

Maine’s Automotive Right to Repair Law

In November 2023, Maine voters approved Initiated Bill 3 (LD 1677), *An Act Regarding Automotive Right to Repair*. ~~Generally, the~~The law requires motor vehicle manufacturers to make access to on-board diagnostic and repair information the same for owners and independent repair facilities as it is for new vehicle dealers and/or manufacturer authorized repair shops. 29-A M.R.S. § 1810. For 2002 models through the present, the law requires access through methods that require physical access to the vehicle. 29-A M.R.S. § 1810(3)-(5). Starting on January 5, 2025, however, vehicles sold in the state that use telematics systems must be equipped “with an inter-operable, standardized and owner-authorized access platform across all of the manufacturer's makes and models.” 29-A M.R.S. § 1810(6). A “telematics system” is a “system in a motor vehicle that collects information generated by the operation of the vehicle and transmits that information using wireless communications to a remote receiving point where the information is stored or used.” 29-A M.R.S. § 1801(6). This means that diagnostic and repair information generated by the vehicle, with owner authorization, could be accessed remotely and without the physical presence of the vehicle.

The vehicle access platform “must be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform” and “must be directly accessible by the motor vehicle owner through a mobile-based application.” 29-A M.R.S. § 1810(6). Additionally, “upon the authorization of the owner,” the data “must be directly accessible by an independent repair facility or a licensed dealer . . . limited to the time to complete the repair or for a period of time agreed to by the motor vehicle owner for the purposes of maintaining, diagnosing and repairing the motor vehicle.” *Id.*

The law also requires the Attorney General to “designate an independent entity not controlled by one or more motor vehicle manufacturers to establish and administer access to vehicle-generated data that is available through the on-board diagnostic system or that is transmitted by the standardized access platform authorized under this section.” 29-A M.R.S. § 1810(2). This “independent entity” shall:

- A. Identify and adopt relevant standards for implementation of this section and relevant provisions for accreditation and certification of organizations and for a system for monitoring policy compliance;
- B. Monitor and develop policies for the evolving use and availability of data generated by the operations of motor vehicles; and
- C. Create policies for compliance with relevant laws, regulations, standards, technologies and best practices related to access to motor vehicle data.

Automotive Right to Repair Working Group

Subsequently, during its Second Regular Session, the 131st Legislature enacted LD 2289, *Resolve, to Establish an Automotive Right to Repair Working Group*. This resolve directed the Attorney

¹ “Mechanical data” is “any vehicle-specific data, including telematics system data, generated by, stored in or transmitted by a motor vehicle and used in the diagnosis, repair or maintenance of a motor vehicle.” 29-A M.R.S. § 1801(2-A).

Commented [JG1]: This language that comes directly from the statute is critical and it does not change in the proposed revision. It requires “data emanating directly from the motor vehicle” be accessible and to be “directly accessible by the motor vehicle owner.”

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General to “convene a working group to develop recommendations for legislation to establish an entity with rule-making and enforcement authority to adopt standards governing access to motor vehicle telematics systems and to otherwise implement and enforce the requirements” of section 1810. The working group was charged with “develop[ing] recommendations for legislation to establish an entity to ensure cyber-secure access to motor vehicle-generated data to owners and owner-authorized independent repair facilities for maintenance, diagnostic and repair purposes.” The recommendations must address the entity’s ability to:

- A. Identify and adopt relevant standards for implementing the requirements of Title 29-A, section 1810, including standards relating to access to vehicle telematics systems;
- B. Monitor motor vehicle manufacturer compliance with standards adopted by the entity;
- C. Develop and monitor policies for the evolving use and availability of data generated by the operations of motor vehicles;
- D. Create policies for compliance with relevant laws, regulations, standards, technologies and best practices related to motor vehicle data, with consideration given to privacy and cybersecurity concerns; and
- E. Adopt rules necessary for implementation and enforcement of Title 29-A, section 1810 and to enforce the requirements of that law consistent with those rules.

The Resolve directed the Attorney General to submit a report by February 28, 2025 “to the joint standing committee of the Legislature having jurisdiction over innovation, development, economic advancement and business matters a report containing the findings and recommendations of the working group.” The committee may then report out legislation relating to the report to the 132nd Legislature in 2025.²

Formation of the Working Group

The Resolve directed the Attorney General or the Attorney General’s designee to participate in the working group and to invite the following additional members:

- A. The Secretary of State or the Secretary of State's designee;
- B. Two members representing motor vehicle manufacturers, at least one of whom must represent an organization of motor vehicle manufacturers;
- C. One member representing aftermarket parts manufacturers;
- D. One member representing aftermarket parts distributors and retailers;
- E. Two members representing independent repair facilities, at least one of whom is an owner or operator of a facility;
- F. One member representing new motor vehicle dealers;
- G. One member representing a consumer advocacy organization; and
- H. One member representing a data privacy advocacy organization.

