

SENATE No. 2268

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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 with an
28 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 motor
32 vehicle engines.

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

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

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

43 “Trade secret" a formula, process device, or other business information that is kept
44 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 2. The manufacturer of any motor vehicle sold in the Commonwealth shall
49 provide to any independent motor vehicle repair facility in the Commonwealth all information
50 and tools related to the proper and complete diagnosis, service, and repair of the vehicle,
51 including all service and training information.

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

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

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

75 3. Failure to comply with the requirements of this chapter shall be a violation of
76 subsection (a) of section 3 of this chapter and section 2 of Chapter 93A. A motor vehicle owner

77 or an independent motor vehicle repair facility may institute a civil action for equitable relief and
78 or damages in any court of competent jurisdiction as a remedy for such violation. A prevailing
79 plaintiff is entitled to recover damages, which may be trebled as provided for in Chapter 93A,
80 and the cost of litigation including expert witness and attorney fees.

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

87 Section 4. Notwithstanding any General or Special law, or any rule or regulation to
88 the contrary, nothing in this chapter shall (1) interfere with the authority of the Administrator of
89 the Environmental Protection Agency under section 202(m) of the Clean Air Act (42 U.S.C.
90 7521(m)) with regard to motor vehicle emissions control diagnostics systems; or (2) conflict with
91 rules prescribed by the Administrator of the Environmental Protection Agency.

92 Section 5. Notwithstanding any General or Special law, or any rule or regulation to
93 the contrary, no provision in this chapter shall be read, interpreted, or construed to abrogate,
94 interfere with, contradict, or alter the terms of a franchise agreement, and the business practices
95 of the parties there-under, executed and in force between a dealer and a manufacturer, including,
96 but not limited to, the performance or provision of warranty or recall repair work by a dealer on
97 behalf of a manufacturer pursuant to such franchise agreement provided that any provision in the

98 franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance
99 with this chapter shall be void and unenforceable.