

## **Subcommittee on Innovation, Data, & Commerce**

### **Hearing entitled “Proposals to Enhance Product Safety and Transparency for American”**

**[September 27, 2023]**

#### **Documents for the record**

At the conclusion of the meeting, the chair asked and was given unanimous consent to include the following documents into the record:

1. A letter from Consumer Reports regarding H.R. 3950, the “TICKET Act,” to Chair Bilirakis and Ranking Member Schakowsky, September 19, 2023, submitted by the Majority.
2. A letter from GrubHub to Chair Rodgers, September 25, 2023, submitted by Rep. Clarke.
3. A letter from TickPick to Chair Bilirakis and Ranking Member Schakowsky, September 26, 2023, submitted by the Majority.
4. A letter from DoorDash to Chair Bilirakis and Ranking Member Schakowsky, September 26, 2023, submitted by Rep. Clarke.
5. A letter from Representatives McClain and Peltola to Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky, September 27, 2023, submitted by Rep. Walberg.
6. A letter from CPSC Commissioner Peter A. Feldman to Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
7. A letter from Consumer Reports regarding H.R. 1797, the Setting Consumer Standards for Lithium-Ion Batteries Act, to Chair Bilirakis and Ranking Member Schakowsky, September 26, 2023, submitted by Rep. Clarke.
8. An enclosure to supplement the Consumer Reports (7) letter, submitted by Rep. Clarke.
9. A coalition letter from undersigned organizations to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Rep. Walberg.
10. A letter from the California Association of Sanitation Agencies to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
11. Letter from International Association of Fire Chiefs re HR 1797 the Setting Consumer Standards for Lithium-Ion Batteries Act, September 26, 2023, submitted by Rep. Clarke.
12. Comments from the National Association of Mutual Insurance Companies, September 27, 2023, submitted by the Majority.
13. Comments from the Ticket Buyer Bill of Rights Coalition, submitted by the Majority.
14. A letter from Macomb County Public Works Commissioner Candice S. Miller, September 26, 2023, submitted by the Majority.
15. A letter from the Massachusetts State Automobile Dealers Association to Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky, September 26, 2023, submitted by the Majority.
16. A letter from Travel Tech to Chair Bilirakis and Ranking Member Schakowsky, September 26, 2023, submitted by the Majority.
17. A letter from the American Hotel & Lodging Association to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.

18. A letter from Representative Carey to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
19. A letter from the Alliance for Automotive Innovation to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
20. A letter from MEMA Aftermarket Suppliers to Chair Bilirakis and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
21. A letter from the National Automobile Dealers Association to Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky, September 27, 2023, submitted by the Majority.
22. Comments for the record from Representative Bill Pascrell, Jr., September 27, 2023, submitted by the Majority.
23. Comments for the record from the American Cleaning Institute, September 27, 2023, submitted by the Majority.
24. Letter from American Red Cross and YMCA of the USA on HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, submitted by the Minority.
25. Document from the American Alliance for Vehicle Owners' Rights on HR 906, the REPAIR Act, submitted by the Minority.
26. Document from the American Property Casualty Insurance Association on HR 906, the REPAIR Act, submitted by the Minority.
27. Letter from parent advocates on HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, submitted by the Minority.
28. Letter from Pool and Hot Tub Alliance on HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, submitted by the Minority.
29. Letter from Abbey's Hope on HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, submitted by the Minority.
30. Document from Rep. Debbie Wasserman Schultz on HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, submitted by the Minority.
31. Document from CA Goldberg on HR 4310, the Youth Poisoning Protection Act, submitted by the Minority.
32. Document from Vivid Seats on HR 3660, the BOSS and SWIFT Act, HR 3950, the TICKET Act, and the Speculative Ticketing Discussion Draft, submitted by the Minority.
33. Letter from the Alliance for American Manufacturing on HR 5556, the Reinforcing American-Made Products Act, submitted by the Minority.
34. Letter from People for Bikes on HR 1797, the Setting Consumer Standards for Lithium-Ion Batteries Act, submitted by Rep. Clarke.
35. Letter from International Association of Fire Fighters on HR 1797 the Setting Consumer Standards for Lithium-Ion Batteries Act, September 26, 2023, submitted by Rep. Clarke.
36. A letter from INDA, the Association of the Nonwoven Fabrics Industry and the undersigned companies, submitted by Rep. Walberg.
37. A pamphlet from the National Association of Clean Water Agencies, submitted by Rep. Walberg.
38. A letter from the Specialty Equipment Market Association (SEMA) to Chair Bilirakis and Ranking Member Schakowsky, submitted by Rep. Walberg.
39. An op-ed titled, "REPAIR Act will guarantee the right to safe, affordable and accessible vehicle repair," July 21, 2023, submitted by Rep. Dunn.



