

6492

I N S E N A T E

January 29, 2014

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to protecting motor vehicle owners and small businesses in repairing motor vehicles

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

1 Section 1. The vehicle and traffic law is amended by adding a new
2 article 12-D to read as follows:

3 ARTICLE 12-D

4 RIGHT TO REPAIR ACT

5 SECTION 399-P. DEFINITIONS.

6 399-Q. REPAIR OF MOTOR VEHICLES.

7 S 399-P. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING
8 TERMS SHALL HAVE THE FOLLOWING DEFINITIONS:

9 1. "FRANCHISED MOTOR VEHICLE DEALER" SHALL MEAN ANY PERSON REQUIRED TO
10 BE REGISTERED PURSUANT TO SECTION FOUR HUNDRED FIFTEEN OF THIS CHAPTER
11 WHICH HAS BEEN GRANTED A FRANCHISE AS DEFINED IN SUBDIVISION SIX OF
12 SECTION FOUR HUNDRED SIXTY-TWO OF THIS CHAPTER.

13 2. "FAIR AND REASONABLE TERMS" SHALL MEAN THAT IN DETERMINING WHETHER
14 A PRICE IS ON "FAIR AND REASONABLE TERMS," CONSIDERATION MAY BE GIVEN TO
15 RELEVANT FACTORS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

16 (A) THE NET COST TO THE MANUFACTURER'S FRANCHISED DEALERSHIPS FOR
17 SIMILAR INFORMATION OBTAINED FROM MANUFACTURERS, LESS ANY DISCOUNTS,
18 REBATES, OR OTHER INCENTIVE PROGRAMS.

19 (B) THE COST TO THE MANUFACTURER FOR PREPARING AND DISTRIBUTING THE
20 INFORMATION, EXCLUDING ANY RESEARCH AND DEVELOPMENT COSTS INCURRED IN
21 DESIGNING AND IMPLEMENTING, UPGRADING OR ALTERING THE ONBOARD COMPUTER
22 AND ITS SOFTWARE OR ANY OTHER VEHICLE PART OR COMPONENT. AMORTIZED CAPI-
23 TAL COSTS FOR THE PREPARATION AND DISTRIBUTION OF THE INFORMATION MAY BE
24 INCLUDED.

25 (C) THE PRICE CHARGED BY OTHER MANUFACTURERS FOR SIMILAR INFORMATION.

26 (D) THE PRICE CHARGED BY MANUFACTURERS FOR SIMILAR INFORMATION PRIOR
27 TO THE LAUNCH OF MANUFACTURER WEB SITES.

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

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1 (E) THE ABILITY OF AFTERMARKET TECHNICIANS OR SHOPS TO AFFORD THE
2 INFORMATION.

3 (F) THE MEANS BY WHICH THE INFORMATION IS DISTRIBUTED.

4 (G) THE EXTENT TO WHICH THE INFORMATION IS USED, WHICH INCLUDES THE
5 NUMBER OF USERS, AND FREQUENCY, DURATION, AND VOLUME OF USE.

6 (H) INFLATION.

7 3. "IMMOBILIZER SYSTEM" SHALL MEAN AN ELECTRONIC DEVICE DESIGNED FOR
8 THE SOLE PURPOSE OF PREVENTING THE THEFT OF A MOTOR VEHICLE BY PREVENT-
9 ING THE MOTOR VEHICLE IN WHICH IT IS INSTALLED FROM STARTING WITHOUT THE
10 CORRECT ACTIVATION OR AUTHORIZATION CODE.

11 4. "MOTOR VEHICLE REPAIR SHOP" SHALL MEAN ANY PERSON WHO, FOR COMPEN-
12 SATION, IS WHOLLY OR PARTIALLY ENGAGED IN THE BUSINESS OF REPAIRING OR
13 DIAGNOSING MOTOR VEHICLE MALFUNCTIONS OR REPAIRING MOTOR VEHICLE BODIES,
14 FENDERS OR OTHER COMPONENTS DAMAGED BY ACCIDENT OR OTHERWISE, EXCEPT
15 THAT SUCH TERM DOES NOT INCLUDE:

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

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

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

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

29 5. "MANUFACTURER" SHALL MEAN ANY PERSON OR BUSINESS ENGAGED IN THE
30 BUSINESS OF MANUFACTURING OR ASSEMBLING NEW MOTOR VEHICLES.

