

# ASSEMBLY, No. 4336

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 9, 2013

**Sponsored by:**

**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Enacts “Motor Vehicle Owners’ Right to Repair Act.”

**CURRENT VERSION OF TEXT**

As introduced.



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

3

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

6

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

9

10 2. As used in this act:

11 “Dealer” means any franchisee, as defined by P.L.1971, c.356  
12 (C.56:10-1, et seq.), which in the ordinary course of its business, is  
13 engaged in the business of selling or leasing new motor vehicles to  
14 consumers or other end users pursuant to a franchise agreement and  
15 is engaged in the diagnosis, service, maintenance or repair of motor  
16 vehicles or motor vehicle engines pursuant to the franchise  
17 agreement.

18 “Franchise agreement,” means a written arrangement for a  
19 definite or indefinite period in which a manufacturer or distributor  
20 grants to a motor vehicle dealer a license to use a trade name, trade  
21 mark, service mark or related characteristics, and in which there is a  
22 community of interest in the marketing of goods or services at  
23 wholesale, retail, by lease, agreement, or otherwise.

24 “Immobilizer system” means an electronic device designed for  
25 the sole purpose of preventing the theft of a motor vehicle by  
26 preventing the motor vehicle in which it is installed from starting  
27 without the correct activation or authorization code.

28 “Independent repair facility” means a person or business  
29 operating in the State that is not affiliated with a manufacturer or  
30 manufacturer’s authorized dealer of motor vehicles, which is  
31 engaged in the diagnosis, service, maintenance or repair of motor  
32 vehicles or motor vehicle engines; provided, however, that for the  
33 purposes of this act a dealer, notwithstanding affiliation with any  
34 manufacturer, shall be considered an independent repair facility for  
35 purposes of those instances when the dealer engages in the  
36 diagnosis, service, maintenance or repair of motor vehicles or motor  
37 vehicle engines that are not affiliated with the dealer’s franchise  
38 manufacturer.

39 “Manufacturer” means a person or business engaged in the  
40 manufacturing or assembling of new motor vehicles.

41 “Motor vehicle” means a passenger automobile or motorcycle as  
42 defined in R.S.39:1-1 that was originally manufactured for  
43 distribution and sale in the United States.

44 “Owner” means a person who owns, leases or otherwise has the  
45 legal right to use and possess a motor vehicle which is registered in  
46 this State, or the agent of such person.

1       3. a. Except as provided in subsection e. of this section, for  
2 motor vehicles manufactured in model year 2002 and thereafter, a  
3 manufacturer of motor vehicles sold in the State shall make  
4 available for purchase by owners of motor vehicles manufactured  
5 by such manufacturers and by independent repair facilities the same  
6 diagnostic and repair information, including repair technical  
7 updates, that such manufacturer makes available to its dealers  
8 through the manufacturer's internet-based diagnostic and repair  
9 information system or other electronically accessible  
10 manufacturer's repair information system. All content in any such  
11 manufacturer's repair information system shall be made available to  
12 owners and to independent repair facilities in the same form and  
13 manner and to the same extent as is made available to dealers  
14 utilizing such diagnostic and repair information system. Each  
15 manufacturer shall provide access to such manufacturer's diagnostic  
16 and repair information system for purchase by owners and  
17 independent repair facilities on a daily, monthly and yearly  
18 subscription basis and upon fair and reasonable terms.

19       b. Any manufacturer that sells any diagnostic, service or repair  
20 information to any independent repair facility or other third party  
21 provider in a format that is standardized with other manufacturers,  
22 and on terms and conditions more favorable than the manner and  
23 the terms and conditions pursuant to which the dealer obtains the  
24 same diagnostic, service or repair information, shall be prohibited  
25 from requiring any dealer to continue purchasing diagnostic,  
26 service, or repair information in a proprietary format, unless such  
27 proprietary format includes diagnostic, service, repair or dealership  
28 operations information or functionality that is not available in such  
29 standardized format.

30       c. (1) For motor vehicles manufactured in model year 2002  
31 and thereafter, each manufacturer of motor vehicles sold in the State  
32 shall make available for purchase by owners and independent repair  
33 facilities all diagnostic repair tools incorporating the same  
34 diagnostic, repair and wireless capabilities that such manufacturer  
35 makes available to its dealers. Such tools shall incorporate the  
36 same functional repair capabilities that such manufacturer makes  
37 available to dealers. Each manufacturer shall offer such tools for  
38 sale to owners and to independent repair facilities upon fair and  
39 reasonable terms.

