

June 9, 2020

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Greg Walden  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, DC 20515

Chairman Pallone and Ranking Member Walden:

I hope this finds you safe and well. I am writing in response to a June 3rd letter you may have received from the Alliance for Automotive Innovation, and I appreciate your consideration of the following points as you consider the issue mentioned in that letter.

The Auto Care Association, the trade association representing independent repair facilities, auto part retail stores, and aftermarket parts manufacturers and distributors takes particular exception to several of the blatant falsehoods in the Alliance letter, and believe it is imperative for policy makers to have a full understanding of the facts of the ballot initiative in question. Please note that from the outset that for the last several years, the aftermarket industry has attempted to work with the Alliance and its members to resolve our concerns regarding telematics and its impact on the competitive repair market. Unfortunately, our efforts at meaningful discourse have been ignored every step of the way.

Now, they are attempting to use scare tactics to overrun the rights of Massachusetts voters to make an important decision regarding not only access to the data transmitted by their vehicles, but also their ability to obtain competitive repairs for their vehicle. I have attached a recent letter from our industry to the Alliance that discuss our willingness to come to the table discuss this issue.

I want to emphasize that the cybersecurity risks presented are false and presented to detract from what is at risk for the vehicle manufacturers with the passage of this ballot initiative: their prioritization of monetizing vehicle data over consumers' access to vehicle repair. In a June 4<sup>th</sup> article on this topic, Politico reported (article attached) that a [2016 McKinsey study](#) showed that vehicle data "could be monetized to the tune of \$750 billion globally by 2030.

The current ballot question amends the Motor Vehicle Right to Repair law that was overwhelmingly approved by Massachusetts voters by an 86-14 percent margin in 2012. That initiative required vehicle manufacturers to provide independent repair shops with access to the same information, tools and

software that they provide their franchised dealers at a fair and reasonable cost. Following passage of the legislation, the car companies and the Auto Care Association and the Coalition for Auto Repair Equality signed a Memorandum of Understanding (MOU) whereby the manufacturers would agree to abide by the Massachusetts law nationwide.

This latest ballot initiative attempts to keep pace with actions by vehicle manufacturers to restrict access to on-board diagnostic systems and to transmit repair data wirelessly. Taken together, these actions are placing the manufacturer in the role of gatekeeper for vehicle data, eliminating choice for car owners and putting the independent aftermarket at a significant competitive disadvantage to the repair services provided by and on behalf of the manufacturer.

The Massachusetts ballot initiative, which is attached, would require that:

- Access to vehicle on board diagnostic systems be standardized and not require any authorization by manufacturer directly or indirectly unless the authorization system for access to vehicle networks and the OBD system is standardized across all makes and models and is administered by an entity unaffiliated with the manufacturer. **Similar to actions by the Energy and Commerce Committee in the 1990 Clean Air Act that required a standardized access to the OBD port, this provision would ensure that notwithstanding the need for cybersecurity protection, access to the vehicle's diagnostic system necessary for repair will not be proprietary.**
- Beginning with model year 2022, all manufacturers that utilize telematics systems are required to equip their vehicles with "an inter-operable, standardized and open access platform that is capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform." **It should be emphasized that contrary to the Alliance letter alleging that the initiative would pose "cybersecurity, personal safety, and privacy risks to the owner of the vehicle", the ballot question mandates that that access be "secure" and it only requires access to "mechanical data" and does not require that personal data be accessible.**
- Requires that manufacturers provide the capability for independents to send commands to vehicle components, but only if it is needed for purposes of maintenance, diagnostics and repair. **Therefore, manufacturers would not need to provide bi-directional capabilities unless they were necessary for repairing or maintaining the vehicle, keeping manufacturers in firm control of if, how and when bidirectional capabilities are required to be provided.**
- Mandates that prospective owners of motor vehicles receive a notice that includes an explanation of motor vehicle telematics and its purposes, a description summarizing the mechanical data collected stored and transmitted by a telematics system, and the owner's ability to access the vehicle's mechanical data through a mobile device and owner's right to authorize an independent shop to access the mechanical data for the purposes of diagnostics repair and maintenance. **This would be a significant change since at the current moment, car owners have little to no knowledge of the fact that their vehicle transmitting data.**

As the aftermarket has stated for the last several years, we are ready and willing to talk with the manufacturers regarding this issue. However, we strongly urge the Committee and Congress to let Massachusetts voters express their rights to decide this matter. Auto Care also remains willing to provide a technical briefing for the committee on how vehicle data can be safely and securely transmitted to independent shops with permission of the vehicle owner.

