

# HOUSE . . . . . No. 2654

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*James J. O'Day*

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*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 guaranteeing consumer ownership of, privacy of, and access to motor vehicle computer data.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/20/2011</i>

# HOUSE . . . . . No. 2654

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By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 2654) of James J. O'Day relative to guaranteeing consumer ownership of, privacy of, and access to motor vehicle computer data. Transportation.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act guaranteeing consumer ownership of, privacy of, and access to motor vehicle computer data.

*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. It is hereby found and declared:

2           Whereas motor vehicles are now equipped with sophisticated and complex computerized  
3 monitoring and diagnostic systems; and whereas the data created in vehicle's computer systems  
4 is personal property of the consumer.

5           SECTION 2. The General Laws are hereby amended, by inserting after Chapter 93I  
6 thereof the following Chapter: --

7           Chapter 93J. Motor Vehicle Diagnostic, Repair and Service Information

8           Section 1. Definitions. The following words and phrases, as used in this chapter, unless  
9 the text otherwise requires or a different meaning is specifically required, shall mean--

(a) “New vehicle manufacturer” or “original equipment manufacturer” or “OEM”, a business that manufactures or builds new motor vehicles and then distributes such motor vehicles through dealers that they authorize to lease and / or sell the motor vehicles at retail.

(b) “Dealer”, a business authorized by a new vehicle manufacturer to lease and / or sell the manufacturer’s new motor vehicles at retail, and which is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines.

(c) “The aftermarket”, independent motor vehicle repair facilities, used car dealers, and third party suppliers of motor vehicle repair related information and technology, including, but not limited to, businesses providing diagnostic, service and repair information for motor vehicles, information service providers, Internet based services, aftermarket scan tool providers, and technical telephone support services.

(d) “Firmware”, instructions that are stored in electronic device memory, used to control the electronic device, without which such device would not function. “Firmware” includes, but is not limited to, an embedded instruction set to control the operation of logical hardware found in motor vehicle monitoring and /or control systems.

(e) “Software”, programs and applications for a computer or other electronic device, and programs and applications that can be run on a computer system or other electronic device system, including, but not limited to, operating systems, firmware, and application software.

(f) “Vehicle data”, the set of data that a motor vehicle’s computer and / or electronic device systems and firmware or application software records or produces, including, but not limited to, a live data stream, diagnostic trouble codes (DTC), computerized self-test results, bi-directional operation, global positioning system (GPS) location, all malfunction indicator lamp

(MIL) or check engine light status, stored memory data and adaptive memory data, any or all of which are transmitted through the vehicle's computers, electronic devices, and communication network or BUS or any additional or emerging technology.

(g) "Interactive monitoring service" means a service that a vehicle lessee or owner utilizes to remotely monitor the vehicle, including, but not limited to, services for determining motor vehicle service intervals and maintenance requirements, for detecting defects by retrieving diagnostic trouble codes, for retrieving vehicle identification numbers for reference, firmware or software revision numbers or parts numbers, for global positioning system location, for air bag status, for vehicle mileage, and for analyzing vehicle data or any other information indicating the condition of the vehicle. "Interactive monitoring service" includes so-called OnStar and other similar remote monitoring systems.

(h) "Proprietary", pertaining to privately owned property or data, including knowledge or data that is protected by a patent, copyright, or trademark.

(i) "Trade secret", a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or readily ascertainable, by which a business may attempt to obtain an economic advantage over competitors or in soliciting customers.

## Section 2. Vehicle Component Ownership

Whenever a motor vehicle that has been manufactured or built by a new vehicle manufacturer is leased or purchased from a dealer within the Commonwealth, or leased or purchased from any dealer and then titled, registered or operated within the Commonwealth, such lease or purchase shall constitute lease or purchase of a complete product from the original

equipment manufacturer (OEM) and from the dealer. The lease or purchase shall in all instances include the engine, power train, frame, body, electrical system, mechanical and electronic control systems and subsystems, computerized modules, communication network or BUS, and a royalty free perpetual license in and to all digital computer code or firmware that make computerized modules perform specific functions.

