

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

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**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:

James J. O'Day

DISTRICT/ADDRESS:

14th Worcester District

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

## The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:*

- 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 complete and accurate diagnostic, service and  
4 repair information needs to be available to vehicle owners and all motor vehicle service industry  
5 sectors in order to properly, safely, and affordably diagnose problems with, maintain, and repair  
6 vehicles; and whereas such complete and accurate diagnostic, service and repair information may  
7 not presently be readily available to vehicle owners and all motor vehicle service industry  
8 sectors; it is determined that it is necessary to enact legislation that will assure that such accurate  
9 diagnostic service and repair information be readily available, so that the safety of the public in  
10 Massachusetts is protected and so that the public can be assured of obtaining safe and affordable  
11 diagnosis, service, and repair of their motor vehicles, and it is the purpose of this Act so to do.
- 12 SECTION 2. The General Laws are hereby amended, by inserting after Chapter 93I thereof the  
13 following Chapter: --
- 14 Chapter 93J. Motor Vehicle Diagnostic, Repair and Service Information
- 15 Section 1. Definitions. The following words and phrases, as used in this chapter, unless  
16 the text otherwise requires or a different meaning is specifically required, shall mean--
- 17 (a) "New vehicle manufacturer" or "original equipment manufacturer" or "OEM", a  
18 business that manufactures or builds new motor vehicles and then distributes such motor vehicles  
19 through dealers that they authorize to lease and / or sell the motor vehicles at retail.
- 20 (b) "Dealer", a business authorized by a new vehicle manufacturer to lease and / or sell  
21 the manufacturer's new motor vehicles at retail, and which is engaged in the diagnosis, service,  
22 maintenance, or repair of motor vehicles or motor vehicle engines.

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

26 (d) “The aftermarket”, independent motor vehicle repair facilities, used car dealers, and  
27 third party suppliers of motor vehicle repair related information and technology, including, but  
28 not limited to, businesses providing diagnostic, service and repair information for motor  
29 vehicles, information service providers, Internet based services, aftermarket scan tool providers,  
30 and technical telephone support services.

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

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

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

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

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

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

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

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

64 Section 2. Vehicle Component Ownership

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

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

### 79 Section 3. Vehicle Data Ownership.

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

### 85 Section 4. Service and Repair Information.

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

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

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

107 (d) All diagnostic, service and repair information shall be disseminated to dealers,  
108 vehicle lessees or owners, and the aftermarket in a nondiscriminatory manner by new vehicle  
109 manufacturers. Diagnostic, service and repair information shall not be bundled to inflate  
110 purchase prices or to require multiple purchases to acquire one complete set of diagnostic,

111 service and repair information by a vehicle lessee or owner or the aftermarket, or in any manner  
112 to create a competitive advantage. Diagnostic, service and repair information disseminated by  
113 new vehicle manufacturers shall be complete for the purposes for which it is to be utilized; no  
114 additional reference material or device shall be needed to interpret the information.

#### 115 Section 5. Vehicle Data Privacy.

116 A lessee or owner of a motor vehicle shall have a right to privacy with regard to vehicle  
117 data. No OEM, dealer, or other entity shall have the right to access or collect vehicle data by way  
118 of a motor vehicle's communication BUS, either through wired or wireless means. Access to  
119 vehicle data without the express written authorization of the vehicle lessee or owner is  
120 prohibited, except in the case of an emergency when lives or safety of the public may be  
121 endangered.

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

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

#### 132 Section 7. Interactive Monitoring Services.

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

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

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

#### 152 Section 8. Software Installation.

153 (a) An OEM may install software in computers and / or electronic devices that are  
154 component parts of new motor vehicles and continue to retain ownership of the motor vehicle's  
155 computer code and /or device code; provided, however, that the OEM and dealer must disclose  
156

157 that the OEM is doing so at the time of new vehicle lease or purchase, and provided further that a  
158 clearly identified and separate global End User's License Agreement (EULA) must be entered  
159 into with the lessee or purchaser at the time of lease or purchase.

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

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

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

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

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

#### 177 Section 9. Module Programming.

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

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

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

#### 189 Section 10. Security.

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

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

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

205 Section 11. Original Condition.

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

216 Section 12. Regulatory Authority.

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

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

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

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

227 Section 13. Penalties.

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

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

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