

215TH NEW JERSEY LEGISLATURE
ASSEMBLY CONSUMER AFFAIRS COMMITTEE
HON. PAUL MORIARTY--CHAIR

TESTIMONY

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A-230 (COMMITTEE SUBSTITUTE)

SUPPORT

March 16, 2015

COMMITTEE ROOM 13
TRENTON, NJ 08625

Testimony of Sal Risalvato
A-230: SUPPORT

Chairman Moriarty, Vice-Chair Diegnan, and members of the committee, my name is Sal Risalvato, Executive Director of the New Jersey Gasoline-Convenience-Automotive Association. There are over 4,600 automotive repair shops in New Jersey, most of which are independently owned and operated. NJGCA represents America's quintessential small businesses and they need a Right to Repair law.

The issue of Right to Repair has been heard in this committee a few times over the last few years. Indeed, it has twice passed the General Assembly with bipartisan majorities, first in October 2008 and again in December 2013.

Before I discuss the importance of Right to Repair as public policy, let me state right up front why we need to pass this bill today. To do so requires a brief history lesson.

In 2012 more than 120,000 Massachusetts citizens signed a petition to put Right to Repair on the ballot. Facing near certain defeat, the auto manufacturers then agreed to a compromise and have the bill pass legislatively. A bill similar to the referendum was passed overwhelmingly and signed by the Governor. However, it was too late to remove the referendum from the ballot. Despite the fact that passing the measure was now almost unnecessary, voters still wound up not only passing Right to Repair, but doing so in historic proportions. It received over 2.3 million votes in favor versus less than 400,000 against, meaning it won 86% of the vote, the largest landslide ever for a public question in Massachusetts history.

There were conflicts in the language of the referendum and the new bill, and the various sides of the debate spent most of 2013 negotiating a compromise bill, which was signed into law in November 2013. Meanwhile on the national level, the manufacturers, dealers, and those representing the auto repairers and their allies were negotiating over an agreement to apply throughout the US. They rightly feared a scenario in which there were 50 different laws throughout the nation.

In January 2014 a national Memorandum of Understanding (MOU) was agreed to by the representatives of the auto manufacturers and the representatives of the auto repairers. It was thought that this MOU would be identical to Massachusetts' law, ensuring that there was one policy nationwide.

Unfortunately, that is not what happened. There is currently one policy for Massachusetts, and another lesser policy for the other 49 states, including New Jersey. This bill seeks to bring New Jersey closer in line with Massachusetts.

The primary difference is in heavy duty vehicles, weighing over 14,000 pounds. The Massachusetts law provides them a form of Right to Repair, while the MOU does not. The substitute we have here today will give the owners and repairers of these vehicles the rights they need to use their property.

There have been some national negotiations on a separate Right to Repair MOU for heavy duty vehicles, but after more than a year, there has yet to be an agreement. Per our discussions with those leading that fight, we have made some small changes to the language of the MA law. Specifically, we have decided to have Right to Repair apply to MY 2010 heavy duty vehicles, rather than MY 2013 vehicles. MY 2010 was when the lack of Right to Repair truly became a problem for heavy duty vehicles and we believe this is a worthwhile change. We also want to ensure that those who repair buses, ambulances, and recreational vehicles are able to access the necessary codes, instead of heading to dealerships which are few and far between.

We are also eliminating a vague loophole added at the last minute in the MA law which provides an exemption for heavy duty vehicles "built to custom specifications sold" in the state "for commercial purposes". It is our understanding that MA lawmakers are in the process of removing this mistake from their law.

This bill also provides the same rights to car dealerships that are provided in MA law, but not in the MOU.

In addition to providing Right to Repair to heavy duty vehicles, we also need to make Right to Repair state law. We simply cannot afford to risk that in five, ten, or twenty years from now some or all of the auto manufacturers will simply decide that they don't want to play by the rules of the MOU anymore.

