

111TH CONGRESS
1ST SESSION

H. R. 2057

To protect the rights of consumers to diagnose, service, maintain, and repair their motor vehicles, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2009

Mr. TOWNS (for himself, Mr. GEORGE MILLER of California, and Ms. ESHOO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect the rights of consumers to diagnose, service, maintain, and repair their motor vehicles, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Motor Vehicle Owners
5 Right to Repair Act of 2009.”

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Motor vehicle owners are entitled to choose
2 which service provider will diagnose, service, main-
3 tain, or repair their motor vehicles.

4 (2) Promoting competition in price and quality
5 for the diagnosis of problems, service, maintenance,
6 and repair of motor vehicles will benefit consumers.

7 (3) Regular diagnosis, service, maintenance,
8 and repair of motor vehicles, motor vehicle equip-
9 ment, and motor vehicle systems such as pollution
10 control, transmission, antilock brakes, electronic and
11 mechanical systems, heating and air-conditioning,
12 and steering are essential to America's mobility,
13 minimizing fuel consumption, protecting the environ-
14 ment, and enabling the highest levels of safety pos-
15 sible in modern motor vehicles.

16 (4) Computers of various kinds are now used by
17 manufacturers in motor vehicle equipment and
18 motor vehicle systems. On-board computer tech-
19 nology controls virtually all of the vehicle's systems,
20 and only service technicians with the necessary tools
21 and information can access the computers to per-
22 form diagnosis, service, maintenance, and repair of
23 the vehicle.

24 (5) Manufacturers have made available to their
25 authorized dealers and service providers the informa-

1 tion, tools, codes, and replacement equipment nec-
2 essary to diagnose problems and to service, main-
3 tain, and repair motor vehicles that incorporate com-
4 puters in their motor vehicle systems.

5 (6) Consumers in the United States have bene-
6 fited from the availability of a wide choice of service
7 providers for their motor vehicles. The American
8 economy has also benefited from the availability of
9 an aftermarket tools and parts supply that provides
10 jobs to over 5 million workers in 495,000 businesses,
11 and generates \$200 billion in annual sales.

12 (7) Vehicles are now being equipped with sys-
13 tems that permit vehicles to communicate repair and
14 diagnostic information wirelessly with the vehicle
15 manufacturer and repair facilities. Car owners have
16 the right to choose where and to whom information
17 generated by their vehicle and vehicle computers is
18 sent.

19 (b) PURPOSES.—The purposes of this Act are—

20 (1) to protect motor vehicle owners' right to
21 choose a service provider for the diagnosis, service,
22 maintenance, and repair of their motor vehicles;

23 (2) to promote competition in price and quality
24 among service providers; and

1 (3) to promote safety and fuel efficiency by al-
2 lowing consumers to choose among competing service
3 providers.

4 **SEC. 3. MANUFACTURER REQUIREMENTS.**

5 (a) DUTY TO DISCLOSE INFORMATION.—The manu-
6 facturer of a motor vehicle sold, leased, or otherwise intro-
7 duced into commerce in the United States must provide
8 to the motor vehicle owner and service providers, using
9 reasonable business means and on a non-discriminatory
10 basis, all information to diagnose, service, maintain, or re-
11 pair the motor vehicle. This information must include—

12 (1) information about safety alerts, recalls,
13 service bulletins and the need for adjustments to
14 maintain vehicle efficiency, safety and convenience;
15 and

16 (2) all information of any kind provided di-
17 rectly, indirectly, or wirelessly to new car dealers or
18 any repair facility to diagnose, service, maintain, re-
19 pair, activate, certify, or install any motor vehicle
20 equipment (including replacement parts and equip-
21 ment) in a motor vehicle.

22 (b) DUTY TO MAKE TOOLS AVAILABLE.—The manu-
23 facturer of a motor vehicle sold, leased, or otherwise intro-
24 duced into commerce in the United States must offer for
25 sale to the motor vehicle owner and to all service providers

1 on a reasonable and non-discriminatory basis, any tool for
2 the diagnosis, service, maintenance, or repair of a motor
3 vehicle, and provide all information that enables aftermar-
4 ket tool companies to manufacture tools with the same
5 functional characteristics as those tools made available by
6 the manufacturers to authorized dealers.

7 (c) **REPLACEMENT EQUIPMENT.**—The manufacturer
8 of a motor vehicle sold, leased, or otherwise introduced
9 into commerce in the United States must offer for sale
10 to motor vehicle owners, and to all service providers on
11 reasonable and non-discriminatory terms, all equipment
12 for diagnosis, service, maintenance, or repair of a motor
13 vehicle.

14 (d) **PROTECTION OF TRADE SECRETS.**—

15 (1) A manufacturer may not be required to
16 publicly disclose information that, if made public,
17 would divulge methods or processes entitled to pro-
18 tection as trade secrets.

19 (2) No information may be withheld by a manu-
20 facturer on the ground that it is a trade secret if
21 that information is provided (directly or indirectly)
22 to authorized dealers or service providers.

23 **SEC. 4. AUTHORITY OF FEDERAL TRADE COMMISSION.**

24 (a) **IN GENERAL.**—For the purpose of enforcing com-
25 pliance with this Act, the Federal Trade Commission may

1 utilize all authority conferred on it by the Federal Trade
2 Commission Act, or otherwise.