40       (2) Any diagnostic tools or information necessary to diagnose,  
41 service or repair a motor vehicle that a manufacture sells to any  
42 independent repair facility in a manner and on terms and conditions  
43 more favorable than the manner and the terms and conditions  
44 pursuant to which the dealer obtains the same diagnostic tool or  
45 information necessary to diagnose, service or repair a motor  
46 vehicle, shall also be offered to the dealer in the same manner and  
47 on the same terms and conditions as provided to such independent  
48 repair facility.

1 Any manufacturer that sells to any independent repair facility  
2 any diagnostic tool necessary to diagnose, service or repair a motor  
3 vehicle and such diagnostic tool communicates with the vehicle  
4 using the same non-proprietary interface used by other  
5 manufacturers, the manufacturer delivering such a diagnostic tool  
6 shall be prohibited from requiring any dealer from continuing to  
7 purchase that manufacturer's proprietary tool and interface unless  
8 such proprietary interface has a capability not available in the non-  
9 proprietary interface.

10 (3) Each manufacturer shall provide diagnostic repair  
11 information to each aftermarket scan tool company and each third  
12 party service information provider with whom the manufacturer has  
13 appropriate licensing, contractual or confidentiality agreements for  
14 the sole purpose of building aftermarket diagnostic tools and third  
15 party service information publications and systems. Once a  
16 manufacturer makes such information available pursuant to this  
17 section, the manufacturer will have fully satisfied its obligations  
18 under this section and thereafter not be responsible for the content  
19 and functionality of aftermarket diagnostic tools or service  
20 information systems.

21 d. (1) Commencing in model year 2018, except as provided in  
22 subsection e. of this section, manufacturers of motor vehicles in the  
23 State shall provide access to their onboard diagnostic and repair  
24 information systems, for each successive model year, as required by  
25 this section, using an off-the-shelf personal computer with  
26 sufficient memory, processor speed, connectivity and other  
27 capabilities as specified by the vehicle manufacturer and:

28 (a) a non-propriety vehicle interface device that complies with  
29 the Society of Engineers SAE J2534, the International Standards  
30 Organizations ISO 22900 or any successor to SAE J2534 or ISO  
31 22900 as may be accepted or published by the Society of  
32 Automotive Engineers or the International Standards Organizations;  
33 or

34 (b) an on-board diagnostic and repair information system  
35 integrated and entirely self-contained within the vehicle including,  
36 but not limited to, service information systems integrated into an  
37 onboard display; or

38 (c) a system that provides direct access to on-board diagnostic  
39 and repair information available to their dealers, including technical  
40 updates to such on-board systems, through such non-proprietary  
41 interfaces as referenced in this paragraph.

42 Nothing in this act shall be construed to require a dealer to use  
43 the non-proprietary vehicle interface specified in this subsection,  
44 nor shall this act be construed to prohibit a manufacturer from  
45 developing a proprietary vehicle diagnostic and reprogramming  
46 device, provided that the manufacturer also complies with  
47 paragraph (1) of this subsection, makes this device available to

1 independent repair facilities upon fair and reasonable terms, and  
2 otherwise complies with subsection a. of this section.

3 (2) No manufacturer shall be prohibited from making proprietary  
4 tools available to dealers if such tools are for a specific specialized  
5 diagnostic or repair procedure developed for the sole purpose of a  
6 customer service campaign meeting the requirements set forth in 49  
7 CFR s.579.5, or performance of a specific technical service bulletin  
8 or recall after the vehicle was produced, and where original vehicle  
9 design was not originally intended for direct interface through the  
10 non-proprietary interface set forth in paragraph (1) of this  
11 subsection. Provision of such proprietary tools shall not constitute  
12 a violation even if such tools provide functions not available  
13 through the interface set forth in paragraph (1) of this subsection,  
14 provided such proprietary tools are also available to the aftermarket  
15 upon fair and reasonable terms. Nothing in this subsection  
16 authorizes manufacturers to exclusively develop proprietary tools,  
17 without a non-proprietary equivalent as forth in paragraph (1) of  
18 this subsection, for diagnostic or repair procedures that fall outside  
19 the provisions of paragraph (2) of this subsection or to otherwise  
20 operate in a manner inconsistent with the requirements of paragraph  
21 (1) of this subsection.

22 e. Manufacturers of motor vehicles sold in the State may  
23 exclude diagnostic, service, and repair information necessary to  
24 reset an immobilizer system or security-related electronic modules  
25 from information provided to owners and independent repair  
26 facilities. If excluded under this paragraph, the information  
27 necessary to reset an immobilizer system or security-related  
28 electronic modules shall be obtained by owners and independent  
29 repair facilities through the secure data release model system as  
30 currently used by the National Automotive Service Task Force or  
31 other known, reliable and accepted systems.