The Attorney General designated Chief Deputy Attorney General Christopher Taub and Assistant Attorney General and Chief of the Consumer Protection Division Christina Moylan as his

² Given the benefits resulting from the working group’s consideration of the powers, duties, and authority of the independent entity, the Attorney General decide to await conclusion of the working group’s work before designating an independent entity pursuant to Initiated Bill 3. See letter attached hereto as Exhibit A.

designees to participate in the working group. During the summer of 2024, DAG Taub and AAG Moylan reached out to the designated stakeholders to identify persons interested in serving on the working group. Ultimately, the following persons agreed to serve on the working group:

1. Lynne Gardner, Esq., Director of Legal Affairs, Adjudications & Hearings for the Bureau of Motor Vehicles (serving as the Secretary of State's designee)
2. Elizabeth Frazier, Esq. of Pierce Atwood LLP (representing the Alliance for Automotive Innovation, an organization of motor vehicle manufacturers)
3. Brian Boggs, Director of Service Engineering at Tesla, Inc. (representing motor vehicle manufacturers)
4. Eric Luftig, Senior Vice President of Product, Engineering, Manufacturing & Quality of Dorman Products (representing aftermarket parts manufacturers)
5. Tommy Hickey of Brian S. Hickey & Associates and Executive Director of the Maine Automotive Right to Repair Coalition (representing independent repair facilities)
6. Tim Winkeler, President and CEO of VIP Tires & Service (representing independent repair facilities)
7. Jack Quirk, President of Quirk Auto Group (representing new motor vehicle dealers)
8. Meagan Sway, Policy Director for the ACLU of Maine (representing a consumer advocacy organization)
9. Caitriona Fitzgerald, Deputy Director of the Electronic Privacy Information Center (representing a data privacy advocacy organization)
- 9-10. Jeffrey Groves, General Counsel O'Reilly Automotive, Inc., retired (representing aftermarket retailers and distributors).

Working Group Meetings

The working group met ___ times: August 29, 2024, September 11, 2024, September 26, 2024, October 16, 2024, October 30, 2024, November 18, 2024, December 2, 2024, _____.

At the working group's first meeting on August 29, there was a general discussion of the working group's goals and expectations for future meetings. The working group also adopted a remote meeting policy, pursuant to which in-person participation by members was expected unless a member determined that their physical presence would not be practical. At its meetings on September 11 and September 26, the working group heard technical and other presentations from stakeholders and others with relevant expertise who members had previously invited to the meetings. At its October 16 meeting, the working group held a public hearing and heard from members of the public who wished to present information, recommendations, or other matters to the group.

At its meetings on October 30 and November 18, members of the working group engaged in discussions regarding recommendations to be made for legislation establishing an entity to implement and enforce the requirements of the automotive right to repair law (29-A M.R.S. § 1810). The discussions covered a number of topics, including: 1) the nature of the entity (e.g., an independent board or commission, a quasi-governmental entity, or a state regulatory agency); 2) whether the entity would maintain, provide access to, or otherwise exercise control over vehicle data; 3) whether the entity would determine who, and on what terms, individuals would have

access to vehicle data (e.g., a credentialing or verification process for independent repair facilities); 4) whether the entity would establish a standardized process by which all motor vehicle manufacturers would provide access to vehicle data; 5) whether the entity would need rulemaking authority; 6) whether the entity would need enforcement authority; 7) whether the entity would need staff; and 8) whether the entity would need funding and if so, the manner by which it should be funded.

[Description here of additional meetings]

Working Group's Conclusions and Recommendations

The working group focused on the role of the entity with respect to access to vehicle data accessed remotely via telematics systems. Both members of the group and members of the public expressed concerns regarding privacy and cyber-security in allowing third parties to access this data. This led to extensive discussions among group members regarding the extent to which the entity should maintain, provide access to, or otherwise exercise control over vehicle data. Ultimately, there was a unanimous consensus that the entity should not maintain, provide access to, or otherwise exercise control over vehicle data. Rather, all vehicle data would should remain under the control of vehicle manufacturers be accessed directly from the vehicle ~~with the each~~ manufacturers then developing a method making the vehicle's diagnostic and repair data available to owners and/or (upon authorization by owners) independent repair facilities directly from the vehicle and to the extent required by 29-A M.R.S. § 1810. As is the case now, manufacturers would remain responsible for addressing potential privacy and cyber-security issues in making data available pursuant to 29-A M.R.S. § 1810.

