

**HOUSE . . . . . No. 282**

The Commonwealth of Massachusetts

PRESENTED BY:  
**James J. O'Day**

*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 guaranteeing consumers ownership of, privacy of, and access to motor vehicle diagnostic, repair and service information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James J. O'Day	14th Worcester District
Carlo P. Basile	1st Suffolk
Dennis Rosa	4th Worcester
Stephen L. DiNatale	3rd Worcester
Steven J. D'Amico	4th Bristol
Anne M. Gobi	5th Worcester
Jennifer L. Flanagan	Worcester and Middlesex
Joyce A. Spiliotis	12th Essex
William N. Brownsberger	24th Middlesex
Mary E. Grant	6th Essex
John W. Scibak	2nd Hampshire
Cleon H. Turner	1st Barnstable
John D. Keenan	7th Essex
William Lantigua	16th Essex
James Cantwell	4th Plymouth
Karen E. Spilka	Second Middlesex and Norfolk
Denise Provost	27th Middlesex
William Smitty Pignatelli	4th Berkshire
Christopher N. Speranzo	3rd Berkshire
Barbara A. L'Italien	18th Essex
Christine E. Canavan	10th Plymouth
Allen J. McCarthy	7th Plymouth
Bruce E. Tarr	First Essex and Middlesex
Patricia A. Haddad	5th Bristol
James Dwyer	30th Middlesex
Michael Brady	9th Plymouth
Stephen R. Canessa	12th Bristol
William G. Greene, Jr.	22nd Middlesex
Robert L. Rice, Jr.	2nd Worcester

Michael O. Moore	Second Worcester
Ellen Story	3rd Hampshire
F. Jay Barrows	1st Bristol
Elizabeth Poirier	14th Bristol
David B. Sullivan	6th Bristol
Katherine Clark	32nd Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 296 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### AN ACT GUARANTEEING CONSUMERS OWNERSHIP OF, PRIVACY OF, AND ACCESS TO MOTOR VEHICLE DIAGNOSTIC, REPAIR AND SERVICE INFORMATION.

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

SECTION 1. It is hereby found and declared:

Whereas motor vehicles are now equipped with sophisticated and complex computerized monitoring and diagnostic systems; and whereas complete and accurate diagnostic, service and repair information needs to be available to vehicle owners and all motor vehicle service industry sectors in order to properly, safely, and affordably diagnose problems with, maintain, and repair vehicles; and whereas such complete and accurate diagnostic, service and repair information may not presently be readily available to vehicle owners and all motor vehicle service industry sectors; it is determined that it is necessary to enact legislation that will assure that such accurate diagnostic service and repair information be readily available, so that the safety of the public in Massachusetts is protected and so that the public can be assured of obtaining safe and affordable diagnosis, service, and repair of their motor vehicles, and it is the purpose of this Act so to do.

SECTION 2. The General Laws are hereby amended, by inserting after Chapter 93I thereof the following Chapter: --

Chapter 93J. Motor Vehicle Diagnostic, Repair and Service Information

Section 1. Definitions. The following words and phrases, as used in this chapter, unless the text otherwise requires or a different meaning is specifically required, shall mean--

(a) "New vehicle manufacturer" or "original equipment manufacturer" or "OEM", a business that manufactures or builds new motor vehicles and then distributes such motor vehicles through dealers that they authorize to lease and / or sell the motor vehicles at retail.

(b) "Dealer", a business authorized by a new vehicle manufacturer to lease and / or sell the manufacturer's new motor vehicles at retail, and which is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines.

(c) "Independent motor vehicle repair facility", a business that is not a dealer and which is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines.

(d) "The aftermarket", independent motor vehicle repair facilities, used car dealers, and third party suppliers of motor vehicle repair related information and technology, including, but not limited to, businesses providing diagnostic, service and repair information for motor

vehicles, information service providers, Internet based services, aftermarket scan tool providers, and technical telephone support services.

(e) "Firmware", instructions that are stored in electronic device memory, used to control the electronic device, without which such device would not function. "Firmware" includes, but is not limited to, an embedded instruction set to control the operation of logical hardware found in motor vehicle monitoring and /or control systems.

(f) "Application software", software that is loaded onto computers and electronic devices, utilized to perform tasks for the users of the computers or devices, including, but not limited to word processing, database, spreadsheet, and diagnostic programs.

