



General Assembly

February Session, 2020

**Raised Bill No. 136**

LCO No. 1349



Referred to Committee on GENERAL LAW

Introduced by:  
(GL)

**AN ACT CONCERNING MOTOR VEHICLE OWNER AND SMALL BUSINESS RIGHT TO REPAIR.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2020*) (a) As used in this section:
- 2 (1) "Dealer" means any person, as defined in section 1-79 of the  
3 general statutes, that, in the ordinary course of its business, is engaged  
4 in the business of selling or leasing new motor vehicles to consumers or  
5 other end users pursuant to a franchise agreement and is engaged in the  
6 diagnosis, service, maintenance or repair of motor vehicles or motor  
7 vehicle engines pursuant to such franchise agreement;
- 8 (2) "Franchise agreement" means an oral or written arrangement for  
9 a definite or indefinite period in which a manufacturer or distributor  
10 grants to a motor vehicle dealer a license to use a trade name, service  
11 mark or related characteristic and in which there is a community of  
12 interest in the marketing of new motor vehicles or services related  
13 thereto at wholesale or retail, through leasing or otherwise;
- 14 (3) "Fair and reasonable terms" means terms that are determined by

15 giving consideration to relevant factors, including, but not limited to,  
16 the following:

17 (A) The net cost to the manufacturer's franchised dealerships for  
18 information obtained from the manufacturer, less any discounts, rebates  
19 or other incentive programs;

20 (B) The cost to the manufacturer of preparing and distributing the  
21 information, excluding any research and development costs incurred in  
22 designing and implementing, upgrading or altering the on-board  
23 computer and its software or any other vehicle part or component.  
24 Amortized capital costs for the preparation and distribution of the  
25 information may be included;

26 (C) The price charged by other manufacturers for similar information;

27 (D) The price charged by manufacturers for similar information prior  
28 to the launch of manufacturer Internet web sites;

29 (E) The ability of independent repair facilities and owners to afford  
30 the information;

31 (F) The means by which the information is distributed;

32 (G) The extent to which the information is used, which includes the  
33 number of users, and frequency, durations and volume of use; and

34 (H) Inflation.

35 (4) "Immobilizer system" means an electronic device designed for the  
36 sole purpose of preventing the theft of a motor vehicle by preventing  
37 the motor vehicle in which it is installed from starting without the  
38 correct activation or authorization code;

39 (5) "Independent repair facility" means a person or business  
40 operating in the state that is not affiliated with a manufacturer or  
41 manufacturer's authorized dealer of motor vehicles, which is engaged  
42 in the diagnosis, service, maintenance or repair of motor vehicles or

43 motor vehicle engines; except that, for the purposes of this section, a  
44 dealer, notwithstanding its affiliation with any manufacturer, shall be  
45 considered an independent repair facility when such dealer engages in  
46 the diagnosis, service, maintenance or repair of motor vehicles or motor  
47 vehicle engines that are not affiliated with the dealer's franchise  
48 manufacturer;

49 (6) "Manufacturer" means any person or business engaged in the  
50 business of manufacturing or assembling new motor vehicles;

51 (7) "Motor vehicle" means a vehicle, originally manufactured for  
52 distribution and sale in the United States, driven or drawn by  
53 mechanical power and manufactured primarily for use on public streets,  
54 roads and highways, but excluding: (A) A vehicle that may be operated  
55 only on a rail line, (B) a recreational vehicle or motor home equipped for  
56 habitation, (C) an ambulance, (D) a motor bus, motor coach or trackless  
57 trolley designed for the carriage of persons for hire or for school-related  
58 purposes, (E) vehicles used exclusively for the building, repair and  
59 maintenance of highways or designed primarily for use elsewhere than  
60 on the traveled part of ways, (F) any vehicle with a gross vehicle weight  
61 rating of more than ten thousand pounds, and (G) a motorcycle;

62 (8) "Owner" means a person, as defined in section 1-79 of the general  
63 statutes, who owns or leases a motor vehicle registered in the state; and

64 (9) "Trade secret" means anything, tangible or intangible or  
65 electronically stored or kept, that constitutes, represents, evidences or  
66 records intellectual property, including, but not limited to, secret or  
67 confidentially held designs, processes, procedures, formulas, inventions  
68 or improvements, or secret or confidentially held scientific, technical,  
69 merchandising, production, financial, business or management  
70 information, or anything within the definition of 18 USC 1839.

71 (b) Except as provided in subsection (k) of this section, for model year  
72 2002 motor vehicles and thereafter, each manufacturer of motor vehicles  
73 sold in the state shall make available for purchase by owners of motor  
74 vehicles manufactured by such manufacturer and independent repair

75 facilities the same diagnostic and repair information, including repair  
76 technical updates, that such manufacturer makes available to its dealers  
77 through the manufacturer's Internet-based diagnostic and repair  
78 information system or other electronically accessible manufacturer's  
79 repair information system. All content in any such manufacturer's  
80 repair information system shall be made available to owners and to  
81 independent repair facilities in the same form and manner and to the  
82 same extent as is made available to dealers utilizing such diagnostic and  
83 repair information system. Each manufacturer shall provide access to  
84 such manufacturer's diagnostic and repair information system for  
85 purchase by owners and independent repair facilities on a daily,  
86 monthly and yearly subscription basis and upon fair and reasonable  
87 terms.

