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

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:

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

ARTICLE 12-D

RIGHT TO REPAIR ACT

SECTION 399-P. DEFINITIONS.

399-Q. REPAIR OF MOTOR VEHICLES.

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

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

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

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

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

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

(D) THE PRICE CHARGED BY MANUFACTURERS FOR SIMILAR INFORMATION PRIOR 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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(E) THE ABILITY OF AFTERMARKET TECHNICIANS OR SHOPS TO AFFORD THE INFORMATION.
(F) THE MEANS BY WHICH THE INFORMATION IS DISTRIBUTED.
(G) THE EXTENT TO WHICH THE INFORMATION IS USED, WHICH INCLUDES THE NUMBER OF USERS, AND FREQUENCY, DURATION, AND VOLUME OF USE.
(H) INFLATION.
3. "IMMOBILIZER SYSTEM" SHALL MEAN AN ELECTRONIC DEVICE DESIGNED FOR THE SOLE PURPOSE OF PREVENTING THE THEFT OF A MOTOR VEHICLE BY PREVENTING THE MOTOR VEHICLE IN WHICH IT IS INSTALLED FROM STARTING WITHOUT THE CORRECT ACTIVATION OR AUTHORIZATION CODE.
4. "MOTOR VEHICLE REPAIR SHOP" SHALL MEAN 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;
(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 LOCAL GOVERNMENT OR ANY AGENCY THEREOF;
(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 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 MAY BY REGULATION DESIGNATE.
5. "MANUFACTURER" SHALL MEAN ANY PERSON OR BUSINESS ENGAGED IN THE BUSINESS OF MANUFACTURING OR ASSEMBLING NEW MOTOR VEHICLES.
6. "MOTOR VEHICLE" SHALL HAVE THE SAME MEANING AS THE TERM "MOTOR VEHICLES" AS DEFINED IN SECTION ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER.
7. "OWNER" SHALL MEAN A PERSON OR BUSINESS WHO OWNS OR LEASES A MOTOR VEHICLE REGISTERED IN THIS STATE.
8. "TRADE SECRET" SHALL MEAN ANYTHING, TANGIBLE OR INTANGIBLE OR ELECTRONICALLY STORED OR KEPT, WHICH CONSTITUTES, REPRESENTS, EVIDENCES OR RECORDS INTELLECTUAL PROPERTY INCLUDING SECRET OR CONFIDENTIALLY HELD DESIGNS, PROCESSES, PROCEDURES, FORMULAS, INVENTIONS, OR IMPROVEMENTS, OR SECRET OR CONFIDENTIALLY HELD SCIENTIFIC, TECHNICAL, MERCHANDISING, PRODUCTION, FINANCIAL, BUSINESS OR MANAGEMENT INFORMATION, OR ANYTHING WITHIN THE DEFINITION OF 18 U.S.C. S 1839(3).
S 399-Q. REPAIR OF MOTOR VEHICLES. 1. (A) EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, FOR MODEL YEAR 2002 MOTOR VEHICLES AND THEREAFTER, A MANUFACTURER OF MOTOR VEHICLES SOLD IN THIS STATE SHALL MAKE AVAILABLE FOR PURCHASE BY OWNERS OF MOTOR VEHICLES MANUFACTURED BY SUCH MANUFACTURER AND BY MOTOR VEHICLE REPAIR SHOPS THE SAME DIAGNOSTIC AND REPAIR INFORMATION, INCLUDING REPAIR TECHNICAL UPDATES, THAT SUCH MANUFACTURER MAKES AVAILABLE TO ITS DEALERS THROUGH THE MANUFACTURER'S INTERNET-BASED DIAGNOSTIC AND REPAIR INFORMATION SYSTEM OR OTHER ELECTRONICALLY ACCESSIBLE MANUFACTURER'S REPAIR INFORMATION SYSTEM. ALL CONTENT IN ANY SUCH MANUFACTURER'S REPAIR INFORMATION SYSTEM SHALL BE MADE AVAILABLE TO OWNERS AND TO MOTOR VEHICLE REPAIR SHOPS IN THE SAME FORM AND MANNER AND TO THE SAME EXTENT AS IS MADE AVAILABLE TO DEALERS UTILIZING SUCH DIAGNOSTIC AND REPAIR INFORMATION SYSTEM. EACH MANUFACTURER SHALL PROVIDE ACCESS TO SUCH MANUFACTURER'S DIAGNOSTIC AND REPAIR INFORMATION SYSTEM FOR PURCHASE BY OWNERS AND MOTOR VEHICLE REPAIR SHOPS

