

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 230**

**STATE OF NEW JERSEY**

**Sponsored by Assemblymen GUSCIORA and MORIARTY**

**AN ACT** concerning diagnosis, service, and repair of motor vehicles  
and supplementing Title 56 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State  
of New Jersey:

1. This act shall be known and may be cited as the “Motor  
Vehicle Owners’ Right to Repair Act.”

2. As used in this act:

“Dealer” means any franchisee, as defined in P.L.1971, c.356  
(C.56:10-3) which in the ordinary course of its business, is engaged  
in the business of selling or leasing new motor vehicles to  
consumers or other end users pursuant to a franchise agreement and  
is engaged in the diagnosis, service, maintenance or repair of motor  
vehicles or motor vehicle engines pursuant to the franchise  
agreement.

“Franchise agreement” means an oral or written arrangement for  
a definite or indefinite period in which a manufacturer or distributor  
grants to a motor vehicle dealer a license to use a trade name,  
service mark, or related characteristic and in which there is a  
community of interest in the marketing of new motor vehicles or  
services related thereto at wholesale, retail, leasing or otherwise.

“Heavy duty vehicle” means any motor vehicle that does not run  
on rails or tracks and is designed for transporting persons or  
property on a street or highway and that is certified by the  
manufacturer under all applicable federal safety and emissions  
standards and requirements for distribution and sale in the United  
States with a gross vehicle weight of more than 14,000 pounds.

“Immobilizer system” means 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.

“Independent repair facility” means a person or business  
operating in the State that is not affiliated with a manufacturer or

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manufacturer's authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines; provided, however, that for the purposes of this act a dealer, notwithstanding affiliation with any manufacturer, shall be considered an independent repair facility for purposes of those instances when the dealer engages in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines that are not affiliated with the dealer's franchise manufacturer.

"Manufacturer" means a person or business engaged in the manufacturing or assembling of new motor vehicles.

"Motor vehicle" means "motor vehicle" as defined in R.S.39:1-1, including "heavy duty vehicles" as defined in this section, but shall not include "motorcycles" or "motorized bicycles" as defined in R.S.39:1-1.

"Owner" means a person who or business that owns or leases a motor vehicle registered in this State.

"Trade secret" means 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 included within the definition in 18 U.S.C. 1839(3).

3. a. (1) Except as provided in subsection e. of this section, for motor vehicles, other than heavy duty vehicles, manufactured in model year 2002 and thereafter, and for heavy duty vehicles manufactured in 2010 or thereafter, a manufacturer of motor vehicles sold in the State shall make available for purchase, by owners of motor vehicles manufactured by such manufacturers and by independent repair facilities, 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 independent repair facilities 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 independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms.

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(2) For the purposes of this section, in determining whether a price is on “fair and reasonable terms,” consideration may be given to relevant factors, including, but not limited to:

(a) the net cost to the manufacturer 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; provided, however, that 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;

(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; and

(h) inflation.

b. Any manufacturer that sells any diagnostic, service or repair information to any independent repair facility 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. (1) For motor vehicles, other than heavy duty vehicles, manufactured in model year 2002 and thereafter, and for heavy duty vehicles manufactured in 2010 or thereafter, each manufacturer of motor vehicles sold in the State shall make available for purchase, by owners and independent repair facilities, 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 independent repair facilities upon fair and reasonable terms.

(2) Any diagnostic tools or information necessary to diagnose, service or repair a motor vehicle that a manufacturer sells to any

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independent repair facility 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 independent repair facility.

Any manufacturer that sells to any independent repair facility 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 a 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.

(3) Each manufacturer shall provide diagnostic repair information to each aftermarket 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 will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

d. (1) Commencing in model year 2018, except as provided in subsection e. of this section, manufacturers of motor vehicles sold in the State shall provide access to their onboard diagnostic and repair information systems, for each successive model year, as required by 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:

(a) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers SAE J2534 or SAE J1939, the **International Organization for Standardization** ISO 22900 or any successors to SAE J2534, SAE J1939 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Standards Organizations;

(b) 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

(c) a system that provides direct access to on-board diagnostic and repair information through a nonproprietary vehicle interface, such as Ethernet, universal serial bus, or digital versatile disc. Each

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manufacturer shall provide access to the same onboard diagnostic and repair information available to their dealers, including technical updates to such on-board systems, through such non-proprietary interfaces, including but not limited to digital versatile disc, Ethernet, universal serial bus as referenced in this paragraph.

Nothing in this act shall be construed to require a dealer to use the non-proprietary vehicle interface specified in this subsection, nor shall this act be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device, **provided that the manufacturer also complies with this subsection**, makes this device available to independent repair facilities upon fair and reasonable terms, and otherwise complies with subsection a. of this section.

(2) 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 forth in 49 CFR s.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 forth in paragraph (1) of this subsection. Provision of such proprietary tools shall not constitute a violation even if such tools provide functions not available through the interface set forth in paragraph (1) of this subsection, provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection shall authorize manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as forth in paragraph (1) of this subsection, for diagnostic or repair procedures that fall outside the provisions of this paragraph or to otherwise operate in a manner inconsistent with the requirements of paragraph (1) of this subsection.

e. Manufacturers of motor vehicles sold in the 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 independent repair facilities. If excluded under this subsection, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

(f) 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 an independent repair facility via the tools specified in paragraph (1) of subsection (c) and paragraph (1) of subsection (d) of this section,

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nothing in this section shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from a motor vehicle by mobile communications; provided, however, that nothing in this section shall be construed to abrogate a telematics services contract or other contract that exists between a manufacturer or service provider, an owner or a dealer. For the purposes of this section, 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 and any other service integrating vehicle location technology and wireless communications. Nothing in this chapter shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

4. Nothing in this act shall be construed to require a manufacturer to divulge a trade secret.

5. Notwithstanding any law or regulation to contrary, no provision of this act shall be interpreted or construed to abrogate, contradict or, alter the terms of any provision of P.L.1971, c.356 (C.56:10-1 et seq.) 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 to waive, avoid, restrict, or limit a manufacturer's compliance with this act shall be void and unenforceable.

6. Nothing in this act shall be construed to require manufacturers or dealers to provide an owner or independent repair facility 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.

7. a. In addition to any other remedies that may be available under law, a violation of this act is an unlawful practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

b. An independent repair facility or owner who believes that a manufacturer had failed to provide information or a tool required by this act shall notify the manufacturer in writing through the National Automotive Service Task Force Service Information Request process or its successor organization or process. Upon receiving the complaint, the manufacturer shall have 30 days to comply with the provisions of this act. If the manufacturer

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complies within 30 days it shall be liable to the vehicle owner or independent repair facility only to the extent of the actual damages sustained by the vehicle owner or independent repair facility.

c. If the manufacturer fails to respond to the notice provided pursuant to subsection b. of this section or the owner is not satisfied with the manufacturer's compliance, the independent repair facility or owner may file a complaint with the Division of Consumer Affairs. Such complaint shall include, but not be limited to the following: (1) 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; (2) written information confirming that the complainant has obtained and utilized the relevant manufacturer's scan or diagnostic tool necessary for such repair; and, (3) evidence of manufacturer notification pursuant to subsection b. of this section.

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, a dealer shall have all the rights and remedies provided in this act.

8. This act shall take effect on the first day of the seventh month next following the date of enactment.

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Enacts "Motor Vehicle Owners' Right to Repair Act."

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