

4066

2015-2016 Regular Sessions

I N A S S E M B L Y

January 29, 2015

Introduced by M. of A. DenDEKKER -- read once and referred 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 ASSEM-
BLY, 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.

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

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

3 (E) THE ABILITY OF AFTERMARKET TECHNICIANS OR SHOPS TO AFFORD THE
4 INFORMATION.

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

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

8 (H) INFLATION.

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

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

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

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

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

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

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

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

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

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

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

1 TURER SHALL PROVIDE ACCESS TO SUCH MANUFACTURER'S DIAGNOSTIC AND REPAIR
2 INFORMATION SYSTEM FOR PURCHASE BY OWNERS AND MOTOR VEHICLE REPAIR SHOPS
3 ON A DAILY, MONTHLY AND YEARLY SUBSCRIPTION BASIS AND UPON FAIR AND
4 REASONABLE TERMS.

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

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

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

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

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

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

1 TY OF AUTOMOTIVE ENGINEERS SAE J2534, THE INTERNATIONAL STANDARDS ORGAN-
2 IZATIONS ISO 22900 OR ANY SUCCESSOR TO SAE J2534 OR ISO 22900 AS MAY BE
3 ACCEPTED OR PUBLISHED BY THE SOCIETY OF AUTOMOTIVE ENGINEERS OR THE
4 INTERNATIONAL STANDARDS ORGANIZATIONS; OR, (II) AN ON-BOARD DIAGNOSTIC
5 AND REPAIR INFORMATION SYSTEM INTEGRATED AND ENTIRELY SELF-CONTAINED
6 WITHIN THE VEHICLE INCLUDING, BUT NOT LIMITED TO, SERVICE INFORMATION
7 SYSTEMS INTEGRATED INTO AN ONBOARD DISPLAY, OR (III) A SYSTEM THAT
8 PROVIDES DIRECT ACCESS TO ON-BOARD DIAGNOSTIC AND REPAIR INFORMATION
9 THROUGH A NON-PROPRIETARY VEHICLE INTERFACE SUCH AS ETHERNET, UNIVERSAL
10 SERIAL BUS OR DIGITAL VERSATILE DISC. EACH MANUFACTURER SHALL PROVIDE
11 ACCESS TO THE SAME ON-BOARD DIAGNOSTIC AND REPAIR INFORMATION AVAILABLE
12 TO THEIR DEALERS, INCLUDING TECHNICAL UPDATES TO SUCH ON-BOARD SYSTEMS,
13 THROUGH SUCH NON-PROPRIETARY INTERFACES AS REFERENCED IN THIS PARAGRAPH.

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

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

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

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

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

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

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

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

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

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

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

1 (D) EXCEPT IN THE INSTANCE OF A DISPUTE ARISING BETWEEN A FRANCHISOR
2 MANUFACTURER AND ITS FRANCHISEE DEALER RELATED TO EITHER PARTY'S COMPLI-
3 ANCE WITH AN EXISTING FRANCHISE AGREEMENT WHICH IS REQUIRED TO BE
4 RESOLVED PURSUANT TO ARTICLE SEVENTEEN-A OF THIS CHAPTER, A DEALER SHALL
5 HAVE ALL THE RIGHTS AND REMEDIES PROVIDED IN THIS ARTICLE, INCLUDING,
6 BUT NOT LIMITED TO, IN THE INSTANCE WHEN EXERCISING RIGHTS AND REMEDIES
7 AS ALLOWED AS A MOTOR VEHICLE REPAIR SHOP UNDER ARTICLE TWELVE-A OF THIS
8 TITLE.
9 S 2. This act shall take effect on the one hundred eightieth day after
10 it shall have become a law.