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

(B) ANY MANUFACTURER THAT SELLS ANY DIAGNOSTIC, SERVICE, OR REPAIR INFORMATION TO ANY MOTOR VEHICLE REPAIR SHOP OR OTHER THIRD PARTY PROVIDER IN A FORMAT THAT IS STANDARDIZED WITH OTHER MANUFACTURERS, AND ON TERMS AND CONDITIONS MORE FAVORABLE THAN THE MANNER AND THE TERMS AND CONDITIONS PURSUANT TO WHICH THE DEALER OBTAINS THE SAME DIAGNOSTIC, SERVICE OR REPAIR INFORMATION, SHALL BE PROHIBITED FROM REQUIRING ANY DEALER TO CONTINUE PURCHASING DIAGNOSTIC, SERVICE, OR REPAIR INFORMATION IN A PROPRIETARY FORMAT, UNLESS SUCH PROPRIETARY FORMAT INCLUDES DIAGNOSTIC, SERVICE, REPAIR OR DEALERSHIP OPERATIONS INFORMATION OR FUNCTIONALITY THAT IS NOT AVAILABLE IN SUCH STANDARDIZED FORMAT.

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

(II)(1) ANY DIAGNOSTIC TOOL OR INFORMATION NECESSARY TO DIAGNOSE, SERVICE OR REPAIR A MOTOR VEHICLE THAT A MANUFACTURER SELLS TO ANY MOTOR VEHICLE REPAIR SHOP IN A MANNER AND ON TERMS AND CONDITIONS MORE FAVORABLE THAN THE MANNER AND THE TERMS AND CONDITIONS PURSUANT TO WHICH THE DEALER OBTAINS THE SAME DIAGNOSTIC TOOL OR INFORMATION NECESSARY TO DIAGNOSE, SERVICE OR REPAIR A MOTOR VEHICLE, SHALL ALSO BE OFFERED TO THE DEALER IN THE SAME MANNER AND ON THE SAME TERMS AND CONDITIONS AS PROVIDED TO SUCH MOTOR VEHICLE REPAIR SHOP.

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

(III) EACH MANUFACTURER SHALL PROVIDE DIAGNOSTIC REPAIR INFORMATION TO EACH AFTER MARKET SCAN TOOL COMPANY AND EACH THIRD PARTY SERVICE INFORMATION PROVIDER WITH WHOM THE MANUFACTURER HAS APPROPRIATE LICENSING, CONTRACTUAL OR CONFIDENTIALITY AGREEMENTS FOR THE SOLE PURPOSE OF BUILDING AFTERMARKET DIAGNOSTIC TOOLS AND THIRD PARTY SERVICE INFORMATION PUBLICATIONS AND SYSTEMS. ONCE A MANUFACTURER MAKES SUCH INFORMATION AVAILABLE PURSUANT TO THIS SECTION, THE MANUFACTURER SHALL HAVE FULLY SATISFIED ITS OBLIGATIONS UNDER THIS SECTION AND THEREAFTER NOT BE RESPONSIBLE FOR THE CONTENT AND FUNCTIONALLY OF AFTERMARKET DIAGNOSTIC TOOLS OR SERVICE INFORMATION SYSTEMS.

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

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

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

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

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

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

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

3. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE A MANUFACTURER TO DIVULGE A TRADE SECRET.

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

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

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

(B) A MOTOR VEHICLE REPAIR SHOP OR OWNER WHO BELIEVES THAT A MANUFACTURER HAS FAILED TO PROVIDE INFORMATION OR A TOOL REQUIRED BY THIS ARTICLE MUST NOTIFY THE MANUFACTURER IN WRITING THROUGH THE NATIONAL AUTOMOTIVE SERVICE TASK FORCE (NASTF) SERVICE INFORMATION REQUEST PROCESS OR ITS SUCCESSOR ORGANIZATION OR PROCESS, AND GIVE THE MANUFACTURER THIRTY DAYS FROM THE TIME THE MANUFACTURER RECEIVES THE COMPLAINT TO CURE THE FAILURE. IF THE MANUFACTURER CURES SAID COMPLIANT WITHIN THE CURE PERIOD, DAMAGES SHALL BE LIMITED TO ACTUAL DAMAGES IN ANY SUBSEQUENT LITIGATION.

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

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

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

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