Section 1810 can be interpreted as requiring the entity to administer access to vehicle data. For example, the statute states that the independent entity shall “establish and administer access to vehicle-generated data” and “manage cyber-secure access to motor vehicle-generated data.” The working group recommends that the statute be amended to make clear that the entity will not maintain, provide access to, or otherwise exercise control over vehicle data. Proposed amended statutory language addressing this recommendation and several other recommendations is attached to this report as Exhibit B.

There was also unanimous consensus that at least initially, the entity should serve a purely advisory role and have no rulemaking or enforcement authority. In this advisory role, the entity would have four major responsibilities: 1) monitoring and assessing implementation of the right-to-repair law, including manufacturers' compliance with the law's requirements; 2) attempting to informally resolve any complaints from owners and independent repair facilities alleging a manufacturer's non-compliance with the law, and, if a complaint cannot be resolved, considering whether to refer the matter to the Attorney General for enforcement action; 3) designating one or more technical experts with whom the Attorney General may consult in assessing enforcement referrals and maintaining enforcement actions, and 4) making an annual report to Attorney General the legislative committee of jurisdiction with copy to the Governor and legislative committee of jurisdiction describing the entity's activities during the preceding year, identifying any implementation or compliance issues that it encountered, and recommending any amendments to

the statute, including amendments providing the entity with additional authority, to address any implementation or compliance issues.

There was consensus that the entity should not be a state agency but instead should be an independent commission. The Governor should appoint or re-appoint commission members (initially on a staggered basis) as follows:

- A. Two members representing motor vehicle manufacturers, at least one of whom must represent an organization of motor vehicle manufacturers;
- B. One member representing aftermarket parts manufacturers;
- C. One member representing aftermarket parts distributors and retailers;
- D. Two members representing independent repair facilities, at least one of whom is an owner or operator of a facility;
- E. One member representing new motor vehicle dealers;
- F. One member with expertise in automotive cyber-security matters; and
- G. One member representing the public interest.

The member representing the public should serve as the commission's chair. Each member should serve a term of three (3) ——— years with the exception of the commission's initial term wherein certain members would be appointed for a lessor term enabling the board to be staggered with three (3) members standing for appointment or re-appointment every three (3) years. Members should not receive compensation but should be reimbursed for expenses for attendance at meetings. Appointments shall be initially made within 30 business days from the Effective Date of 29 A.M.R.S. §1810. Should a member resign or leave the commission because of death or incapacity, the Governor shall appoint a replacement within 30 business days of the resignation or incapacity. In making appointments, the Governor shall take into consideration the nominations timely made by industry stakeholders or trade associations.

One basis for the working group's recommendation that the commission be advisory is that the statutory provisions requiring motor vehicle manufacturers to provide access to vehicle data (29-A M.R.S. § 1810(3) – (6)) are self-executing. The provisions specify the manufacturer's obligations and do not, on their face, expressly reference the entity. The consensus among working group members was that, at least initially, motor vehicle manufacturers should decide for themselves the manner in which they will provide direct access to vehicle data in compliance with the statute.

The working group recognized that depending on how manufacturers implement the telematics requirements of the law, it may become necessary to provide at least some level of standardization across all manufacturers. If the commission determines that access to vehicle data should be standardized, it could recommend in its annual report that it be given the necessary authority to adopt and implement appropriate standardization requirements. The commission can also consider issuing, solely as non-binding recommendations, "best practices" for manufacturers to use in providing access to vehicle data.

While 29-A M.R.S. § 1810(6) (the telematics provision) does not expressly reference the entity, some working group members interpret that provision, in conjunction with 29-A M.R.S. § 1810(2),

as not requiring motor vehicle manufacturers to provide access to telematics data until the entity has established a standardized access platform. As noted above, motor vehicle manufacturers must begin complying with the requirements of Section 1810(6) no later than January 5, 2025. [Discussion here of recommendation of some working group members that the telematic requirements be postponed for a year].

