

Written Testimony and Objection to LD 1394 – An Act to Support Maine’s Electric Vehicle Adoption Goals by Providing an Exclusion for Electric Vehicles from Certain Requirements of the Right to Repair Law

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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 General’s Working Group regarding the implementation of the existing right-to-repair law as the representative of the Automotive Aftermarket’s 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 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), 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 wifi 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 when you agreed to purchase 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 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 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. I do not believe the fact that my vehicle is not an EV or a plug-in hybrid would have made a difference.

- What I didn't learn in 5 months of meetings with the working group is why EVs or plug-in hybrids should be exempted from the existing law.

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 implemented. 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 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 without the benefit of allowing the existing law to work, her way better.

Now on to my Specific Objections to this bill:

- A representative of Tesla was on the Attorney General's Right-to-Repair Working group. At no time did he express that EVs should be exempt from the law simply because they are purely electric or a plug-in hybrid as defined by this bill. In fact, Tesla already has an existing program to allow repair called "Tesla Toolbox". It sells a proprietary scan tool with annual subscriptions reported to cost around \$3,000. In addition, Tesla offers shorter term subscriptions in certain situations.
- The proponents of this bill attended and spoke at both public hearings of the working group. Neither raised this issue.
- The proponents of this bill state that its purpose is to "support Maine's Electric Vehicle Adoptions Goals" by providing this exemption to the existing law. It stretches the very bounds of credulity to understand how such an exception could accomplish that. That implies consumers are going to make a purchasing decision in favor of an EV or plug-in hybrid because the legislature has seen fit to exempt their vehicle from a law that would otherwise give them direct access to their vehicles repair, maintenance and diagnostic data and a choice on who they have repair their vehicle when they run out of warranty.
- 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 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 does nothing to increase the number of EVs or plug-in hybrids in Maine. It does not benefit Maine consumers. It only takes away their choice. It doesn't benefit Maine businesses or jobs, because independent shops will not have the data available to repair their customer's vehicles. It will create an absolute monopoly on service of EVs and plug-in hybrids to the manufacturer's dealer. It will create an absolute monopoly on replacement parts for EVs and plug-in hybrids as only the OEM will be the supplier to the dealer. All of this, in turn, will lead to longer wait times and higher prices for consumers and as the EV fleet in Maine increases and ages, it will also lead to fewer jobs and independent repair shop closure. All of this adds up to less economic development and security in Maine as opposed to economic choice and more economic development.

I believe your conclusion here should be the same as mine and this is this bill does not support Maine's electric vehicle adoption goals. It does not favor Maine consumers or Maine jobs or businesses. The only stakeholders that benefit are the global automakers and their agents. This bill 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 including whether there is any reason for EVs and plug-in hybrids to be excluded from what 84% of Maine voters approved in November of 2023. I would encourage you to give the existing law and the process defined by the working group a chance to work before considering passing bill.