Thank you for your attention and please feel free to contact me should you have any questions.

Sincerely,



Aaron M. Lowe  
Senior Vice President  
Regulatory and Government Affairs

Cc: All Members of the Committee on Energy and Commerce

Enclosures

## Fight over car data in Massachusetts could go national

By Tanya Snyder

06/04/2020 01:18 PM EDT

A Massachusetts [ballot initiative](#) to decide whether independent car mechanics can access wireless vehicle data has mushroomed into a slug-fest between moneyed national interests, and could have implications for how that data is used across the country.

The state-level initiative proposes to expand a [2012 “right-to-repair” measure](#) that gave car owners and independent mechanics the right to the same diagnostic and repair information that automakers give dealers. The measure under consideration now would do the same for data that cars send wirelessly to dealers so they can warn owners, for example, of imminent parts failures.

The issue, for now, is limited to Massachusetts, which represents just [\\$21 billion](#) of the country’s \$1 trillion in auto dealer sales a year. But national groups are pouring boatloads of money into the fight, which, if history is any guide, could spread across the country and impact their bottom lines. The 2012 Massachusetts measure that resulted in the right-to-repair law went national in just over a year, after car companies afraid of a patchwork of vehicle regulations agreed to voluntarily abide by it in all 50 states.

“If the ballot initiative passes, it’s almost a certainty that a 50-state solution will have to be developed,” said Michelle Krebs, executive analyst with Cox Automotive. “The last thing the major automakers want is an unaligned patchwork of state regulations.”

National auto parts and repair coalitions have spent at least a million dollars, according to a [2019 filing](#) to the Massachusetts Office of Campaign and Political Finance, on a campaign that argues dealers are just seeking to maintain a monopoly. Auto manufacturers, meanwhile, have poured \$1.7 million, according to [their 2019 filing](#), into a campaign suggesting they want to protect consumer privacy and shield the data, which they say could be exposed to hackers if it is transmitted over the air.

As of this year, more than 90 percent of new cars will transmit real-time repair information wirelessly. Currently, real-time diagnostic information about a car’s systems — such as a brake on the verge of failing — is transmitted exclusively to dealers. But supporters of the ballot measure say car owners and independent mechanics should be able to get the same data.

“Cars are computers on wheels and there is real-time diagnostic information that independent repairers and owners aren’t getting,” said Tommy Hickey, a Boston-based lobbyist with a firm called Brian Hickey Associates. Hickey serves as the spokesperson for the Right to Repair coalition, which is [bankrolled mostly by national lobbying groups](#) for the aftermarket auto parts industry and car repair shops.

"It's like asking us to stick with mail when you're using email," Hickey said.

The Coalition for Safe and Secure Data, a group funded by [the two main automaker trade groups](#), warns that bad actors could hack into that wireless vehicle data, exposing not just repair information but also sensitive geolocation markers that could reveal where people go and when, which has obvious implications for safety.

The ballot initiative would task automakers with figuring out a way to send only the repair data — and not the more sensitive geolocation data — to consumers and their mechanics. The Alliance for Automotive Innovation, which represents nearly the entire auto manufacturing industry, declined to say whether existing vehicle data transmission systems are capable of separating that data.

Conor Yunits, a public relations consultant who serves as the spokesperson for the Coalition for Safe and Secure Data, says independent mechanics can access the car's repair data while it's in the shop, and insisted that nothing is transmitted over the air that is actually necessary for repair.

Hickey countered that the data mechanics can get by plugging in shows just a "snapshot," which can miss signs a breakdown is coming. He added that having this data enables dealerships to send warning messages — sometimes a voice over the car speaker or a message on the display — saying "hey, your starter's about to go out, why don't you drive to your local dealership, 8.6 miles away; press here to navigate to it."

