount *[charged by]* the dealer *[to]* **charges** nonwarranty customers, as long as *[that]* **the** amount is not unreasonable.

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

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

(C) A dealer may not include in the dealer's proposal:

(i) Repairs for a manufacturer's, distributor's or importer's specials, special events or promotional discounts for retail customer repairs;

(ii) Parts sold at wholesale;

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

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

(v) Vehicle reconditioning.

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

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

(e) Once per year, a manufacturer, distributor or importer may verify the dealer's hourly rate or the amount for parts the dealer charges nonwarranty customers. If the manufacturer, distributor or importer finds that the dealer's hourly rate or the amount for parts has decreased, the manufacturer, distributor or importer may reduce the dealer's compensation under this subsection prospectively.

(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]* **to correct** the defect or defects. A manufacturer, distributor or importer shall adequately compensate a dealer for repair service *[performed]* **the dealer performs** 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.]

(4) A manufacturer, distributor or importer shall:

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

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

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

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

SECTION 4. Section 2 of this 2013 Act and the amendments to ORS 650.158 by section 3 of this 2013 Act apply to:

(1) Programs that dealers participate in under the terms of a contract that the dealer and a manufacturer, distributor or importer execute on or after the effective date of this 2013 Act;

(2) Claims for reimbursement for labor or parts that a dealer makes under the terms of any contract or agreement that the dealer enters into with a manufacturer, distributor or importer on or after the effective date of this 2013 Act; and

(3) Other contracts or agreements that manufacturers, distributors or importers enter into on or after the effective date of this 2013 Act.

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