31 6. "MOTOR VEHICLE" SHALL HAVE THE SAME MEANING AS THE TERM "MOTOR
32 VEHICLES" AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER.

33 7. "OWNER" SHALL MEAN A PERSON OR BUSINESS WHO OWNS OR LEASES A MOTOR
34 VEHICLE REGISTERED IN THIS STATE.

35 8. "TRADE SECRET" SHALL MEAN ANYTHING, TANGIBLE OR INTANGIBLE OR ELEC-
36 TRONICALLY STORED OR KEPT, WHICH CONSTITUTES, REPRESENTS, EVIDENCES OR
37 RECORDS INTELLECTUAL PROPERTY INCLUDING SECRET OR CONFIDENTIALLY HELD
38 DESIGNS, PROCESSES, PROCEDURES, FORMULAS, INVENTIONS, OR IMPROVEMENTS,
39 OR SECRET OR CONFIDENTIALLY HELD SCIENTIFIC, TECHNICAL, MERCHANDISING,
40 PRODUCTION, FINANCIAL, BUSINESS OR MANAGEMENT INFORMATION, OR ANYTHING
41 WITHIN THE DEFINITION OF 18 U.S.C. S 1839(3).

42 S 399-Q. REPAIR OF MOTOR VEHICLES. 1. (A) EXCEPT AS PROVIDED IN PARA-
43 GRAPH (C) OF THIS SUBDIVISION, FOR MODEL YEAR 2002 MOTOR VEHICLES AND
44 THEREAFTER, A MANUFACTURER OF MOTOR VEHICLES SOLD IN THIS STATE SHALL
45 MAKE AVAILABLE FOR PURCHASE BY OWNERS OF MOTOR VEHICLES MANUFACTURED BY
46 SUCH MANUFACTURER AND BY MOTOR VEHICLE REPAIR SHOPS THE SAME DIAGNOSTIC
47 AND REPAIR INFORMATION, INCLUDING REPAIR TECHNICAL UPDATES, THAT SUCH
48 MANUFACTURER MAKES AVAILABLE TO ITS DEALERS THROUGH THE MANUFACTURER'S
49 INTERNET-BASED DIAGNOSTIC AND REPAIR INFORMATION SYSTEM OR OTHER ELEC-
50 TRONICALLY ACCESSIBLE MANUFACTURER'S REPAIR INFORMATION SYSTEM. ALL
51 CONTENT IN ANY SUCH MANUFACTURER'S REPAIR INFORMATION SYSTEM SHALL BE
52 MADE AVAILABLE TO OWNERS AND TO MOTOR VEHICLE REPAIR SHOPS IN THE SAME
53 FORM AND MANNER AND TO THE SAME EXTENT AS IS MADE AVAILABLE TO DEALERS
54 UTILIZING SUCH DIAGNOSTIC AND REPAIR INFORMATION SYSTEM. EACH MANUFAC-
55 Turer SHALL PROVIDE ACCESS TO SUCH MANUFACTURER'S DIAGNOSTIC AND REPAIR
56 INFORMATION SYSTEM FOR PURCHASE BY OWNERS AND MOTOR VEHICLE REPAIR SHOPS

