S T A T E O F N E W Y O R K

129--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Short title. This act shall be known and may be cited as the "New York state consumers' right to repair act of 2012".

S 2. Legislative findings. The legislature finds that the ability to diagnose, service, and repair a motor vehicle in a timely, reliable, and affordable manner is essential to the safety and well-being of automotive consumers in the state of New York. Consumers are entitled to choose among competing repair facilities for the convenient, reliable, and affordable repair of their motor vehicles. Increased competition among repair facilities will benefit vehicle owners in this state. Computers of various kinds are increasingly being used in motor vehicle systems, such as pollution control, transmission, antilock brakes, electronic and mechanical systems, heating and air-conditioning, sound, and steering.

The legislature finds that the diagnosis, service, and repair of these vehicle systems are essential to the safety and proper operation of modern motor vehicles. In many instances, access codes prevent owners from making, or having made, the necessary diagnosis, service, and repair of their motor vehicles in a timely, convenient, reliable, and affordable manner. Consumers in New York have benefited from the availability of an aftermarket parts supply, or parts and accessories used in the repair, maintenance, or enhancement of a motor vehicle.

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

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The legislature therefore finds that vehicle owners in New York should have the right to all information necessary to allow the diagnosis, service, and repair of their vehicles and to make, or have made, repairs necessary to keep their vehicles in reasonably good and serviceable condition during the expected vehicle life.

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

ARTICLE 11-C

NEW YORK STATE CONSUMERS' RIGHT TO REPAIR ACT

SECTION 199-S. DEFINITIONS.

199-T. MOTOR VEHICLE MANUFACTURER REQUIREMENTS.

199-U. REMEDIES.

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

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

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

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

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

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

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

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

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

2. THE DEPARTMENT OF MOTOR VEHICLES SHALL NOT REQUIRE A MANUFACTURER TO PUBLICLY DISCLOSE INFORMATION THAT, IF MADE PUBLIC, WOULD DIVULGE METHODS OR PROCESSES ENTITLED TO PROTECTION AS TRADE SECRETS OF THAT

MANUFACTURER, BUT MAY REQUIRE DISCLOSURE OF SUCH INFORMATION TO THE DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF DETERMINING WHETHER SUCH INFORMATION IS ENTITLED TO SUCH PROTECTION. SUCH DETERMINATION SHALL BE MADE AFTER AN OPPORTUNITY FOR A HEARING.

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

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

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

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

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

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.