



BULLETIN #112/2020 SEPTEMBER 16, 2020

451-1051. RIGHT TO REPAIR REDUX

VOTE NO ON QUESTION #1

On this year's November 3 ballot, in addition to making choices for President and other federal, state, and county offices, voters will have the opportunity to weigh in on two initiative petitions. The one that greatly concerns us this year as franchised dealers is Question #1 regarding a re-write of the existing Massachusetts law on "right to repair". Your association, as well as the franchisor vehicle manufacturers, are opposing this effort by aftermarket parts companies, big box repair entities, and independent repair shops to expand the current law in an effort to grab all sorts of non-diagnostic and non-repair information from car owners' vehicles.

You may recall that the Legislature enacted the current law, Chapter 93K of the Massachusetts General Laws, after the RTR squad 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. Subsequently, in 2014, the vehicle manufacturers and many members of the RTR coalition memorialized our statute in a memorandum of understanding that essentially committed the manufacturers to providing diagnostic and repair info to independent repairers across the country on the basis of the terms contained in our state law. The National Automobile Dealers Association (NADA) did not participate in the MOU discussions or agreement.

Over the years, we are not aware of a single legitimate complaint filed with state or federal authorities alleging blockage to diagnostic and repair information under the 2013 law. It seems the RTR proponents are 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, in the vehicle telematics.

In the category of history repeating itself, just as the original RTR debate ten years ago, RTR redux has nothing to do with diagnostic and repair info. It is all about gaining access to vehicle travel data and consumers' personal information. Prior to the first RTR law and after, repair shops have access to all the information needed to diagnose and repair vehicles. Just like last time, what the RTR coalition really wanted, and still wants, is access to all NON-diagnostic and NON-repair information flowing through the vehicle software – making such data as consumer driving habits, patterns, and location available remotely and in real-time to unlimited third parties. They want any vehicle data signifying a problem, such as a check engine light or any other dashboard indicator, for instance, to be sent directly from one's car to repairers in the vicinity of the car owner's vehicle. Consequently, the bill would create a serious threat to the consumer privacy and cybersecurity of Massachusetts vehicle owners. The manner in which this data will flow would make consumers' personal data potentially accessible to dangerous third parties – hackers, stalkers, thieves – and offers no guidelines as to how customers' information

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Unfortunately, the initiative petition is an up or down yes/no vote. Any changes to this new proposal, if passed by the voters, will have to be considered in a subsequent legislative session beginning in 2021.

Manufacturer Briefings. The vehicle manufacturers, as part of the Coalition for Safe and Secure Data, have committed at least \$25 MILLION to defeat Question #1. (The RTR coalition plans on spending at least \$15 MILLION.) Just crazy money. Over the last several weeks, many of the factories have conducted meetings with their franchised dealers here to brief them on the ballot question and what the factory is doing in the “No on #1” effort. Additionally, the Coalition for Safe and Secure Data will be sending opposition materials to our member dealers, items such as bumper stickers, yard signs, and information cards, that can be used with employees and customers.

Independent Repairers. Throughout the RTR effort, independent repair shops have been the face of their advocacy efforts. This week the No on #1 folks have rolled out an ad featuring an independent repairer in Massachusetts who opposes the question since all the data needed to diagnose and repair a vehicle is already available. You can watch that ad here: <https://youtu.be/MtLoQ03xZqw>. If there is an independent repairer you know or work with who shares a similar mindset and may want to participate in such an ad, let us know and we can facilitate making that connection.

Components of Opposition. As we previously reported, on January 13, as part of its constitutionally required tasks, the Joint Committee on Consumer Protection and Professional Licensure held the required public hearing on all the RTR bills (16!) as well as the initiative petition, House 4302, “An Act to Enhance, Update and Protect the 2013 Motor Vehicle Right to Repair Law”. We testified in strong opposition to this broad overreach into car owners’ personal data based on the following points, whether substantial or minor.