1 ON A DAILY, MONTHLY AND YEARLY SUBSCRIPTION BASIS AND UPON FAIR AND
2 REASONABLE TERMS.

3 (B) ANY MANUFACTURER THAT SELLS ANY DIAGNOSTIC, SERVICE, OR REPAIR
4 INFORMATION TO ANY MOTOR VEHICLE REPAIR SHOP OR OTHER THIRD PARTY
5 PROVIDER IN A FORMAT THAT IS STANDARDIZED WITH OTHER MANUFACTURERS, AND
6 ON TERMS AND CONDITIONS MORE FAVORABLE THAN THE MANNER AND THE TERMS AND
7 CONDITIONS PURSUANT TO WHICH THE DEALER OBTAINS THE SAME DIAGNOSTIC,
8 SERVICE OR REPAIR INFORMATION, SHALL BE PROHIBITED FROM REQUIRING ANY
9 DEALER TO CONTINUE PURCHASING DIAGNOSTIC, SERVICE, OR REPAIR INFORMATION
10 IN A PROPRIETARY FORMAT, UNLESS SUCH PROPRIETARY FORMAT INCLUDES DIAG-
11 NOSTIC, SERVICE, REPAIR OR DEALERSHIP OPERATIONS INFORMATION OR FUNC-
12 TIONALITY THAT IS NOT AVAILABLE IN SUCH STANDARDIZED FORMAT.

13 (C)(I) FOR MODEL YEAR 2002 MOTOR VEHICLES AND THEREAFTER, EACH
14 MANUFACTURER OF MOTOR VEHICLES SOLD IN THIS STATE SHALL MAKE AVAILABLE
15 FOR PURCHASE BY OWNERS AND MOTOR VEHICLE REPAIR SHOPS ALL DIAGNOSTIC
16 REPAIR TOOLS INCORPORATING THE SAME DIAGNOSTIC, REPAIR AND WIRELESS
17 CAPABILITIES THAT SUCH MANUFACTURER MAKES AVAILABLE TO ITS DEALERS. SUCH
18 TOOLS SHALL INCORPORATE THE SAME FUNCTIONAL REPAIR CAPABILITIES THAT
19 SUCH MANUFACTURER MAKES AVAILABLE TO DEALERS. EACH MANUFACTURER SHALL
20 OFFER SUCH TOOLS FOR SALE TO OWNERS AND TO MOTOR VEHICLE REPAIR SHOPS
21 UPON FAIR AND REASONABLE TERMS.

22 (II)(1) ANY DIAGNOSTIC TOOL OR INFORMATION NECESSARY TO DIAGNOSE,
23 SERVICE OR REPAIR A MOTOR VEHICLE THAT A MANUFACTURER SELLS TO ANY MOTOR
24 VEHICLE REPAIR SHOP IN A MANNER AND ON TERMS AND CONDITIONS MORE FAVORA-
25 BLE THAN THE MANNER AND THE TERMS AND CONDITIONS PURSUANT TO WHICH THE
26 DEALER OBTAINS THE SAME DIAGNOSTIC TOOL OR INFORMATION NECESSARY TO
27 DIAGNOSE, SERVICE OR REPAIR A MOTOR VEHICLE, SHALL ALSO BE OFFERED TO
28 THE DEALER IN THE SAME MANNER AND ON THE SAME TERMS AND CONDITIONS AS
29 PROVIDED TO SUCH MOTOR VEHICLE REPAIR SHOP.

30 (2) ANY MANUFACTURER THAT SELLS TO ANY MOTOR VEHICLE REPAIR SHOP ANY
31 DIAGNOSTIC TOOL NECESSARY TO DIAGNOSE, SERVICE OR REPAIR A MOTOR VEHICLE
32 AND SUCH DIAGNOSTIC TOOL COMMUNICATES WITH THE VEHICLE USING THE SAME
33 NON-PROPRIETARY INTERFACE USED BY OTHER MANUFACTURERS, THE MANUFACTURER
34 DELIVERING SUCH DIAGNOSTIC TOOL SHALL BE PROHIBITED FROM REQUIRING ANY
35 DEALER FROM CONTINUING TO PURCHASE THAT MANUFACTURER'S PROPRIETARY TOOL
36 AND INTERFACE UNLESS SUCH PROPRIETARY INTERFACE HAS A CAPABILITY NOT
37 AVAILABLE IN THE NON-PROPRIETARY INTERFACE.