The auto industry says it spends millions on data privacy and that the independent repair shops that want access don't have the cybersecurity infrastructure to properly secure it. Yunits told POLITICO the ballot measure would create a "hugely vulnerable" platform that would allow "real-time, two-way access to information," meaning mechanics — or hackers — could "write code into the vehicle."

[At a hearing on the issue in the state Legislature](#) earlier this year, MIT professor Bryan Reimer, the associate director of the New England University Transportation Center, said if the proposal were enacted, he "would advise manufacturers here to seriously consider not selling vehicles in the state."

"The risks of cyber warfare, leveraging vehicles as terrorist activities, is too high," he said.

DOT has not mandated any federal requirements on vehicle cybersecurity and data privacy, and Congress has so far failed to pass any overarching privacy legislation, despite years of attempts.

But Norma Krayem, a former DOT official who now chairs the cybersecurity, privacy and digital innovation practice at the lobbying firm Van Scoyoc Associates, said that while all over-the-air data transmission has its potential hazards, there's no reason to think independent mechanics — who have been adjusting to increasingly sophisticated car technology for decades — can't manage it.

"It's less a differentiation between a mom-and-pop and an [automaker] and more about clear standards

and requirements for anyone who's going to touch the vehicle," Krayem told POLITICO.

It's not just garage tinkerers and mom-and-pop auto shops who want the data. The [aftermarket industry wants to ensure](#) they can get full access to all relevant vehicle information too, so automakers don't corner the market on spare parts and accessories.

But the real money for automakers may not be in car repairs or spare parts, but rather in the data itself. A [2016 McKinsey study](#) found vehicle data showing how cars are used, "where they are and who is behind the wheel" could be monetized to the tune of \$750 billion globally by 2030.

*To view online:*

<https://subscriber.politicopro.com/transportation/article/2020/06/fight-over-car-data-in-massachusetts-could-go-national-1943265>

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May 19, 2020

Mr. John Bozzella  
President and CEO  
Alliance for Automotive Innovation  
1050 K Street NW, Suite 650  
Washington, DC 20001

Dear John,

Thank you for your letter regarding the Massachusetts ballot initiative. We agree that the industry must “align our strengths and stand together in order to minimize the negative impacts of COVID-19 and find new opportunities to work together to prepare for the near-term and long-term transformation expected in our industry.” We have been seeking this level of cooperation and open dialogue for the past several years and are pleased to know that the automakers are interested in reaching an agreement.

Over the past several years our associations have recognized the need for car owners to be aware of, and control access to, the data generated by their vehicles. In fact, our associations have reached out to your association as well as to individual manufacturers on several occasions over the last several years in an attempt to work cooperatively on a solution that will permit data being generated by vehicles to be securely available to shops where your customers want to have their vehicles serviced. Unfortunately, no progress has been accomplished from those attempts.

The Massachusetts Right to Repair Committee along with many of the groups copied on your letter will continue to pursue the ballot initiative in Massachusetts, however we all agree that a settlement prior to the July 1 deadline would be beneficial for all parties involved.

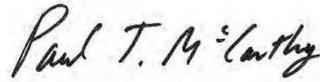
Per Massachusetts law, the Right to Repair Committee will not be able to withdraw the right to repair question from the November ballot after July 1. While a tight timeframe, we believe that the next month and a half provides an opportunity for both our industries to work together to reach an agreement that is in the best interest of U.S. vehicle owners. Although challenging, we want to emphasize that our side stands ready to meet as soon as possible to see if a solution can be reached.

Again, thank you for your letter and we look forward to working with the Alliance of Automotive Innovation to ensure that the motoring public has the knowledge and ability to control access to the repair data generated by today’s and tomorrow’s advanced vehicle systems.

Sincerely,

Handwritten signature of Bill Hanvey in black ink.

Mr. Bill Hanvey  
President and CEO  
Auto Care Association

Handwritten signature of Paul T. McCarthy in black ink.

Mr. Paul McCarthy  
President  
Automotive Aftermarket Suppliers Association

Handwritten signature of Ray Fisher in blue ink.

Mr. Ray Fisher  
Executive Director  
Automotive Service Association

Handwritten signature of Ray Pohlman in black ink.

