

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to mandating automobile manufacturers to release vehicle repair information to vehicle owners

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state consumers' right to repair act of 2011".
3 S 2. Legislative findings. The legislature finds that the ability to
4 diagnose, service, and repair a motor vehicle in a timely, reliable, and
5 affordable manner is essential to the safety and well-being of automot-
6 tive consumers in the state of New York. Consumers are entitled to
7 choose among competing repair facilities for the convenient, reliable,
8 and affordable repair of their motor vehicles. Increased competition
9 among repair facilities will benefit vehicle owners in this state.
10 Computers of various kinds are increasingly being used in motor vehicle
11 systems, such as pollution control, transmission, antilock brakes, elec-
12 tronic and mechanical systems, heating and air-conditioning, sound, and
13 steering.
14 The legislature finds that the diagnosis, service, and repair of these
15 vehicle systems are essential to the safety and proper operation of
16 modern motor vehicles. In many instances, access codes prevent owners
17 from making, or having made, the necessary diagnosis, service, and
18 repair of their motor vehicles in a timely, convenient, reliable, and
19 affordable manner. Consumers in New York have benefited from the avail-
20 ability of an aftermarket parts supply, or parts and accessories used in
21 the repair, maintenance, or enhancement of a motor vehicle.
22 The legislature therefore finds that vehicle owners in New York should
23 have the right to all information necessary to allow the diagnosis,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 service, and repair of their vehicles and to make, or have made, repairs
2 necessary to keep their vehicles in reasonably good and serviceable
3 condition during the expected vehicle life.

4 S 3. The general business law is amended by adding a new article 11-C
5 to read as follows:

6 ARTICLE 11-C

7 NEW YORK STATE CONSUMERS' RIGHT TO REPAIR ACT

8 SECTION 199-S. DEFINITIONS.

9 199-T. MOTOR VEHICLE MANUFACTURER REQUIREMENTS.

10 199-U. REMEDIES.

11 S 199-S. DEFINITIONS. 1. FOR THE PURPOSES OF THIS ARTICLE, THE TERM
12 "MOTOR VEHICLE" SHALL MEAN MOTOR VEHICLES AS DEFINED BY SECTION ONE
13 HUNDRED TWENTY-FIVE AND TRAILERS AS DEFINED BY SECTION ONE HUNDRED
14 FIFTY-SIX OF THE VEHICLE AND TRAFFIC LAW.

15 2. THE TERM "VEHICLE OWNER" MEANS ANY PERSON WHO OWNS, LEASES OR
16 OTHERWISE HAS THE LEGAL RIGHT TO USE AND POSSESS A MOTOR VEHICLE, OR THE
17 AGENT OF SUCH PERSON.

18 3. THE TERM "MOTOR VEHICLE REPAIR SHOP" MEANS ANY PERSON WHO, FOR
19 COMPENSATION, IS WHOLLY OR PARTIALLY ENGAGED IN THE BUSINESS OF REPAIR-
20 ING OR DIAGNOSING MOTOR VEHICLE MALFUNCTIONS OR REPAIRING MOTOR VEHICLE
21 BODIES, FENDERS OR OTHER COMPONENTS DAMAGED BY ACCIDENT OR OTHERWISE,
22 EXCEPT THAT SUCH TERM DOES NOT INCLUDE:

23 (A) AN EMPLOYEE OF A MOTOR VEHICLE REPAIR SHOP WHO ENGAGES IN THE
24 BUSINESS OF REPAIRING MOTOR VEHICLES SOLELY BY REASON OF HIS EMPLOYMENT;
25 OR

26 (B) ANY PERSON WHO IS SOLELY ENGAGED IN THE BUSINESS OF REPAIRING THE
27 MOTOR VEHICLES OF A SINGLE COMMERCIAL OR INDUSTRIAL ESTABLISHMENT, OR OF
28 THE FEDERAL, STATE OR A LOCAL GOVERNMENT OR ANY AGENCY THEREOF; OR

29 (C) ANY PERSON WHOSE ACTIVITIES CONSIST SOLELY OF FUELING, CHANGING
30 OIL, WATER, BATTERIES OR TIRES, REPLACING FAN BELTS, AIR FILTERS OR OIL
31 FILTERS, INSTALLING WINDSHIELD WIPER BLADES OR LIGHT BULBS, OR SUCH
32 OTHER MINOR REPAIR AND SERVICING FUNCTIONS AS THE COMMISSIONER OF MOTOR
33 VEHICLES SHALL BY RULE PRESCRIBE; OR

34 (D) ANY PERSON SOLELY ENGAGED IN THE BUSINESS OF REPAIRING FARM OR
35 ROAD BUILDING MACHINES, OR SUCH OTHER UTILITY VEHICLES AS THE COMMIS-
36 SIONER OF MOTOR VEHICLES MAY BY REGULATION DESIGNATE.

