

**HOUSE . . . . . No. 184**

---

The Commonwealth of Massachusetts

PRESENTED BY:

***Garrett J. Bradley and John Hart, Jr.***

*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 to reconcile Chapter 241 and Chapter 368 of the Acts of 2012.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>
<i>John Hart, Jr.</i>	<i>First Suffolk</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>

**HOUSE . . . . . No. 184**

By Mr. Bradley of Hingham and Senator Hart, a joint petition (accompanied by bill, House, No. 184) of Garrett J. Bradley and others relative to making corrective changes to the "Right to Repair" law, so-called. Consumer Protection and Professional Licensure.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act to reconcile Chapter 241 and Chapter 368 of the Acts of 2012.

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

1           The General Laws are hereby amended by inserting after chapter 93I the following  
2 chapter:-  
3   
4 CHAPTER 93J  
5   
6 Section (1) As used in this chapter, the following words shall, unless the context clearly  
7 indicates a different meaning, have the following meanings:  
8   
9 “Dealer”, any person or business who, in the ordinary course of its business, is engaged in the  
10 business of selling or leasing new motor vehicles to consumers or other end users pursuant to a  
11 franchise agreement and who has obtained a class 1 license pursuant to the provisions of section  
12 58 and 59 of chapter 140 and is engaged in the diagnosis, service, maintenance or repair of motor  
13 vehicles or motor vehicle engines pursuant to said franchise agreement.  
14   
15 “Franchise agreement”, an oral or written arrangement for a definite or indefinite period in  
16 which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade  
17 name, 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.  
20   
21 “Fair and Reasonable Terms”. In determining whether a price is on “fair and reasonable  
22 terms,” consideration may be given to relevant factors, including, but not limited to, the

23 following:

24

25  (i) The net cost to the manufacturer franchised dealerships for similar information obtained  
26 from manufacturers, less any discounts, rebates, or other incentive programs.

27  (ii) The cost to the manufacturer for preparing and distributing the information, excluding any  
28 research and development costs incurred in designing and implementing, upgrading or altering  
29 the onboard computer and its software or any other vehicle part or component. Amortized capital  
30 costs for the preparation and distribution of the information may be included.

31  (iii) The price charged by other manufacturers for similar information.

32  (iv) The price charged by manufacturers for similar information prior to the launch of  
33 manufacturer web sites.

34  (v) The ability of aftermarket technicians or shops to afford the information.

35  (vi) The means by which the information is distributed.

36  (vii) The extent to which the information is used, which includes the number of users, and  
37 frequency, duration, and volume of use.

38  (viii) Inflation.

39

40  "Immobilizer system", an electronic device designed for the sole purpose of preventing the  
41 theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting  
42 without the correct activation or authorization code.

43  "Independent repair facility", a person or business operating in the commonwealth that is not  
44 affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is  
45 engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle  
46 engines; provided, however, that, for the purposes of this chapter, a dealer, notwithstanding its  
47 affiliation with any manufacturer, shall be considered an independent repair facility for purposes  
48 of those instances when said dealer engages in the diagnosis, service, maintenance or repair of  
49 motor vehicles or motor vehicle engines that are not affiliated with the dealer's franchise  
50 manufacturer.

51  "Manufacturer", any person or business engaged in the business of manufacturing or  
52 assembling new motor vehicles.

53  "Motor vehicle", a vehicle, originally manufactured for distribution and sale in the United  
54 States, driven or drawn by mechanical power and manufactured primarily for use on public  
55 streets, roads and highways, but excluding: (i) a vehicle that may be operated only on a rail line;  
56 (ii) a recreational vehicle or auto home equipped for habitation; (iii) an ambulance; (iv) a bus,  
57 motor coach or trackless trolley designed for the carriage of persons for hire or for school-related  
58 purposes; (v) vehicles used exclusively for the building, repair and maintenance of highways or  
59 designed primarily for use elsewhere than on the traveled part of ways; (vi) any vehicle with a  
60 gross vehicle weight rating of more than 10,000 pounds; (vii) any vehicle excluded from the  
61 definition of "motor vehicle" in chapter 90; and (viii) a motorcycle, as defined in section 1 of  
62 chapter 90.

63

64  "Owner", a person or business who owns or leases a motor vehicle registered in the  
65 commonwealth.

