

HOUSE No. 04362

The Commonwealth of Massachusetts

HOUSE, July 31, 2012

The committee on Consumer Protection and Professional Licensure to whom were recommitted the petition (accompanied by bill, Senate, No. 104) of John Hart, Jr., Michael R. Knapik, Jennifer L. Flanagan, Robert L. Hedlund and other members of the Senate for legislation to protect motor vehicle owners' and small businesses in repairing motor vehicles, and recommitted the petition (accompanied by bill, House, No. 102) of Garrett J. Bradley, Kathi-Anne Reinstein 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, and the petition (accompanied by resolve, House, No. 1016) of Kevin J. Murphy and Thomas A. Golden, Jr. for an investigation by a special commission (including members of the General Court) relative to the ability of independent auto repair businesses to repair automobiles after the expiration of any warranty, reports recommending that the accompanying bill (House, No. 4362) ought to pass.

For the committee,

THEODORE C. SPELIOTIS.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 The General Laws are hereby amended by inserting after chapter 93I the following chapter:-

2 CHAPTER 93J

3 Section (1) As used in this chapter, the following words shall, unless the context clearly indicates
4 a different meaning, have the following meanings:

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

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

15 “Fair and Reasonable Terms”. In determining whether a price is on “fair and reasonable terms,”
16 consideration may be given to relevant factors, including, but not limited to, the following:

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

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

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

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

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

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

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

30 (viii) Inflation.

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

34 "Independent repair facility", a person or business operating in the commonwealth that is not
35 affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is
36 engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle
37 engines; provided, however, that, for the purposes of this chapter, a dealer, notwithstanding its
38 affiliation with any manufacturer, shall be considered an independent repair facility for purposes
39 of those instances when said dealer engages in the diagnosis, service, maintenance or repair of
40 motor vehicles or motor vehicle engines that are not affiliated with the dealer's franchise
41 manufacturer.

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

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

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

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

61 Section (2)(a) Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles and
62 thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available for
63 purchase by owners of motor vehicles manufactured by such manufacturer and by independent
64 repair facilities the same diagnostic and repair information, including repair technical updates,
65 that such manufacturer makes available to its dealers through the manufacturer's internet-based
66 diagnostic and repair information system or other electronically accessible manufacturer's repair
67 information system. All content in any such manufacturer's repair information system shall be
68 made available to owners and to independent repair facilities in the same form and manner and to
69 the same extent as is made available to dealers utilizing such diagnostic and repair information
70 system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair
71 information system for purchase by owners and independent repair facilities on a daily, monthly
72 and yearly subscription basis and upon fair and reasonable terms.

73 (2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any
74 independent repair facility or other third party provider in a format that is standardized with other
75 manufacturers, and on terms and conditions more favorable than the manner and the terms and
76 conditions pursuant to which the dealer obtains the same diagnostic, service or repair
77 information, shall be prohibited from requiring any dealer to continue purchasing diagnostic,
78 service, or repair information in a proprietary format, unless such proprietary format includes

79 diagnostic, service, repair or dealership operations information or functionality that is not
80 available in such standardized format.

81 (2)(c)(i) For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor
82 vehicles sold in the commonwealth shall make available for purchase by owners and independent
83 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless
84 capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate
85 the same functional repair capabilities that such manufacturer makes available to dealers. Each
86 manufacturer shall offer such tools for sale to owners and to independent repair facilities upon
87 fair and reasonable terms.

88 (2)(c)(ii) Any diagnostic tool or information necessary to diagnose, service or repair a motor
89 vehicle that a manufacturer sells to any independent repair facility in a manner and on terms and
90 conditions more favorable than the manner and the terms and conditions pursuant to which the
91 dealer obtains the same diagnostic tool or information necessary to diagnose, service or repair a
92 motor vehicle, shall also be offered to the dealer in the same manner and on the same terms and
93 conditions as provided to such independent repair facility.

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

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

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

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

128 (2)(d)(ii) No manufacturer shall be prohibited from making proprietary tools available to dealers
129 if such tools are for a specific specialized diagnostic or repair procedure developed for the sole
130 purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or
131 performance of a specific technical service bulletin or recall after the vehicle was produced, and
132 where original vehicle design was not originally intended for direct interface through the non-
133 proprietary interface set out in (2)(d)(i). Provision of such proprietary tools under this paragraph
134 shall not constitute a violation of this chapter even if such tools provide functions not available
135 through the interface set forth in (2)(d)(i), provided such proprietary tools are also available to
136 the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(d)(ii) authorizes
137 manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as
138 set forth in (2)(d)(i), for diagnostic or repair procedures that fall outside the provisions of
139 (2)(d)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(d)(i).

140 (2)(e) Manufacturers of motor vehicles sold in the commonwealth may exclude diagnostic,
141 service and repair information necessary to reset an immobilizer system or security-related
142 electronic modules from information provided to owners and independent repair facilities. If
143 excluded under this paragraph, the information necessary to reset an immobilizer system or
144 security-related electronic modules shall be obtained by owners and independent repair facilities

145 through the secure data release model system as currently used by the National Automotive
146 Service Task Force or other known, reliable and accepted systems.

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

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

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

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

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

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

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

184 Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or if
185 an independent repair facility or owner is not satisfied with the manufacturer's cure, the
186 independent repair facility or owner may file a complaint in the superior court, or if applicable in
187 the federal district court for the district of Massachusetts. Such complaint shall include, but not
188 be limited to the following: (i) written information confirming that the complainant has visited

189 the relevant manufacturer website and attempted to effect a proper repair utilizing information
190 provided on such website, including communication with customer assistance via the
191 manufacturer's toll-free call-in assistance, if made available by such manufacturer; (ii) written
192 information confirming that the complainant has obtained and utilized the relevant
193 manufacturer's scan or diagnostic tool necessary for such repair; and (iii) evidence of
194 manufacturer notification as set out in (6)(b).

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