Mr. Ray Pohlman  
President  
Coalition for Auto Repair Equality

# The Commonwealth of Massachusetts

## An Initiative Law to Enhance, Update and Protect the 2013 Motor Vehicle Right to Repair Law

*Be it enacted by the People and by their authority,*

**SECTION 1.** Section 1 of Chapter 93K of the General Laws is hereby amended by inserting after the definition of “Manufacturer” the following definition: —

“Mechanical data”, any vehicle-specific data, including telematics system data, generated, stored in or transmitted by a motor vehicle used for or otherwise related to the diagnosis, repair or maintenance of the vehicle.

Section 1 of said Chapter 93K is hereby further amended by inserting after the definition of “Owner” the following new definition:—

“Telematics system,” any system in a motor vehicle that collects information generated by the operation of the vehicle and transmits such information, in this chapter referred to as “telematics system data,” utilizing wireless communications to a remote receiving point where it is stored.

**SECTION 2.** Section 2 (d) (1) of Chapter 93K is hereby amended by inserting at the end thereof the following new paragraph:

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Notwithstanding anything in the preceding paragraph, motor vehicle owners' and independent repair facilities' access to vehicle on-board diagnostic systems shall be standardized and not require any authorization by the manufacturer, directly or indirectly, unless the authorization system for access to vehicle networks and their on-board diagnostic systems is standardized across all makes and models sold in the Commonwealth and is administered by an entity unaffiliated with a manufacturer.

**SECTION 3.** Said Chapter 93K is hereby further amended by striking subsection (f) of Section 2 and inserting in place thereof the following: —

(f) Commencing in model year 2022 and thereafter a manufacturer of motor vehicles sold in the Commonwealth, including heavy duty vehicles having a gross vehicle weight rating of more than 14,000 pounds, that utilizes a telematics system shall be required to equip such vehicles with an inter-operable, standardized and open access platform across all of the manufacturer's makes and models. Such platform shall be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform. Such platform shall be directly accessible by the owner of the vehicle through a mobile-based application and, upon the authorization of the vehicle owner, all mechanical data shall be directly accessible by an independent repair facility or a class 1 dealer licensed pursuant to section 58 of chapter 140 limited to the time to complete the repair or for a period of time agreed to by the vehicle owner for the

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purposes of maintaining, diagnosing and repairing the motor vehicle. Access shall include the ability to send commands to in-vehicle components if needed for purposes of maintenance, diagnostics and repair.

**SECTION 4.** Said Chapter 93K is hereby further amended by adding after subsection (f) of section 2 the following:

(g) The Attorney General is hereby directed to establish for prospective vehicle owners a motor vehicle telematics system notice that includes, but is not limited to, the following features: (i) an explanation of motor vehicle telematics and its purposes, (ii) a description summarizing the mechanical data collected, stored and transmitted by a telematics system, (iii) the prospective owner's ability to access the vehicle's mechanical data through a mobile device, and (iv) an owner's right to authorize an independent repair facility to access the vehicle's mechanical data for vehicle diagnostics, repair and maintenance purposes. The notice form shall provide for the prospective owner's signature certifying that the prospective owner has read the telematics system notice.

(h) When selling or leasing motor vehicles containing a telematics system, a dealer holding a class 1 or class 2 license as defined in section 58 of chapter 140 shall provide the motor vehicle telematics system notice to the prospective owner, obtain the prospective owner's signed certification that he or she has read the notice, and provide a

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copy of the signed notice to the prospective owner. A dealer's failure to comply with the provisions of this subsection shall be grounds for any action by the licensing authority relative to the dealer's license, up to and including revocation, pursuant to section 59 of chapter 140.

**SECTION 5.** Section 6 of Chapter 93K is hereby amended by adding at the end the following—

(e) Notwithstanding subsections (b) and (c), any owner or independent repair facility authorized by an owner who has been denied access to mechanical data in violation of subsections (d)(1) or (f) of section 2 may initiate a civil action seeking any remedies under law, including any remedy authorized by chapter 93A. Each denial of access in violation of said subsections shall be compensable by an award of treble damages or \$10,000, whichever amount is greater.

[signature page to follow]

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| 3. _____ | 6. _____ | 9. _____ | 12. _____ | 15. _____ | 18. _____ |