

SENATE DOCKET, NO.

XXXXX

FILED ON: 04/04/2012

SENATE No. 02267

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

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 relative to the right to repair.

PETITION OF:

NAME:

| DISTRICT/ADDRESS:

SENATE No. 02267

Senate, May 17, 2012 – Substituted by amendment (Senator Kennedy and Hart) for the Senate Bill relative to the right to repair (Senate, No. 2204).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the right to repair.

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
2 following chapter:-

CHAPTER 93J

RIGHT TO REPAIR

5 Section 1. As used in this chapter, the following words shall, unless the context clearly
6 indicates a different meaning, have the following meanings:

7 “Dealer”, any person or business who, in the ordinary course of its business, is engaged
8 in the business of selling or leasing new motor vehicles to consumers or other end users pursuant
9 to a franchise agreement and who has obtained a class 1 license pursuant to the provisions of
10 section 58 and 59 of chapter 140 and is engaged in the diagnosis, service, maintenance or repair
11 of motor vehicles or motor vehicle engines pursuant to said franchise agreement.

12 “Franchise agreement”, an oral or written arrangement for a definite or indefinite period
13 in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade
14 name, service mark or related characteristic and in which there is a community of interest in the
15 marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or
16 otherwise.

17 "Immobilizer system", an electronic device designed for the sole purpose of preventing
18 the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting
19 without the correct key code.

20 “Independent repair facility”, a person or business operating in the commonwealth that is
21 not associated with a manufacturer’s authorized dealer of motor vehicles, which is engaged in
22 the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines.

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

25 "Motor vehicle", a vehicle driven or drawn by mechanical power and manufactured
26 primarily for use on public streets, roads and highways, but excluding: (i) a vehicle that may be
27 operated only on a rail line; (ii) a recreational vehicle or auto home equipped for habitation; (iii)
28 an ambulance; (iv) a bus, motor coach or trackless trolley designed for the carriage of persons for
29 hire or for school-related purposes; (v) vehicles used exclusively for the building, repair and
30 maintenance of highways or designed primarily for use elsewhere than on the traveled part of
31 ways; (vi) any vehicle with a gross vehicle weight rating of more than 10,000 pounds; (vii) any
32 vehicle excluded from the definition of “motor vehicle” in chapter 90; and (viii) a motorcycle, as
33 defined in section 1 of chapter 90.

34 "Owner", a person or business who owns, leases or otherwise has the legal right to use
35 and possess a motor vehicle or the agent of such person.

36 "Trade secret", anything tangible or intangible or electronically kept or stored, which
37 constitutes, represents, evidences or records a secret scientific, technical, merchandising,
38 production or management information, design, process, procedure, formula, invention or
39 improvement.

40 Section 2. (a) Except as provided in subsection (d), for vehicles manufactured in 2002
41 and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available
42 for purchase by owners of motor vehicles manufactured by such manufacturer and by
43 independent repair facilities the same diagnostic and repair documentation, including repair
44 technical updates, that such manufacturer makes available to its dealers through the
45 manufacturer's Internet-based diagnostic and repair information system or other electronically
46 accessible manufacturer's repair information system. All content in any such manufacturer's
47 repair information system shall be made available to owners and to independent repair facilities
48 in the same form and manner and to the same extent as is made available to dealers utilizing such
49 diagnostic and repair information system. Each manufacturer shall provide access to such
50 manufacturer's diagnostic and repair information system for purchase by owners and independent
51 repair facilities on an hourly, daily, monthly and yearly subscription basis and upon fair and
52 reasonable terms, taking into account the factors set forth in the number 40 CFR 86.1808-01.

53 If a manufacturer provides any diagnostic, service or repair information to an
54 independent repair facility or other third party provider in a manner and on terms and conditions
55 more favorable than or equal to the manner and the terms and conditions pursuant to which the

56 dealer obtains the same diagnostic, service or repair information, the manufacturer shall offer to
57 the dealer such diagnostic, service or repair information in the same manner and on the same
58 terms and conditions as provided to such independent repair facility. If for any reason any
59 manufacturer begins to deliver any diagnostic, service or repair information to any independent
60 repair facility or other third party provider in a format that is standardized with other
61 manufacturers, such manufacturer shall be prohibited from requiring any dealer from continuing
62 to purchase diagnostic, service or repair information in a proprietary format if such proprietary
63 format does not include diagnostic, service or repair information that is not available in such
64 standardized format.

65 (b) For vehicles manufactured in 2002 and thereafter, each manufacturer of motor
66 vehicles sold in the commonwealth shall make available for purchase by owners and independent
67 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless
68 capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate
69 the same functional repair capabilities that such manufacturer makes available to dealers. Each
70 manufacturer shall offer such tools for sale to owners and to independent repair facilities upon
71 fair and reasonable terms, taking into account the factors set forth in 40 CFR 86.1808-01.

72 If a manufacturer delivers any tool necessary to diagnose, service or repair a motor
73 vehicle to any independent repair facility or other third party provider in a manner and on terms
74 and conditions more favorable than or equal to the manner and the terms and conditions pursuant
75 to which the dealer obtains the same tool necessary to diagnose, service or repair a motor
76 vehicle, the manufacturer shall offer to the dealer such tool in the same manner and on the same
77 terms and conditions as provided to such independent repair facility or other third party provider.
78 If for any reason any manufacturer begins to deliver to any independent repair facility or third

79 party provider any tool necessary to diagnose, service or repair a motor vehicle and such tool has
80 a standard interface with motor vehicles manufactured by other manufacturers, the manufacturer
81 delivering such a tool shall be prohibited from requiring any dealer from continuing to purchase
82 any proprietary tool if such proprietary tool does not have a capability not available in the
83 standardized tool.

