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2D SESSION

S. 3181

To protect the rights of consumers to diagnose, service, maintain, and repair their motor vehicles, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2010

Mrs. BOXER (for herself and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the rights of consumers to diagnose, service, maintain, and repair their motor vehicles, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Motor Vehicle Owners
5 Right to Repair Act of 2010”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Motor vehicle owners are entitled to choose
2 which service provider will diagnose, service, main-
3 tain, or repair their motor vehicles.

4 (2) Promoting competition in price and quality
5 for the diagnosis of problems, service, maintenance,
6 and repair of motor vehicles will benefit consumers.

7 (3) Regular diagnosis, service, maintenance,
8 and repair of motor vehicles, motor vehicle equip-
9 ment, and motor vehicle systems, such as pollution
10 control, transmission, antilock brakes, electronic and
11 mechanical systems, heating, air-conditioning, and
12 steering are essential to facilitating United States
13 mobility, minimizing fuel consumption, protecting
14 the environment, and enabling the highest possible
15 levels of safety in modern motor vehicles.

16 (4) Various kinds of computers have been inte-
17 grated by manufacturers into motor vehicle equip-
18 ment and motor vehicle systems. On-board computer
19 technology controls virtually all of the motor vehi-
20 cle's systems, and only service technicians with the
21 necessary tools and information can access the com-
22 puters to perform diagnosis, service, maintenance,
23 and repair of the motor vehicle.

24 (5) Manufacturers have provided their author-
25 ized dealers and service providers with the informa-

1 tion, tools, codes, and replacement equipment nec-
2 essary to diagnose problems and to service, main-
3 tain, and repair motor vehicles that incorporate com-
4 puters in their motor vehicle systems.

5 (6) Consumers in the United States have bene-
6 fitted from the availability of a wide choice of service
7 providers for their motor vehicles. The United States
8 economy has also benefitted from the availability of
9 a tools and parts supply aftermarket that provides
10 jobs to more than 5,000,000 workers in approxi-
11 mately 495,000 businesses, and generates approxi-
12 mately \$200,000,000,000 in annual sales.

13 (7) New motor vehicles are being equipped with
14 systems that permit such vehicles to transmit repair
15 and diagnostic information wirelessly to the vehicle
16 manufacturer and repair facilities. Car owners have
17 the right to choose where and to whom information
18 generated by their vehicle and vehicle computers is
19 sent.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to protect the rights of motor vehicle owners
22 to choose a service provider for the diagnosis, serv-
23 ice, maintenance, and repair of their motor vehicles;

24 (2) to promote competition in price and quality
25 among service providers; and

1 (3) to promote safety and fuel efficiency by al-
2 lowing consumers to choose among competing service
3 providers.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ATTORNEY GENERAL OF A STATE.—The
7 term “attorney general of a State” means the attor-
8 ney general or other chief law enforcement officer of
9 a State.

10 (2) COMMERCE.—The term “commerce” has
11 the meaning given that term in section 4 of the Fed-
12 eral Trade Commission Act (15 U.S.C. 44).

13 (3) CONSUMER, MOTOR VEHICLE OWNER.—The
14 terms “consumer” and “motor vehicle owner” mean
15 any person who owns, leases, or otherwise has the
16 legal right to use and possess a motor vehicle, or the
17 agent of such person.

18 (4) DEALER, MANUFACTURER, MOTOR VEHI-
19 CLE, MOTOR VEHICLE EQUIPMENT.—The terms
20 “dealer”, “manufacturer”, “motor vehicle”, and
21 “motor vehicle equipment” have the meaning given
22 those terms in section 30102(a) of title 49, United
23 States Code.

1 (5) REPLACEMENT EQUIPMENT.—The term
2 “replacement equipment” has the meaning given
3 that term in section 30102(b)(1) of such title.

4 (6) SERVICE PROVIDER.—The term “service
5 provider” means any person engaged in the diag-
6 nosis, service, maintenance, or repair of motor vehi-
7 cles or motor vehicle engines.

8 (7) TECHNICAL SERVICE BULLETIN.—The term
9 “technical service bulletin”—

10 (A) means a communication sent to a deal-
11 er about the diagnosis, service, maintenance or
12 repair of a motor vehicle or item of motor vehi-
13 cle equipment; and

14 (B) includes all communications sent to
15 the Secretary of Transportation under sub-
16 sections (f) and (m)(3)(A)(ii) of section 30166
17 of title 49, United States Code.

