

Written Testimony and Objection to LD 1228 – An Act to Clarify Certain Terms in the Automotive Right to Repair Laws

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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 be 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 repair the vehicle. 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 – some older, some newer), that 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, you as the car owner are not in that loop, nor is your local 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 paid when you purchased 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.

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 the closest dealer (10 miles). They had a 7 week wait time to 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 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 2023, 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 the 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 recommendations for implantation and suggested changes to the law. 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 to the statute that I believe the legislature should implement. The advisory commission to the Attorney General, as called for in the unanimous suggestions of the working group, will be made up of stakeholders from all sides of this issue and who are in a better position to decide and make suggestions to you about what, if any, additional changes or definitions ought to be made or "clarified" in the existing law. I would ask you not to throw away the working group's five months of labor because the proponent of this bill has decided, without the benefit of allowing the existing law to

work, or the Attorney General's advisory group to even be assembled, meet or have any findings, that the existing law will not work without the additional changes.

Specific Objections to the bill

- The definition of "Diagnostic and Repair information" refers to "electronic messages transmitted between a diagnostic scan tool and an electronic control unit on board a motor vehicle."

Actually, diagnostic and repair data is generated by the vehicle itself. Currently, it is transmitted via cell service or the cloud to the manufacturer and then on to a dealer. Defining "information" in this way is an attempt to circumvent cyber secure direct access to the vehicle through means of cell or Wi-Fi which is how the manufacturers and dealers receive it.
- The definition of Independent Repair Facility omits heavy duty vehicles. There was ample public testimony during the working group from heavy duty owners and repairers that support leaving heavy duty applications in the law. Taking them out leaves heavy duty owners, including fleet owners, without any right-to-repair. And, taking out heavy duty ignores the result of the referendum where 84% of voters approved including it.
- The definition of mobile based application is too narrow. It should include any device that would allow a solution to facilitate accessing repair data.
- "Owner-authorized" is defined vaguely. What does "explicit" mean? To which "applicable laws" regarding privacy and data sharing must be followed and what privacy and data sharing laws are being proposed currently that will affect this? Why include the Driver's Privacy Protection Act of 1994 in this definition? The aftermarket has been clear that it does not want consumers personally identifiable information under the right-to-repair law but only that diagnostic, maintenance and repair data needed to affect a repair. This federal law referenced would arguably give information that identifies an individual, including an individual's photograph,

social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information. If you want to protect consumers PII, inclusion of this Act has the opposite effect.

- The section on “reliable and accepted systems” could easily be used to deny an owner or owner authorized independent repairer the data needed to affect a repair. It requires systems to be “validated” but doesn’t say by whom? Presumably the OEMs? It refers to regulatory standards but doesn’t include any specific reference to standards. The Code of Federal and State Regulations have many standards on many things. Finally, the section includes the phrase “tested for reliability and safety” but doesn’t mention by whom? Presumably again, the OEMs. Finally, the term standardized is used. I like that word in this context, but standardized by whom and what exactly is be standardized?
- The definition of repair appears to limit repair to mechanical parts to the exclusion of those modules in vehicles that might require to be flashed for them to work.
- The definition of “dealer” is already a fixed concept under Maine law – specifically Title 29, Chapter 9(1)(851) – which does not include item A(3) in this bill.
- The definition of “securely communicating” includes encryption which was never discussed in the working group as being needed. We all agreed however that data should be communicated in a cyber-secure manner and the existing law already requires that. It also refers to “secure data transmission protocols.” Given this lack of any definition, the language would allow the OEMs to argue against providing any data if they in their sole discretion when they establish rigid and restrict internal “secure data transmission protocols.” It will also create barriers for smaller independent repairers.
- The definition of Telematics is already adequate and includes all of those items specifically called out in the bill. Calling them out like this however might lead a reader to conclude that

telematics provides only safety related data. The existing law already requires data to be transmitted in a safe and secure manner.

- The bill defines a “manufacturer” only as a person engaged in the business of manufacturing motor vehicles but does not include corporations or other types of legal entities.
- The definition of “motor vehicle” excludes larger vehicles, all heavy-duty vehicles, and excludes any motor vehicle that would otherwise be covered IF it is used “primarily for commercial purposes.”

I believe your conclusion here should be the same as mine and that is this bill does not “clarify” definitions in the existing law. Rather, it makes substantive wholesale changes and it does so without any evidence that implementation of the existing law has required any of these changes and does so in a manner that does not favor Maine consumers or Maine businesses but rather favors global automakers. It wholly and completely ignores the 5 months of labor of the Attorney General’s Working Group and pre-emptively circumvents some of the work dedicated to the advisory commission to be appointed by the Governor. I would encourage you to give the law and the process defined by the working group a chance to work before considering passing bill.