32 f. With the exception of telematics diagnostic and repair  
33 information that is provided to dealers, necessary to diagnose and  
34 repair a customer's vehicle, and not otherwise available to an  
35 independent repair facility via the tools specified in paragraph (1)  
36 of subsection c. and paragraph (1) of subsection d. of this section,  
37 nothing in this act shall apply to telematics services or any other  
38 remote or information service, diagnostic or otherwise, delivered to  
39 or derived from the vehicle by mobile communications; provided  
40 however, that nothing in this act shall be construed to abrogate a  
41 telematics services or other contract that exists between a  
42 manufacturer or service provider, a motor vehicle owner or a dealer.

43 For purposes of this act, telematics services include but are not  
44 limited to automatic airbag deployment and crash notification,  
45 remote diagnostics, navigation, stolen vehicle location, remote door  
46 unlock, transmitting emergency and vehicle location information to  
47 public safety answering points as well as any other service  
48 integrating vehicle location technology and wireless

1 communications. Nothing in this act shall require a manufacturer or  
2 a dealer to disclose to any person the identity of existing customers  
3 or customer lists.

4

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

7

8 5. Notwithstanding any law or regulation to contrary, no  
9 provision of this act shall be interpreted or construed to abrogate,  
10 contradict or alter the terms of any provision of P.L.1971, c.356  
11 (C.56:10-1, et seq.) or the terms of any franchise agreement  
12 executed and in force between a dealer and a manufacturer  
13 including, but not limited to, the performance or provision of  
14 warranty or recall repair work by a dealer on behalf of a  
15 manufacturer pursuant to such franchise agreement; provided,  
16 however, that any provision in such a franchise agreement that  
17 purports to waive, avoid, restrict or limit a manufacturer's  
18 compliance with this act shall be void and unenforceable.

19

20 6. Nothing in this act shall be construed to require  
21 manufacturers or dealers to provide an owner or independent repair  
22 facility access to non-diagnostic and repair information provided by  
23 a manufacturer to a dealer, or by a dealer to a manufacturer  
24 pursuant to the terms of a franchise agreement.

25

26 7. a. In addition to any other remedies that may be available  
27 under law, a violation of this act is an unlawful practice.

28 b. An independent repair facility or owner who believes that a  
29 manufacturer had failed to provide information or a tool required by  
30 this act must notify the manufacturer in writing through the  
31 National Automotive Service Task Force Service Information  
32 Request process or its successor organization or process. Upon  
33 receiving the complaint, the manufacturer shall have 30 days to  
34 comply with the provisions of this act. If the manufacturer  
35 complies within 30 days it shall be liable to the vehicle owner or  
36 independent repair facility only to the extent of the actual damages  
37 sustained by the vehicle owner or independent repair facility.

38 c. If the manufacturer fails to respond to the notice provided  
39 pursuant to subsection b. of this section or the owner is not satisfied  
40 with the manufacturer's compliance, the independent repair facility  
41 or owner may file a complaint with the Division of Consumer  
42 Affairs. Such complaint shall include, but not be limited to the  
43 following: (1) written information confirming that the complainant  
44 has visited the relevant manufacturer website and attempted to  
45 effect a proper repair utilizing information provided on such  
46 website, including communication with customer assistance via the  
47 manufacturer's toll-free call-in assistance, if made available by such  
48 manufacturer; (2) written information confirming that the

1 complainant has obtained and utilized the relevant manufacturer's  
2 scan or diagnostic tool necessary for sure repair; and, (3) evidence  
3 of manufacturer notification pursuant to subsection b. of this  
4 section.

5 d. Except in the instance of a dispute arising between a  
6 franchisor manufacturer and its franchisee dealer related to either  
7 party's compliance with an existing franchise agreement, a dealer  
8 shall have all the rights and remedies provided in this act.

9  
10 8. This act shall be submitted to the people for their approval  
11 or rejection at the next general election to be held at least 70 days  
12 following the date of its enactment for the purpose of complying  
13 with Article II, Section I, paragraph 2 of the New Jersey  
14 Constitution.

15  
16 9. This voter referendum shall be submitted to the people in the  
17 following manner and form:

18 There shall be printed on each official ballot to be used at the  
19 general election, the following:

20 a. In every municipality in which voting machines are not used,  
21 a legend which shall immediately precede the question as follows:

22 If you favor the proposition printed below make a cross (X), plus  
23 (+) or check (✓) in the square opposite the word "Yes." If you are  
24 opposed thereto make a cross (X), plus (+) or check (✓) in the  
25 square opposite the word "No."

