

HOUSE No. 02654

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 consumer ownership of, privacy of, and access to motor vehicle computer data .

PETITION OF:

NAME:

James J. O'Day

DISTRICT/ADDRESS:

14th Worcester

HOUSE No. 02654

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 2654) of O'Day relative to guaranteeing consumer ownership of, privacy of, and access to motor vehicle computer data Joint Committee on Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act guaranteeing consumer ownership of, privacy of, and access to motor vehicle computer data .

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. It is hereby found and declared:

2 Whereas motor vehicles are now equipped with sophisticated and complex computerized
3 monitoring and diagnostic systems; and whereas the data created in vehicle's computer systems
4 is personal property of the consumer.

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

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

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

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

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

16 (c) “The aftermarket”, independent motor vehicle repair facilities, used car dealers, and third
17 party suppliers of motor vehicle repair related information and technology, including, but not
18 limited to, businesses providing diagnostic, service and repair information for motor vehicles,
19 information service providers, Internet based services, aftermarket scan tool providers, and
20 technical telephone support services.

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

25 (e) “Software”, programs and applications for a computer or other electronic device, and
26 programs and applications that can be run on a computer system or other electronic device
27 system, including, but not limited to, operating systems, firmware, and application software.

28 (f) “Vehicle data”, the set of data that a motor vehicle’s computer and / or electronic device
29 systems and firmware or application software records or produces, including, but not limited to,
30 a live data stream, diagnostic trouble codes (DTC), computerized self-test results, bi-directional
31 operation, global positioning system (GPS) location, all malfunction indicator lamp (MIL) or

32 check engine light status, stored memory data and adaptive memory data, any or all of which are
33 transmitted through the vehicle's computers, electronic devices, and communication network or
34 BUS or any additional or emerging technology.

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

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

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

48 Section 2. Vehicle Component Ownership

49 Whenever a motor vehicle that has been manufactured or built by a new vehicle manufacturer is
50 leased or purchased from a dealer within the Commonwealth, or leased or purchased from any
51 dealer and then titled, registered or operated within the Commonwealth, such lease or purchase
52 shall constitute lease or purchase of a complete product from the original equipment
53 manufacturer (OEM) and from the dealer. The lease or purchase shall in all instances include the

54 engine, power train, frame, body, electrical system, mechanical and electronic control systems
55 and subsystems, computerized modules, communication network or BUS, and a royalty free
56 perpetual license in and to all digital computer code or firmware that make computerized
57 modules perform specific functions.

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

62 Section 3. Vehicle Data Ownership.

63 For purposes of Section 2 of this Chapter, vehicle data regarding, or generated by, the use of a
64 vehicle shall be considered a component of the vehicle. Upon lease or purchase of a new motor
65 vehicle, all vehicle data which relates to the way in which the vehicle lessee or owner operates
66 the vehicle and the communication of the data throughout the vehicle shall be property owned by
67 the lessee or purchaser and not by the OEM or dealer; excluding, however, licensed or
68 copyrighted products or data used in vehicle systems that may provide driver information or are
69 part of vehicle entertainment systems, such as map data used for navigation systems and digital
70 music.

71 Section 4. Vehicle Data Privacy.

72 A lessee or owner of a motor vehicle shall have a right to privacy with regard to vehicle data. No
73 OEM, dealer, or other entity shall have the right to access or collect vehicle data by way of a
74 motor vehicle's communication BUS, either through wired or wireless means. Access to vehicle

75 data without the express written authorization of the vehicle lessee or owner is prohibited, except
76 in the case of an emergency when lives or safety of the public may be endangered.

77 Section 5. Right to Access Vehicle Data.

78 With the authority of, and upon the request of, a motor vehicle's lessee or owner, a dealer,
79 individual, or independent motor vehicle repair facility or other aftermarket entity shall have full
80 access to the data output of computer firmware and software including the right to access all of a
81 motor vehicle's module functions and data in the vehicle's computer memory, firmware or
82 software and transferred on the communication BUS. An OEM or dealer is prohibited from
83 restricting access to the vehicle data and communication BUS.

84 Section 6. Interactive Monitoring Services.

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

91 (b) Whenever a dealer leases or sells a motor vehicle equipped with an interactive monitoring
92 device, the dealer shall disclose in a separate writing at the time of the lease or sale, in a clear
93 and conspicuous manner, exactly what vehicle data may be transferred through the interactive
94 monitoring service, including, but not limited to, such data as GPS location, vehicle speed, stored
95 DTC, MIL status, or any other vehicle data or information on the vehicle communication BUS.

96 The lessee or purchaser shall in all instances be given the right to choose what data is and is not
97 to be monitored and transferred, and for what purposes.

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

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

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

111 (f) All firmware and software in components of a new motor vehicle, may not include clocks,
112 calendars or any other counter functions that cause either the firmware or software to cease to
113 fully function in any manner at a predetermined time or mileage.