38 (III) EACH MANUFACTURER SHALL PROVIDE DIAGNOSTIC REPAIR INFORMATION TO
39 EACH AFTER MARKET SCAN TOOL COMPANY AND EACH THIRD PARTY SERVICE INFOR-
40 MATION PROVIDER WITH WHOM THE MANUFACTURER HAS APPROPRIATE LICENSING,
41 CONTRACTUAL OR CONFIDENTIALITY AGREEMENTS FOR THE SOLE PURPOSE OF BUILD-
42 ING AFTERMARKET DIAGNOSTIC TOOLS AND THIRD PARTY SERVICE INFORMATION
43 PUBLICATIONS AND SYSTEMS. ONCE A MANUFACTURER MAKES SUCH INFORMATION
44 AVAILABLE PURSUANT TO THIS SECTION, THE MANUFACTURER SHALL HAVE FULLY
45 SATISFIED ITS OBLIGATIONS UNDER THIS SECTION AND THEREAFTER NOT BE
46 RESPONSIBLE FOR THE CONTENT AND FUNCTIONALLY OF AFTERMARKET DIAGNOSTIC
47 TOOLS OR SERVICE INFORMATION SYSTEMS.

48 2. (A) COMMENCING IN MODEL YEAR 2018, EXCEPT AS PROVIDED IN PARAGRAPH
49 (C) OF THIS SUBDIVISION, MANUFACTURERS OF MOTOR VEHICLES SOLD IN THIS
50 STATE SHALL PROVIDE ACCESS TO THEIR ONBOARD DIAGNOSTIC AND REPAIR INFOR-
51 MATION SYSTEM, AS REQUIRED UNDER THIS SECTION, USING AN OFF-THE-SHELF
52 PERSONAL COMPUTER WITH SUFFICIENT MEMORY, PROCESSOR SPEED, CONNECTIVITY
53 AND OTHER CAPABILITIES AS SPECIFIED BY THE VEHICLE MANUFACTURER AND: (I)
54 A NON-PROPRIETARY VEHICLE INTERFACE DEVICE THAT COMPLIES WITH THE SOCIE-
55 TY OF AUTOMOTIVE ENGINEERS SAE J2534, THE INTERNATIONAL STANDARDS ORGAN-
56 IZATIONS ISO 22900 OR ANY SUCCESSOR TO SAE J2534 OR ISO 22900 AS MAY BE

1 ACCEPTED OR PUBLISHED BY THE SOCIETY OF AUTOMOTIVE ENGINEERS OR THE
2 INTERNATIONAL STANDARDS ORGANIZATIONS; OR, (II) AN ON-BOARD DIAGNOSTIC
3 AND REPAIR INFORMATION SYSTEM INTEGRATED AND ENTIRELY SELF-CONTAINED
4 WITHIN THE VEHICLE INCLUDING, BUT NOT LIMITED TO, SERVICE INFORMATION
5 SYSTEMS INTEGRATED INTO AN ONBOARD DISPLAY, OR (III) A SYSTEM THAT
6 PROVIDES DIRECT ACCESS TO ON-BOARD DIAGNOSTIC AND REPAIR INFORMATION
7 THROUGH A NON-PROPRIETARY VEHICLE INTERFACE SUCH AS ETHERNET, UNIVERSAL
8 SERIAL BUS OR DIGITAL VERSATILE DISC. EACH MANUFACTURER SHALL PROVIDE
9 ACCESS TO THE SAME ON-BOARD DIAGNOSTIC AND REPAIR INFORMATION AVAILABLE
10 TO THEIR DEALERS, INCLUDING TECHNICAL UPDATES TO SUCH ON-BOARD SYSTEMS,
11 THROUGH SUCH NON-PROPRIETARY INTERFACES AS REFERENCED IN THIS PARAGRAPH.

