



**Pennsylvania House of Representatives
Consumer Affairs Committee & Transportation Committee
Testimony Regarding "Right to Repair" Legislation
June 2, 2011**

Good morning, my name is Matthew Godlewski and I am the Vice President of State Affairs at the Alliance of Automobile Manufacturers. The Alliance represents 12 of the world's leading car and light truck manufacturers. Our members include BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America.

So-called "right to repair" legislation attempts to solve a problem that does not exist, and in the process creates a host of new problems and unintended consequences that the legislature must carefully consider. Unfortunately, so-called "right to repair" legislation does not recognize the real issues that make vehicle repair more complex today and risks opening the door to the theft of vehicles and intellectual property. The United States Congress has said "no" to this legislation for several years, and every state where this legislation has been introduced has also said "no." I appreciate the opportunity to be in front of the Committees today and express our Association's strong opposition to this bill.

It is important to begin by saying that automakers view independent repair shops as critical partners in vehicle repair. While factors such as styling and performance are key considerations when customers choose to purchase a vehicle from one of our companies – the factors of quality, dependability and reliability are among the most important in determining brand loyalty. A positive ownership experience for our customers throughout the vehicle lifecycle starts with the ease of getting their cars repaired. This ensures repeat business.

While dealers perform most repairs while a vehicle is under warranty, approximately 75% of all post-warranty repairs are performed by aftermarket facilities. Thus, automakers have a deep business interest in ensuring that these repairers have access to all of the diagnostic information and tools needed to repair vehicles quickly, accurately, and affordably. Independent repairers play an important role in maintaining customer satisfaction.

The service information, diagnostic tools, and training material provided to the independent repair community are the same as those sold to our franchised dealers. Automakers require dealerships through franchise agreements to purchase factory diagnostic scan tools, provide extensive training for technicians, and to fully subscribe to automaker service information

websites. This ensures that dealerships are “service ready” to repair a vehicle. However, automakers cannot make those same demands on independent repair facilities. Aftermarket shops make their own business decisions on the types of repair tools they need and the kinds of training their technicians require. Based on these decisions that they make for their own businesses, aftermarket shops may or may not be “service ready” to make every repair on every make of vehicle.

For example, a repair shop in Harrisburg may specialize in repairing Ford cars and trucks. They choose to buy the Ford factory diagnostic scan tool and fully subscribe to the Ford Motorcraft Service website. They are as “service ready” to work on Ford vehicles as a Ford dealer. This same shop may also work on Chryslers, but only one or two per month. Thus, they buy a Snap-on diagnostic tool that is less expensive than a factory tool, but it may only contain sufficient information to complete 90% of repairs on Chrysler vehicles. That shop is not fully “service ready” to work on all Chryslers, but this is because of a business decision the shop made based on the customers it typically gets, not because the information or tools are not available.

Most manufacturers provide what is referred to as “data stream information” to the Equipment and Tool Institute (ETI). ETI acts as a clearinghouse between automakers and companies like Snap-on, Bosch, and ALLDATA who build the tools, websites, and other subscription services that are used in independent repair shops and dealerships. Automakers provide the information. The aftermarket companies (such as Snap-on) then design the products they believe their customers (independent repair shops and dealers) want.

The sole exception to the information that automakers provide to the aftermarket is security information that is used for the purpose of overriding anti-theft immobilizer systems. This information is highly sensitive and if widely released, would compromise the state-of-the-art, anti-theft deterrent systems that have reduced auto theft dramatically. Nonetheless, a process has been established for the aftermarket to access this information.

The National Automotive Service Task Force (NASTF) Vehicle Security Committee, working with numerous industry stakeholders and law enforcement, has recognized the complexity of the vehicle security issue and developed the NASTF Secure Data Release Model (SDRM) to close this last remaining gap. Any independent repair facility can register with NASTF to gain access to this information once their security credentials are verified. NASTF also provides a forum for repairers to find other automaker repair information and perhaps most importantly, offers a process to resolve any final gaps in manufacturer service information.

Therefore, the question arises “if service information is being made available to the aftermarket, why do the proponents continue to claim otherwise and push for this legislation?” In every instance where these bills have been introduced, they contain language that would provide a path for litigation to obtain automakers’ intellectual property and threaten

automakers' right to protect their intellectual property. Proponents will assert that these bills do not have that goal. However, in each venue where "right to repair" has been introduced, specific language is included that likely would lead to that state becoming a hub for litigation over automotive intellectual property and design information.

Notably, such bills are not narrowly focused on service and repair information, and they could require automakers to make available information not related to repairing vehicles, such as sensitive, proprietary information and source codes relating to parts design and operating software. Rather, this intellectual property and confidential business information that automakers could be forced to disclose without any protections or restrictions is extremely valuable to aftermarket parts manufacturers and their retailers.

Furthermore, so-called "right to repair" legislation generally conflicts with federal Patent and Copyright laws because certain information that must be made available is otherwise protected by an automaker's patents, copyrights, and trademarks. By granting the unrestricted right to use an automaker's patents, copyrights, and trademarks, such legislation effectively authorizes a compulsory license to this intellectual property. But, in the U.S., a compulsory license generally is available only in the most limited circumstances, such as national defense and public health and safety. It would be unprecedented to require companies to provide compulsory licenses to their business competitors, as would be the case with "right to repair" legislation.

Another significant ramification of "right to repair" legislation is litigation. Legislation that creates a new cause of action and allows any vehicle owner or aftermarket part manufacturer to sue an automaker by alleging an insufficient disclosure of information inevitably will result in complex, costly, and disruptive intellectual property litigation. Also, because "right to repair" legislation could facilitate the piracy of automakers' intellectual property, automakers may be provoked to file more lawsuits to police the use of their patents, copyrights, and trademarks, a difficult and costly proposition.

The counterfeit parts industry already drains billions of dollars from sales revenue annually, and this drain on the innovators is growing due to an increase in the production of counterfeit parts and components from overseas. Legislation that could make counterfeiting parts easier would be a boon to that industry at the expense of automakers that have invested billions of dollars in research and development to fund their innovations and technological advances in safety and environmental protection, such as the electronic systems that control the deployment of airbags, the improvement of fuel economy, the reduction in tailpipe emissions, the engagement of stability control systems, the activation of anti-lock braking systems, among others.

Intellectual property rights drive the U.S. economy by encouraging investment in research and development. Ultimately, any "right to repair" legislation that devalues intellectual property

rights could dramatically reduce the incentive to invest in research and development, thereby stifling safety-related and other innovations and technological advances. This would prove extremely damaging to the entire automotive industry and to the public.

Finally, such legislation would set a precedent that may be used to narrow intellectual property rights in other industries. That is why other high-tech industries, such as the biotechnology and medical device industries have opposed this issue in other states.

It is in the interests' of automakers to partner with the aftermarket to ensure our customers can get their vehicles repaired. As stated earlier, 75% of all post-warranty repairs are completed by independent shops, and automakers make available all information needed to complete repairs. So-called "right to repair" legislation is full of unintended consequences and it is why no state has ever enacted such a bill. On behalf of our member companies, I respectfully urge the Committees to carefully study this issue more closely before proceeding with legislation.

I would be happy to answer any questions.

Respectfully submitted,

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