3 (b) VIOLATION OF SECTION 3.—A violation of section
4 3 of this Act constitutes an unfair method of competition
5 and an unfair or deceptive act or practice within the mean-
6 ing of section 5(a)(1) of the Federal Trade Commission
7 Act (15 U.S.C. 45(a)(1)).

8 (c) VIOLATION OF A RULE.—Violation of a rule pre-
9 scribed under section 4(d) of this Act constitutes violation
10 of a rule defining an unfair or deceptive act or practice
11 prescribed under section 18(a)(1)(B) of the Federal Trade
12 Commission Act (15 U.S.C. 57a(a)(1)(B)).

13 (d) RULEMAKING.—The Federal Trade Commission
14 may prescribe rules to implement this Act.

15 (e) COOPERATION WITH DEPARTMENT OF TRANS-
16 PORTATION.—The Federal Trade Commission must co-
17 operate with the Department of Transportation to publish
18 technical service bulletins on a Federal Internet Website.

19 (f) LIMITATION.—The Federal Trade Commission
20 may not prescribe rules that—

21 (1) interfere with the authority of the Adminis-
22 trator of the Environmental Protection Agency
23 under section 202(m) of the Clean Air Act (42
24 U.S.C. 7521(m)) with regard to motor vehicle emis-
25 sions control diagnostics systems; or

1 (2) conflict with rules prescribed by the Admin-
2 istrator of the Environmental Protection Agency.

3 **SEC. 5. ACTION BY STATES.**

4 (a) IN GENERAL.—Whenever an attorney general of
5 any State has reason to believe that the interests of the
6 residents of that State have been or are being threatened
7 or adversely affected by a violation of section 3 of this
8 Act, or by the violation of a rule promulgated by the Fed-
9 eral Trade Commission to implement this Act, the State,
10 as *parens patriae*, may bring a civil action on behalf of
11 its residents to enjoin violations, to obtain damages, res-
12 titution, or other compensation on behalf of residents of
13 the State, or to obtain such further relief as the court may
14 deem appropriate.

15 (b) NOTICE.—The State must serve prior written no-
16 tice of any civil action under subsection (a) of this section
17 upon the Federal Trade Commission with a copy of its
18 complaint, except that if it is not feasible for the State
19 to provide such prior notice, the State must serve notice
20 immediately upon instituting an action. Upon receiving a
21 notice of a civil action, the Federal Trade Commission
22 may—

23 (1) intervene in the action;

24 (2) upon intervening, to be heard on all matters
25 arising therein; and

1 (3) to appeal.

2 (c) CONSTRUCTION.—For purposes of bringing any
3 civil action under subsection (a) of this section, nothing
4 in this chapter will prevent an attorney general from exer-
5 cising the powers conferred on the attorney general by the
6 laws of such State to conduct investigations or to admin-
7 ister oaths or affirmations or to compel the attendance
8 of witnesses or the production of documentary and other
9 evidence.

10 (d) ACTIONS BY FEDERAL TRADE COMMISSION.—
11 Whenever a civil action has been instituted by or the Fed-
12 eral Trade Commission for violation of any rule prescribed
13 under section 4(d) of this Act, no State may, during the
14 pendency of the action instituted by the Federal Trade
15 Commission, institute a civil action under this Act against
16 any defendant named in the complaint in such action for
17 violation of any rule as alleged in such complaint.

18 (e) ACTIONS BY OTHER STATE OFFICIALS.—

19 (1) Nothing contained in this section may pro-
20 hibit an authorized State official from proceeding in
21 State court on the basis of an alleged violation of
22 any civil or criminal statute of such State.

23 (2) In addition to actions brought by an attor-
24 ney general of a State under subsection (a) of this

1 section, an action may be brought by officers of a
2 State who are so authorized.

3 **SEC. 6. CONSUMERS' RIGHTS.**

4 A consumer or service provider may bring a civil ac-
5 tion to enjoin any violation of section 3 of this Act or of
6 any rule issued pursuant to this Act and for damages (in-
7 cluding court costs and reasonable attorney and expert
8 witness fees). The action may be brought in any court of
9 competent jurisdiction.

10 **SEC. 7. DEFINITIONS.**

11 In this Act:

12 (1) The term “commerce” has the meaning
13 given that term in section 4 of the Federal Trade
14 Commission Act (15 U.S.C. 44).

15 (2) The terms “manufacturer”, “motor vehi-
16 cle”, and “motor vehicle equipment” have the mean-
17 ings given those terms in section 30102(a) of title
18 49, United States Code.

19 (3) The term “motor vehicle owner” and the
20 term “consumer” mean any person who owns,
21 leases, or otherwise has the legal right to use and
22 possess a motor vehicle, or the agent of such person.

23 (4) The term “service provider” means any per-
24 son engaged in the diagnosis, service, maintenance,
25 or repair of motor vehicles or motor vehicle engines.

1 (5) The term “replacement equipment” has the
2 meaning given that term in section 30102(b)(1) of
3 title 49, United States Code.

4 (6) The term “model year” has the meaning
5 given that term in section 32901(a) of title 49,
6 United States Code.

7 (7) The term “dealer” has the meaning given
8 that term in section 30102(a) of title 49, United
9 States Code.

10 (8) The term “technical service bulletin” means
11 a communication sent to a dealer about the diag-
12 nosis, service, maintenance or repair of a motor ve-
13 hicle or item of motor vehicle equipment and shall
14 include all communications sent to the Secretary of
15 Transportation under sections 30166(f) and
16 30166(m)(3)(A)(ii) of title 49, United States Code.

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