

SENATE No. 124

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen J. Buoniconti

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 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:
Stephen J. Buoniconti	Hampden
Hedlund, Robert (SEN)	Plymouth and Norfolk
Joan Menard	First Bristol and Plymouth
Tarr, Bruce (SEN)	First Essex and Middlesex
Michael R. Knapik	Second Hampden and Hampshire
James E. Timilty	Bristol and Norfolk
Susan C. Tucker	Second Essex and Middlesex
Michael W. Morrissey	Norfolk and Plymouth
James B. Eldridge	Middlesex and Worcester
Marc R. Pacheco	First Plymouth and Bristol
Jennifer L. Flanagan	Worcester and Middlesex
James B. Eldridge	Middlesex and Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 The term “trade secret” means a formula, process device, or other business information that is kept
43 confidential to maintain an advantage over competitors including a formula, patterns, compilation,
44 program, device, method, technique, or process that derives independent economic value, actual or

45 potential, from not being generally known or readily ascertainable by others who can obtain economic
46 value from its disclosure or use.

47 **SECTION 3.** The manufacturers of any motor vehicles which are sold in the Commonwealth
48 shall:

49 Provide to any independent motor vehicle repair facility in the Commonwealth all information related to
50 the proper and complete diagnosis, service, and repair of the vehicle, including all non-emission-related
51 service information or training information. The motor vehicle manufacturer shall permit any
52 independent motor vehicle repair facility in the Commonwealth to acquire any diagnostic tools relating to
53 the proper and complete diagnosis, service, and repair of the vehicle on a non-discriminatory basis, from a
54 similar manufacturer of the tools, and at a similar cost that is charged to an authorized dealer and any
55 authorized motor vehicle repair facility of the manufacturer of a motor vehicle sold in the
56 Commonwealth. The motor vehicle manufacturer shall also provide aftermarket tool companies with
57 diagnosis, service, and repair information that will allow them to manufacture tools with the same
58 functional characteristics as those tools made available by the manufacturers to authorized dealers and
59 any authorized motor vehicle repair facility.

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

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

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

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

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

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

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

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