

Congress of the United States

Washington, DC 20515

December 11, 2023

The Honorable Pete Buttigieg
Secretary of Transportation
Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Sophie Shulman
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg and Deputy Administrator Shulman,

We write to express our appreciation for the National Highway Traffic Safety Administration's (NHTSA) recent letter providing a path forward for vehicle manufacturers to comply with Massachusetts' right to repair law, and for NHTSA's stated commitment to the right to repair more broadly.¹ However, we also wish to express concerns regarding the double standard this implementation of Massachusetts law would create, as well as the implications this warning could have for other right to repair legislation at the state and federal levels.²

Massachusetts' Data Access Law requires that all telematics systems on vehicles sold in the state be equipped with "an inter-operable, standardized and open access platform," which ensures vehicle owners have access to their diagnostic and repair data, allowing them to provide their vehicle's data to a repair shop of their choice.³ The law also requires that "[s]uch platform shall be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform."⁴ While we appreciate that NHTSA has determined in its most recent letter that the Massachusetts law does not conflict with and is not preempted by the Safety Act (the National Traffic and Motor Vehicle Safety Act, 49 C.F.R. Chapter 301), we are concerned that the implementation structure outlined by NHTSA disadvantages independent repair shops.⁵

In its most recent letter, NHTSA suggests that its primary concern with the Massachusetts law is "the risk associated with the ability to, at scale, remotely access and send commands that affect a vehicle's critical safety systems."⁶ NHTSA argues that these risks exist regardless of who is seeking to repair a vehicle, and that no

1 National Highway Traffic Safety Administration, Letter from Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement to Massachusetts Assistant Attorney General Haskell, August 22, 2023 <https://www.autocare.org/docs/default-source/government-affairs/2023-08-22-nhtsa-letter-regarding-ma-data-access-law.pdf>.

2 National Highway Traffic Safety Administration, Letter from Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement, NHTSA, to Counsel for Vehicle Manufacturers, June 13, 2023 <https://drive.google.com/file/d/1UlnBq29yxNaLMrNWX3qEW50M-dbcYkJO/view>.

3 Commonwealth of Massachusetts, General Laws Ch. 93K § 2.

4 *Ibid.*

5 NHTSA June 2023 Letter

6 NHTSA August 2023 Letter

person or entity “necessarily poses a greater cybersecurity concern than another.”⁷ However, NHTSA has allowed vehicle manufacturers to have remote access to telematic data, while at the same time suggesting that independent repair shops having similar access would pose a risk. NHTSA suggests that short-range wireless access, such as via Bluetooth, is a solution that “would significantly reduce the cybersecurity risks—and therefore the safety risks—associated with remote access.”⁸ NHTSA is suggesting creating a double standard wherein manufacturers’ long-range remote access is deemed less risky than similar access from an independent repair shop.

NHTSA’s evaluation of Massachusetts law may hurt small businesses and consumers. Without competition from independent repair shops, auto manufacturers have no incentive to price repair parts competitively. Independent repair shops will have increasingly limited ability to repair newer cars, as vehicles are more and more reliant on telematics for repairs. In 2021, approximately 50 percent of new cars had telematics, and this number is expected to increase to about 95 percent by 2030.⁹ Approximately 85 percent of voters support consumers’ right to make vehicle data available to a repair shop they choose.¹⁰ Our constituents understand the importance of supporting small businesses and preserving their right to repair the vehicles they own. The Biden Administration has expressed support for the right to repair precisely because it helps consumers, noting the need for the U.S. to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”¹¹

We are concerned that the path forward NHTSA proposed in its August 22nd letter will entrench manufacturers’ dominance in the repair market in the long run, harm competition, and discourage other states from pursuing comprehensive right to repair legislation. We respectfully request a briefing from NHTSA to explain how remote access risks differ between manufacturers and independent repair shops, and how its proposed solution will affect competition in the marketplace to help consumers.

Sincerely,



Jake Auchincloss
Member of Congress



Marie Gluesenkamp Perez
Member of Congress

⁷ *Ibid.*

⁸ *Ibid.*

⁹ “National Right to Repair.” Auto Care Association, www.autocare.org/government-relations/current-issues/access-to-and-control-of-vehicle-data. Accessed 5 Sept. 2023.

¹⁰ “Survey Release.” Consumer Access to Repair Coalition, 10 Nov. 2021, carcoalition.com/wp-content/uploads/2020/07/FTI-survey-release.pdf.

¹¹ The White House. “FACT SHEET: Executive Order on Promoting Competition in the American Economy.” The White House, 9 July 2021, www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/.

Jared J. Golden
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