

SENATE No. 2267

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

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 relative to the right to repair.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

SENATE No. 2267

Senate, May 17, 2012 – Substituted by amendment (Senator Kennedy and Hart) for the Senate Bill relative to the right to repair (Senate, No. 2204).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the 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. The General Laws are hereby amended by inserting after chapter 93I the
2 following chapter:-

3 CHAPTER 93J

4 RIGHT TO REPAIR

5 Section 1. As used in this chapter, the following words shall, unless the context clearly
6 indicates a different meaning, have the following meanings:

7 “Dealer”, any person or business who, in the ordinary course of its business, is
8 engaged in the business of selling or leasing new motor vehicles to consumers or other end users
9 pursuant to a franchise agreement and who has obtained a class 1 license pursuant to the
10 provisions of section 58 and 59 of chapter 140 and is engaged in the diagnosis, service,
11 maintenance or repair of motor vehicles or motor vehicle engines pursuant to said franchise
12 agreement.

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

18 "Immobilizer system", an electronic device designed for the sole purpose of preventing
19 the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting
20 without the correct key code.

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

24 "Manufacturer", any person or business engaged in the business of manufacturing or
25 assembling new motor vehicles.

26 "Motor vehicle", a vehicle driven or drawn by mechanical power and manufactured
27 primarily for use on public streets, roads and highways, but excluding: (i) a vehicle that may be
28 operated only on a rail line; (ii) a recreational vehicle or auto home equipped for habitation; (iii)
29 an ambulance; (iv) a bus, motor coach or trackless trolley designed for the carriage of persons for
30 hire or for school-related purposes; (v) vehicles used exclusively for the building, repair and
31 maintenance of highways or designed primarily for use elsewhere than on the traveled part of
32 ways; (vi) any vehicle with a gross vehicle weight rating of more than 10,000 pounds; (vii) any
33 vehicle excluded from the definition of “motor vehicle” in chapter 90; and (viii) a motorcycle, as
34 defined in section 1 of chapter 90.

35 "Owner", a person or business who owns, leases or otherwise has the legal right to use
36 and possess a motor vehicle or the agent of such person.

37 "Trade secret", anything tangible or intangible or electronically kept or stored, which
38 constitutes, represents, evidences or records a secret scientific, technical, merchandising,
39 production or management information, design, process, procedure, formula, invention or
40 improvement.

41 Section 2. (a) Except as provided in subsection (d), for vehicles manufactured in 2002
42 and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available
43 for purchase by owners of motor vehicles manufactured by such manufacturer and by
44 independent repair facilities the same diagnostic and repair documentation, including repair
45 technical updates, that such manufacturer makes available to its dealers through the
46 manufacturer's Internet-based diagnostic and repair information system or other electronically
47 accessible manufacturer's repair information system. All content in any such manufacturer's
48 repair information system shall be made available to owners and to independent repair facilities
49 in the same form and manner and to the same extent as is made available to dealers utilizing such
50 diagnostic and repair information system. Each manufacturer shall provide access to such
51 manufacturer's diagnostic and repair information system for purchase by owners and independent
52 repair facilities on an hourly, daily, monthly and yearly subscription basis and upon fair and
53 reasonable terms, taking into account the factors set forth in the number 40 CFR 86.1808-01.

54 If a manufacturer provides any diagnostic, service or repair information to an
55 independent repair facility or other third party provider in a manner and on terms and conditions
56 more favorable than or equal to the manner and the terms and conditions pursuant to which the

57 dealer obtains the same diagnostic, service or repair information, the manufacturer shall offer to
58 the dealer such diagnostic, service or repair information in the same manner and on the same
59 terms and conditions as provided to such independent repair facility. If for any reason any
60 manufacturer begins to deliver any diagnostic, service or repair information to any independent
61 repair facility or other third party provider in a format that is standardized with other
62 manufacturers, such manufacturer shall be prohibited from requiring any dealer from continuing
63 to purchase diagnostic, service or repair information in a proprietary format if such proprietary
64 format does not include diagnostic, service or repair information that is not available in such
65 standardized format.

66 (b) For vehicles manufactured in 2002 and thereafter, each manufacturer of motor
67 vehicles sold in the commonwealth shall make available for purchase by owners and independent
68 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless
69 capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate
70 the same functional repair capabilities that such manufacturer makes available to dealers. Each
71 manufacturer shall offer such tools for sale to owners and to independent repair facilities upon
72 fair and reasonable terms, taking into account the factors set forth in 40 CFR 86.1808-01.

73 If a manufacturer delivers any tool necessary to diagnose, service or repair a
74 motor vehicle to any independent repair facility or other third party provider in a manner and on
75 terms and conditions more favorable than or equal to the manner and the terms and conditions
76 pursuant to which the dealer obtains the same tool necessary to diagnose, service or repair a
77 motor vehicle, the manufacturer shall offer to the dealer such tool in the same manner and on the
78 same terms and conditions as provided to such independent repair facility or other third party
79 provider. If for any reason any manufacturer begins to deliver to any independent repair facility

80 or third party provider any tool necessary to diagnose, service or repair a motor vehicle and such
81 tool has a standard interface with motor vehicles manufactured by other manufacturers, the
82 manufacturer delivering such a tool shall be prohibited from requiring any dealer from
83 continuing to purchase any proprietary tool if such proprietary tool does not have a capability not
84 available in the standardized tool.

