

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

In the Year Two Thousand and Nine

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:

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 being
4 denied in certain instances, it is essential the Attorney General be empowered to take actions necessary to
5 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 otherwise
27 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 shall:

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

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

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

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

73 **SECTION 4.** Nothing in this Act will require a motor vehicle manufacturer to divulge information that is
74 a trade secret. No information may be withheld by a manufacturer on the ground that it is a trade secret if

75 that information is provided (directly or indirectly) to an authorized dealer and any authorized motor
76 vehicle repair facility.

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

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

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

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