(g) "Software", programs and applications for a computer or other electronic device, and programs and applications that can be run on a computer system or other electronic device system, including, but not limited to, operating systems, firmware, and application software.

(h) "Vehicle data", the set of data that a motor vehicle's computer and / or electronic device systems and firmware or application software records or produces, including, but not limited to, a live data stream, diagnostic trouble codes (DTC), computerized self-test results, bi-directional operation, global positioning system (GPS) location, all malfunction indicator lamp (MIL) or check engine light status, stored memory data and adaptive memory data, any or all of which are transmitted through the vehicle's computers, electronic devices, and communication network or BUS or any additional or emerging technology.

(i) "Interactive monitoring service" means a service that a vehicle lessee or owner utilizes to remotely monitor the vehicle, including, but not limited to, services for determining motor vehicle service intervals and maintenance requirements, for detecting defects by retrieving diagnostic trouble codes, for retrieving vehicle identification numbers for reference, firmware or software revision numbers or parts numbers, for global positioning system location, for air bag status, for vehicle mileage, and for analyzing vehicle data or any other information indicating the condition of the vehicle. "Interactive monitoring service" includes so-called OnStar and other similar remote monitoring systems.

(j) "Flash", to embed or copy firmware or application software permanently onto an electronically erasable and programmable read only memory (EEPROM) chip.

(k) "Proprietary", pertaining to privately owned property or data, including knowledge or data that is protected by a patent, copyright, or trademark.

(l) "Trade secret", a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or readily ascertainable, by which a business may attempt to obtain an economic advantage over competitors or in soliciting customers.

## Section 2. Vehicle Component Ownership

Whenever a motor vehicle that has been manufactured or built by a new vehicle manufacturer is leased or purchased from a dealer within the Commonwealth, or leased or purchased from any dealer and then titled, registered or operated within the Commonwealth, such lease or purchase shall constitute lease or purchase of a complete product from the original equipment manufacturer (OEM) and from the dealer. The lease or purchase shall in all instances include the engine, power train, frame, body, electrical system, mechanical and electronic control systems and subsystems, computerized modules, communication network or BUS, and digital computer code that make computerized modules perform specific functions. Except as otherwise provided in this Chapter, such computer code and all software included with the vehicle or any of its components shall be considered part of the vehicle and owned by the lessee or purchaser.

Notwithstanding anything else contained herein, the OEM research and development process for creating vehicle components, including the process of creating firmware, may be a trade secret which the OEM is not required to release or disclose to dealers, lessees, purchasers, the aftermarket, or others.

### Section 3. Vehicle Data Ownership.

For purposes of Section 2 of this Chapter, vehicle data shall be considered a component of the vehicle. Upon lease or purchase of a new motor vehicle, all vehicle data which relates to the way in which the vehicle lessee or owner operates the vehicle and the communication of the data throughout the vehicle shall be property owned by the lessee or purchaser and not by the OEM or dealer.

### Section 4. Service and Repair Information.

(a) With the consent of a motor vehicle's lessee or owner, dealers, motor vehicle purchasers, and the aftermarket shall have the right to access all diagnostic, service and repair information for a motor vehicle, the same referring to all information relating to items required by an OEM as a condition of continuing a warranty for a new motor vehicle for a lessee or purchaser, relating to appropriate diagnostics, service and repairs performed to keep a motor vehicle warranty in force, relating to service, maintenance and parts that may allow a motor vehicle lessee or owner to extend the life of a motor vehicle, and relating to or necessary for the proper repair of a vehicle that suffers collision damage.

(b) Diagnostic, service and repair information for a motor vehicle shall include but not be limited to (i) diagnostic trouble code (DTC) information, (ii) systems description and operations, (iii) complete wiring diagrams, (iv) diagnostic procedures, (v) repair procedures, (vi) technician training and materials, (vii) non part-producing related specifications, both mechanical and electronic in nature, (viii) technical service bulletins (TSB), (ix) hot line technical support data, (x) recalls, and (xi) firmware upgrades for enhanced vehicle operation.

(c) The process of developing diagnostic, service and repair information may be a protected trade secret of a new vehicle manufacturer; and the diagnostic, service and repair information itself may be proprietary to the OEM. Nevertheless, the motor vehicle lessee or owner and the aftermarket shall in all instances have the right to access all diagnostic, service and repair information. Diagnostic, service and repair information shall not be a trade secret of the new vehicle manufacturer, and shall not be protected by a new vehicle manufacturer or dealer in any manner that would create a competitive advantage for them.