First, these bills are completely unnecessary. Current law under MGL Chapter 93K requires automobile manufacturers to provide to any automotive repairer in Massachusetts all information that is needed to diagnose and repair a vehicle brought into a shop, whether it is owned by an independent repairer or a franchised auto dealer. The law provides legal remedies for repairers who feel that they have not been provided adequate access to such diagnostic and repair information. To the best of our knowledge, in Massachusetts there has not been a single case reported to federal authorities or our Attorney General, or initiated in state court, of a repairer being unable to conduct a repair due to a blockage of such needed information. Finally, the auto manufacturers and aftermarket industry executed a nationwide memorandum of understanding in 2014 based on our state law. If there is such wide-spread abuse by the auto factories in denying the information, why has no other state passed a so-called right to repair law? It is because our law and the national MOU work as they were intended.

Second, there is the potential privacy data breach and “stranger danger” aspect to these proposals. The legislation is so broadly written that all data collected and stored in the motor vehicle – whether it is vehicle-related or personal – would be subject to exposure to other entities outside the realm of the customer’s repair shop. In fact, this

latest so-called right to repair scheme is a thinly veiled data grab that will lead to the violation of consumer privacy rights and access to proprietary codes that control emission and other vehicle operating systems as well as car owners' non-vehicle-related personal information. The more strangers can access the vehicle's information and a car owner's personal data, the more likely the data can be misused. This scheme also represents a potential intellectual property grab that will allow aftermarket parts manufacturers to improperly access patented information for the purposes of reverse engineering replacement parts. None of this data is needed to diagnose or repair a vehicle. In fact, where the RTR proponents claim that the auto manufacturers will hide diagnostic and repair data in the vehicle telematics systems, thereby denying repairers the info they need, current law already covers this in prohibiting the factory from doing just that.

Third, franchised auto dealers oppose having a new affirmative duty of notice layered onto the vehicle transaction with substantial penalties for noncompliance, including potential loss of business license. Such a notice is more appropriate for inclusion in the vehicle's owner's manual provided by the manufacturer. Section 4 of the petition would direct the Office of the Attorney General to draft a notice that includes: "(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." Section 4 of the petition also would add 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 the 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 petition, 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. We feel such a loss of license penalty for failure to provide a piece of paper to a consumer describing the engineering aspects of the vehicle, better suited as coming from the vehicle manufacturer, is unjustifiably extreme.

Finally, an initiative petition with no prior legislative consideration is nothing more than a sword hanging over all our heads and not in the best interests of our customers. The 2013 law was the result of several sessions of legislative consideration with ultimate designs on avoiding a ballot measure. This current ballot threat arises from no legislative inaction but is designed to force auto manufacturers and retailers into a bad law. The vast majority of Commonwealth residents own and drive motor vehicles of various makes, types, and age. It does not suit our members' purposes to participate in a law that does not work to the benefit of our customers. Our Association worked very hard in 2011-2013 with all interested parties to craft a law that would actually work in providing the necessary diagnostic and repair information to repairers, whether they are our franchised members or independent shops. We see no reason presently to upset the existing statutory framework. The law works here and across the country through the MOU. If the goal of the right to repair crowd really is repair, the law is already on their side. The initiative petition they are pushing is misguided and not in the best interests of Massachusetts' motorists.

As the Legislature did not deem the issue worthy of action, the petition's proponents were

able to obtain the necessary signatures to have it placed on the November ballot.

Should you require additional information or wish to be more active in the opposition campaign, please feel free to reach out to us.

MSADA - YOUR DEALER ANSWER PLACE

If you have any questions regarding this bulletin, please contact Robert O'Koniewski, Esq., MSADA Executive Vice President, by e-mail at rokoniewski@msada.org, or Peter Brennan, Esq., MSADA staff attorney, by e-mail at pbrennan@msada.org, or either by phone at (617) 451-1051.