

# **HOUSE . . . . . No. 3757**

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## **The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, November 12, 2013.

The committee on Consumer Protection and Professional Licensure to whom was referred the joint petition (accompanied by bill, House, No. 184) of Garrett J. Bradley, John A. Hart, Jr., and others relative to making corrective changes to the "Right to Repair" law, so-called, reports recommending that the accompanying bill (House, No. 3757) ought to pass.

For the committee,

JOHN W. SCIBAK.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act to reconcile Chapter 241 and Chapter 368 of the Acts of 2012.

*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. Chapter 93J of the General Laws, as inserted by Chapter 241 of the Acts of  
2 2012, is hereby repealed.

3           SECTION 2. Chapter 93J of the General Laws, as inserted by Chapter 368 of the Acts of  
4 2012, is hereby repealed.

5           SECTION 3. The General Laws are hereby amended by inserting after chapter 93J the  
6 following chapter:-

7

8           CHAPTER 93K

9           Section (1) As used in this chapter, the following words shall, unless the context clearly  
10 indicates a different meaning, have the following meanings:

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

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

21 “Fair and Reasonable Terms”. In determining whether a price is on “fair and reasonable  
22 terms,” consideration may be given to relevant factors, including, but not limited to, the  
23 following:

24 (i) The net cost to the manufacturer franchised dealerships for similar information  
25 obtained from manufacturers, less any discounts, rebates, or other incentive programs.

26 (ii) The cost to the manufacturer for preparing and distributing the information, excluding  
27 any research and development costs incurred in designing and implementing, upgrading or  
28 altering the onboard computer and its software or any other vehicle part or component.  
29 Amortized capital costs for the preparation and distribution of the information may be included.

30 (iii) The price charged by other manufacturers for similar information.

31 (iv) The price charged by manufacturers for similar information prior to the launch of  
32 manufacturer web sites.

33 (v) The ability of aftermarket technicians or shops to afford the information.

34 (vi) The means by which the information is distributed.

35 (vii) The extent to which the information is used, which includes the number of users,  
36 and frequency, duration, and volume of use.

37 (viii) Inflation.

38 "Immobilizer system", an electronic device designed for the sole purpose of preventing  
39 the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting  
40 without the correct activation or authorization code.

41 “Independent repair facility”, a person or business operating in the commonwealth that is  
42 not affiliated with a manufacturer or manufacturer’s authorized dealer of motor vehicles, which  
43 is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle  
44 engines; provided, however, that, for the purposes of this chapter, a dealer, notwithstanding its  
45 affiliation with any manufacturer, shall be considered an independent repair facility for purposes  
46 of those instances when said dealer engages in the diagnosis, service, maintenance or repair of  
47 motor vehicles or motor vehicle engines that are not affiliated with the dealer’s franchise  
48 manufacturer.

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

51 "Motor vehicle", a vehicle, originally manufactured for distribution and sale in the United  
52 States, driven or drawn by mechanical power and manufactured primarily for use on public  
53 streets, roads and highways, but excluding: (i) a vehicle that may be operated only on a rail line;

54 (ii) a recreational vehicle or auto home equipped for habitation; (iii) an ambulance; (iv) a bus,  
55 motor coach or trackless trolley designed for the carriage of persons for hire or for school-related  
56 purposes; (v) vehicles used exclusively for the building, repair and maintenance of highways or  
57 designed primarily for use elsewhere than on the traveled part of ways; (vi) any vehicle with a  
58 gross vehicle weight rating of more than 14,000 pounds; (vii) any vehicle excluded from the  
59 definition of "motor vehicle" in chapter 90; and (viii) a motorcycle, as defined in section 1 of  
60 chapter 90.

61 "Owner", a person or business who owns or leases a motor vehicle registered in the  
62 commonwealth.

63 "Trade secret", anything, tangible or intangible or electronically stored or kept, which  
64 constitutes, represents, evidences or records intellectual property including secret or  
65 confidentially held designs, processes, procedures, formulas, inventions, or improvements, or  
66 secret or confidentially held scientific, technical, merchandising, production, financial, business  
67 or management information, or anything within the definition of 18 U.S.C. § 1839(3).