(d) All diagnostic, service and repair information shall be disseminated to dealers, vehicle lessees or owners, and the aftermarket in a nondiscriminatory manner by new vehicle manufacturers. Diagnostic, service and repair information shall not be bundled to inflate purchase prices or to require multiple purchases to acquire one complete set of diagnostic, service and repair information by a vehicle lessee or owner or the aftermarket, or in any manner to create a competitive advantage. Diagnostic, service and repair information disseminated by new vehicle manufacturers shall be complete for the purposes for which it is to be utilized; no additional reference material or device shall be needed to interpret the information.

### Section 5. Vehicle Data Privacy.

A lessee or owner of a motor vehicle shall have a right to privacy with regard to vehicle data. No OEM, dealer, or other entity shall have the right to access or collect vehicle data by way of a motor vehicle's communication BUS, either through wired or wireless means. Access to vehicle data without the express written authorization of the vehicle lessee or owner is

prohibited, except in the case of an emergency when lives or safety of the public may be endangered.

#### Section 6. Right to Access Vehicle Data.

With the authority of, and upon the request of, a motor vehicle's lessee or owner, a dealer, individual, or independent motor vehicle repair facility or other aftermarket entity shall have the right to access all of a motor vehicle's module functions and data in the vehicle's computer memory, firmware or software and transferred on the communication BUS. An OEM or dealer is prohibited from restricting access to the vehicle data and communication BUS. Such access shall include disclosure of research and development information, including but not limited to firmware, software, data, memory, and BUS configurations to the aftermarket for the purpose of developing tools to access the vehicle data by the aftermarket on behalf of a vehicle's lessee or owner.

#### Section 7. Interactive Monitoring Services.

(a) Whenever a motor vehicle is equipped for interactive monitoring, the vehicle lessee or owner shall have the right to choose the form in which interactive monitoring vehicle data will be sent and to whom it will be sent. An OEM or dealer shall not mandate that interactive monitoring vehicle data be sent to an entity which it chooses, and may not prohibit a vehicle lessee or owner from directing that the vehicle data be sent to a dealer, individual, aftermarket facility, or other entity of the lessee's or owner's choice.

(b) Whenever a dealer leases or sells a motor vehicle equipped with an interactive monitoring device, the dealer shall disclose in a separate writing at the time of the lease or sale, in a clear and conspicuous manner, exactly what vehicle data may be transferred through the interactive monitoring service, including, but not limited to, such data as GPS location, vehicle speed, stored DTC, MIL status, or any other vehicle data or information on the vehicle communication BUS. The lessee or purchaser shall in all instances be given the right to choose what data is and is not to be monitored and transferred, and for what purposes.

(c) If a motor vehicle lessee or owner contracts with an interactive monitoring service provider, such vehicle lessee or owner shall at all times have the right to change interactive monitoring service providers, without penalty, upon written notice to the provider. Further, upon written notice to the provider, the vehicle lessee or owner shall at all times have the right to change the interactive monitoring service vehicle data that is being collected and to whom it is sent or distributed.

#### Section 8. Software Installation.

(a) An OEM may install software in computers and / or electronic devices that are component parts of new motor vehicles and continue to retain ownership of the motor vehicle's computer code and /or device code; provided, however, that the OEM and dealer must disclose that the OEM is doing so at the time of new vehicle lease or purchase, and provided further that a clearly identified and separate global End User's License Agreement (EULA) must be entered into with the lessee or purchaser at the time of lease or purchase.

(b) The EULA required by this section must allow the lessee or purchaser to transfer their rights under the EULA upon transfer of the vehicle at no cost to the lessee or purchaser or to the transferee and must disclose a good faith estimate of the applicable software life expectancy.

(c) All software installed by an OEM in a new motor vehicle shall be viable for the life expectancy of the vehicle, or shall be replaced or upgraded by the OEM or dealer at a reasonable cost when either defects are detected and repaired or when new enhancements become available when the vehicle is out of warranty.

(d) An OEM or dealer cannot separately charge a motor vehicle lessee or purchaser for, or separately lease to a motor vehicle purchaser or lessee, software installed by the OEM, and cannot charge a separate service or maintenance fee for such software.