37 THE TERM "MOTOR VEHICLE REPAIR SHOP" SHALL ALSO INCLUDE ANY SHOP,
38 DRIVE-IN STATION, OR GARAGE OPERATED BY ANY PERSON, FIRM, CORPORATION OR
39 ASSOCIATION AT WHICH MOTOR VEHICLES ARE INSPECTED FOR THE PURPOSES OF
40 APPRAISING, EVALUATING OR ESTIMATING THE EXTENT OR VALUE OF MOTOR VEHI-
41 CLE DAMAGE OR THE NECESSITY OR COST OF MOTOR VEHICLE REPAIRS.

42 S 199-T. MOTOR VEHICLE MANUFACTURER REQUIREMENTS. 1. THE MANUFACTURER
43 OF A MOTOR VEHICLE SOLD OR INTRODUCED INTO COMMERCE IN THIS STATE SHALL
44 PROVIDE TO THE VEHICLE OWNER, TO THE MOTOR VEHICLE REPAIR SHOP AND TO
45 THE DEPARTMENT OF MOTOR VEHICLES FOR USE BY ANY SUCH VEHICLE OWNER OR
46 REPAIR FACILITY, THE INFORMATION NECESSARY TO DIAGNOSE, SERVICE, OR
47 REPAIR THE VEHICLE. SUCH INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED
48 TO, INFORMATION NECESSARY TO INTEGRATE REPLACEMENT EQUIPMENT INTO THE
49 VEHICLE AND OTHER INFORMATION OF ANY KIND NEEDED OR USED TO DIAGNOSE,
50 SERVICE, REPAIR, ACTIVATE, CERTIFY, OR INSTALL ANY MOTOR VEHICLE EQUIP-
51 MENT (INCLUDING REPLACEMENT EQUIPMENT) IN A MOTOR VEHICLE.

52 2. THE DEPARTMENT OF MOTOR VEHICLES SHALL NOT REQUIRE A MANUFACTURER
53 TO PUBLICLY DISCLOSE INFORMATION THAT, IF MADE PUBLIC, WOULD DIVULGE
54 METHODS OR PROCESSES ENTITLED TO PROTECTION AS TRADE SECRETS OF THAT
55 MANUFACTURER, BUT MAY REQUIRE DISCLOSURE OF SUCH INFORMATION TO THE
56 DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF DETERMINING WHETHER SUCH

1 INFORMATION IS ENTITLED TO SUCH PROTECTION. SUCH DETERMINATION SHALL BE
2 MADE AFTER AN OPPORTUNITY FOR A HEARING.

3 3. NO SUCH INFORMATION MAY BE WITHHELD BY A MANUFACTURER IF THAT
4 INFORMATION IS PROVIDED, DIRECTLY OR INDIRECTLY, TO FRANCHISED DEALERS
5 OR OTHER REPAIR FACILITIES.

6 S 199-U. REMEDIES. 1. THE FAILURE OF A MANUFACTURER TO PROVIDE THE
7 INFORMATION REQUIRED BY SECTION ONE HUNDRED NINETY-NINE-T OF THIS ARTI-
8 CLE SHALL CONSTITUTE A VIOLATION OF THIS ARTICLE.

9 2. ANY MANUFACTURER WHO VIOLATES THE PROVISIONS OF THIS ARTICLE OR
10 ANY RULES OR REGULATIONS PROMULGATED THEREUNDER WITH ACTUAL KNOWLEDGE OR
11 KNOWLEDGE FAIRLY IMPLIED ON THE BASIS OF OBJECTIVE CIRCUMSTANCES SHALL
12 BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR
13 MORE THAN TEN THOUSAND DOLLARS.

14 3. A VEHICLE OWNER OR MOTOR VEHICLE REPAIR SHOP MAY BRING A CIVIL
15 ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN A VIOLATION OF
16 THIS ARTICLE AND TO RECOVER THE ACTUAL COSTS OF LITIGATION INCLUDING
17 REASONABLE ATTORNEY'S FEES.

18 4. UPON ANY VIOLATION OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY
19 THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK
20 TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND
21 UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND
22 RESTRAIN THE CONTINUANCE OF THE VIOLATION. IF IT SHALL APPEAR TO THE
23 SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS VIOLATED
24 THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE,
25 ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF
26 THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY
27 SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL
28 AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
29 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
30 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTI-
31 CLE HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF NOT LESS THAN FIVE
32 HUNDRED DOLLARS AND NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH
33 VIOLATION. IN CONNECTION WITH AN APPLICATION MADE UNDER THIS SUBDIVI-
34 SION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND TO MAKE A
35 DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE
36 WITH THE CIVIL PRACTICE LAW AND RULES.

37 S 4. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law. Effective immediately, the addition, amend-
39 ment and/or repeal of any rule or regulation necessary for the implemen-
40 tation of this act on its effective date are authorized and directed to
41 be made and completed on or before such effective date.