

SENATE No. 104

The Commonwealth of Massachusetts

PRESENTED BY:

John Hart, Jr.

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: |
|-----------------------------|---------------------------------------|
| <i>John Hart, Jr.</i> | |
| <i>Michael R. Knapik</i> | |
| <i>Jennifer L. Flanagan</i> | |
| <i>Robert L. Hedlund</i> | |
| <i>James E. Timilty</i> | |
| <i>James T. Welch</i> | |
| <i>Michael O. Moore</i> | |
| <i>Daniel A. Wolf</i> | |
| <i>Richard J. Ross</i> | <i>Norfolk, Bristol and Middlesex</i> |
| <i>Thomas M. McGee</i> | <i>Third Essex</i> |
| <i>Anthony W. Petrucci</i> | |

SENATE No. 104

By Mr. Hart, a petition (accompanied by bill, Senate, No. 104) of John Hart, Jr., Michael R. Knapik, Jennifer L. Flanagan, Robert L. Hedlund and other members of the Senate for legislation to protect motor vehicle owners' and small businesses in repairing motor vehicles. Consumer Protection and Professional Licensure.

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
2 93I the following chapter:-

3 CHAPTER 93J.

4 PROTECTING MOTOR VEHICLE OWNERS' AND SMALL BUSINESSES IN
5 REPAIRING MOTOR VEHICLES

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

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

10 "Dealer", a business authorized by a new vehicle manufacturer to lease or sell
11 the manufacturer's new motor vehicles at retail, under a franchise agreement; provided, however,

that the business is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines under the franchise agreement.

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

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

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

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

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

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

The information must include, but is not limited to, the following: (1) all diagnostic, service, training and repair information and tools related to the proper and complete diagnosis, service and repair of a motor vehicle including any diagnostic codes used to activate all controls that are required to be activated by a repair technician to diagnose, service and repair the motor vehicle; and (2) tools and software capabilities, including wireless capabilities, related to the diagnosis, service and repair of a motor vehicle.

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

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

SECTION 4. Notwithstanding any other general or special law or rule or regulation to the contrary, nothing in this chapter shall require a motor vehicle manufacturer to divulge information that is a trade secret or other such proprietary information related to the development or use of the manufacturer's repair and diagnostic tools, equipment and parts, except pursuant to a valid contract or agreement executed by a manufacturer and the other person

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