68 Section (2)(a) Except as provided in subsection (2)(e), for Model Year 2002 motor  
69 vehicles and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make  
70 available for purchase by owners of motor vehicles manufactured by such manufacturer and by  
71 independent repair facilities the same diagnostic and repair information, including repair  
72 technical updates, that such manufacturer makes available to its dealers through the  
73 manufacturer's internet-based diagnostic and repair information system or other electronically  
74 accessible manufacturer's repair information system. All content in any such manufacturer's  
75 repair information system shall be made available to owners and to independent repair facilities  
76 in the same form and manner and to the same extent as is made available to dealers utilizing such  
77 diagnostic and repair information system. Each manufacturer shall provide access to such  
78 manufacturer's diagnostic and repair information system for purchase by owners and independent  
79 repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable  
80 terms.

81 (2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any  
82 independent repair facility or other third party provider in a format that is standardized with other  
83 manufacturers, and on terms and conditions more favorable than the manner and the terms and  
84 conditions pursuant to which the dealer obtains the same diagnostic, service or repair  
85 information, shall be prohibited from requiring any dealer to continue purchasing diagnostic,  
86 service, or repair information in a proprietary format, unless such proprietary format includes  
87 diagnostic, service, repair or dealership operations information or functionality that is not  
88 available in such standardized format.

89 (2)(c)(i) For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor  
90 vehicles sold in the commonwealth shall make available for purchase by owners and independent

91 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless  
92 capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate  
93 the same functional repair capabilities that such manufacturer makes available to dealers. Each  
94 manufacturer shall offer such tools for sale to owners and to independent repair facilities upon  
95 fair and reasonable terms.

96 (2)(c)(ii) Any diagnostic tool or information necessary to diagnose, service or repair a  
97 motor vehicle that a manufacturer sells to any independent repair facility in a manner and on  
98 terms and conditions more favorable than the manner and the terms and conditions pursuant to  
99 which the dealer obtains the same diagnostic tool or information necessary to diagnose, service  
100 or repair a motor vehicle, shall also be offered to the dealer in the same manner and on the same  
101 terms and conditions as provided to such independent repair facility.

102 Any manufacturer that sells to any independent repair facility any diagnostic tool  
103 necessary to diagnose, service or repair a motor vehicle and such diagnostic tool communicates  
104 with the vehicle using the same non-proprietary interface used by other manufacturers, the  
105 manufacturer delivering such a diagnostic tool shall be prohibited from requiring any dealer from  
106 continuing to purchase that manufacturer's proprietary tool and interface unless such proprietary  
107 interface has a capability not available in the non-proprietary interface.

108 (2)(c)(iii) Each manufacturer shall provide diagnostic repair information to each  
109 aftermarket scan tool company and each third party service information provider with whom the  
110 manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole  
111 purpose of building aftermarket diagnostic tools and third party service information publications  
112 and systems. Once a manufacturer makes such information available pursuant to this section, the  
113 manufacturer will have fully satisfied its obligations under this section and thereafter not be  
114 responsible for the content and functionality of aftermarket diagnostic tools or service  
115 information systems.

116 (2)(d)(i) Commencing in Model Year 2018, except as provided in subsection (2)(e),  
117 manufacturers of motor vehicles sold in the commonwealth shall provide access to their onboard  
118 diagnostic and repair information system, as required under this section, using an off-the-shelf  
119 personal computer with sufficient memory, processor speed, connectivity and other capabilities  
120 as specified by the vehicle manufacturer and: (i) a non-proprietary vehicle interface device that  
121 complies with the Society of Automotive Engineers SAE J2534, the International Standards  
122 Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or  
123 published by the Society of Automotive Engineers or the International Standards Organizations;  
124 or, (ii) an on-board diagnostic and repair information system integrated and entirely self-  
125 contained within the vehicle including, but not limited to, service information systems integrated  
126 into an onboard display, or (iii) a system that provides direct access to on-board diagnostic and  
127 repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial  
128 Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board

129 diagnostic and repair information available to their dealers, including technical updates to such  
130 on-board systems, through such non-proprietary interfaces as referenced in this paragraph.

131 Nothing in this Chapter shall be construed to require a dealer to use the non-proprietary  
132 vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this  
133 subsection, nor shall this Chapter be construed to prohibit a manufacturer from developing a  
134 proprietary vehicle diagnostic and reprogramming device, provided that (i) the manufacturer also  
135 complies with Section 2(d)(i), and (ii) the manufacturer also makes this device available to  
136 independent repair facilities upon fair and reasonable terms, and otherwise complies with Section  
137 2(a).