26 b. In every municipality the following question:

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	YES	<p style="text-align: center;">REQUIRING AUTO MAKERS TO PROVIDE MOTOR VEHICLE OWNERS AND INDEPENDENTLY OWNED REPAIR SHOPS ACCESS TO CERTAIN VEHICLE REPAIR INFORMATION AND TOOLS</p> <p>Do you approve a new law which requires that auto makers give motor vehicle owners and independently owned repair shops access to the same repair information and tools provided to dealerships?</p>
	NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>Approval of this law gives motor vehicle owners and independently owned repair shops access to the same information and tools given to automotive dealers.</p> <p>In order to repair newer motor vehicles with computer systems, certain tools and information are necessary. In many cases auto makers only give the information and tools to dealerships. The new law requires auto makers to provide motor vehicle owners and independently owned repair shops with access to the information and tools.</p>

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3 10. This act shall take effect on the first day of the third month  
 4 next following voter approval of this act at the designated general  
 5 election.

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STATEMENT

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10 This bill creates the “Motor Vehicle Owners’ Right to Repair  
 11 Act.” The bill requires motor vehicle manufacturers to provide  
 12 motor vehicle owners and independent repair shops with access to  
 13 the same repair information and tools given to automotive dealer  
 14 repair facilities.

15 Under the provisions of the bill, for motor vehicles model year  
 16 2002 and newer, a manufacturer of motor vehicles sold in the State  
 17 must make available for purchase the same diagnostic and repair  
 18 information, including repair technical updates, provided to its  
 19 dealers, to owners and independent repair facilities. A  
 20 manufacturer that currently sells diagnostic, service or repair  
 21 information to owners or independent repair facilities in a format  
 22 that is standardized would not be allowed to require a dealer to

1 purchase such information in a proprietary format, under terms and  
2 conditions that are less favorable to the dealer than to the other  
3 purchasers. The bill also requires that manufacturers must provide  
4 diagnostic tools to owners and independent repair facilities in a  
5 similar fashion, including the provision that dealers may not be  
6 disadvantaged. Additionally, manufacturers are to provide  
7 diagnostic repair information to aftermarket scan tool companies  
8 and certain other third party service information providers.

9 Commencing in model year 2018, under the bill, manufacturers  
10 must begin providing access to their onboard diagnostic and repair  
11 information systems using an off-the-shelf personal computer, and:

12 (1) a non-propriety vehicle interface device that complies with  
13 industry standards; or

14 (2) an on-board diagnostic and repair information system  
15 integrated and entirely self-contained within the vehicle including,  
16 but not limited to, service information systems integrated into an  
17 onboard display; or

18 (3) a system that provides direct access to on-board diagnostic  
19 and repair information available to their dealers, including technical  
20 updates to such on-board systems.

21 The bill provides an exception to this requirement for  
22 information related to immobilizer systems and security-related  
23 electronic modules as such information is accessible in other ways.  
24 The bill also exempts telematics services, except in certain  
25 circumstances. For purposes of the bill, telematics services include,  
26 but are not limited to, automatic airbag deployment and crash  
27 notification, remote diagnostics, navigation, stolen vehicle location,  
28 remote door unlock, transmitting emergency and vehicle location  
29 information to public safety answering points as well as any other  
30 service integrating vehicle location technology and wireless  
31 communications.

32 Under the bill, a violation would be an unlawful practice. An  
33 unlawful practice under the Consumer Fraud Act is punishable by a  
34 monetary penalty of not more than \$10,000 for a first offense and  
35 not more than \$20,000 for any subsequent offense. In addition, a  
36 violation can result in cease and desist orders issued by the  
37 Attorney General, the assessment of punitive damages and the  
38 awarding of treble damages and costs to the injured.

39 However, the bill also provides that an owner or independent  
40 repair facility who believes that a manufacturer had failed to  
41 provide information or a tool required by this act must notify the  
42 manufacturer in writing through the National Automotive Service  
43 Task Force Service Information Request process. Upon receiving  
44 the complaint, the manufacturer has 30 days to comply with the  
45 provisions of this act. If the manufacturer complies within 30 days  
46 it shall be liable to the owner or independent repair facility only to  
47 the extent of the actual damages sustained. The bill specifies that  
48 if the manufacturer fails to respond or the owner is not satisfied

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1 with the manufacturer's compliance, the independent repair facility  
2 or owner may then file a complaint with the Division of Consumer  
3 Affairs.

4 The bill will only become operative if approved by the voters in  
5 a Statewide referendum and would take effect on the first day of the  
6 third month next following voter approval.