18 **SEC. 4. REQUIREMENTS OF MOTOR VEHICLE MANUFAC-**
19 **TURERS.**

20 (a) DUTY TO DISCLOSE INFORMATION.—

21 (1) IN GENERAL.—The manufacturer of a
22 motor vehicle sold, leased, or otherwise introduced
23 into commerce in the United States shall provide to
24 the owner of the motor vehicle and the service pro-
25 vider of the motor vehicle, using reasonable business

1 means and on a non-discriminatory basis, all infor-
2 mation to diagnose, service, maintain, or repair the
3 motor vehicle.

4 (2) ELEMENTS.—The information required
5 under paragraph (1) with respect to a motor vehicle
6 shall include the following:

7 (A) Information about all safety alerts, re-
8 calls, service bulletins, and the adjustments
9 needed to maintain the efficiency, safety, and
10 convenience of the vehicle.

11 (B) All information of any kind provided
12 directly, indirectly, or wirelessly to new car
13 dealers or any repair facility to diagnose, serv-
14 ice, maintain, repair, activate, certify, or install
15 any motor vehicle equipment (including replace-
16 ment parts and equipment) in the motor vehi-
17 cle.

18 (b) DUTY TO MAKE TOOLS AVAILABLE.—The manu-
19 facturer of a motor vehicle sold, leased, or otherwise intro-
20 duced into commerce in the United States shall—

21 (1) offer for sale to the owner of the motor ve-
22 hicle and to all service providers on a reasonable and
23 non-discriminatory basis, any tool for the diagnosis,
24 service, maintenance, or repair of the motor vehicle;
25 and

1 (2) provide all information that enables after-
2 market tool companies to manufacture tools with the
3 same functional characteristics as those tools made
4 available by the manufacturers to authorized dealers.

5 (c) REPLACEMENT EQUIPMENT.—The manufacturer
6 of a motor vehicle sold, leased, or otherwise introduced
7 into commerce in the United States shall offer for sale
8 to the owner of the motor vehicle and to all service pro-
9 viders on reasonable and non-discriminatory terms, all
10 equipment for diagnosis, service, maintenance, or repair
11 of the motor vehicle.

12 (d) PROTECTION OF TRADE SECRETS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), nothing in this section may be construed
15 to require a manufacturer to disclose publicly infor-
16 mation that, if made public, would divulge methods
17 or processes entitled to protection as trade secrets.

18 (2) EXCEPTION.—No information may be with-
19 held by a manufacturer on the ground that it is a
20 trade secret if that information is provided (directly
21 or indirectly) to authorized dealers or service pro-
22 viders.

23 **SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

24 (a) IN GENERAL.—The Federal Trade Commission
25 shall enforce the provisions of this Act in the same man-

1 ner, by the same means, and with the same jurisdiction,
2 powers, and duties as though all applicable terms and pro-
3 visions of the Federal Trade Commission Act (15 U.S.C.
4 41 et seq.) were incorporated into and made part of this
5 Act.

6 (b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

7 (1) VIOLATION OF A DUTY.—Any failure to
8 comply with the provisions of section 4 shall be
9 treated as an unfair method of competition and an
10 unfair or deceptive act or practice within the mean-
11 ing of section 5(a)(1) of the Federal Trade Commis-
12 sion Act (15 U.S.C. 45(a)(1)).

13 (2) VIOLATION OF A RULE.—A violation of a
14 rule prescribed under subsection (c) shall be treated
15 as a violation of a rule defining an unfair or decep-
16 tive act or practice prescribed under section
17 18(a)(1)(B) of the Federal Trade Commission Act
18 (15 U.S.C. 57a(a)(1)(B)).

19 (c) RULEMAKING.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the Federal Trade Commission may pre-
22 scribe such rules as may be necessary to carry out
23 the provisions of this Act.

1 (2) LIMITATION.—The Federal Trade Commis-
2 sion may not prescribe rules under this subsection
3 that—

4 (A) interfere with the authority of the Ad-
5 ministrator of the Environmental Protection
6 Agency under section 202(m) of the Clean Air
7 Act (42 U.S.C. 7521(m)) with regard to motor
8 vehicle emissions control diagnostics systems; or

9 (B) conflict with rules prescribed by the
10 Administrator of the Environmental Protection
11 Agency.