66

67  "Trade secret", anything, tangible or intangible or electronically stored or kept, which  
68 constitutes, represents, evidences or records intellectual property including secret or  
69 confidentially held designs, processes, procedures, formulas, inventions, or improvements, or  
70 secret or confidentially held scientific, technical, merchandising, production, financial, business  
71 or management information, or anything within the definition of 18 U.S.C. § 1839(3).

72  Section (2)(a) Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles  
73 and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available  
74 for purchase by owners of motor vehicles manufactured by such manufacturer and by  
75 independent repair facilities the same diagnostic and repair information, including repair  
76 technical updates, that such manufacturer makes available to its dealers through the  
77 manufacturer's internet-based diagnostic and repair information system or other electronically  
78 accessible manufacturer's repair information system. All content in any such manufacturer's  
79 repair information system shall be made available to owners and to independent repair facilities  
80 in the same form and manner and to the same extent as is made available to dealers utilizing such  
81 diagnostic and repair information system. Each manufacturer shall provide access to such  
82 manufacturer's diagnostic and repair information system for purchase by owners and independent  
83 repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable  
84 terms.

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

93  (2)(c)(i) For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor  
94 vehicles sold in the commonwealth shall make available for purchase by owners and independent  
95 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless  
96 capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate  
97 the same functional repair capabilities that such manufacturer makes available to dealers. Each  
98 manufacturer shall offer such tools for sale to owners and to independent repair facilities upon  
99 fair and reasonable terms.

100  (2)(c)(ii) Any diagnostic tool or information necessary to diagnose, service or repair a motor  
101 vehicle that a manufacturer sells to any independent repair facility in a manner and on terms and  
102 conditions more favorable than the manner and the terms and conditions pursuant to which the

103 dealer obtains the same diagnostic tool or information necessary to diagnose, service or repair a  
104 motor vehicle, shall also be offered to the dealer in the same manner and on the same terms and  
105 conditions as provided to such independent repair facility.

106 □ Any manufacturer that sells to any independent repair facility any diagnostic tool necessary to  
107 diagnose, service or repair a motor vehicle and such diagnostic tool communicates with the  
108 vehicle using the same non-proprietary interface used by other manufacturers, the manufacturer  
109 delivering such a diagnostic tool shall be prohibited from requiring any dealer from continuing to  
110 purchase that manufacturer's proprietary tool and interface unless such proprietary interface has  
111 a capability not available in the non-proprietary interface.

112 □ (2)(c)(iii) Each manufacturer shall provide diagnostic repair information to each aftermarket  
113 scan tool company and each third party service information provider with whom the  
114 manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole  
115 purpose of building aftermarket diagnostic tools and third party service information publications  
116 and systems. Once a manufacturer makes such information available pursuant to this section, the  
117 manufacturer will have fully satisfied its obligations under this section and thereafter not be  
118 responsible for the content and functionality of aftermarket diagnostic tools or service  
119 information systems.

120 □ (2)(d)(i) Commencing in Model Year 2018, except as provided in subsection (2)(e),  
121 manufacturers of motor vehicles sold in the commonwealth shall provide access to their onboard  
122 diagnostic and repair information system, as required under this section, using an off-the-shelf  
123 personal computer with sufficient memory, processor speed, connectivity and other capabilities  
124 as specified by the vehicle manufacturer and: (i) a non-proprietary vehicle interface device that  
125 complies with the Society of Automotive Engineers SAE J2534, the International Standards  
126 Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or  
127 published by the Society of Automotive Engineers or the International Standards Organizations;  
128 or, (ii) an on-board diagnostic and repair information system integrated and entirely self-  
129 contained within the vehicle including, but not limited to, service information systems integrated  
130 into an onboard display, or (iii) a system that provides direct access to on-board diagnostic and  
131 repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial  
132 Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board  
133 diagnostic and repair information available to their dealers, including technical updates to such  
134 on-board systems, through such non-proprietary interfaces as referenced in this paragraph.

135 □ Nothing in this Chapter shall be construed to require a dealer to use the non-proprietary vehicle  
136 interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this subsection, nor  
137 shall this Chapter be construed to prohibit a manufacturer from developing a proprietary vehicle  
138 diagnostic and reprogramming device, provided that (i) the manufacturer also complies with  
139 Section 2(d)(i), and (ii) the manufacturer also makes this device available to independent repair  
140 facilities upon fair and reasonable terms, and otherwise complies with Section 2(a).

