Initiative Petition Information Sheet

Title of Petition  An Act to Protect Motor Vehicle Owners and Small Businesses in Repairing Motor Vehicles  (v. D1)

Petition Number  11-17
(to be filled in by Attorney General’s Office staff)

Proponents’ Contact

Name  Arthur W. Kinsman

Residential Address  56 Crescent Street
City  Plympton  State  MA  Zip  02367
Phone  (781) 635-6912  Fax  (617) 248-9752
Email  awkinsman@yahoo.com

Business Address  9 Park Street, Suite 500
City  Boston  State  MA  Zip  02108
Phone  (617) 248-9772  Fax  (617) 248-9752

Proponents’ Attorney

Name  Carl Valvo and Thomas R. Kiley, Cosgrove, Eisenberg and Kiley, P.C.
City  1 International Pl., Boston  State  MA  Zip  01742
Phone  617-439-7775  Fax  617-330-8774
Email  cvalvo@ceklaw.net; trkiley159@aol.com.

Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?  Yes, but proposed summary may be submitted after August 8, 2011

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?  No, but proponents will submit legal memos as necessary upon request

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents’ Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition  PS
(to be filled in by Attorney General’s Office staff)

Date  8/3/2011
(to be filled in by Attorney General’s Office staff)
AN INITIATIVE PETITION

AN ACT TO PROTECT MOTOR VEHICLE OWNERS AND SMALL BUSINESSES IN REPAIRING MOTOR VEHICLES

Be it enacted by the People, and by their authority, as follows:

SECTION 1. The General Laws of Massachusetts shall be amended by inserting after chapter 93I the following new chapter 93J:—

CHAPTER 93J

MASSACHUSETTS RIGHT TO REPAIR ACT

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

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

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

"Immobilizer system", an electronic device equipped on a vehicle for the sole purpose of preventing the theft of that vehicle by preventing a vehicle from being started unless the correct key code is present.

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

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

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

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

Section 2. Commencing with new motor vehicle model year 2015 and thereafter, no manufacturer of a motor vehicle may sell or lease or offer for sale or lease, directly or through a dealer, a new motor vehicle without affording to the owner access to the same diagnostic and repair information relative to said new motor vehicle that the manufacturer makes available to its dealers and authorized repair facilities.

The manufacturer shall maintain a diagnostic and repair information system which shall enable the owner of the motor vehicle or the owner’s designated independent repair facility, the capability to utilize such system via the worldwide web or other electronically available manufacturer repair information system on a hourly, daily, monthly or yearly subscription basis at cost and terms that are no greater than fair market value and nondiscriminatory as compared with the terms and costs charged to dealers or authorized repair facilities.

Manufacturers shall provide access to their diagnostic and repair information system through a non-proprietary vehicle interface that complies with SAE J2534 as required by the United States Environmental Protection Agency in 40 CFR § 86.1808-01(f). The manufacturer’s diagnostic and repair information system shall provide the same diagnostic and repair information, including technical updates, which the manufacturer makes available to its dealers and authorized motor vehicle repair facilities. The content of said diagnostic and repair information system shall be in the same form and shall be accessed in the same manner as is available to dealers and authorized motor vehicle repair facilities utilizing said information system. Manufacturers shall exclude diagnostic, service and repair information necessary to reset a vehicle immobilizer system. Information necessary to reset a vehicle immobilizer system shall be obtained by dealers, authorized motor vehicle repair facilities, motor vehicle owners and independent motor vehicle repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted law enforcement Internet-based systems.

Section 3. Nothing in this chapter shall require a motor vehicle manufacturer to divulge a trade secret.

Section 4. Nothing in this chapter shall be interpreted or construed to abrogate, interfere with, contradict or alter the terms of any agreement made by a manufacturer, dealer, or authorized repair facility executed and in force as of the effective date of this chapter. On and after January 1, 2013, no person shall make or enter an agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter and any such agreement shall be void and unenforceable.
Section 5. Any violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter 93A. In the event of a dispute concerning the determination of fair market value under this chapter, the parties may agree to binding arbitration under the rules of the American Arbitration Association or, absent such agreement, either party may initiate an action in the superior court for relief under chapter 231A.

Pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment, the undersigned qualified voters of the Commonwealth of Massachusetts hereby submit the foregoing measure for approval by the people.

1 Glenn A Wilder – 21 Crickets Run – Hanover – MA – 02339
2 Arthur W. Kinsman – 56 Crescent Street – Plympton – MA – 02367
3 Alan S. Saks – 39 Canavan Drive – Braintree – MA -02184
4 John D. Caldwell Jr. – 3 Prescott Street – Boston – MA – 02129
5 Mary Ellen Doherty – 173 Woburn Street – Medford – MA – 02155
6 Steven A. Keady – 23 Hunter Lane – Canton – MA - 02021
7 Chrisann Gillen – 133 Commander Shea Blvd., Apt. 806 – Quincy – MA – 02171
8 John Daniel Caldwell – 3 Prescott Street – Boston – MA 02129
9 Paula A. Aiello – 67 Trowbridge Lane – Shrewsbury – MA – 01545
10 Jeffrey P. McLeod – 105 Pinehurst Road – Marshfield – MA - 02050
11 Sherry L. McLeod – 105 Pinehurst Road – Marshfield – MA - 02050
12 Noreen Caroline Camelo – 375 Swains Pond Ave. – Melrose –MA – 02176
13 Linda A Zablocki – 12 Leeds Street – Boston – MA – 02127
14 Dolores J. Pickup – 220 Gold Street, Unit 1 – Boston – MA – 02127
17 Mary C. Nee-Loftus – 1764 Columbia Road, #2 – South Boston – MA – 02127
18 Richard J. Charbonnier – 31 Northern Spy Road – Franklin – MA - 02038