138 (2)(d)(ii) No manufacturer shall be prohibited from making proprietary tools available to  
139 dealers if such tools are for a specific specialized diagnostic or repair procedure developed for  
140 the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR  
141 579.5, or performance of a specific technical service bulletin or recall after the vehicle was  
142 produced, and where original vehicle design was not originally intended for direct interface  
143 through the non-proprietary interface set out in (2)(d)(i). Provision of such proprietary tools  
144 under this paragraph shall not constitute a violation of this chapter even if such tools provide  
145 functions not available through the interface set forth in (2)(d)(i), provided such proprietary tools  
146 are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection  
147 (2)(d)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-  
148 proprietary equivalent as set forth in (2)(d)(i), for diagnostic or repair procedures that fall outside  
149 the provisions of (2)(d)(ii) or to otherwise operate in a manner inconsistent with the requirements  
150 of (2)(d)(i).

151 (2)(e) Manufacturers of motor vehicles sold in the commonwealth may exclude  
152 diagnostic, service and repair information necessary to reset an immobilizer system or security-  
153 related electronic modules from information provided to owners and independent repair  
154 facilities. If excluded under this paragraph, the information necessary to reset an immobilizer  
155 system or security-related electronic modules shall be obtained by owners and independent repair  
156 facilities through the secure data release model system as currently used by the National  
157 Automotive Service Task Force or other known, reliable and accepted systems.

158 (2)(f) With the exception of telematics diagnostic and repair information that is provided  
159 to dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to  
160 an independent repair facility via the tools specified in 2(c)(i) and 2(d)(i) above, nothing in this  
161 chapter shall apply to telematics services or any other remote or information service, diagnostic  
162 or otherwise, delivered to or derived from the vehicle by mobile communications; provided,  
163 however, that nothing in this chapter shall be construed to abrogate a telematics services or other  
164 contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a  
165 dealer. For purposes of this chapter, telematics services include but are not limited to automatic  
166 airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location,

167 remote door unlock, transmitting emergency and vehicle location information to public safety  
168 answering points as well as any other service integrating vehicle location technology and  
169 wireless communications. Nothing in this chapter shall require a manufacturer or a dealer to  
170 disclose to any person the identity of existing customers or customer lists.

171           Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge  
172 a trade secret.

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174           Section (4) Notwithstanding any general or special law or any rule or regulation to the  
175 contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere  
176 with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise  
177 agreement executed and in force between a dealer and a manufacturer including, but not limited  
178 to, the performance or provision of warranty or recall repair work by a dealer on behalf of a  
179 manufacturer pursuant to such franchise agreement; provided, however, that any provision in  
180 such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's  
181 compliance with this chapter shall be void and unenforceable.

182           Section (5) Nothing in this chapter shall be construed to require manufacturers or dealers  
183 to provide an owner or independent repair facility access to non-diagnostic and repair  
184 information provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to  
185 the terms of a franchise agreement.

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187           Section (6)(a) In addition to any other remedies that may be available under law, a  
188 violation of this chapter shall be deemed to be an unfair method of competition and an unfair or  
189 deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter  
190 93A.

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192           Section (6)(b) An independent repair facility or owner who believes that a manufacturer  
193 has failed to provide information or a tool required by this chapter must notify the manufacturer  
194 in writing through the National Automotive Service Task Force (NASTF) Service Information  
195 Request process or its successor organization or process, and give the manufacturer thirty (30)  
196 days from the time the manufacturer receives the complaint to cure the failure. If the  
197 manufacturer cures said complaint within the cure period, damages shall be limited to actual  
198 damages in any subsequent 93A litigation.

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200           Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to  
201 (6)(b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure,  
202 the independent repair facility or owner may file a complaint in the superior court, or if  
203 applicable in the federal district court for the district of Massachusetts. Such complaint shall  
204 include, but not be limited to the following: (i) written information confirming that the  
205 complainant has visited the relevant manufacturer website and attempted to effect a proper repair  
206 utilizing information provided on such website, including communication with customer  
207 assistance via the manufacturer's toll-free call-in assistance, if made available by such  
208 manufacturer; (ii) written information confirming that the complainant has obtained and utilized  
209 the relevant manufacturer's scan or diagnostic tool necessary for such repair; and (iii) evidence  
210 of manufacturer notification as set out in (6)(b).

211           Section (6)(d) Except in the instance of a dispute arising between a franchisor  
212 manufacturer and its franchisee dealer related to either party's compliance with an existing  
213 franchise agreement, which is required to be resolved pursuant to chapter 93B, a dealer shall  
214 have all the rights and remedies provided in this chapter, including, but not limited to, in the  
215 instance when exercising rights and remedies as allowed as an independent repair facility under  
216 chapter 93K.