

HOUSE No. 228

The Commonwealth of Massachusetts

PRESENTED BY:
Garrett J. Bradley

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 passage of the accompanying bill:
An Act creating a civil legal action to be enforced by the Attorney General of the Commonwealth to protect an individuals right to repair an automobile.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Garrett J. Bradley	3rd Plymouth
John D. Keenan	7th Essex
Rosemary Sandlin	3rd Hampden
Brian P. Wallace	4th Suffolk
Paul Kujawski	8th Worcester
Jay R. Kaufman	15th Middlesex
Patricia A. Haddad	5th Bristol
Katherine Clark	32nd Middlesex
Joyce A. Spiliotis	12th Essex
John W. Scibak	2nd Hampshire
Mark V. Falzone	9th Essex
Robert L. Rice, Jr.	2nd Worcester
John F. Quinn	9th Bristol
Steven J. D'Amico	4th Bristol
Theodore C. Speliotis	13th Essex
James T. Welch	6th Hampden
Martin J. Walsh	13th Suffolk
William Smitty Pignatelli	4th Berkshire
David M. Nangle	17th Middlesex
Harold P. Naughton, Jr.	12th Worcester
Peter v. Kocot	1st Hampshire
William N. Brownsberger	24th Middlesex
Kevin J. Murphy	18th Middlesex
Viriato Manuel deMacedo	1st Plymouth
Thomas A. Golden, Jr.	16th Middlesex
Lewis G. Evangelidis	1st Worcester
Robert F. Fennell	10th Essex
Kathi-Anne Reinstein	16th Suffolk
Robert J. Nyman	5th Plymouth

Katherine Clark	32nd Middlesex
John J. Binienda	17th Worcester
Alice Hanlon Peisch	14th Norfolk
Stephen R. Canessa	12th Bristol

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT CREATING A CIVIL LEGAL ACTION TO BE ENFORCED BY THE ATTORNEY GENERAL OF THE COMMONWEALTH TO PROTECT AN INDIVIDUAL'S RIGHT TO REPAIR AN AUTOMOBILE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws of Massachusetts as appearing in the 2006th Edition of the official Acts is hereby amended by inserting after Chapter 100A the following Chapter, 100B

Section 1. Whereas, an individual's rights to repair an automobile in the Commonwealth are being denied in certain instances, it is essential the Attorney General be empowered to take actions necessary to protect such rights; and

Whereas the ability to diagnose, service and repair a motor vehicle in a timely, reliable and affordable manner is essential to the safety and well-being of individuals in the Commonwealth; and

Whereas individuals are entitled to choose among competing repair facilities for the convenient, reliable and affordable repair of their motor vehicles; and

Whereas, independent motor vehicle repair facilities operating in a free market economy should have access to vehicle repair information and functional diagnostic tools; and

Whereas increased competition among motor vehicle repair facilities will benefit vehicle owners in the Commonwealth; and

Whereas computers of various kinds are commonly being used in motor vehicle systems, such as pollution control, transmission, antilock brakes, electronic and mechanical systems, heating and air conditioning, tire pressure and steering; and

Whereas the diagnosis, service and repair of these vehicle systems are essential to the safe and proper operation of motor vehicles; and

Whereas, motor vehicle owners and independent motor vehicle repair facilities in the Commonwealth should have the right to obtain all information necessary to provide for the diagnosis, service and repair of a motor vehicle.

The General Court finds that to reestablish an equitable auto repair industry in the Commonwealth whereby all repair shops have equal access to complete repair information and functional diagnostic tools necessitates that motor vehicle owners and independent repair shops have access to the legal system through a civil remedy to enforce the provisions of this act.

Section 2. As used in this Chapter the following words, unless the content clearly requires otherwise shall have the following meanings:

The term “authorized dealer” means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

The term “authorized motor vehicle repair facility” means a person or business that is associated with an authorized dealer or motor vehicle manufacturer.

The term “independent motor vehicle repair facility” means a person or business that is not associated with a manufacturer’s authorized dealer of motor vehicles and which is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines.

The term "manufacturers" means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers new motor vehicles□

The term “motor vehicle” as defined in section 1 of Chapter 90 of m.g.l.

The term “motor vehicle owner” means any person who owns, leases, or otherwise has the legal right to use and possess a motor vehicle, or the agent of such person.

The term “trade secret” means a formula, process device, or other business information that is kept confidential to maintain an advantage over competitors including a formula, patterns, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use.

SECTION 3. The manufacturers of any motor vehicles which are sold in the Commonwealth shall: Provide to any independent motor vehicle repair facility in the Commonwealth all information related to the proper and complete diagnosis, service, and repair of the vehicle, including all non-emission-related service information or training information. The motor vehicle manufacturer shall permit any independent motor vehicle repair facility in the Commonwealth to acquire any diagnostic tools relating to the proper and complete diagnosis, service, and repair of the vehicle on a non-discriminatory basis, from a

similar manufacturer of the tools, and at a similar cost that is charged to an authorized dealer and any authorized motor vehicle repair facility of the manufacturer of a motor vehicle sold in the Commonwealth. The motor vehicle manufacturer shall also provide aftermarket tool companies with diagnosis, service, and repair information that will allow them to manufacture tools with the same functional characteristics as those tools made available by the manufacturers to authorized dealers and any authorized motor vehicle repair facility.

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

(a)The same information for the diagnosis, service, or repair of any motor vehicle sold in the Commonwealth by a manufacturer and which the manufacturer makes available to an authorized dealership and any authorized motor vehicle repair facility. This information must be made available in the same form and in the same manner as it is made available to the repair facilities of an authorized dealer and any authorized motor vehicle repair facility of the motor vehicle, and must include all information, including any diagnostic codes used to activate all controls that must be activated by the repair facility in order to diagnose, service, and repair the motor vehicle.

(b)The same diagnostic tools and software capabilities, including wireless capabilities, related to the diagnosis and repair of a motor vehicle that the manufacturer makes available to an authorized dealership and any authorized motor vehicle repair facility of the motor vehicle. All diagnostic tools, wireless capabilities, and software capabilities must be made available for purchase at a reasonable and non-discriminatory price.

SECTION 4. Nothing in this Act will require a motor vehicle manufacturer to divulge information that is a trade secret. No information may be withheld by a manufacturer on the ground that it is a trade secret if that information is provided (directly or indirectly) to an authorized dealer and any authorized motor vehicle repair facility.

SECTION 5. A motor vehicle owner or an independent motor vehicle repair facility may bring a notice of complaint for a violation of this act to the Attorney General's office which shall no later than 90 days from receipt of said notice make a determination as to whether a hearing shall be held on the complaint. The Attorney General shall render a decision no later than 60 days from the date of the hearing. Any person in violation of the provisions of this act, in addition to any other penalty provided by law, shall be liable for a penalty of not more than \$10,000 for the first offense and not more than \$20,000 in each subsequent offense.

A motor vehicle owner or an independent motor vehicle repair facility may institute a civil action for enforcement of this act in any court of competent jurisdiction. A prevailing plaintiff is entitled to recover the costs of litigation including reasonable attorney fees.

The attorney general may institute a civil action for enforcement of this provision in the superior court of Suffolk County.

SECTION 6. This act shall apply to all motor vehicles manufactured after model year nineteen hundred and ninety four.