12 (A-1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE A DEALER
13 TO USE THE NON-PROPRIETARY VEHICLE INTERFACE (I.E., SAE J2534 OR ISO
14 22900 VEHICLE INTERFACE DEVICE) SPECIFIED IN PARAGRAPH (A) OF THIS
15 SUBDIVISION, NOR SHALL THIS ARTICLE BE CONSTRUED TO PROHIBIT A MANUFAC-
16 Turer FROM DEVELOPING A PROPRIETARY VEHICLE DIAGNOSTIC AND REPROGRAMMING
17 DEVICE, PROVIDED THAT (I) THE MANUFACTURER ALSO COMPLIES WITH PARAGRAPH
18 (A) OF THIS SUBDIVISION, AND (II) THE MANUFACTURER ALSO MAKES THIS
19 DEVICE AVAILABLE TO MOTOR VEHICLE REPAIR SHOPS UPON FAIR AND REASONABLE
20 TERMS, AND OTHERWISE COMPLIES WITH PARAGRAPH (A) OF THIS SUBDIVISION.

21 (B) NO MANUFACTURER SHALL BE PROHIBITED FROM MAKING PROPRIETARY TOOLS
22 AVAILABLE TO DEALERS IF SUCH TOOLS ARE FOR A SPECIFIC SPECIALIZED DIAG-
23 NOSTIC OR REPAIR PROCEDURE DEVELOPED FOR THE SOLE PURPOSE OF A CUSTOMER
24 SERVICE CAMPAIGN MEETING THE REQUIREMENTS SET OUT IN 49 CFR 579.5, OR
25 PERFORMANCE OF A SPECIFIC TECHNICAL SERVICE BULLETIN OR RECALL AFTER THE
26 VEHICLE WAS PRODUCED, AND WHERE ORIGINAL VEHICLE DESIGN WAS NOT
27 ORIGINALLY INTENDED FOR DIRECT INTERFACE THROUGH THE NON-PROPRIETARY
28 INTERFACE SET OUT IN PARAGRAPH (A) OF THIS SUBDIVISION. PROVISION OF
29 SUCH PROPRIETARY TOOLS UNDER THIS PARAGRAPH SHALL NOT CONSTITUTE A
30 VIOLATION OF THIS ARTICLE EVEN IF SUCH TOOLS PROVIDE FUNCTIONS NOT
31 AVAILABLE THROUGH THE INTERFACE SET FORTH IN PARAGRAPH (A) OF THIS
32 SUBDIVISION, PROVIDED SUCH PROPRIETARY TOOLS ARE ALSO AVAILABLE TO THE
33 AFTERMARKET UPON FAIR AND REASONABLE TERMS. NOTHING IN THIS SUBDIVISION
34 SHALL AUTHORIZE MANUFACTURERS TO EXCLUSIVELY DEVELOP PROPRIETARY TOOLS,
35 WITHOUT A NON-PROPRIETARY EQUIVALENT AS SET FORTH IN PARAGRAPH (A) OF
36 THIS SUBDIVISION, FOR DIAGNOSTIC OR REPAIR PROCEDURES THAT FALL OUTSIDE
37 THE PROVISIONS OF THIS SUBDIVISION OR TO OTHERWISE OPERATE IN A MANNER
38 INCONSISTENT WITH THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION.

39 (C) MANUFACTURERS OF MOTOR VEHICLES SOLD IN THIS STATE MAY EXCLUDE
40 DIAGNOSTIC, SERVICE AND REPAIR INFORMATION NECESSARY TO RESET AN IMMOBI-
41 LIZER SYSTEM OR SECURITY-RELATED ELECTRONIC MODULES FROM INFORMATION
42 PROVIDED TO OWNERS AND MOTOR VEHICLE REPAIR SHOPS. IF EXCLUDED UNDER
43 THIS PARAGRAPH, THE INFORMATION NECESSARY TO RESET AN IMMOBILIZER SYSTEM
44 OR SECURITY-RELATED ELECTRONIC MODULES SHALL BE OBTAINED BY OWNERS AND
45 MOTOR VEHICLE REPAIR SHOPS THROUGH THE SECURE DATA RELEASE MODEL SYSTEM
46 AS CURRENTLY USED BY THE NATIONAL AUTOMOTIVE SERVICE TASK FORCE OR OTHER
47 KNOWN, RELIABLE AND ACCEPTED SYSTEMS.

