

## SENATE, NO. 2268

[Senate, February 11, 2010 – New draft reported on House, No. 228 from the committee on Consumer Protection and Professional Licensure]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND TEN

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### **AN ACT TO PROTECT MOTOR VEHICLE OWNERS' AND INDEPENDENT REPAIRERS' 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:** Whereas the ability to diagnose, service, and repair a motor vehicle in a  
2   timely, reliable, and affordable manner is essential to the safety and well-being of individuals in  
3   the Commonwealth;

4           Whereas individuals are entitled to choose among competing repair facilities for the  
5   convenient, reliable, and affordable repair of their motor vehicles;

6           Whereas, independent motor vehicle repair facilities operating in a free-market economy  
7 should have access to vehicle repair information and functional diagnostic tools;

8           Whereas increased competition among motor vehicle repair facilities will benefit vehicle  
9 owners in the Commonwealth;

10           Whereas computers of various kinds are commonly being used in motor vehicle systems,  
11 such as pollution control, transmission, antilock brakes, electronic and mechanical systems,  
12 heating and air conditioning, tire pressure, and steering;

13           Whereas the diagnosis, service and repair of these vehicle systems are essential to the  
14 safe and proper operation of motor vehicles; and

15           Whereas motor vehicle owners and independent motor vehicle repair facilities in the  
16 Commonwealth should have the right to obtain all information necessary to provide for the  
17 diagnosis, service, and repair of a motor vehicle.

18           The General Court finds that to reestablish an equitable auto repair industry in the  
19 Commonwealth in which all repair shops have equal access to complete repair information and  
20 functional diagnostic tools requires that motor vehicle owners and independent repair shops have  
21 access to the legal system through a civil remedy to enforce the provisions of this Act.

22           **SECTION 2.** The General Laws, as appearing in the 2008 Official Edition, are hereby  
23 amended by inserting after Chapter 93I the following new chapter:-

24           Chapter 93J. Motor vehicle Diagnosis, Service Information and Right to Repair.

25           Section 1.       Definitions. The following words and phrases, as used in this chapter,  
26 unless the context otherwise requires, shall have the following meanings:—

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

29 “Dealer”, a business authorized by a new vehicle manufacturer to lease or sell the  
30 manufacturer’s new motor vehicles at retail, pursuant to a franchise agreement, and  
31 which is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or  
32 motor vehicle engines.

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

39 “Independent motor vehicle repair facility” a person or business that is not  
40 associated with a manufacturer’s authorized dealer of motor vehicles and which is  
41 engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor  
42 vehicle engines.

43 “Motor vehicle owner” any person who owns, leases, or otherwise has the legal  
44 right to use and possess a motor vehicle, or the agent of such person.

45 “Trade secret” a formula, process device, or other business information that is  
46 kept confidential to maintain an advantage over competitors including a formula,  
47 patterns, compilation, program, device, method, technique, or process that derives  
48 independent economic value, actual or potential, from not being generally known or  
49 readily ascertainable by others who can obtain economic value from its disclosure or use.

50 Section 2. The manufacturer of any motor vehicle sold in the Commonwealth shall  
51 provide to any independent motor vehicle repair facility in the Commonwealth all information

52 and tools related to the proper and complete diagnosis, service, and repair of the vehicle,  
53 including all service and training information.

54 The information and tools that the manufacturer shall provide to any motor vehicle owner  
55 or independent motor vehicle repair facility shall include but not be limited to the following:

56 1. The same information for the diagnosis, service, or repair of any motor vehicle  
57 that the manufacturer makes available to its authorized dealers and authorized  
58 motor vehicle repair facilities. This information must be made available on a  
59 reasonable and non-discriminatory basis and cost as compared to the terms and  
60 costs charged to an authorized dealer or an authorized motor vehicle repair  
61 facility by the motor vehicle manufacturer; and in the same form and in the same  
62 manner as it is made available to an authorized dealer or an authorized motor  
63 vehicle repair facility of the motor vehicle, and must include all information,  
64 including any diagnostic codes used to activate all controls that must be activated  
65 by a repair technician to diagnose, service, and repair the motor vehicle.

66 2. The same tools and software capabilities, including wireless capabilities, related  
67 to the diagnosis, service, and repair of a motor vehicle that the manufacturer  
68 makes available to an authorized dealership or an authorized motor vehicle repair  
69 facilities of the motor vehicle. The motor vehicle manufacturer shall make  
70 available to any independent motor vehicle repair facility in the Commonwealth  
71 any tools relating to the proper and complete diagnosis, service, and repair of the  
72 vehicle on a reasonable and non-discriminatory basis and cost as compared to the  
73 terms and costs charged to an authorized dealer or an authorized motor vehicle  
74 repair facility by the motor vehicle manufacturer. The motor vehicle  
75 manufacturer shall also provide aftermarket tool companies with information that  
76 will allow the aftermarket tool companies to manufacture tools with the same

77 functional characteristics as those tools made available by the manufacturers to  
78 authorized dealers or to an authorized motor vehicle repair facility, for the  
79 purpose of allowing independent motor vehicle repair facilities to diagnose,  
80 service, and repair motor vehicles.

81 3. Failure to comply with the requirements of this chapter shall be a violation of  
82 subsection (a) of section 3 of this chapter and section 2 of Chapter 93A. A motor  
83 vehicle owner or an independent motor vehicle repair facility may institute a civil  
84 action for equitable relief and or damages in any court of competent jurisdiction  
85 as a remedy for such violation. A prevailing plaintiff is entitled to recover  
86 damages, which may be trebled as provided for in Chapter 93A, and the cost of  
87 litigation including expert witness and attorney fees.

88 Section 3. Notwithstanding any General or Special law, or any rule or regulation to  
89 the contrary, nothing in this chapter shall require a motor vehicle manufacturer to divulge  
90 information that is a trade secret. No diagnosis, service or repair information of any motor vehicle  
91 may be withheld by a manufacturer on the grounds that it is a trade secret if that information is  
92 provided, directly or indirectly, to an authorized dealer and any authorized motor vehicle repair  
93 facility.

94 Section 4. Notwithstanding any General or Special law, or any rule or regulation to  
95 the contrary, nothing in this chapter shall (1) interfere with the authority of the Administrator of  
96 the Environmental Protection Agency under section 202(m) of the Clean Air Act (42 U.S.C.  
97 7521(m)) with regard to motor vehicle emissions control diagnostics systems; or (2) conflict with  
98 rules prescribed by the Administrator of the Environmental Protection Agency.

99 Section 5. Notwithstanding any General or Special law, or any rule or  
100 regulation to the contrary, no provision in this chapter shall be read, interpreted, or

101 construed to abrogate, interfere with, contradict, or alter the terms of a franchise  
102 agreement, and the business practices of the parties there-under, executed and in force  
103 between a dealer and a manufacturer, including, but not limited to, the performance or  
104 provision of warranty or recall repair work by a dealer on behalf of a manufacturer  
105 pursuant to such franchise agreement provided that any provision in the franchise  
106 agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance  
107 with this chapter shall be void and unenforceable.