

Objection to LD 442 An Act to Amend the Automotive Repair Statute

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Honorable Members of the Committee,

My name is Jeffrey Groves. I was the Chief Legal Officer of O'Reilly Auto Parts when I retired from the company in 2023. I now live in Yarmouth, Maine. I had the privilege of serving on the Attorney Generals Working Group regarding the implementation of the existing right-to-repair law as the representative of the Automotive Aftermarkets distributors and retailers. I have both general and specific objections to the bill before you now. Before I get into those, I would like to share with you some of the takeaways from my service on the working group with respect to the idea of automotive right to repair.

- I was surprised to learn that everyone on the working group seemed to supportive of the idea of automotive right-to-repair. We did not however always agree on how that should be accomplished.
- I was surprised to learn that those members of the working group representing Tesla and the coalition of auto makers known as the Alliance, seem to agree with me about the continued need for owners and independent repairers to have access to diagnostic, maintenance and repair data. An acknowledgment, if you will, that there really isn't any way that dealers could handle the volume of repairs they would see if owners and independent repairers weren't allowed to get the information it takes to fix a vehicle.
- I was also surprised to learn from public comments made during working group meetings that some had a fundamental misunderstanding about the purpose of the automotive right-to-repair referendum. As technology has advanced, car manufacturers have leveraged it to replace older methods of obtaining diagnostic and repair information. If you have an older car, and you have

a check engine light come on, you can take it to the shop or even your local O'Reilly store and have them "pull the trouble code" from a dongle inserted into what is called the OBD (On Board Diagnostic) II Port. The code will identify generally what your issue is and may even allow you to make a very educated conclusion on what it will take to make the light go off. I should note, the average age of motor vehicles on the road today is 12.7 years.

In newer cars, say those made in 2022 and beyond (it varies with by manufacturer), diagnostic maintenance and repair data is generated by the vehicle and provided to the manufacturer in real time, and then to their authorized dealer through the vehicles telematics system which sends the information through a cellular connection or perhaps through a Wi-Fi connection. It is, in effect, a closed loop. But, the vehicle owner is not in that loop nor is their independent mechanic. The fundamental misunderstanding I mentioned is the growing scope of the problem. Older cars without telematics are being repaired because their diagnostic, maintenance and repair data continues to be available through the OBDII Port on the vehicle. New car warranties vary. But the fact is, many of the cars with the closed loop telematic systems are still under warranty and are being repaired by the dealer because that warranty was part of the consideration when you agreed to that car. But without the right-to-repair, when that vehicle is out of warranty, your independent mechanic, the one just down the street, may not be able to fix your car because they don't have the ability to get the diagnostic maintenance and repair data generated by your vehicle. So, you are left with taking your car to the dealership. Or, perhaps, you might be able to pay the manufacturer to sell you the data to your own vehicle. Telematics does allow the OEMs to monetize all sorts of data.

This has happened to me. I had a check engine light come on my Volkswagen. My local independent mechanic didn't have the ability to access my diagnostic and repair data. They referred me to a Volkswagen dealer. I called closest dealer (10 miles). They had a 7 week wait

time for an appointment. I called the next closest dealer (30 miles). They said if I would bring the car to them and leave it, they would work me in over the next week. That's what I did. When they called with the diagnosis, they told me I just needed a new battery. They priced a new battery at \$500. The retail price of a battery from O'Reilly was \$245. I was able to talk the dealership into allowing me to have O'Reilly supply the battery. However, they did charge for diagnosis and installation of the battery. If my mechanic would have been able to have my information, they could have taken care of my check engine light issue for around \$175 less than what I ultimately paid which was about \$400 less than if I simply told them "yes" to their \$500 battery plus diagnosis and installation. Because I had no choice but to take my vehicle to the dealer to be diagnosed, it took over a week longer and cost 35% more.

My general objection to this bill – In November 2003, 84% of Maine voters approved the Right-to-Repair referendum. I believe they overwhelmingly supported the ballot issue because they believe they should own their own vehicles diagnostic, maintenance and repair data and because they want to continue to have a choice in repairing their own vehicle or directing the repair to a mechanic of their choice and not be confined to a dealership where their repair will take longer and on the average cost over 35% more.

The Attorney General's working group was set up to focus on the language of the referendum and to make suggested changes. For those of you who have not read the report of the working group, we came to a number of unanimous conclusions and proposed changes in the statute that I believe the legislature should implement. However, I should point out that despite the title of LD 292, "*An Act to Implement the Automotive Right to Repair Working Group Recommendations*", it does NOT represent the unanimous recommendations of the working group. The advisory commission to the Attorney General, as called for in the unanimous suggestions of the working group, would be made up of

stakeholders from all sides of this issue and who are in a better position to decide and make suggestions about what, if any, additional changes ought to be made to the existing law. I would ask you not to throw away the working group's five months of labor and more importantly, at the same time, tell 84% of Maine voters that their voice in 2023 didn't matter because the proponent of this bill has decided to in effectively substitute her judgment about whether they deserve a meaningful right-to-repair.

Now on to my Specific Objections to this bill:

- The bill repeals the voice of the people.
- Section 1 of the bill repeals telematics from the law and effectively allows the OEMs to continue to have the "closed loop" system I referred to earlier in this testimony. To the extent they provide any information to owners or independent shops, owners and independent shops will get only that which the grace of the manufacturer will allow and only in the method and manner of the manufacturer's choosing. This change ignores the primary way vehicles now communicate diagnostic maintenance and repair data. It will allow the manufacture sole and unbridled discretion about whether to supply information, under what terms, and would allow them to effectively monetize telematic diagnostic maintenance and repair data, even for vehicles out of warranty. This will drive business to dealerships and away from the hundreds of independent repair shops in Maine. This will cause consumers to wait longer for repairs, pay more for repairs, and lose any choice they may have about who repairs their vehicle all while allowing manufacturers a monopoly on data, repair and parts. These changes are hostile to Maine small businesses and Maine jobs.
- Section 2 of the bill repeals the definition of telematics because if you take out telematics, you don't need to define it. Why confuse anyone by a reference to a right they once had but this bill has taken away?

- But, the bill goes even further. Section 3 of the bill repeals all language regarding the Right-to-Repair. It is as if it never happened. 84% of Mainers were given the right to choose and now, before it can really be implemented it is simply being repealed.
- Finally, Section 4 of the bill omits the Telematics Notice because . . . see 1,2 and 3 above.

I believe your conclusion here should be the same as mine. This bill repeals this existing law, flies in the face of that which 84% of voters approved in November 2023. It fails to consider the 5 months of labor put in by the Attorney General's office and the working group and it does so even before we know whether the existing law has real implementation issues, before the Governor has the opportunity to appoint stakeholders to the AG's advisory commission and before that commission can even meet to identify, discuss or come to conclusions or recommendations about the existing law. Rather, the proponent of this bill would repeal the existing law and recommendations of the working group in favor of the will and profits of global automakers while at the same time, hurting Maine consumers, Maine business and Maine jobs.