85 Each manufacturer shall provide diagnostic repair information to each aftermarket
86 scan tool company with whom the manufacturer has appropriate licensing, contractual or
87 confidentiality agreements if such agreements allow the scan tool company to provide alternative
88 web-based pass through diagnostics.

89 (c) Commencing on January 1, 2016, except as provided in subsection (d),
90 manufacturers of motor vehicles sold in the commonwealth shall provide access to their
91 diagnostic and repair information system, as required under this section, using a generic
92 computer and: (i) a non-proprietary vehicle interface device that complies with the Society of
93 Automotive Engineers SAE J2534, the International Standards Organizations ISO 22900 or any
94 successor to SAE J 2534 or ISO 22900 as may be accepted or published by the Society of
95 Automotive Engineers or the International Standards Organizations; or (ii) a service information
96 system integrated and entirely self-contained within the vehicle including, but not limited to,
97 service information systems integrated into an onboard display or which provide direct access to
98 service information through a non-proprietary interface such as Ethernet, Universal Serial Bus,
99 Digital Versatile Disc. Each manufacturer shall provide access to the diagnostic and repair
100 information system through such interface device in the same form and in the same manner and
101 provide the same diagnostic and repair information, including technical updates, as is made
102 available to dealers utilizing such information system; provided, however, that such information

103 system is not under contract, user agreement or warranty by a manufacturer or dealer. Nothing in
104 this chapter shall apply to telematics or other remoter services or information.

105 Notwithstanding the provisions of this chapter to the contrary, no manufacturer
106 shall be prohibited from making proprietary tools available to franchised dealers if such tools aid
107 in warranty or recall repairs. Provision of such proprietary tools under this paragraph shall not
108 constitute a violation of this chapter even if such tools provide functions not available through
109 the interface set forth in clause (i) of the preceding paragraph if such proprietary tools are also
110 available to the aftermarket through the interface set forth in clause (i) or (ii) of the preceding
111 paragraph, upon fair and reasonable terms, once the term of the warranty or recall campaign has
112 expired and if owners still require such repairs specified in the warranty or recall campaign,
113 taking into account the factors set forth in 40 CFR 86.1808-01.

114 (d) Manufacturers of motor vehicles sold in the commonwealth shall exclude
115 diagnostic, service and repair information necessary to reset an immobilizer system or security-
116 related electronic modules from information provided to owners and independent repair
117 facilities. Information necessary to reset an immobilizer system or security-related electronic
118 modules shall be obtained by dealers, owners and independent motor vehicle repair facilities
119 through the secure data release model system as currently used by the National Automotive
120 Service Task Force or other known, reliable and accepted system.

121 Section 3. Nothing in this chapter shall be construed to require a manufacturer to divulge
122 a trade secret.

123 Section 4. Notwithstanding any general or special law or any rule or regulation to the
124 contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere

125 with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise
126 agreement executed and in force between a dealer and a manufacturer including, but not limited
127 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a
128 manufacturer pursuant to such franchise agreement; provided, however, that any provision in
129 such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's
130 compliance with this chapter shall be void and unenforceable.

131 Section 5. (a) A violation of this chapter shall be deemed to be an unfair method of
132 competition and an unfair or deceptive act or practice in the conduct of trade or commerce in
133 violation of section 2 of chapter 93A. In addition to the remedies available under said chapter
134 93A, the court shall assess damages in an amount not less than \$5,000 per violation. An
135 independent repair facility or a motor vehicle owner alleging that it has been denied access to:
136 diagnostic and repair information; a functionally equivalent manufacturer's diagnostic scan tool;
137 or the failure of a universal interface as required by subsection (c) of section 2 to obtain repair
138 information and to interact successfully with the manufacturer's so-called repair information
139 cloud shall, as a pre-condition to filing an action under said chapter 93A alleging a violation of
140 this chapter, file a complaint with the attorney general. Such complaint may include, but not be
141 limited to, the following: (i) written information confirming that the complainant has visited the
142 relevant manufacturer website and attempted to effect a proper repair utilizing information
143 provided on such website, including communication with technician assistance via a
144 manufacturer's toll-free call-in assistance, if made available by such manufacturer; (ii) written
145 information confirming that the complainant has obtained and utilized the relevant
146 manufacturer's scan or diagnostic tool necessary for such repair; and (iii) written affirmation
147 confirming that the complainant sought the assistance of other applicable information sources to

148 effect the necessary repair including an information request to the National Automotive Service
149 Task Force or to an established automobile repair information entity, if practicable. The attorney
150 general shall review the complaint and may issue an order to the manufacturer to resolve the
151 complaint in favor of the complainant within 30 days or shall conduct mediation between the
152 complainant and the manufacturer that is the subject of the complaint to resolve the alleged
153 complaint. The cost of mediation shall be born equally by all parties involved in the mediation.
154 In the event such mediation does not resolve the dispute to the complainant's satisfaction within
155 90 days after mediation has commenced, the complainant may file an action under said chapter
156 93A. Failure by a manufacturer to comply with the mediation required under this section shall
157 be deemed a violation of this chapter.

158 (b) In the event of a dispute concerning the determination of fair and reasonable terms
159 under this chapter, the parties may agree to binding arbitration under the rules of the American
160 Arbitration Association or, absent such agreement, either party may initiate an action in the
161 superior court for relief under chapter 231A.”