48 (D) WITH THE EXCEPTION OF TELEMATICS DIAGNOSTIC AND REPAIR INFORMATION
49 THAT IS PROVIDED TO DEALERS, NECESSARY TO DIAGNOSE AND REPAIR A CUSTOM-
50 ER'S VEHICLE, AND NOT OTHERWISE AVAILABLE TO A MOTOR VEHICLE REPAIR SHOP
51 VIA THE TOOLS SPECIFIED IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION,
52 NOTHING IN THIS ARTICLE SHALL APPLY TO TELEMATICS SERVICES OR ANY OTHER
53 REMOTE OR INFORMATION SERVICE, DIAGNOSTIC OR OTHERWISE, DELIVERED TO OR
54 DERIVED FROM THE VEHICLE BY MOBILE COMMUNICATIONS; PROVIDED, HOWEVER,
55 THAT NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ABROGATE A TELEMATICS
56 SERVICES OR OTHER CONTRACT THAT EXISTS BETWEEN A MANUFACTURER OR SERVICE

1 PROVIDER, A MOTOR VEHICLE OWNER, AND/OR A DEALER. FOR THE PURPOSES OF
2 THIS CHAPTER, TELEMATICS SERVICES SHALL INCLUDE, BUT NOT BE LIMITED TO,
3 AUTOMATIC AIRBAG DEPLOYMENT AND CRASH NOTIFICATION, REMOTE DIAGNOSTICS,
4 NAVIGATION, STOLEN VEHICLE LOCATION, REMOTE DOOR UNLOCK, TRANSMITTING
5 EMERGENCY AND VEHICLE LOCATION INFORMATION TO PUBLIC SAFETY ANSWERING
6 POINTS AS WELL AS ANY OTHER SERVICE INTEGRATING VEHICLE LOCATION TECH-
7 NOLOGY AND WIRELESS COMMUNICATIONS. NOTHING IN THIS ARTICLE SHALL
8 REQUIRE A MANUFACTURER OR A DEALER TO DISCLOSE TO ANY PERSON THE IDENTI-
9 TY OF EXISTING CUSTOMERS OR CUSTOMER LISTS.

10 3. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE A MANUFACTUR-
11 ER TO DIVULGE A TRADE SECRET.

12 4. NOTWITHSTANDING ANY GENERAL OR SPECIAL LAW OR ANY RULE OR REGU-
13 LATION TO THE CONTRARY, NO PROVISION IN THIS ARTICLE SHALL BE READ,
14 INTERPRETED OR CONSTRUED TO ABROGATE, INTERFERE WITH, CONTRADICT OR
15 ALTER THE TERMS OF ANY PROVISION OF ARTICLE SEVENTEEN-A OF THIS CHAPTER
16 OR THE TERMS OF ANY FRANCHISE AGREEMENT EXECUTED AND IN FORCE BETWEEN A
17 DEALER AND A MANUFACTURER INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE
18 OR PROVISION OF WARRANTY OR RECALL REPAIR WORK BY A DEALER ON BEHALF OF
19 A MANUFACTURER PURSUANT TO SUCH FRANCHISE AGREEMENT; PROVIDED, HOWEVER,
20 THAT ANY PROVISION IN SUCH A FRANCHISE AGREEMENT THAT PURPORTS THE
21 WAIVE, AVOID, RESTRICT OR LIMIT A MANUFACTURER'S COMPLIANCE WITH THIS
22 ARTICLE SHALL BE VOID AND UNENFORCEABLE.

23 5. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE MANUFACTURERS
24 OR DEALERS TO PROVIDE AN OWNER OR MOTOR VEHICLE REPAIR SHOP ACCESS TO
25 NON-DIAGNOSTIC AND REPAIR INFORMATION PROVIDED BY A MANUFACTURER TO A
26 DEALER, OR BY A DEALER TO A MANUFACTURER PURSUANT TO THE TERMS OF A
27 FRANCHISE AGREEMENT.

