



LEGAL BULLETIN #3/2020 January 8, 2020

LEGISLATIVE ALERT: "RIGHT TO REPAIR" PART DEUX

PUBLIC HEARING AT STATE HOUSE - MONDAY, JANUARY 13

So-called "right to repair" legislation, this time a proposal to allow independent repairers to access telematic data generated by drivers in their automobiles, is once again before the Massachusetts Legislature. On Monday, January 13, 2020, the Joint Committee on Consumer Protection and Professional Licensure is conducting a public hearing in Gardner Auditorium, at the State House, at 1:00 p.m. Your Association will testify in opposition to the legislation and continues to work with our franchise manufacturers and other interested parties to fight to defeat this ill-intentioned legislation. Frankly, we are dubbing this the "Right to Steal Personal Data."

History

The original so-called "Right to Repair" law was passed first by the Legislature (Chapter 241 of the Acts of 2012), then through ballot initiative (Chapter 368 of the Acts of 2012), and then once more by the Legislature (Chapter 165 of the Acts of 2013), which re-affirmed the original pre-ballot legislative deal parties struck. The two legislatively passed laws were drafted and enacted with input from all affected industry parties, including your Association. The Right to Repair law is now codified in MGL Chapter 93K, which deals with the relationship between independent repair facilities and automobile manufacturers and the provision of diagnostic and repair information and tools, amongst other related matters.

The law contains a provision that prevents a manufacturer from requiring any dealer to purchase diagnostic, service, or repair information on terms less favorable to those given to an independent repair facility. (MGL Chapter 93K, §2(b)). Importantly, MGL Chapter 93K placed no new duties or burdens on motor vehicle dealers holding a class 1 or class 2 license as defined in MGL Chapter 140, §58. In negotiating the final law, your Association also successfully prevented the factories from establishing OEM-approved repair centers that would have existed outside the scope of their franchised dealers network.

Current Legislation

As we have written previously, legislators have filed almost twenty bills dealing with the "right to repair" law for the 2019-2020 legislative session. Additionally, although the public hearing on these bills was not scheduled until this past Monday, RTR proponents are well on their way through the initiative petition process. You may recall that the current law was passed after RTR proponents pushed a ballot question in 2012, causing the parties to come to a separate agreement that ultimately was re-passed and signed by Governor Patrick in 2013.



The Committee will be hearing the RTR bills on Monday, but the initiative petition is not included on the list, as of this writing. The House clerk, which has had the bill since January 2, has not yet transmitted the initiative petition to the Committee. House 4122, the lead bill on Monday's hearing docket, filed by Rep. Paul McMurtry (D-Dedham), mirrors the exact language of the initiative petition.

RTR proponents are apparently not content with just having access to vehicle diagnostic and repair information. They now want to extend their reach into all types of data that flows through vehicle computer systems, the so-called telematics systems. All this, even though there has not been one legitimate complaint filed with state or federal authorities alleging blockage to diagnostic and repair information under the 2013 law.

Importantly, the new RTR legislation would place a new burden on franchised dealers by adding a requirement to state law that any new or used motor vehicle dealer that retails a vehicle containing a "telematics system" must: (1) provide a copy of a notice drafted by the Attorney General to a prospective vehicle purchaser; (2) obtain the prospective owner's signed certification that he or she has read the notice; and (3) provide a copy of the signed notice to the prospective owner. Under the legislation, a motor vehicle dealer's failure to comply with this provision would be grounds for *any* action by the relevant licensing authority regarding the dealer's license, up to and including revocation of the license.

The RTR proponents have filed over 120,000 certified signatures with the Massachusetts Secretary of State to qualify as a valid initiative petition for 2020 (only 80,239 were needed). The Secretary of State submitted this initiative petition to the House clerk on January 2. The clerk was then supposed to send it to the Committee as a bill for consideration, giving the Legislature an opportunity to take action in an attempt to prevent it from going to the ballot. If the Legislature does not approve a petition in a version that the supporters like, the petitioners have the right to collect an additional 13,374 signatures to place it on the November 3, 2020, ballot. The additional signatures would need to be filed with the Secretary of State by July 1, 2020.

What Happens Next

With the public hearing on the Right to Repair bills finally scheduled for Monday, January 13, 2020, your MSADA, franchise manufacturers, and other opponents of the legislation will have a chance to publicly voice their opposition to this legislative overreach. Should the Legislature decline to take positive action on the legislation, then it will likely head to the ballot in November, as the well-funded proponents of the bill appear to be geared up for a ballot initiative fight. Your Association, among many others, is opposing this latest data grab by the aftermarket parts industry and big box retailers who are funding this scheme. We will keep our members informed of this process as it moves along so that we can work together to defeat this legislation.

MSADA - YOUR DEALER ANSWER PLACE

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