(e) If an OEM installs software in components of a new motor vehicle, it may not include clocks, calendars or any other counter functions that cause either the software to cease to fully function in any manner at a predetermined time or mileage.

(f) If a new motor vehicle is equipped with application software rather than firmware, then only the application software itself shall be subject to this section; and, the vehicle data created by the computerized module and application software shall at all times be owned by the vehicle lessee or owner, to the same extent as if the vehicle were equipped with firmware.

#### Section 9. Module Programming.

(a) Firmware or application software that is not permanently embedded in a motor vehicle's computer or electronic device module shall be capable of being loaded to the module through module reprogramming or flash process. Neither firmware nor the flash process shall be considered a trade secret and software owned by the OEM shall not be treated as proprietary to the OEM, provided that the applicable computer code is not decompiled.

(b) Every version of firmware and application software utilized or installed in a motor vehicle shall have a unique, easily identifiable part number or product code and shall be available for purchase and installation in the same manner as other replaceable components of the vehicle.

(c) Flash processes developed or utilized by an OEM shall not include a decompiling process, and such flash processes are to be made readily available to dealers, independent repair facilities and to aftermarket tool manufacturers for tool development.

#### Section 10. Security.

Digital security information related to a motor vehicle shall be proprietary to the vehicle lessee or owner and not the OEM or dealer. A digital security code or information shall be issued by an OEM to a lessee or purchaser of a new motor vehicle such as a secure personal identification number. A digital security code shall also be issued by an OEM to a subsequent lessee or owner of a vehicle upon satisfactory proof of identity and lease or ownership of the vehicle.

Security codes may be obtained from an OEM or dealer by presenting a copy of the vehicle lessee's or owner's driver's license and vehicle registration or title. An independent repair facility may also obtain security codes for a vehicle by presenting an additional letter of request signed by the vehicle owner and duly notarized. The information will be provided in a reasonable and useful format. The process of recoding security data is not to be kept as trade secret and must be made available to the dealer, vehicle lessee or owner and the aftermarket.

The process of developing a vehicle's security system shall be considered the OEM's trade secret and an OEM shall not be required to disclose such process to a dealer, motor vehicle lessee or purchaser, or the aftermarket.

#### Section 11. Original Condition.

A motor vehicle lessee or owner shall at all times have the right to have a damaged or defective motor vehicle diagnosed, serviced or repaired to its original condition. An OEM may not discriminate in the manner of dissemination of any product or information to motor vehicle lessees, owners, dealers, or the aftermarket, when such information is to be provided to support a vehicle new car warranty, or for the purpose of restoring a damaged motor vehicle to original or pre-accident condition. Such products and information shall include the sale of firmware or software revisions to the aftermarket and the distribution of new and remanufactured parts by an

OEM to authorized new car dealers. Authorized new car dealers may not discriminate in the manner of sale of new or remanufactured OEM parts to motor vehicle lessees or owners or to the aftermarket.

#### Section 12. Regulatory Authority.

The executive office of consumer affairs and business regulation may issue regulations for the enforcement and interpretation of this Chapter.

Notwithstanding any general or special law, or any rule or regulation to the contrary, the office of consumer affairs and business regulation shall not promulgate any rule or regulation that:

(a) Interferes with the authority of the Administrator of the United States Environmental Protection Agency under section 202(m) of the Clean Air Act (42 U. S. C. 752 l(m)) with regard to motor vehicle emissions control diagnostic systems; or

(b) Conflicts with any rule or regulation prescribed by the Administrator of the United States Environmental Protection Agency under that Act.

#### Section 13. Penalties.

A new vehicle manufacturer that manufactures a motor vehicle that is leased, sold, owned, registered, or operated in the Commonwealth, in addition to any other penalty provided by law, shall be subject to a civil penalty of not more than \$10,000.00 for the first offense and not more than \$20,000.00 for the second and each subsequent offense for any violation of the provisions of this Chapter.

In the event that is an ongoing noncompliance with the provisions of this Chapter, a new vehicle manufacturer shall be subject to a civil penalty of not more than \$20,000.00 after each period of sixty days of ongoing noncompliance.

The attorney general or the secretary of consumer affairs and business regulation may institute a civil proceeding for enforcement of this Chapter, and may seek injunctive relief in addition to any penalty being sought.