

CHAPTER 396

AN ACT

SB 714

Relating to motor vehicle dealerships; creating new provisions; and amending ORS 650.130.

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

SECTION 1. ORS 650.130 is amended to read:

650.130. 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]* **that the dealer did not voluntarily order.** This subsection does not apply to recall safety and emissions campaign parts *[not voluntarily ordered by]* **that the dealer did not voluntarily order** or to 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 **into** any agreement or sales promotion program by threatening to cancel the **dealer's** 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 **manufacturer, distributor or importer advertises the** vehicle, part or accessory *[is advertised as being]* **as** available for delivery or is *[being delivered]* **delivering the vehicle, part or accessory** to another dealer. This subsection does not apply if the failure to deliver *[is the result of]* **results from** 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]* **a dealership's** capital structure *[of a dealership]* or the means by which **a dealer finances** 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]* **a** dealer for work or services **the dealer** performed and expenses **the dealer** 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 **to** purchase any promotional materials, display devices or display decorations or materials at the **dealer's** 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 **for** 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]* **conclude not more than 60 days after the audits begin.**

(9) Initiate an audit to determine the validity of paid claims for dealer compensation, or **for** 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]* **conclude not more than 60 days after the audits begin.**

(10) Unfairly compete with a dealer in any matters *[governed by]* the franchise **governs** 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]* **A manufacturer, distributor or importer does not violate** this subsection if:

(a) [A] **The** manufacturer, distributor or importer:

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

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

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

(iii) **The manufacturer, distributor or importer offers for sale to a qualified independent person at a fair and reasonable price** while the manufacturer, distributor or importer maintains an ownership interest in, operates or controls the business, *[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*] **in a manner that does not violate** subsection (12) of this section.

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

(A) The manufacturer has, directly or indirectly, no more than 45 percent of the ownership 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 **manufacturer's** 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 **in this state**; and

(ii) Of the dealers [*in this state*] of the manufacturer's single line-make **in this state**, 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*] **A manufacturer, distributor or importer does not violate** 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*] **that** 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*] **that permits** the manufacturer, distributor or importer **to compensate a person that is not a dealer** 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*] **that** owns or leases the motor vehicles for use in the person's business **to perform the repairs or services.**

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

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

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

(A) Granting or renewing a franchise;

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

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

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

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

(b) [*Nothing in*] Paragraph (a) of this subsection [*prohibits*] **does not prohibit** enforcement of a voluntary agreement between a franchisee and a manufacturer, distributor or importer for which separate and valuable consideration that does not include any of the items listed in paragraph (a) of this subsection has been offered and accepted.

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

SECTION 2. The amendments to ORS 650.130 by section 1 of this 2015 Act apply to franchise agreements that a dealer enters into or renews with a manufacturer, distributor or importer on or after the effective date of this 2015 Act.

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