

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1193 (Delegate Hornberger)
Economic Matters

Consumer Protection - Motor Vehicles - Right to Repair

This bill generally requires a manufacturer of motor vehicles to make available diagnostic and repair information and diagnostic repair tools to vehicle owners and “independent repair facilities.” The bill also requires a manufacturer that sells motor vehicles with “telematics systems” to install an open data platform in certain vehicles. The bill establishes numerous rules, procedures, and enforcement provisions related to its requirements. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG), Consumer Protection Division (CPD), can handle the bill’s requirements with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

“Independent repair facility” means a person that is not affiliated with a manufacturer or a manufacturer’s authorized dealer that diagnoses, services, maintains, or repairs motor

vehicles or motor vehicle engines. It includes a dealer when the dealer diagnoses, services, maintains, or repairs motor vehicles or motor vehicle engines that are not affiliated with the dealer's franchise manufacturer.

“Telematics information” means information generated and collected by the operation of the vehicle and transmitted by using wireless communications to a remote receiving point where the information is stored. It includes specified information, such as remote diagnostic information, automatic airbag deployment and crash notifications, stolen vehicle locations, etc. A “telematics system” means a telematics service or other remote or information service, delivered to (or derived from) a motor vehicle by wireless communications.

Fair and Reasonable Terms and Applicability

For purposes of the bill's requirements, when deciding whether an offer to purchase information or tools is given on “fair and reasonable terms,” consideration may be given to specified factors (*e.g.*, the cost for preparing and distributing the information, the price charged by other manufacturers for similar information, etc.).

The bill also specifies several situations to which its requirements should not be construed to apply. For example, nothing in the bill may be construed to require a manufacturer to divulge a trade secret.

Diagnostic and Repair Information

Generally, a manufacturer must make available for purchase by owners and independent repair facilities the same diagnostic and repair information that the manufacturer makes available to its dealers through its Internet-based diagnostic and repair information system (or other electronically accessible manufacturer's repair information system). However, this requirement only applies to (1) model year 2002 and newer motor vehicles and (2) model year 2013 and newer heavy duty vehicles.

All content in a manufacturer's repair information system must be made available to owners and to independent repair facilities in the same form and manner (and to the same extent as) as it is made available to dealers using the diagnostic and repair information system.

The diagnostic and repair information must be made available for purchase on a daily, monthly, or yearly subscription basis and on fair and reasonable terms.

Generally, a manufacturer may not require a dealer to purchase diagnostic, service, or repair information in a proprietary format if it sells the same information to an independent

repair facility or other third-party provider (1) in a format that is standardized with other manufacturers and (2) on terms and conditions more favorable than those under which a dealer obtains the same information. However, a manufacturer may require a dealer to purchase diagnostic, service, or repair information in a proprietary format if the format includes specified operations information or functionality that is not available in the standardized format.

A manufacturer may exclude diagnostic, service, and repair information necessary to reset an immobilizer system or security-related electronic modules from information provided to owners and independent repair facilities. If a manufacturer does so, an owner or independent repair facility may obtain the information through the National Automotive Service Task Force or another reliable and accepted system.

Diagnostic Repair Tools

Generally, a manufacturer must make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair, and wireless capabilities that the manufacturer makes available to its dealers. However, this requirement only applies to (1) model year 2002 and newer motor vehicles and (2) model year 2013 and newer heavy duty vehicles. The tools must incorporate the same functional repair capabilities that the manufacturer makes available to dealers. A manufacturer must offer the tools for sale to owners and to independent repair facilities on fair and reasonable terms.

If a manufacturer sells diagnostic tools or information necessary to diagnose, service, or repair a motor vehicle to an independent repair facility on terms that are more favorable than those that are offered to a dealer for the same tools or information, the manufacturer must offer the tools or information to the dealer in the same manner and on the same terms and conditions as provided to the independent repair facility.

Generally, a manufacturer may not require a dealer to purchase a proprietary tool and interface if (1) it sells diagnostic tools necessary to diagnose, service, or repair a motor vehicle to independent repair facilities and (2) the diagnostic tool communicates with the vehicle using the same nonproprietary interface used by other manufacturers. However, a manufacturer may require a dealer to purchase a proprietary tool and interface if the interface has a capability that is not available in the nonproprietary interface.

A manufacturer must provide diagnostic repair information to aftermarket scan tool companies and third-party service information providers with whom the manufacturer has a licensing, contractual, or confidentiality agreement for the sole purpose of building aftermarket diagnostic tools and third-party service information publications and systems.

A manufacturer that complies with this requirement is not responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

Requirements Related to Onboard Diagnostic Systems

Generally, beginning in model year 2018, a manufacturer must provide access to the manufacturer's onboard diagnostic and repair information system using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity, and other capabilities as specified by the vehicle manufacturer. Additionally, it must provide access to one of the following:

- a nonproprietary vehicle interface device that complies with specified standards;
- an onboard diagnostic and repair information system integrated and entirely self-contained within the vehicle, including service information systems integrated into an onboard display; or
- a system that provides direct access to onboard diagnostic and repair information through a nonproprietary vehicle interface, such as ethernet, universal serial bus, or digital versatile disc.

A manufacturer must provide owners and independent repair facilities with the same access to onboard diagnostic and repair information that is available to the manufacturer's dealers, including technical updates to the onboard systems, through the nonproprietary vehicle interfaces as required under the bill.

Nothing in the bill may be construed to require a dealer to use a nonproprietary vehicle interface or to prevent a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device if the manufacturer meets specified requirements. A manufacturer may not be prohibited from making proprietary tools available to dealers if the tools meet certain requirements.

If a proprietary tool is available to the aftermarket on fair and reasonable terms, provision of a proprietary tool pursuant to these requirements is not a violation of the bill even if the tools provide functions not available through a nonproprietary vehicle interface required by the bill. Additionally, a manufacturer is not authorized to exclusively develop proprietary tools, without a nonproprietary equivalent, for diagnostic or repair procedures that fall outside the above requirements or to otherwise operate in a manner inconsistent with the requirements in the bill related to nonproprietary vehicle interfaces.

Telematics Systems

A manufacturer that sells motor vehicles equipped with a telematics system must install an open data platform in each motor vehicle with such a system beginning with
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model year 2025; any such system must meet several requirements specified by the bill (e.g., standardized across all makes and models, allows an owner to easily access the information, etc.).

OAG must develop a document that explains (1) what a telematics system is and (2) an owner's rights relating to those systems. A motor vehicle dealer must give a consumer buying a motor vehicle with a telematics system the required document at the time of purchase.

Enforcement Provisions

An independent repair facility or owner that believes that a manufacturer has failed to provide information or a tool required by the bill must notify the manufacturer in writing, through the National Automotive Service Task Force Service Information Request process. The manufacturer may cure the failure within 30 days of receiving the notice. If the manufacturer cures the failure within that time period, damages must be limited to actual damages in any subsequent litigation in accordance with MCPA.

If a manufacturer fails to respond to the notice, or if an owner or independent repair facility is not satisfied with the manufacturer's cure, the facility or owner may bring an action against the manufacturer in accordance with specified provisions of MCPA. A complaint must include specified documentation and evidence.

A dealer may exercise the rights and remedies provided in the bill, including rights and remedies authorized for an independent repair facility.

Current Law:

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

CPD is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: Small businesses that are independent repair facilities (as defined by the bill) may meaningfully benefit under the bill, as the bill requires manufacturers to make information and tools available that allow for the diagnosis, maintenance, or repair of vehicles. Dealers, to the extent they are small businesses, may face greater competition.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Legislative Services

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