28 6. (A) IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE UNDER
29 LAW, A VIOLATION OF THIS CHAPTER SHALL BE DEEMED TO BE A DECEPTIVE ACT
30 OR PRACTICE IN THE CONDUCT OF TRADE OR COMMERCE IN VIOLATION OF SECTION
31 THREE HUNDRED FORTY-NINE OF THE GENERAL BUSINESS LAW.

32 (B) A MOTOR VEHICLE REPAIR SHOP OR OWNER WHO BELIEVES THAT A MANUFAC-
33 Turer HAS FAILED TO PROVIDE INFORMATION OR A TOOL REQUIRED BY THIS ARTI-
34 CLE MUST NOTIFY THE MANUFACTURER IN WRITING THROUGH THE NATIONAL AUTOMO-
35 TIVE SERVICE TASK FORCE (NASTF) SERVICE INFORMATION REQUEST PROCESS OR
36 ITS SUCCESSOR ORGANIZATION OR PROCESS, AND GIVE THE MANUFACTURER THIRTY
37 DAYS FROM THE TIME THE MANUFACTURER RECEIVES THE COMPLAINT TO CURE THE
38 FAILURE. IF THE MANUFACTURER CURES SAID COMPLAINT WITHIN THE CURE PERI-
39 OD, DAMAGES SHALL BE LIMITED TO ACTUAL DAMAGES IN ANY SUBSEQUENT LITI-
40 GATION.

41 (C) IF THE MANUFACTURER FAILS TO RESPOND TO THE NOTICE PROVIDED HERE-
42 IN, OR IF A MOTOR VEHICLE REPAIR SHOP OR OWNER IS NOT SATISFIED WITH THE
43 MANUFACTURER'S CURE, THE MOTOR VEHICLE REPAIR SHOP OR OWNER MAY FILE A
44 COMPLAINT IN A COURT OF COMPETENT JURISDICTION. SUCH COMPLAINT SHALL
45 INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (I) WRITTEN INFORMATION
46 CONFIRMING THAT THE COMPLAINANT HAS VISITED THE RELEVANT MANUFACTURER
47 WEBSITE AND ATTEMPTED TO EFFECT A PROPER REPAIR UTILIZING INFORMATION
48 PROVIDED ON SUCH WEBSITE, INCLUDING COMMUNICATION WITH CUSTOMER ASSIST-
49 ANCE VIA THE MANUFACTURER'S TOLL-FREE CALL-IN ASSISTANCE, IF MADE AVAIL-
50 ABLE BY SUCH MANUFACTURER; (II) WRITTEN INFORMATION CONFIRMING THAT THE
51 COMPLAINANT HAS OBTAINED AND UTILIZED THE RELEVANT MANUFACTURER'S SCAN
52 OR DIAGNOSTIC TOOL NECESSARY FOR SUCH REPAIR; AND (III) EVIDENCE OF
53 MANUFACTURER NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

54 (D) EXCEPT IN THE INSTANCE OF A DISPUTE ARISING BETWEEN A FRANCHISOR
55 MANUFACTURER AND ITS FRANCHISEE DEALER RELATED TO EITHER PARTY'S COMPLI-
56 ANCE WITH AN EXISTING FRANCHISE AGREEMENT WHICH IS REQUIRED TO BE

1 RESOLVED PURSUANT TO ARTICLE SEVENTEEN-A OF THIS CHAPTER, A DEALER SHALL
2 HAVE ALL THE RIGHTS AND REMEDIES PROVIDED IN THIS ARTICLE, INCLUDING,
3 BUT NOT LIMITED TO, IN THE INSTANCE WHEN EXERCISING RIGHTS AND REMEDIES
4 AS ALLOWED AS A MOTOR VEHICLE REPAIR SHOP UNDER ARTICLE TWELVE-A OF THIS
5 TITLE.

6 S 2. This act shall take effect on the one hundred eightieth day after
7 it shall have become a law.