40. An outtake from the Auto Care Service Retail Outlets, the 2024 Fact Book on auto repair shops, submitted by Rep. Dunn.



September 19, 2023

The Honorable Gus Bilirakis, Chairman  
The Honorable Jan Schakowsky, Ranking Member  
Subcommittee on Innovation, Data and Commerce  
House Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

**RE: Consumer Reports Support for H.R. 3950, the “TICKET Act”**

Dear Chairman Bilirakis and Ranking Member Schakowsky,

Consumer Reports (CR)<sup>1</sup> strongly supports H.R. 3950, the Transparency in Charges for Key Events Ticketing Act (“TICKET Act”),<sup>2</sup> to protect consumers by requiring “all-in pricing” for sales of tickets for concerts, sports events and other live entertainment events. By requiring the upfront disclosure of the full cost of the ticket, inclusive of all mandatory and unavoidable fees, the TICKET Act will help ensure price transparency for ticket sales, and enable consumers to make informed purchase decisions at the point of sale.

As noted by the Federal Trade Commission (FTC)<sup>3</sup> and the Government Accounting Office

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<sup>1</sup> Consumer Reports (CR) is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. Since 1936, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers’ interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

<sup>2</sup> H.R. 3950 - 118th Congress (2023-2024), TICKET Act, *Congress.gov*, Library of Congress, April 26, 2023, available at: <https://www.congress.gov/bill/118th-congress/house-bill/3950>.

<sup>3</sup> Federal Trade Commission, “That’s The Ticket Workshop” Staff Perspective, May 2020, available at: [https://www.ftc.gov/system/files/documents/reports/thats-ticket-workshop-staff-perspective/staffperspective\\_tickets\\_final-508.pdf](https://www.ftc.gov/system/files/documents/reports/thats-ticket-workshop-staff-perspective/staffperspective_tickets_final-508.pdf) See also: *Proposed Rule, Unfair or Deceptive Fees Trade Regulation Commission Matter No R.207011, Advanced Notice of Proposed Rulemaking*, November 8, 2022, available at: <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>, hereafter “Junk Fee Rule.”

(GAO),<sup>4</sup> the current ticket marketplace for live entertainment events is not transparent, with ticket sellers often hiding the full cost of admission through “drip pricing” methods. Mandatory and unavoidable fees, such as “venue,” “facility” and “ticket processing” fees, increase the price— sometimes by as much as 30 percent. Furthermore, consumers often are not informed about these fees after they have selected their tickets, sometimes only after entering their payment information. The late disclosure of fees at the last minute before purchase increases search costs for consumers, and makes it harder for them to comparison shop. It also creates opportunities for unfair and predatory competition, by obscuring the actual cost of tickets that may be available for sale on competitive platforms.

In December 2016, the National Economic Council issued a report, *The Competition Initiative and Hidden Fees*, which notes that ticket fees are generally structured as they are “in order to drive down the perceived price and lure consumers to make purchasing decisions based on misinformation” and are, at worst, “fraudulent or deceptive; at a minimum, they make prices unclear, hinder effective consumer decision making, and dull the competitive process.”<sup>5</sup>

The additional cost of the ticket fees quickly adds up. In 2018, the GAO estimated that “the average event ticket fee on a primary sale is 27 percent of face value” while fees on resale sites average 31 percent of the (often inflated) price.”<sup>6</sup>

Members of the ticket industry have also testified before FTC and Congress that without a federal requirement to provide “all-in pricing,” it is unlikely that ticket sellers will act to consistently implement transparent pricing on their own. In its 2022 proposed rulemaking to curb junk fees, the FTC has reported that: “After a market leader took unilateral action to phase out hidden fees, the platform ‘lost significant market share and abandoned the policy after a year because consumers perceived the platform's advertised prices to be higher than its competitors' displayed prices.’”<sup>6</sup> Thus, for an “all-in pricing” requirement to be effective, it should apply to all sellers in the marketplace, so that consumers can make head-to-head comparisons regarding the price of tickets.

As an organization that works to advance the interests of consumers, Consumer Reports has received thousands of stories from consumers who are frustrated by the imposition of expense fees for live entertainment. In 2018, in advance of a workshop on event ticketing at the FTC, CR

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<sup>4</sup> Government Accounting Office, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347, April 12, 2018, available at: <https://www.gao.gov/products/gao-18-347>, hereafter “GAO Report.”

<sup>5</sup> National Economic Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), at: [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport\\_12282016.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf)

<sup>6</sup> GAO Report, page 15-18.

