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S. 2138

To protect the rights of American consumers to diagnose, service, and repair motor vehicles purchased in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2004

Mr. GRAHAM of South Carolina 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 American consumers to diagnose, service, and repair motor vehicles purchased in the United States, 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 2003”.

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

7 (a) FINDINGS.—The Congress finds the following:

8 (1) The ability to diagnose, service, and repair
9 a motor vehicle in a timely, reliable, and affordable

1 manner is essential to the safety and well-being of
2 automotive consumers in the United States.

3 (2) Consumers are entitled to choose among
4 competing repair facilities for the convenient, reli-
5 able, and affordable repair of their motor vehicles.

6 (3) Increased competition among repair facili-
7 ties will benefit vehicle owners in the United States.

8 (4) Computers of various kinds are increasingly
9 being used in motor vehicle systems, such as pollu-
10 tion control, transmission, antilock brakes, electronic
11 and mechanical systems, heating and air-condi-
12 tioning, sound, and steering.

13 (5) The diagnosis, service, and repair of these
14 vehicle systems are essential to the safety and prop-
15 er operation of modern motor vehicles.

16 (6) In many instances, access codes prevent
17 owners from making, or having made, the necessary
18 diagnosis, service, and repair of their motor vehicles
19 in a timely, convenient, reliable, and affordable man-
20 ner.

21 (7) Consumers in the United States have bene-
22 fited from the availability of an aftermarket parts
23 supply, or parts and accessories used in the repair,
24 maintenance, or enhancement of a motor vehicle.
25 The American economy has also benefited from the

1 availability of an aftermarket parts supply that pro-
2 vides jobs to over 5 million workers in 495,000 busi-
3 nesses, and generates \$200 billion in annual sales.

4 (8) Vehicle owners in the United States should
5 have the right—

6 (A) to all information necessary to allow
7 the diagnosis, service, and repair of their vehi-
8 cles;

9 (B) to choose between original parts and
10 aftermarket parts when repairing their motor
11 vehicles; and

12 (C) to make, or have made, repairs nec-
13 essary to keep their vehicles in reasonably good
14 and serviceable condition during the expected
15 vehicle life.

16 (9) The restriction of vehicle repair information
17 limits who can repair motor vehicles and what parts
18 may be used to repair those vehicles, which limits
19 consumer choice and thus limits competition.

20 (10) The Congress has provided the Federal
21 Trade Commission with broad authority to make
22 and enforce rules to foster competition, to prevent
23 unfair methods of competition in commerce, and to
24 protect consumers.

1 (b) PURPOSES.—The purposes of this Act are the fol-
2 lowing:

3 (1) To require the Federal Trade Commission
4 to prescribe and enforce rules necessary to ensure
5 the right of a motor vehicle owner to obtain all in-
6 formation required for the diagnosis, service, and re-
7 pair of the motor vehicle.

8 (2) To ensure the safety of all vehicle owners
9 by requiring disclosure of all information necessary
10 for the proper diagnosis, service, and repair of a ve-
11 hicle in a timely, affordable, and reliable manner.

12 (3) To encourage competition in the diagnosis,
13 service, and repair of motor vehicles.

14 **SEC. 3. MANUFACTURER DISCLOSURE REQUIREMENTS.**

15 (a) DUTY TO DISCLOSE.—In accordance with rules
16 prescribed by the Federal Trade Commission under sec-
17 tion 6, the manufacturer of a motor vehicle sold or intro-
18 duced into commerce in the United States shall promptly
19 provide to the vehicle owner, to a repair facility of the ve-
20 hicle, and to the Commission for use by any such vehicle
21 owner or repair facility, the information necessary to diag-
22 nose, service, or repair the vehicle. Such information shall
23 include—

24 (1) information necessary to integrate replace-
25 ment equipment into the vehicle; and

1 (2) other information necessary to diagnose,
2 service, repair, activate, certify, or install any motor
3 vehicle equipment (including replacement equipment)
4 in the motor vehicle.

