

**HOUSE . . . . . No. 00102**

The Commonwealth of Massachusetts

PRESENTED BY:

*Garrett J. Bradley and*

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An act protecting motor vehicle owners and small businesses in repairing motor vehicles..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Rhonda Nyman</i>	<i>5th Plymouth</i>
<i>Sean Curran</i>	<i>9th Hampden</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>

<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Marc Lombardo</i>	<i>22nd Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Elizabeth Poirier</i>	<i>14th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Demetrius J. Atsalis</i>	<i>2nd Barnstable</i>
<i>Paul Adams</i>	<i>17th Essex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Geraldine Creedon</i>	<i>11th Plymouth</i>
<i>Steven Howitt</i>	<i>4th Bristol</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>

# HOUSE . . . . . No. 00102

By Mr. Bradley of Hingham, petition (accompanied by Bill, House, No. 00102) of Garrett J. Bradley and others for legislation to ensure that independent repair facilities in the Commonwealth have access to information related to the proper and complete diagnosis, service and repair of motor vehicles. Joint Committee on Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 228 OF 2009-2010.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An act protecting motor vehicle owners and small businesses in repairing motor vehicles..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. The General Laws are hereby amended by inserting after chapter 93I the following
- 2 chapter:-
- 3 CHAPTER 93J.
- 4 Section 1. As used in this chapter the following words shall, have the following meanings, unless
- 5 the context clearly requires otherwise:—

7 "Authorized motor vehicle repair facility" a person or business that is associated with an  
8 authorized dealer or motor vehicle manufacturer.

9

10 "Dealer", a business authorized by a new vehicle manufacturer to lease or sell the manufacturer's  
11 new motor vehicles at retail, under a franchise agreement; provided, however, that the business is  
12 engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle  
13 engines under the franchise agreement.

14

15 "Franchise agreement", an oral or written arrangement for a definite or indefinite  
16 period in which a manufacturer or distributor grants to a dealer a license to use a trade name,  
17 service mark or related characteristic and in which there is a community of interest in the  
18 marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or  
19 otherwise; provided, however, this shall include the performance or provision of a warranty or  
20 recall repair work by a dealer on behalf of a manufacturer.

21

22 "Independent motor vehicle repair facility" a person or business operating in the commonwealth  
23 that is not associated with a manufacturer's authorized dealer of motor vehicles, which is  
24 engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle  
25 engines.

26

27 “Manufacturer” any person engaged in the business of manufacturing or assembling new motor  
28 vehicles.

29 “Motor vehicle owner” a person who owns, leases or otherwise has the legal right to use and  
30 possess a motor vehicle or the agent of that person.

31

32 “Trade secret” a formula, pattern, device or compilation of information which is used in a  
33 business, which gives the business an opportunity to obtain an advantage over competitors who  
34 do not know or use it and which the business has taken all reasonable and proper steps to keep  
35 secret; provided, however, that a trade secret does not include matters of public knowledge or of  
36 general knowledge in an industry.

37 Section 2. The manufacturer of a motor vehicle sold in the commonwealth shall make available  
38 for purchase to independent motor vehicle repair facilities and motor vehicle owners in a non-  
39 discriminatory basis and cost as compared to the terms and costs charged to an authorized dealer  
40 or authorized motor vehicle repair facility all diagnostic, service and repair information that the  
41 manufacturer makes available to its authorized dealers and authorized motor vehicle repair  
42 facilities in the same form and the same manner as it is made available to authorized dealers or  
43 an authorized motor vehicle repair facility of the motor vehicle. The distribution of such  
44 information shall be in a form and manner that does not alter or affect the contractual  
45 relationship between the manufacturer and its authorized dealer; provided, however, that such  
46 contractual relationship shall not alter the manner and form of diagnostic service and repair  
47 information that independent repair facilities obtain through a manufacturers repair website.

48 The information must include, but is not limited to, the following: (1) all diagnostic, service,  
49 training and repair information and tools related to the proper and complete diagnosis, service  
50 and repair of a motor vehicle including any diagnostic codes used to activate all controls that are  
51 required to be activated by a repair technician to diagnose, service and repair the motor vehicle;  
52 and (2) tools and software capabilities, including wireless capabilities, related to the diagnosis,  
53 service and repair of a motor vehicle.

54

55 Section 3. (a) Failure to comply with the requirements of section 2 shall be an unfair or deceptive  
56 trade act or practice under section 2 of chapter 93A. A motor vehicle owner or an independent  
57 motor vehicle repair facility may institute a civil action for equitable relief or damages in any  
58 court of competent jurisdiction as a remedy for the violation.

59

60 (b) No person may bring an action against a manufacturer under this section unless the person  
61 has first provided documentation which shall include, but not be limited to, the following  
62 requirements: (1) the person shall provide written information confirming that the person has  
63 visited the relevant manufacturer website and attempted to effect a proper repair utilizing  
64 information provided on the website, including communication with technician assistance if  
65 made available by the manufacturer; and (2) the person shall provide a written affirmation  
66 confirming that the person sought the assistance of other applicable information sources to effect  
67 the necessary repair, including, but not limited to, the assistance of the National Automotive  
68 Service Task Force, if practicable.

69 Section 4. Notwithstanding any other general or special law or rule or regulation to the contrary,  
70 nothing in this chapter shall require a motor vehicle manufacturer to divulge information that is a  
71 trade secret or other such proprietary information related to the development or use of the  
72 manufacturer's repair and diagnostic tools, equipment and parts, except pursuant to a valid  
73 contract or agreement executed by a manufacturer and the other person

74 Section 5. Notwithstanding any other general or special law or rule or regulation to the contrary,  
75 nothing in this chapter shall be read, interpreted or construed to abrogate, interfere with,  
76 contradict or alter the terms of a franchise agreement and the business practices of the parties  
77 thereunder, executed and in force between a dealer and a manufacturer, including, but not limited  
78 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a  
79 manufacturer under the franchise agreement; provided , however, that any provision in the  
80 franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance  
81 with this chapter shall be void and unenforceable.

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