88 (c) Any manufacturer that sells any diagnostic, service or repair  
89 information to any independent repair facility in a format that is  
90 standardized with other manufacturers, and on terms and conditions  
91 more favorable than the manner and the terms and conditions pursuant  
92 to which the dealer obtains the same diagnostic, service or repair  
93 information, shall be prohibited from requiring any dealer to continue  
94 purchasing diagnostic, service or repair information in a proprietary  
95 format, unless such proprietary format includes diagnostic, service,  
96 repair or dealership operations information or functionality that is not  
97 available in such standardized format.

98 (d) For model year 2002 motor vehicles and thereafter, each  
99 manufacturer of motor vehicles sold in the state shall make available for  
100 purchase by owners of motor vehicles manufactured by such  
101 manufacturer and independent repair facilities all diagnostic repair  
102 tools incorporating the same diagnostic, repair and wireless capabilities  
103 that such manufacturer makes available to its dealers. Such tools shall  
104 incorporate the same functional repair capabilities that such  
105 manufacturer makes available to dealers. Each manufacturer shall offer  
106 such tools for sale to owners and to independent repair facilities upon  
107 fair and reasonable terms.

108 (e) Any diagnostic tool or information necessary to diagnose, service  
109 or repair a motor vehicle that a manufacturer sells to any independent  
110 repair facility in a manner and on terms and conditions more favorable  
111 than the manner and the terms and conditions pursuant to which the  
112 dealer obtains the same diagnostic tool or information necessary to  
113 diagnose, service or repair a motor vehicle, shall also be offered to the  
114 dealer in the same manner and on the same terms and conditions as  
115 provided to such independent repair facility.

116 (f) Any manufacturer that sells to any independent repair facility any  
117 diagnostic tool necessary to diagnose, service or repair a motor vehicle  
118 and such diagnostic tool communicates with the vehicle using the same  
119 nonproprietary interface used by other manufacturers shall be  
120 prohibited from requiring any dealer to continue purchasing that  
121 manufacturer's proprietary tool and interface unless such proprietary  
122 interface has a capability not available in the nonproprietary interface.

123 (g) Each manufacturer shall provide diagnostic repair information to  
124 each aftermarket scan tool company and each third-party service  
125 information provider with whom the manufacturer has appropriate  
126 licensing, contractual or confidentiality agreements for the sole purpose  
127 of producing aftermarket diagnostic tools and preparing third-party  
128 service information publications and systems. Once a manufacturer  
129 makes such information available pursuant to this subsection, the  
130 manufacturer will have fully satisfied its obligations under this section  
131 and thereafter not be responsible for the content and functionality of  
132 aftermarket diagnostic tools or service information systems.

133 (h) Commencing in model year 2021, except as provided in  
134 subsection (k) of this section, each manufacturer of motor vehicles sold  
135 in the state shall provide access to its on-board diagnostic and repair  
136 information system, as required under this section, using an off-the-  
137 shelf personal computer with sufficient memory, processor speed,  
138 connectivity and other capabilities as specified by the vehicle  
139 manufacturer and: (1) A nonproprietary vehicle interface device that  
140 complies with the Society of Automotive Engineers SAE J2534, the

141 International Standards Organizations ISO 22900 or any successor to  
142 SAE J2534 or ISO 22900 as may be accepted or published by the Society  
143 of Automotive Engineers or the International Standards Organizations,  
144 (2) an on-board diagnostic and repair information system integrated  
145 and entirely self-contained within the vehicle, including, but not limited  
146 to, service information systems integrated into an on-board display, or  
147 (3) a system that provides direct access to on-board diagnostic and  
148 repair information through a nonproprietary vehicle interface such as  
149 ethernet, universal serial bus or digital versatile disc. Each manufacturer  
150 shall provide access to the same on-board diagnostic and repair  
151 information available to its dealers, including technical updates to such  
152 on-board systems, through such nonproprietary interfaces as referenced  
153 in this subsection.

154 (i) Nothing in this section shall be construed to require a dealer to use  
155 the nonproprietary vehicle interface specified in this section, nor shall  
156 this section be construed to prohibit a manufacturer from developing a  
157 proprietary vehicle diagnostic and reprogramming device, provided the  
158 manufacturer also makes this device available to independent repair  
159 facilities upon fair and reasonable terms.