An MOU can never have the same teeth as a state statute, and we need to ensure that the consumers and small businesses of the state of New Jersey will remain protected into the future. To do that, we need the force of law, not just the good word of a few big corporations. Not only that, but what if new car manufacturers come into existence in the next few years? If they are not bound by Right to Repair laws then that may put pressure on the older manufacturers to drop out. In the end, the consumer would lose.

The goal of Right to Repair is to ensure car owners and independent auto technicians have access at a fair market price to purchase the same diagnostic and repair information and diagnostic scan tools that manufacturers provide to their franchise car dealerships.

Consumers need to have Right to Repair enacted. Over the last several years, car manufacturers have integrated more and more computer technology into their vehicles. While this trend has benefited consumers in many ways, it is increasingly coming with a tremendous cost: the

computer technology is being used to force motorists to have their repair work performed by manufacturer dealerships.

Auto repairers are highly trained and highly skilled. They are very capable of making all repairs to modern vehicles. They have a problem receiving the technical data and codes that are needed in order to complete the repairs. Auto manufacturers refuse to share the necessary data. There are countless situations where auto repairers have the part needed to fix a customer's car and, after installing the part, are unable to even get the car to function without inputting certain data and special codes. Auto manufacturers withhold the necessary information that is required for the car's onboard computer to recognize and accept the new part.

The codes necessary for repair are a tool, no different from a wrench or ratchet, and independent repair facilities understand how to use all these tools when given the opportunity to do so.

The computer integration on modern vehicles is so comprehensive that on some vehicle models even tire changes need to have a special code from the manufacturer in order for the dashboard computer to register that the necessary repair has been made. Even after the new tire has been properly installed, the dashboard will continue to register a problem until the manufacturer's code has been implemented, and that warning light can result in a failed state inspection.

Consumers are increasingly losing the freedom to get their car repaired where they want. Consumers should be allowed to engage with the free market and decide what the best place to get their vehicle repaired is based on their needs. Do they need the absolute lowest price, do they want someplace close to their home or office, do they want to take it to their friend or relative who is a mechanic, are they willing to pay a bit more to take it to a mechanic they trust, etc.

Without a Right to Repair, consumers have lost their ability to make these decisions. The manufacturers will eventually have a virtual monopoly on auto repair. Consumers will be forced to take their vehicle into dealerships only, which in most cases will be both more expensive and more inconvenient. They will lose their ability to make a choice about where to get their own property repaired and be forced to settle for whichever dealership is nearest.

Over the long term this problem gets even worse. What happens if a consumer purchases their car from a local dealership, only for that dealership to close 5 years later? Consumers are left high and dry, especially if the car manufacturer does not have another dealership around for many, many miles. This exact situation has been experienced by several legislators that I have spoken with regarding this issue.

Small business owners are the last people in the world to expect a handout. All we are asking for with Right to Repair is the opportunity to purchase access to this information for a reasonable

price. Modern technology, specifically cloud computing, makes it simple for manufacturers to make the information available to be securely accessed, for a fee, over the internet.

In 1990, when the federal government passed the Clean Air Act, provisions were placed within the bill to ensure competition between car manufacturers and the independent repair facilities. The parent legislation of New Jersey's environmental inspection mandates required that any information pertaining to on-board diagnostic testing (OBD and OBD II testing) that was provided directly or indirectly to manufacturers' franchised dealerships must be provided to independent repair facilities. This law guaranteed that manufacturers' trade secrets and proprietary information would be protected, and over a quarter century later we are not aware of one instance where car manufacturers lost any proprietary information.

The manufacturers claim that the necessary information is already available, but the facts on the ground indicate otherwise. Why would thousands of auto repairers turn away business if they had the option of fixing these vehicles in their shops, especially if all that was left to do was enter a special code? Right to Repair has become a genuine grassroots movement in this country and throughout the auto repairer and related industries.

I applaud you, Mr. Chairman, for your strong support on this issue. I ask the committee to return the forces of competition to the auto repair market and support thousands of this state's small businesses by supporting this bill, and I hope that the full Assembly will have the opportunity to pass it once again.

Thank you.