

HOUSE No. 102

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley and Kathi-Anne Reinstein

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An act protecting motor vehicle owners and small businesses in repairing motor vehicles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>	<i>1/13/2011</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>	<i>1/28/2011</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>1/13/2011</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/14/2011</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>1/14/2011</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/14/2011</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>1/14/2011</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>1/14/2011</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/14/2011</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>	<i>1/18/2011</i>
<i>William N. Brownsberger</i>		<i>1/25/2011</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/26/2011</i>
<i>Rhonda Nyman</i>	<i>5th Plymouth</i>	<i>1/21/2011</i>
<i>Sean Curran</i>	<i>9th Hampden</i>	<i>1/20/2011</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>	<i>1/26/2011</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>1/31/2011</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>	<i>1/28/2011</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/28/2011</i>

<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/28/2011</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	<i>1/28/2011</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/28/2011</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/28/2011</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>1/28/2011</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/28/2011</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/28/2011</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>	<i>1/28/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>1/28/2011</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>	<i>1/31/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/1/2011</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>1/31/2011</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>	<i>2/1/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2011</i>
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>1/31/2011</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>	<i>1/31/2011</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>	<i>2/3/2011</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>2/3/2011</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>2/3/2011</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/4/2011</i>
<i>Demetrius J. Atsalis</i>	<i>2nd Barnstable</i>	<i>2/4/2011</i>
<i>Paul Adams</i>	<i>17th Essex</i>	<i>2/3/2011</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/4/2011</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>2/3/2011</i>
<i>Geraldine M. Creedon</i>	<i>11th Plymouth</i>	<i>2/3/2011</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/3/2011</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>	<i>2/3/2011</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>2/3/2011</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/3/2011</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>	<i>2/3/2011</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>	<i>2/4/2011</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>2/4/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2011</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>	<i>2/4/2011</i>

HOUSE No. 102

By Representatives Bradley of Hingham and Reinstein of Revere, a 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. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 228 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

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 SECTION 1. The General Laws are hereby amended by inserting after chapter 93I the
2 following chapter:-

3 CHAPTER 93J.

4 Section 1. As used in this chapter the following words shall, have the following
5 meanings, unless the context clearly requires otherwise:—

6

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

9

10 “Dealer”, a business authorized by a new vehicle manufacturer to lease or sell the
11 manufacturer’s new motor vehicles at retail, under a franchise agreement; provided, however,
12 that the business is engaged in the diagnosis, service, maintenance or repair of motor vehicles or
13 motor vehicle engines under the franchise agreement.

14

15 “Franchise agreement”, an oral or written arrangement for a definite or indefinite
16 period in which a manufacturer or distributor grants to a dealer a license to use a trade
17 name, service mark or related characteristic and in which there is a community of interest in the
18 marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or
19 otherwise; provided, however, this shall include the performance or provision of a warranty or
20 recall repair work by a dealer on behalf of a manufacturer.

21

22 “Independent motor vehicle repair facility" a person or business operating in the
23 commonwealth that is not associated with a manufacturer's authorized dealer of motor vehicles,
24 which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor
25 vehicle engines.

26

27 “Manufacturer” any person engaged in the business of manufacturing or assembling new
28 motor vehicles.

29 “Motor vehicle owner” a person who owns, leases or otherwise has the legal right to use
30 and possess a motor vehicle or the agent of that person.

31

32 “Trade secret” a formula, pattern, device or compilation of information which is used in a
33 business, which gives the business an opportunity to obtain an advantage over competitors who
34 do not know or use it and which the business has taken all reasonable and proper steps to keep
35 secret; provided, however, that a trade secret does not include matters of public knowledge or of
36 general knowledge in an industry.

37 Section 2. The manufacturer of a motor vehicle sold in the commonwealth shall make
38 available for purchase to independent motor vehicle repair facilities and motor vehicle owners in
39 a non-discriminatory basis and cost as compared to the terms and costs charged to an authorized
40 dealer or authorized motor vehicle repair facility all diagnostic, service and repair information
41 that the manufacturer makes available to its authorized dealers and authorized motor vehicle
42 repair facilities in the same form and the same manner as it is made available to authorized
43 dealers or an authorized motor vehicle repair facility of the motor vehicle. The distribution of
44 such information shall be in a form and manner that does not alter or affect the contractual
45 relationship between the manufacturer and its authorized dealer; provided, however, that such
46 contractual relationship shall not alter the manner and form of diagnostic service and repair
47 information that independent repair facilities obtain through a manufacturers repair website.

48 The information must include, but is not limited to, the following: (1) all diagnostic,
49 service, training and repair information and tools related to the proper and complete diagnosis,
50 service and repair of a motor vehicle including any diagnostic codes used to activate all controls

51 that are required to be activated by a repair technician to diagnose, service and repair the motor
52 vehicle; and (2) tools and software capabilities, including wireless capabilities, related to the
53 diagnosis, service and repair of a motor vehicle.

54

55 Section 3. (a) Failure to comply with the requirements of section 2 shall be an unfair or
56 deceptive trade act or practice under section 2 of chapter 93A. A motor vehicle owner or an
57 independent motor vehicle repair facility may institute a civil action for equitable relief or
58 damages in any court of competent jurisdiction as a remedy for the violation.

59

60 (b) No person may bring an action against a manufacturer under this section unless the
61 person has first provided documentation which shall include, but not be limited to, the following
62 requirements: (1) the person shall provide written information confirming that the person has
63 visited the relevant manufacturer website and attempted to effect a proper repair utilizing
64 information provided on the website, including communication with technician assistance if
65 made available by the manufacturer; and (2) the person shall provide a written affirmation
66 confirming that the person sought the assistance of other applicable information sources to effect
67 the necessary repair, including, but not limited to, the assistance of the National Automotive
68 Service Task Force, if practicable.

69 Section 4. Notwithstanding any other general or special law or rule or regulation to the
70 contrary, nothing in this chapter shall require a motor vehicle manufacturer to divulge
71 information that is a trade secret or other such proprietary information related to the development

72 or use of the manufacturer's repair and diagnostic tools, equipment and parts, except pursuant to
73 a valid contract or agreement executed by a manufacturer and the other person

74 Section 5. Notwithstanding any other general or special law or rule or regulation to the
75 contrary, nothing in this chapter shall be read, interpreted or construed to abrogate, interfere
76 with, contradict or alter the terms of a franchise agreement and the business practices of the
77 parties thereunder, executed and in force between a dealer and a manufacturer, including, but not
78 limited to, the performance or provision of warranty or recall repair work by a dealer on behalf
79 of a manufacturer under the franchise agreement; provided , however, that any provision in the
80 franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance
81 with this chapter shall be void and unenforceable.