Once consensus was reached that the commission would not maintain, provide access to, or otherwise exercise control over vehicle data, and that it would initially serve a purely advisory role, the working group readily reached consensus on several other issues. The working group determined that the commission would not act as a “gatekeeper” between owners/independent repair facilities and vehicle manufacturers. Rather, requests for access, as needed to effect a repair, to diagnostic and repair information would be made by vehicle owners and directed to the owner or the owner’s designated third-party repairer allowing the owner or designated third-party repairer to directly access the diagnostic and repair data located onboard the owner’s vehicle. ~~directly to manufacturers (or third parties designated by manufacturers), and manufacturers would then provide the information to the owners/independent repair facilities.~~ There was discussion of whether manufacturers should be required to use “third-party authenticators” to manage access to vehicle data. While some manufacturers already use “third-party authenticators” to allow access to vehicle data, the ~~The~~ consensus was that while this should not be required initially, the commission may ~~want to~~ consider imposing such a requirement if evidence suggests that manufacturers are not providing owners/independent repair facilities with appropriate access to diagnostic and repair information. Similarly, while there was consensus that the commission initially should not impose a credentialing or other processes to ensure that only properly authorized individuals receive access to vehicle information, the commission may want to consider whether such a process would be useful. The commission should also consider hearing from stakeholders with relevant and necessary expertise, including consumer and privacy advocates. The commission should also consider hearing from advocates for survivors of domestic abuse, because of the potential for safety concerns presented by an abuser using access to vehicle data for improper purposes.

Because the commission will initially be only advisory, there was consensus among working group members that the entity will not immediately need rulemaking or enforcement authority. With respect to enforcement, the statute already authorizes the entity to refer matters to the Attorney General for enforcement. There is some ambiguity regarding whether the Attorney General can bring an enforcement action without a referral from the entity (for example, if the Attorney General receives a complaint directly from an owner or independent repair facility). There was consensus that the statute should be amended to make clear that a referral from the entity is not a prerequisite for enforcement action. If the commission determines that it needs its own enforcement authority, it can so recommend in its annual report.

The working group determined that at least initially, the commission will not need staff, although it may need some administrative support to assist in scheduling meetings, maintaining a website, arranging for remote access, and other administrative matters. [Maybe OAG can provide that support]. The working group does not expect that the commission will need funding beyond that necessary to compensate members for expenses.

The working group recognizes that the role it recommends that the commission play may not be entirely consistent with the role that the right-to-repair law seems to contemplate for the independent entity. That said, there was unanimous consensus that the role outlined above makes the most sense during the initial implementation of the law, with the understanding that the commission may well determine it should be given increased authority and responsibilities if issues are encountered with compliance during the law's implantation.

Attached as Exhibit B are recommended changes to the right-to-repair law. Primarily, the suggested changes set forth the process for appointing persons to the commission and redefine the entity's responsibilities, as discussed above. During the course of its work, the working group identified some additional provisions in the law that it determined should be clarified or corrected, and the attached reflects the working group's recommendations for those clarifications and corrections.

Hi Chris and Christina,

Thank you for the great work and thought you have put into this. I will continue to review each of the drafts, but below is some initial feedback. If anything I wrote below is confusing or needs clarification, please let me know and we can discuss further via email or on the phone. I feel most strongly about my recommendation for section 6. Please let me know if my point is unclear.

And vs Or Typo

As compared with Massachusetts, Section 5 changes an "or" to an "and" in a way that is not compliant as 'A' (a specific non-proprietary tethered interface) and 'C' (a readily available non-proprietary tethered interface) are mutually exclusive of 'B' (an entirely self-contained system within the vehicle that lacks a tethered connection). It looks like you already spotted this and included this in the draft you attached. Great!

Section 6: Results in *more* consumer vehicle data being disclosed than is done so today and creates a significant safety/security concern for remote commands

"The platform must be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct data connection to the platform."... "Access must include the ability to send commands to in-vehicle components if needed for purposes of maintenance, diagnostics and repair."

Mechanical data is defined as *"any vehicle-specific data, including telematics system data, generated by, stored in or transmitted by a motor vehicle and used in the diagnosis, repair or maintenance of a motor vehicle."*

Therefore, the scope of what the platform must communicate is any data or that fulfills all of the following:

1. Is mechanical data,
2. Is emanating (transmitted) from the vehicle, and
3. Is used in the diagnosis, repair or maintenance of a motor vehicle.

