

Senate, No. 2517

[Senate, June 24, 2010 - Substituted by amendment by the Senate (Senator Hart) for Senate, No. 2268]



**The Commonwealth of Massachusetts**

---

IN THE YEAR OF TWO THOUSAND AND NINE

---

**AN ACT** TO PROTECT MOTOR VEHICLE OWNERS' AND INDEPENDENT REPAIRERS' 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 MOTOR VEHICLE DIAGNOSIS, SERVICE INFORMATION AND RIGHT TO  
5 REPAIR.

6 Section 1. As used in this chapter the following words shall, have the following  
7 meanings, unless the context clearly requires otherwise:—

8 "Authorized motor vehicle repair facility" a person or business that is associated with an  
9 authorized dealer or motor vehicle manufacturer.

10 "Dealer", a business authorized by a new vehicle manufacturer to lease or sell the  
11 manufacturer's new motor vehicles at retail, under a franchise agreement; provided, however, that the  
12 business is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle  
13 engines under the franchise agreement.

14 "Franchise agreement", an oral or written arrangement for a definite or indefinite  
15 period in which a manufacturer or distributor grants to a dealer a license to use a trade name, service  
16 mark or related characteristic and in which there is a community of interest in the marketing of new  
17 motor vehicles or services related thereto at wholesale, retail, leasing or otherwise; provided, however,  
18 this shall include the performance or provision of a warranty or recall repair work by a dealer on behalf  
19 of a manufacturer.

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

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

25 "Motor vehicle owner" a person who owns, leases or otherwise has the legal right to use and  
26 possess a motor vehicle or the agent of that person.

27           “Trade secret” a formula, pattern, device or compilation of information which is used in a  
28 business, which gives the business an opportunity to obtain an advantage over competitors who do not  
29 know or use it and which the business has taken all reasonable and proper steps to keep secret; provided,  
30 however, that a trade secret does not include matters of public knowledge or of general knowledge in an  
31 industry.

32           Section 2. The manufacturer of a motor vehicle sold in the commonwealth shall make  
33 available for purchase to independent motor vehicle repair facilities and motor vehicle owners  
34 in a non-discriminatory basis and cost as compared to the terms and costs charged to an  
35 authorized dealer or authorized motor vehicle repair facility all diagnostic, service and repair  
36 information that the manufacturer makes available to its authorized dealers and authorized  
37 motor vehicle repair facilities in the same form and the same manner as it is made available to  
38 authorized dealers or an authorized motor vehicle repair facility of the motor vehicle. The  
39 distribution of such information shall be in a form and manner that does not alter or affect the  
40 contractual relationship between the manufacturer and its authorized dealer; provided, however,  
41 that such contractual relationship shall not alter the manner and form of diagnostic service and  
42 repair information that independent repair facilities obtain through a manufacturers repair  
43 website.

44           The information must include, but is not limited to, the following: (1) all diagnostic,  
45 service and repair information and tools related to the proper and complete diagnosis, service  
46 and repair of a motor vehicle including any diagnostic codes used to activate all controls that are  
47 required to be activated by a repair technician to diagnose, service and repair the motor vehicle;  
48 and (2) tools and software capabilities, including wireless capabilities, related to the diagnosis,  
49 service and repair of a motor vehicle.

50           Section 3. (a) Failure to comply with the requirements of section 2 shall be an unfair or  
51 deceptive trade act or practice under section 2 of chapter 93A. A motor vehicle owner or an independent  
52 motor vehicle repair facility may institute a civil action for equitable relief or damages in any court of  
53 competent jurisdiction as a remedy for the violation.

54           (b) No person may bring an action against a manufacturer under this section unless the person  
55 has first provided documentation which shall include, but not be limited to, the following requirements:

- 56 (1) the person shall provide written information confirming that the person has visited the relevant  
57 manufacturer website and attempted to effect a proper repair utilizing information provided on the  
58 website, including communication with technician assistance if made available by the manufacturer; and  
59 (2) the person shall provide a written affirmation confirming that the person sought the assistance of  
60 other applicable information sources to effect the necessary repair, including, but not limited to, the  
61 assistance of the National Automotive Service Task Force, if practicable.

62           Section 4. Notwithstanding any other general or special law or rule or regulation to the  
63 contrary, nothing in this chapter shall require a motor vehicle manufacturer to divulge  
64 information that is a trade secret or other such proprietary information related to the  
65 development or use of the manufacturer's repair and diagnostic tools, equipment and parts,  
66 except pursuant to a valid contract or agreement executed by a manufacturer and the other  
67 person

68           Section 5. Notwithstanding any other general or special law or rule or regulation to the contrary,  
69 nothing in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or  
70 alter the terms of a franchise agreement and the business practices of the parties thereunder, executed  
71 and in force between a dealer and a manufacturer, including, but not limited to, the performance or  
72 provision of warranty or recall repair work by a dealer on behalf of a manufacturer under the franchise

73 agreement; provided, however, that any provision in the franchise agreement that purports to waive,  
74 avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.