

SENATE No. 02204

Senate, Tuesday, April 03, 2012 – Pursuant to the provisions of Senate Rule 19, the committee on Ways and Means (Brewer) reports the following committee bill relative to the right to repair (Senate, No. 2204).

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve
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An Act relative to the 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 RIGHT TO REPAIR

5 Section 1. As used in this chapter, the following words shall, unless the context clearly
6 indicates a different meaning, have the following meanings:

7 "Authorized repair facility", a person or business operating in the commonwealth that is
8 affiliated, by contract or otherwise, with an authorized dealer or motor vehicle manufacturer and
9 is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle
10 engines.

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

14 "Immobilizer system", an electronic device designed for the sole purpose of preventing
15 the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting
16 without the correct key code.

17 "Independent repair facility", a person or business operating in the commonwealth
18 engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle
19 engines and that is not affiliated with a manufacturer or a dealer.

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

22 "Motor vehicle", a vehicle driven or drawn by mechanical power and manufactured
23 primarily for use on public streets, roads and highways, but excluding: (i) a vehicle that may be
24 operated only on a rail line; (ii) a recreational vehicle or auto home equipped for habitation; (iii)
25 an ambulance; (iv) a bus, motor coach or trackless trolley designed for the carriage of persons for
26 hire or for school-related purposes; (v) vehicles used for purposes other than the transportation of
27 property and incapable of being driven at a speed exceeding 12 miles per hour and used
28 exclusively for the building, repair and maintenance of highways or designed especially for use
29 elsewhere than on the travelled part of ways; (vi) any vehicle with a gross vehicle weight rating
30 of more than 10,000 pounds; and (vii) any vehicle excluded from the definition of "motor
31 vehicle" in chapter 90.

32 "Owner", a person or business who owns, leases or otherwise has the legal right to use
33 and possess a motor vehicle or the agent of such person.

34 "Trade secret", anything tangible or intangible or electronically kept or stored, which
35 constitutes, represents, evidences or records a secret scientific, technical, merchandising,
36 production or management information, design, process, procedure, formula, invention or
37 improvement.

38 Section 2. (a) Except as provided in subsection (d), for vehicles manufactured in 2002
39 and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available
40 for purchase by owners of motor vehicles manufactured by such manufacturer and by
41 independent repair facilities the same diagnostic and repair information, including repair
42 technical updates, that such manufacturer makes available to its dealers and authorized repair
43 facilities through the manufacturer's Internet-based diagnostic and repair information system or
44 other electronically accessible manufacturers repair information system. All content in any such
45 manufacturer's repair information system shall be made available to owners and to independent
46 repair facilities in the same form and manner and to the same extent as is made available to
47 dealers and authorized repair facilities utilizing such diagnostic and repair information system.
48 Each manufacturer shall provide access to such manufacturer's diagnostic and repair information
49 system for purchase by owners and independent repair facilities on an hourly, daily, monthly or
50 yearly subscription basis and upon such terms and at a cost no greater than the fair market value
51 for such access and shall not discriminate against such owners or independent repair facilities as
52 compared with the terms and costs charged to dealers or authorized repair facilities.

53 (b) For vehicles manufactured in 2002 and thereafter, each manufacturer of motor
54 vehicles sold in the commonwealth shall make available for purchase by owners and independent
55 repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless
56 capabilities that such manufacturer makes available to its dealers and authorized motor vehicle
57 repair facilities. Such tools shall incorporate the same functional repair capabilities that such
58 manufacturer makes available to dealers and authorized repair facilities. Each manufacturer
59 shall offer such tools for sale to owners and to independent repair facilities upon such terms and
60 at a cost no greater than the fair market value for such tools and shall not discriminate against
61 such owners or independent repair facilities as compared to the terms and costs charged by such
62 manufacturer to dealers or authorized repair facilities.

63 (c) Commencing in 2015, except as provided in subsection (d), manufacturers of motor
64 vehicles sold in the commonwealth shall provide access to their diagnostic and repair
65 information system, as required under this section, through a non-proprietary vehicle interface
66 device that complies with SAE J2534, or any successor as may be recognized or accepted by the
67 United States Environmental Protection Agency for purposes of 40 CFR § 86.1808-01(f). Each
68 manufacturer shall provide access to the diagnostic and repair information system through such
69 interface device in the same form and in the same manner and provide the same diagnostic and
70 repair information, including technical updates, as is made available to dealers and authorized
71 motor vehicle repair facilities utilizing such information system.

72 (d) Manufacturers of motor vehicles sold in the commonwealth shall exclude diagnostic,
73 service and repair information necessary to reset an immobilizer system or security-related
74 electronic modules from information provided to owners and independent repair facilities.
75 Information necessary to reset an immobilizer system or security-related electronic modules shall

76 be obtained by dealers, authorized motor vehicle repair facilities, owners and independent motor
77 vehicle repair facilities through the secure data release model system as currently used by the
78 National Automotive Service Task Force or other known, reliable and accepted law enforcement
79 Internet-based systems.

80 Section 3. Nothing in this chapter shall be construed to require a manufacturer to
81 divulge a trade secret.

82 Section 4. Nothing in this chapter shall be construed to abrogate, interfere with,
83 contradict or alter the terms of any agreement made by a manufacturer, dealer or authorized
84 repair facility executed and in force as of the effective date of this chapter. On and after January
85 1, 2013, no person shall make or enter an agreement that purports to waive, avoid, restrict or
86 limit a manufacturer's compliance with this chapter and any such agreement shall be void and
87 unenforceable.

88 Section 5. (a) Any violation of this chapter shall be deemed to be an unfair method of
89 competition and an unfair or deceptive act or practice in the conduct of trade or commerce in
90 violation of section 2 of chapter 93A. In addition to the remedies available under said chapter
91 93A, the court shall assess damages in an amount not less than \$10,000 per violation.

92 (b) In the event of a dispute concerning the determination of fair market value under this
93 chapter, the parties may agree to binding arbitration under the rules of the American Arbitration
94 Association or, absent such agreement, either party may initiate an action in the superior court
95 for relief under chapter 231A.