5 (b) PROTECTION OF TRADE SECRETS.—

6 (1) DETERMINATION BY FEDERAL TRADE COM-
7 MISSION.—The Federal Trade Commission may not
8 require a manufacturer to publicly disclose informa-
9 tion that, if made public, would divulge methods or
10 processes entitled to protection as trade secrets of
11 that manufacturer, but may require disclosure of
12 such information to the Commission for the purpose
13 of determining whether such information is entitled
14 to such protection. Such determination shall be
15 made on the record after an opportunity for an
16 agency hearing.

17 (2) PREVIOUSLY DISCLOSED INFORMATION.—

18 The information described in subsection (a) may not
19 be withheld by a manufacturer if that information is
20 provided (directly or indirectly) to franchised dealers
21 or other repair facilities.

22 **SEC. 4. UNFAIR OR DECEPTIVE ACT OR PRACTICE.**

23 The failure by a manufacturer to provide the infor-
24 mation required by section 3(a) constitutes an unfair
25 method of competition and an unfair or deceptive act or

1 practice in or affecting commerce (within the meaning of
2 section 5(a)(1) of the Federal Trade Commission Act (15
3 U.S.C. 45(a)(1))). Violation of a rule prescribed under
4 section 6(a) constitutes a violation of a rule defining an
5 unfair or deceptive act or practice prescribed under section
6 18(a)(1)(B) of the Federal Trade Commission Act (15
7 U.S.C. 57a(a)(1)(B)).

8 **SEC. 5. PRIVATE RIGHT OF ACTION.**

9 A vehicle owner or repair facility may bring a civil
10 action to enjoin a violation of this Act and to recover the
11 costs of litigation (including reasonable attorney and ex-
12 pert witness fees). Such an action may be brought in the
13 district court of the United States for the district in which
14 such owner resides or such repair facility does business,
15 without regard to the amount in controversy or the citizen-
16 ship of the parties.

17 **SEC. 6. RULEMAKING.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of enactment of this Act, the Federal Trade Commis-
20 sion shall prescribe rules setting forth a uniform method
21 by which a manufacturer shall provide the information re-
22 quired by section 3(a), including disclosure in writing, on
23 the Internet, or in any other manner, or under such terms,
24 as the Commission determines may be appropriate. Such

1 rules shall take effect for vehicles manufactured after
2 model year 1994.

3 (b) LIMITATION.—The Federal Trade Commission
4 may not prescribe rules that—

5 (1) interfere with the authority of the Adminis-
6 trator of the Environmental Protection Agency
7 under section 202(m) of the Clean Air Act (42
8 U.S.C. 7521(m)) with regard to motor vehicle emis-
9 sions control diagnostics systems; or

10 (2) conflict with rules prescribed by such Ad-
11 ministrator under such section.

12 **SEC. 7. DEFINITIONS.**

13 In this Act:

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

17 (2) COMMISSION.—The term “Commission”
18 means the Federal Trade Commission.

19 (3) MANUFACTURER; MOTOR VEHICLE, MOTOR
20 VEHICLE EQUIPMENT.—The terms “manufacturer”,
21 “motor vehicle”, and “motor vehicle equipment”
22 have the meanings given those terms in section
23 30102(a) of title 49, United States Code.

24 (4) VEHICLE OWNER.—The term “vehicle
25 owner” means any person who owns, leases, or oth-

1 erwise has the legal right to use and possess a motor
2 vehicle, or the agent of such person.

3 (5) REPAIR FACILITY.—The term “repair facil-
4 ity” means a person engaged in the repair, diag-
5 nosing, or servicing of motor vehicles or motor vehi-
6 cle engines.

7 (6) REPLACEMENT EQUIPMENT.—The term
8 “replacement equipment” has the meaning given
9 that term in section 30102(b)(1) of title 49, United
10 States Code.

11 (7) MODEL YEAR.—The term “model year” has
12 the meaning given that term in section 32901(a) of
13 title 49, United States Code.

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