84 Each manufacturer shall provide diagnostic repair information to each aftermarket scan
85 tool company with whom the manufacturer has appropriate licensing, contractual or
86 confidentiality agreements if such agreements allow the scan tool company to provide alternative
87 web-based pass through diagnostics.

88 (c) Commencing on January 1, 2016, except as provided in subsection (d), manufacturers
89 of motor vehicles sold in the commonwealth shall provide access to their diagnostic and repair
90 information system, as required under this section, using a generic computer and: (i) a non-
91 proprietary vehicle interface device that complies with the Society of Automotive Engineers
92 SAE J2534, the International Standards Organizations ISO 22900 or any successor to SAE J
93 2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or
94 the International Standards Organizations; or (ii) a service information system integrated and
95 entirely self-contained within the vehicle including, but not limited to, service information
96 systems integrated into an onboard display or which provide direct access to service information
97 through a non-proprietary interface such as Ethernet, Universal Serial Bus, Digital Versatile
98 Disc. Each manufacturer shall provide access to the diagnostic and repair information system
99 through such interface device in the same form and in the same manner and provide the same
100 diagnostic and repair information, including technical updates, as is made available to dealers
101 utilizing such information system; provided, however, that such information system is not under

102 contract, user agreement or warranty by a manufacturer or dealer. Nothing in this chapter shall
103 apply to telematics or other remoter services or information.

104 Notwithstanding the provisions of this chapter to the contrary, no manufacturer shall be
105 prohibited from making proprietary tools available to franchised dealers if such tools aid in
106 warranty or recall repairs. Provision of such proprietary tools under this paragraph shall not
107 constitute a violation of this chapter even if such tools provide functions not available through
108 the interface set forth in clause (i) of the preceding paragraph if such proprietary tools are also
109 available to the aftermarket through the interface set forth in clause (i) or (ii) of the preceding
110 paragraph, upon fair and reasonable terms, once the term of the warranty or recall campaign has
111 expired and if owners still require such repairs specified in the warranty or recall campaign,
112 taking into account the factors set forth in 40 CFR 86.1808-01.

113 (d) Manufacturers of motor vehicles sold in the commonwealth shall exclude diagnostic,
114 service and repair information necessary to reset an immobilizer system or security-related
115 electronic modules from information provided to owners and independent repair facilities.
116 Information necessary to reset an immobilizer system or security-related electronic modules shall
117 be obtained by dealers, owners and independent motor vehicle repair facilities through the secure
118 data release model system as currently used by the National Automotive Service Task Force or
119 other known, reliable and accepted system.

120 Section 3. Nothing in this chapter shall be construed to require a manufacturer to divulge
121 a trade secret.

122 Section 4. Notwithstanding any general or special law or any rule or regulation to the
123 contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere

124 with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise
125 agreement executed and in force between a dealer and a manufacturer including, but not limited
126 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a
127 manufacturer pursuant to such franchise agreement; provided, however, that any provision in
128 such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's
129 compliance with this chapter shall be void and unenforceable.

130 Section 5. (a) A violation of this chapter shall be deemed to be an unfair method of
131 competition and an unfair or deceptive act or practice in the conduct of trade or commerce in
132 violation of section 2 of chapter 93A. In addition to the remedies available under said chapter
133 93A, the court shall assess damages in an amount not less than \$5,000 per violation. An
134 independent repair facility or a motor vehicle owner alleging that it has been denied access to:
135 diagnostic and repair information; a functionally equivalent manufacturer's diagnostic scan tool;
136 or the failure of a universal interface as required by subsection (c) of section 2 to obtain repair
137 information and to interact successfully with the manufacturer's so-called repair information
138 cloud shall, as a pre-condition to filing an action under said chapter 93A alleging a violation of
139 this chapter, file a complaint with the attorney general. Such complaint may include, but not be
140 limited to, the following: (i) written information confirming that the complainant has visited the
141 relevant manufacturer website and attempted to effect a proper repair utilizing information
142 provided on such website, including communication with technician assistance via a
143 manufacturer's toll-free call-in assistance, if made available by such manufacturer; (ii) written
144 information confirming that the complainant has obtained and utilized the relevant
145 manufacturer's scan or diagnostic tool necessary for such repair; and (iii) written affirmation
146 confirming that the complainant sought the assistance of other applicable information sources to

147 effect the necessary repair including an information request to the National Automotive Service
148 Task Force or to an established automobile repair information entity, if practicable. The attorney
149 general shall review the complaint and may issue an order to the manufacturer to resolve the
150 complaint in favor of the complainant within 30 days or shall conduct mediation between the
151 complainant and the manufacturer that is the subject of the complaint to resolve the alleged
152 complaint. The cost of mediation shall be born equally by all parties involved in the mediation.
153 In the event such mediation does not resolve the dispute to the complainant's satisfaction within
154 90 days after mediation has commenced, the complainant may file an action under said chapter
155 93A. Failure by a manufacturer to comply with the mediation required under this section shall
156 be deemed a violation of this chapter.

157 (b) In the event of a dispute concerning the determination of fair and reasonable terms
158 under this chapter, the parties may agree to binding arbitration under the rules of the American
159 Arbitration Association or, absent such agreement, either party may initiate an action in the
160 superior court for relief under chapter 231A.”