Notwithstanding anything else contained herein, the OEM research and development process for creating vehicle components, including the process of creating firmware, may be a trade secret which the OEM is not required to release or disclose to dealers, lessees, purchasers, the aftermarket, or others.

### Section 3. Vehicle Data Ownership.

For purposes of Section 2 of this Chapter, vehicle data regarding, or generated by, the use of a vehicle shall be considered a component of the vehicle. Upon lease or purchase of a new motor vehicle, all vehicle data which relates to the way in which the vehicle lessee or owner operates the vehicle and the communication of the data throughout the vehicle shall be property owned by the lessee or purchaser and not by the OEM or dealer; excluding, however, licensed or copyrighted products or data used in vehicle systems that may provide driver information or are part of vehicle entertainment systems, such as map data used for navigation systems and digital music.

### Section 4. Vehicle Data Privacy.

A lessee or owner of a motor vehicle shall have a right to privacy with regard to vehicle data. No OEM, dealer, or other entity shall have the right to access or collect vehicle data by way of a motor vehicle's communication BUS, either through wired or wireless means. Access to

vehicle data without the express written authorization of the vehicle lessee or owner is prohibited, except in the case of an emergency when lives or safety of the public may be endangered.

#### Section 5. Right to Access Vehicle Data.

With the authority of, and upon the request of, a motor vehicle's lessee or owner, a dealer, individual, or independent motor vehicle repair facility or other aftermarket entity shall have full access to the data output of computer firmware and software including the right to access all of a motor vehicle's module functions and data in the vehicle's computer memory, firmware or software and transferred on the communication BUS. An OEM or dealer is prohibited from restricting access to the vehicle data and communication BUS.

#### Section 6. Interactive Monitoring Services.

(a) Whenever a motor vehicle is equipped for interactive monitoring, the vehicle lessee or owner shall have the right to choose the form in which interactive monitoring vehicle data will be sent and to whom it will be sent. An OEM or dealer shall not mandate that interactive monitoring vehicle data be sent to an entity which it chooses, and may not prohibit a vehicle lessee or owner from directing that the vehicle data be sent to a dealer, individual, aftermarket facility, or other entity of the lessee's or owner's choice.

(b) Whenever a dealer leases or sells a motor vehicle equipped with an interactive monitoring device, the dealer shall disclose in a separate writing at the time of the lease or sale, in a clear and conspicuous manner, exactly what vehicle data may be transferred through the interactive monitoring service, including, but not limited to, such data as GPS location, vehicle speed, stored DTC, MIL status, or any other vehicle data or information on the vehicle

communication BUS. The lessee or purchaser shall in all instances be given the right to choose what data is and is not to be monitored and transferred, and for what purposes.

(c) If a motor vehicle lessee or owner contracts with an interactive monitoring service provider, such vehicle lessee or owner shall at all times have the right to change interactive monitoring service providers, without penalty, upon written notice to the provider. Further, upon written notice to the provider, the vehicle lessee or owner shall at all times have the right to change the interactive monitoring service vehicle data that is being collected and to whom it is sent or distributed.

(d) All firmware and software installed by an OEM in a new motor vehicle shall be viable for the life expectancy of the vehicle, or shall be replaced or upgraded by the OEM or dealer at a reasonable cost when either defects are detected and repaired or when new enhancements become available when the vehicle is out of warranty.

(e) An OEM or dealer cannot separately charge a motor vehicle lessee or purchaser for, or separately lease to a motor vehicle purchaser or lessee, firmware and software installed by the OEM, and cannot charge a separate service or maintenance fee for such software.

(f) All firmware and software in components of a new motor vehicle, may not include clocks, calendars or any other counter functions that cause either the firmware or software to cease to fully function in any manner at a predetermined time or mileage.