

HOUSE No. 4362

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve
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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
2 chapter:-

3 CHAPTER 93J

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

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

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

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

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

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

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

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

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

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

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

33 (viii) Inflation.

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

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

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

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

55 definition of “motor vehicle” in chapter 90; and (viii) a motorcycle, as defined in section 1 of
56 chapter 90.

57 “Owner”, a person or business who owns or leases a motor vehicle registered in the
58 commonwealth.

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

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

77 (2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any
78 independent repair facility or other third party provider in a format that is standardized with other
79 manufacturers, and on terms and conditions more favorable than the manner and the terms and
80 conditions pursuant to which the dealer obtains the same diagnostic, service or repair
81 information, shall be prohibited from requiring any dealer to continue purchasing diagnostic,
82 service, or repair information in a proprietary format, unless such proprietary format includes
83 diagnostic, service, repair or dealership operations information or functionality that is not
84 available in such standardized format.

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

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

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

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

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

127 Nothing in this Chapter shall be construed to require a dealer to use the non-proprietary
128 vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this
129 subsection, nor shall this Chapter be construed to prohibit a manufacturer from developing a

130 proprietary vehicle diagnostic and reprogramming device, provided that (i) the manufacturer also
131 complies with Section 2(d)(i), and (ii) the manufacturer also makes this device available to
132 independent repair facilities upon fair and reasonable terms, and otherwise complies with Section
133 2(a).

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

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

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

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

169 Section (4) Notwithstanding any general or special law or any rule or regulation to the
170 contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere
171 with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise
172 agreement executed and in force between a dealer and a manufacturer including, but not limited
173 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a
174 manufacturer pursuant to such franchise agreement; provided, however, that any provision in
175 such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's
176 compliance with this chapter shall be void and unenforceable.

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

181 Section (6)(a) In addition to any other remedies that may be available under law, a
182 violation of this chapter shall be deemed to be an unfair method of competition and an unfair or
183 deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter
184 93A.

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

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

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