141 □ (2)(d)(ii) No manufacturer shall be prohibited from making proprietary tools available to  
142 dealers if such tools are for a specific specialized diagnostic or repair procedure developed for

143 the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR  
144 579.5, or performance of a specific technical service bulletin or recall after the vehicle was  
145 produced, and where original vehicle design was not originally intended for direct interface  
146 through the non-proprietary interface set out in (2)(d)(i). Provision of such proprietary tools  
147 under this paragraph shall not constitute a violation of this chapter even if such tools provide  
148 functions not available through the interface set forth in (2)(d)(i), provided such proprietary tools  
149 are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection  
150 (2)(d)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-  
151 proprietary equivalent as set forth in (2)(d)(i), for diagnostic or repair procedures that fall outside  
152 the provisions of (2)(d)(ii) or to otherwise operate in a manner inconsistent with the requirements  
153 of (2)(d)(i).

154  (2)(e) Manufacturers of motor vehicles sold in the commonwealth may exclude diagnostic,  
155 service and repair information necessary to reset an immobilizer system or security-related  
156 electronic modules from information provided to owners and independent repair facilities. If  
157 excluded under this paragraph, the information necessary to reset an immobilizer system or  
158 security-related electronic modules shall be obtained by owners and independent repair facilities  
159 through the secure data release model system as currently used by the National Automotive  
160 Service Task Force or other known, reliable and accepted systems.

161  (2)(f) With the exception of telematics diagnostic and repair information that is provided to  
162 dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to an  
163 independent repair facility via the tools specified in 2(c)(i) and 2(d)(i) above, nothing in this  
164 chapter shall apply to telematics services or any other remote or information service, diagnostic  
165 or otherwise, delivered to or derived from the vehicle by mobile communications; provided,  
166 however, that nothing in this chapter shall be construed to abrogate a telematics services or other  
167 contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a  
168 dealer. For purposes of this chapter, telematics services include but are not limited to automatic  
169 airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location,  
170 remote door unlock, transmitting emergency and vehicle location information to public safety  
171 answering points as well as any other service integrating vehicle location technology and  
172 wireless communications. Nothing in this chapter shall require a manufacturer or a dealer to  
173 disclose to any person the identity of existing customers or customer lists.

174

175  Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a  
176 trade secret.

177

178  Section (4) Notwithstanding any general or special law or any rule or regulation to the  
179 contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere  
180 with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise  
181 agreement executed and in force between a dealer and a manufacturer including, but not limited  
182 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a

183 manufacturer pursuant to such franchise agreement; provided, however, that any provision in  
184 such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's  
185 compliance with this chapter shall be void and unenforceable.

186

187 Section (5) Nothing in this chapter shall be construed to require manufacturers or dealers to  
188 provide an owner or independent repair facility access to non-diagnostic and repair information  
189 provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to the terms of  
190 a franchise agreement.

191

192 Section (6)(a) In addition to any other remedies that may be available under law, a violation of  
193 this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act  
194 or practice in the conduct of trade or commerce in violation of section 2 of chapter 93A.

195 Section (6)(b) An independent repair facility or owner who believes that a manufacturer has  
196 failed to provide information or a tool required by this chapter must notify the manufacturer in  
197 writing through the National Automotive Service Task Force (NASTF) Service Information  
198 Request process or its successor organization or process, and give the manufacturer thirty (30)  
199 days from the time the manufacturer receives the complaint to cure the failure. If the  
200 manufacturer cures said complaint within the cure period, damages shall be limited to actual  
201 damages in any subsequent 93A litigation.

202 Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or  
203 if an independent repair facility or owner is not satisfied with the manufacturer's cure, the  
204 independent repair facility or owner may file a complaint in the superior court, or if applicable in  
205 the federal district court for the district of Massachusetts. Such complaint shall include, but not  
206 be limited to the following: (i) written information confirming that the complainant has visited  
207 the relevant manufacturer website and attempted to effect a proper repair utilizing information  
208 provided on such website, including communication with customer assistance via the  
209 manufacturer's toll-free call-in assistance, if made available by such manufacturer; (ii) written  
210 information confirming that the complainant has obtained and utilized the relevant  
211 manufacturer's scan or diagnostic tool necessary for such repair; and (iii) evidence of  
212 manufacturer notification as set out in (6)(b).

213 Section (6)(d) Except in the instance of a dispute arising between a franchisor manufacturer  
214 and its franchisee dealer related to either party's compliance with an existing franchise  
215 agreement, which is required to be resolved pursuant to chapter 93B, a dealer shall have all the  
216 rights and remedies provided in this chapter, including, but not limited to, in the instance when  
217 exercising rights and remedies as allowed as an independent repair facility under chapter 93J.