

SENATE No. 124

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act AN ACT CREATING A CIVIL LEGAL ACTION TO BE ENFORCED BY THE ATTORNEY GENERAL OF THE COMMONWEALTH TO PROTECT AN INDIVIDUALS RIGHT TO REPAIR AN AUTOMOBILE..

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 of Massachusetts as appearing in the 2006th Edition of the official
2 Acts is hereby amended by inserting after Chapter 100A the following Chapter, 100B

3 Section 1. Whereas, an individual’s rights to repair an automobile in the Commonwealth
4 are being denied in certain instances, it is essential the Attorney General be empowered to take
5 actions necessary to protect such rights; and

6 Whereas the ability to diagnose, service and repair a motor vehicle in a timely, reliable
7 and affordable manner is essential to the safety and well-being of individuals in the
8 Commonwealth; and

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

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

13 Whereas increased competition among motor vehicle repair facilities will benefit vehicle
14 owners in the Commonwealth; and

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

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

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

23 The General Court finds that to reestablish an equitable auto repair industry in the
24 Commonwealth whereby all repair shops have equal access to complete repair information and
25 functional diagnostic tools necessitates that motor vehicle owners and independent repair shops
26 have access to the legal system through a civil remedy to enforce the provisions of this act.

27 Section 2. As used in this Chapter the following words, unless the content clearly
28 requires otherwise shall have the following meanings:

29 The term “authorized dealer” means a person selling and distributing new motor vehicles
30 or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or
31 equipment other than for resale.

32 The term “authorized motor vehicle repair facility” means a person or business that is
33 associated with an authorized dealer or motor vehicle manufacturer.

34 The term “independent motor vehicle repair facility” means a person or business that is
35 not associated with a manufacturer’s authorized dealer of motor vehicles and which is engaged in
36 the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines.

37 The term "manufacturers" means a person engaged in the business of manufacturing,
38 assembling or distributing motor vehicles, who will, under normal business conditions during the
39 year, manufacture, assemble or distribute to dealers new motor vehicles.

40 The term “motor vehicle” as defined in section 1 of Chapter 90 of m.g.l.

41 The term “motor vehicle owner” means any person who owns, leases, or otherwise has
42 the legal right to use and possess a motor vehicle, or the agent of such person.

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

48 SECTION 3. The manufacturers of any motor vehicles which are sold in the
49 Commonwealth shall:

50 Provide to any independent motor vehicle repair facility in the Commonwealth all
51 information related to the proper and complete diagnosis, service, and repair of the vehicle,
52 including all non-emission-related service information or training information. The motor
53 vehicle manufacturer shall permit any independent motor vehicle repair facility in the
54 Commonwealth to acquire any diagnostic tools relating to the proper and complete diagnosis,

55 service, and repair of the vehicle on a non-discriminatory basis, from a similar manufacturer of
56 the tools, and at a similar cost that is charged to an authorized dealer and any authorized motor
57 vehicle repair facility of the manufacturer of a motor vehicle sold in the Commonwealth. The
58 motor vehicle manufacturer shall also provide aftermarket tool companies with diagnosis,
59 service, and repair information that will allow them to manufacture tools with the same
60 functional characteristics as those tools made available by the manufacturers to authorized
61 dealers and any authorized motor vehicle repair facility.

62 The information that the manufacturer shall provide to any motor vehicle owner or
63 independent motor vehicle repair facility shall not be limited thereto but shall include the
64 following:

65 (a)The same information for the diagnosis, service, or repair of any motor vehicle sold in
66 the Commonwealth by a manufacturer and which the manufacturer makes available to an
67 authorized dealership and any authorized motor vehicle repair facility. This information must be
68 made available in the same form and in the same manner as it is made available to the repair
69 facilities of an authorized dealer and any authorized motor vehicle repair facility of the motor
70 vehicle, and must include all information, including any diagnostic codes used to activate all
71 controls that must be activated by the repair facility in order to diagnose, service, and repair the
72 motor vehicle.

73 (b)The same diagnostic tools and software capabilities, including wireless capabilities,
74 related to the diagnosis and repair of a motor vehicle that the manufacturer makes available to an
75 authorized dealership and any authorized motor vehicle repair facility of the motor vehicle. All

76 diagnostic tools, wireless capabilities, and software capabilities must be made available for
77 purchase at a reasonable and non-discriminatory price.

78 SECTION 4. Nothing in this Act will require a motor vehicle manufacturer to divulge
79 information that is a trade secret. No information may be withheld by a manufacturer on the
80 ground that it is a trade secret if that information is provided (directly or indirectly) to an
81 authorized dealer and any authorized motor vehicle repair facility.

82 SECTION 5. A motor vehicle owner or an independent motor vehicle repair facility may
83 bring a notice of complaint for a violation of this act to the Attorney General's office which shall
84 no later than 90 days from receipt of said notice make a determination as to whether a hearing
85 shall be held on the complaint. The Attorney General shall render a decision no later than 60
86 days from the date of the hearing. Any person in violation of the provisions of this act, in
87 addition to any other penalty provided by law, shall be liable for a penalty of not more than
88 \$10,000 for the first offense and not more than \$20,000 in each subsequent offense.

89 A motor vehicle owner or an independent motor vehicle repair facility may institute a
90 civil action for enforcement of this act in any court of competent jurisdiction. A prevailing
91 plaintiff is entitled to recover the costs of litigation including reasonable attorney fees.

92 The attorney general may institute a civil action for enforcement of this provision in the
93 superior court of Suffolk County.

94 SECTION 6. This act shall apply to all motor vehicles manufactured after model year
95 nineteen hundred and ninety four.