12 **SEC. 6. ACTION BY STATES.**

13 (a) IN GENERAL.—In any case in which the attorney
14 general of a State has reason to believe that an interest
15 of the residents of the State has been or is threatened
16 or adversely affected by the engagement of any person
17 subject to a provision of section 4 or a rule prescribed
18 under section 5(c) in a practice that violates such provi-
19 sion or rule, the State may, as *parens patriae*, bring a
20 civil action on behalf of the residents of the State in an
21 appropriate district court of the United States or other
22 court of competent jurisdiction—

23 (1) to enjoin that practice;

24 (2) to enforce compliance with the provision or
25 rule;

1 (3) to obtain damages, restitution, or other
2 compensation on behalf of residents of the State; or

3 (4) to obtain such other relief as the court con-
4 siders appropriate.

5 (b) RIGHTS OF FEDERAL TRADE COMMISSION.—

6 (1) NOTICE TO FEDERAL TRADE COMMIS-
7 SION.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (C), the attorney general of a
10 State shall notify the Federal Trade Commis-
11 sion in writing of any civil action under sub-
12 section (a), prior to initiating such civil action.

13 (B) CONTENTS.—The notice required by
14 subparagraph (A) shall include a copy of the
15 complaint to be filed to initiate such civil ac-
16 tion.

17 (C) EXCEPTION.—If it is not feasible for
18 the attorney general of a State to provide the
19 notice required by subparagraph (A), the State
20 shall provide notice immediately upon insti-
21 tuting a civil action under subsection (a).

22 (2) INTERVENTION BY FEDERAL TRADE COM-
23 MISSION.—

24 (A) IN GENERAL.—Upon receiving notice
25 required by paragraph (1) with respect to a

1 civil action, the Federal Trade Commission
2 may—

3 (i) intervene in such action; and

4 (ii) upon intervening—

5 (I) be heard on all matters arising in such civil action;

6 (II) remove the action to the appropriate district court of the United
7 States; and

8 (III) file petitions for appeal of a
9 decision in such action.

10 (B) CONTINUED PARTICIPATION OF
11 STATES.—If the Federal Trade Commission re-
12 moves an action to the appropriate district
13 court of the United States under subparagraph
14 (A)(ii)(III), the State shall remain a party to
15 the action in such court.

16 (c) INVESTIGATORY POWERS.—Nothing in this sec-
17 tion may be construed to prevent the attorney general of
18 a State from exercising the powers conferred on such at-
19 torney general by the laws of such State to conduct inves-
20 tigation or to administer oaths or affirmations or to com-
21 pel the attendance of witnesses or the production of docu-
22 mentary and other evidence.

1 (d) PREEMPTIVE ACTION BY FEDERAL TRADE COM-
 2 MISSION.—If the Federal Trade Commission institutes a
 3 civil action or an administrative action to enforce a viola-
 4 tion of a rule prescribed under section 5(c), no State may,
 5 during the pendency of such action, bring a civil action
 6 under subsection (a) against any defendant named in the
 7 complaint of the Commission for violation of a rule pre-
 8 scribed under section 5(c) that is alleged in such com-
 9 plaint.

10 (e) ACTIONS BY OTHER STATE OFFICIALS.—

11 (1) IN GENERAL.—In addition to actions
 12 brought by an attorney general of a State under
 13 subsection (a), an action may be brought by officers
 14 of a State who are so authorized.

15 (2) SAVINGS PROVISION.—Nothing contained in
 16 this section may be construed to prohibit an author-
 17 ized official of a State from proceeding in a court of
 18 such State on the basis of an alleged violation of any
 19 civil or criminal statute of such State.

20 **SEC. 7. ACTION BY CONSUMERS AND SERVICE PROVIDERS.**

21 In any case in which a consumer or service provider
 22 has reason to believe that an interest of the consumer or
 23 service provider is threatened or adversely affected by the
 24 engagement of any person subject to a provision of section
 25 4 or a rule prescribed under section 5(c) in a practice that

1 violates such provision or rule, the consumer or service
2 provider may bring a civil action in an appropriate district
3 court of the United States or other court of competent
4 jurisdiction—

5 (1) to enjoin the practice;

6 (2) to enforce compliance with the provision or
7 rule;

8 (3) to obtain damages or restitution, including
9 court costs and reasonable attorney and expert wit-
10 ness fees; or

11 (4) to obtain such other relief as the court con-
12 siders appropriate.

13 **SEC. 8. TECHNICAL SERVICE BULLETINS.**

14 The Federal Trade Commission shall cooperate with
15 the Secretary of Transportation in preparing a technical
16 service bulletin that the Secretary intends to publish on
17 an Internet Web site of the Federal Government.

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