Item '3' is the problem because the clause does not distinguish between work done remotely or when physically present at the vehicle. In the status quo, the vehicle manufacturer can exercise good judgment to only make a subset of data used for diagnosis, repair, or maintenance available remotely to its own dealerships. The data may be appropriate for diagnosis and repair when physically present at a vehicle but inappropriate when viewed remotely. As written, Section 6 does not allow for such good judgment. It would be enhanced by adding a 4th clause:

1. Is mechanical data,
2. Is emanating (transmitted) from the vehicle,
3. Is used in the diagnosis, repair or maintenance of a motor vehicle, and
4. The manufacturer makes available to its authorized repair shops.

Section 6 also specifies that *"Access must include the ability to send commands to in-vehicle*

components". Again, this is problematic because the clause does not distinguish between work done remotely or when physically present at the vehicle. In the status quo, the vehicle manufacturer can exercise good judgment to only make a subset of repair commands used for diagnosis, repair, or maintenance available remotely to its own dealerships. The repair commands may be appropriate for diagnosis and repair when physically present at a vehicle but inappropriate when executed remotely. In a previous working group session, I provided the example of a "Release Parking Brake" command. When a vehicle is physically in a workshop, co-located with the technician and up on a lift, a "Release Parking Brake" command may exist for the technician to execute to gain access to the axel hub while the wheel is removed. Such a command would be entirely reckless to allow being executed remotely on a vehicle that the technician is not co-located with. The vehicle may be on a hill and roll down the hill as a result of remotely releasing the parking brake. Thus, similar to remote access to data, vehicle manufacturers each need to make their own good judgement decisions on what repair commands are able to be executed remotely. The addition of the same clause "and that the manufacturer makes available to its authorized repair shops" would also alleviate my concern while also maintaining parity and a level playing field between authorized dealers and independent repairers.

My above concern was confirmed when guest expert Brian Romansky attended. I asked whether he thought all commands available when you are physically present at a vehicle should be possible to run when remotely distant from the vehicle? He agreed that would not be appropriate and the Trust List concept creates a framework to disallow certain commands to be run remotely and is an important aspect of SOVD. I highlighted how as the Maine bill is written currently, it would require the manufacture to make *all* repair commands that are possible to be run locally to be available remotely. He agreed with me this should be changed.

An example improvement below in red.

*Access must include the ability to **receive data and** send commands to in-vehicle components if needed for purposes of maintenance, diagnostics and repair **and that the manufacturer makes available to its authorized repair shops.***

Note, I included the phrase *receive data and* to clarify that the additional condition *and that the manufacturer makes available to its authorized repair shops* applies to both active commands as well as passively read data.

Regarding Implementation Time

I see a place holder for this topic in the draft report. Great! As I stated in the last working group session, the wording of the current statute is ambiguous. As a vehicle manufacturer, it is unclear if I need to integrate an access platform defined by the Independent Entity and interacting with servers the Independent Entity is hosting, or if I need to equip my vehicles with an access platform that I design and develop. These are the types of questions the Working Group was created to consider and provide recommendations to the legislator on how to clarify. I am optimistic that the draft redlines and report from the working group will result in

the legislator amending with improved clarity. But until the improved wording exists, it is unreasonable to expect manufacturers to have equipped their vehicles with something that is ambiguous and non-implementable (due to security concerns that the draft revisions reduce) within a year. Therefore, I recommend the effective date to be 1 year from enactment of the language in the draft.

I also understand that on paper the existing statute is slated to take effect in early January and the legislative process cannot move quickly enough to implement the clarified language. The recommendation of the working group should also include a note for the attorney general to not actively enforce the 1810 until the clarified language has been adopted.

Heavy Duty Vehicles (Semi Trucks, 18-wheelers, etc.)

We have not discussed this recently, but during the working session with public comment a representative of the heavy-duty trucking industry expressed many legitimate concerns. I do not believe the authors of this original citizens-initiated bill or our discussions within the working group have sufficiently considered or evaluated the needs of or the effect this statute will have on owners, operators, and manufacturers of heavy-duty vehicles. That industry has very different models for vehicle ownership, vehicle repair, and vehicle manufacturer. For example, the engine is often manufactured separately from the rest of the truck and can contain its own telematics system. For other regulations the engine manufacturer and vehicle chassis manufacturer may each be thought of as independent entities each with their own responsibilities and obligations. I do not believe the current statute or revised draft language is written in a way that accommodates this different paradigm. My recommendation is the statute should be amended such that it does not apply to such vehicles. If not, then it is our obligation as a working group to very rapidly and diligently explore everything we have just discussed but for an entirely different industry. Additionally, the working group would benefit from representation by high volume heavy-duty truck manufacturer and heavy-duty engine manufacturer and heavy-duty repairer.

Thank you,

Brian