160 (j) No manufacturer shall be prohibited from making proprietary  
161 tools available to dealers if such tools are for a specific specialized  
162 diagnostic or repair procedure developed for the sole purpose of a  
163 customer service campaign meeting the requirements set out in 49 CFR  
164 579.5, or performance of repairs related to a specific technical service  
165 bulletin or recall after the vehicle was produced, and where original  
166 vehicle design was not intended for direct interface through the  
167 nonproprietary interface. Provision of proprietary tools under this  
168 subsection shall not constitute a violation of this section even if such  
169 tools provide functions not available through the interface, provided  
170 such proprietary tools are also available to the aftermarket upon fair and  
171 reasonable terms. Nothing in this subsection shall authorize a  
172 manufacturer to exclusively develop proprietary tools, without a  
173 nonproprietary equivalent, for diagnostic or repair procedures that fall  
174 outside the provisions of this section or to otherwise operate in a manner

175 inconsistent with the requirements of this section.

176 (k) Manufacturers of motor vehicles sold in the state may exclude  
177 diagnostic, service and repair information necessary to reset an  
178 immobilizer system or security-related electronic modules from  
179 information provided to owners and independent repair facilities. If  
180 excluded pursuant to this subsection, the information necessary to reset  
181 an immobilizer system or security-related electronic modules shall be  
182 obtained by owners and independent repair facilities through the secure  
183 data release model system as currently used by the National  
184 Automotive Service Task Force or other known, reliable and accepted  
185 systems.

186 (l) Except for telematics diagnostic and repair information that is  
187 provided to dealers, necessary to diagnose and repair a customer's  
188 vehicle, and not otherwise available to an independent repair facility via  
189 the tools specified in this section, nothing in this section shall apply to  
190 telematics services or any other remote or information service,  
191 diagnostic or otherwise, delivered to or derived from the vehicle by  
192 mobile communications. Nothing in this section shall be construed to  
193 abrogate a telematics services or other contract that exists between a  
194 manufacturer or service provider, a motor vehicle owner or a dealer. For  
195 purposes of this subsection, telematics services include, but are not  
196 limited to, automatic airbag deployment and crash notification, remote  
197 diagnostics, navigation, stolen vehicle location, remote door unlock,  
198 transmitting emergency and vehicle location information to public  
199 safety answering points, as well as any other service-integrating vehicle  
200 location technology and wireless communications.

201 (m) Nothing in this section shall be construed to require a  
202 manufacturer to divulge a trade secret or to require a manufacturer or a  
203 dealer to disclose to any person the identity of existing customers or  
204 customer lists.

205 (n) Nothing in this section shall be construed to abrogate, interfere  
206 with, contradict or alter the terms of any provision of the terms of any

207 franchise agreement executed and in force between a dealer and a  
208 manufacturer, including, but not limited to, the performance or  
209 provision of warranty or recall repair work by a dealer on behalf of a  
210 manufacturer pursuant to such franchise agreement, except that any  
211 provision in such a franchise agreement that purports to waive, void,  
212 restrict or limit a manufacturer's compliance with this section shall be  
213 void and unenforceable.

214 (o) Nothing in this section shall be construed to require  
215 manufacturers or dealers to provide an owner or independent repair  
216 facility access to nondiagnostic and repair information provided by a  
217 manufacturer to a dealer, or by a dealer to a manufacturer pursuant to  
218 the terms of a franchise agreement.

219 (p) A violation of any provision of this section shall be deemed an  
220 unfair or deceptive trade practice under subsection (a) of section 42-110b  
221 of the general statutes.

222 (q) An independent repair facility or owner who believes that a  
223 manufacturer has failed to provide information or a tool required by this  
224 section shall notify the manufacturer in writing through the National  
225 Automotive Service Task Force Service Information Request process or  
226 its successor organization or process, allowing the manufacturer thirty  
227 days from the time the manufacturer receives the complaint to cure the  
228 failure. If the manufacturer cures the failure within the cure period,  
229 damages shall be limited to actual damages in any subsequent claim  
230 brought against the manufacturer.

231 (r) If the manufacturer fails to respond to the notice provided  
232 pursuant to subsection (q) of this section, or if an independent repair  
233 facility or owner is not satisfied with the manufacturer's cure, the  
234 independent repair facility or owner may bring an action in the Superior  
235 Court to recover damages sustained by such failure or unsatisfactory  
236 cure, or to otherwise enforce the provisions of this section. Such  
237 independent repair facility or owner, if successful in such action, shall  
238 be entitled to costs and reasonable attorneys' fees.



239 (s) Except in the instance of a dispute arising between a franchisor  
240 manufacturer and its franchisee dealer related to either party's  
241 compliance with an existing franchise agreement, a dealer shall have all  
242 the rights and remedies provided in this section, including, but not  
243 limited to, in the instance when exercising rights and remedies as  
244 allowed as an independent repair facility.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2020</i>	New section

**Statement of Purpose:**

To protect the rights of motor vehicle owners and small businesses regarding the repair of motor vehicles.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*