<sup>6</sup> FTC Junk Fee Rule, op. cit note #3.

reached out to its members asking them to share their stories about ticketing and ticket fees; more than 6,600 wrote back sharing their experiences with both CR and the FTC.

These consumers, representing all 50 states, the District of Columbia, and Puerto Rico shared a general frustration with the purchase process. Many gave concrete examples of frustrations with hidden fees raising the price of a ticket well beyond what the individual had understood to be the price; with bait-and-switch tactics that left them uncertain about what they had bought, and whether the tickets were legitimate; and with the opaque operations of the secondary ticket market. Complaints like these are only the tip of the iceberg because many other consumers complain about hidden ticket fees to the FTC, state attorneys general, and other state and local consumer protection agencies.

In conclusion, the common-sense consumer protections provided through the TICKET Act to require “all-in pricing” for ticket sales are urgently needed and long overdue. The bill will help ensure consumers can shop and compare prices for tickets on a fair and transparent basis, as they routinely do for other products and services. By establishing fair ground rules for all ticket sellers and market participants, the TICKET Act also creates a level playing field for all market actors to act appropriately. For all these reasons, Consumer Reports strongly supports the TICKET Act. We urge members of the House Energy and Commerce Committee to please cosponsor and support this critically important consumer protection legislation, and to secure its passage through the full committee.

Sincerely,



Chuck Bell  
Programs Director



Jonathan Schwantes  
Senior Policy Counsel

Consumer Reports  
1101 17<sup>th</sup> Street NW #500  
Washington DC 20036  
(202) 462-6262



**Amy Healy**  
**Vice President, Government Affairs**  
(908) 305-1400  
1065 6th Ave.  
15th Floor  
New York, New York, 10018

September 25, 2023

The Honorable Cathy McMorris Rodgers  
Chairwoman  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairwoman Rodgers,

I am writing to you today to express Grubhub's support of H.R. 1797, *Setting Consumer Standards for Lithium-Ion Batteries Act*, legislation which would require the Consumer Product Safety Commission to promote product safety standards in regard to rechargeable lithium-ion batteries in mobility devices. Grubhub applauds the efforts of Congress to address the rising issue of e-battery fires that have affected cities around the country. Many food delivery earners, especially those in dense urban areas, rely on e-bikes to sustain their livelihoods. These delivery partners are essential to thousands of communities and businesses, including Grubhub's, and helping to ensure their safety – and the safety of all Americans – is a top priority.

Grubhub is doing its part on the ground to combat this issue and we have announced several new initiatives aimed at creating a safer, more sustainable environment for delivery partners who utilize e-bikes, starting in New York City. This includes a [pilot program with JOCO](#), a leading delivery e-bike rental platform founded in New York City in 2021. The JOCO partnership will provide at least 500 delivery partners free access to more than a thousand safety certified e-bikes, as well as more than 55 JOCO hubs for continuous safe e-bike storage, battery exchange and distribution of delivery rider gear. Grubhub is also working collaboratively with New York City leaders, the Fire Department of the City of New York (FDNY), and industry partners to advance the safety of couriers and residents. In addition to the JOCO pilot program, the Grubhub Community Fund has awarded a \$100,000 grant to the FDNY Foundation to address this critical issue.

Grubhub is eager to continue working with Congressional leaders and industry partners to address this issue by spreading public awareness and directly communicating with delivery partners about safe e-bike use, while preserving access for those who rely on them and tackling the clear need for better charging infrastructure. We look forward to a continued dialogue with your office on this critical issue and on ways to best partner to pass this important legislation into law.

Sincerely,

A handwritten signature in black ink that reads "Amy Healy".

Amy Healy  
Vice President of Government Affairs  
Grubhub



September 26, 2023

The Honorable Gus Bilirakis (R-FL)  
The Honorable Jan Schakowsky (R-IL)  
House Energy & Commerce Committee;  
Subcommittee on Innovation, Data, and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky,

Ahead of the Energy & Commerce Committee's consideration of H.R. 3950, The Transparency In Charges for Key Events Ticketing (TICKET) Act, TickPick, LLC respectfully submits the following suggested edits to the bill:

**General:**

- The price transparency requirements for primary ("ticket issuer") vs secondary markets should be separated.

Primary markets have "base event ticket prices" that represent something concrete in the industry whereas in secondary markets the "base event ticket price" is essentially contrived by the marketplace. **It does not represent the amount paid to the ticket seller just as the "event ticket fees" do not represent the marketplace's markup on an amount paid to the ticket seller.** The "base event ticket price" are increased or decreased in relation to decreases and increases in the "event ticket fees" to drive the largest amount paid in total by a customer. It is a deceptive practice.

Allowing the display of a contrived "base event ticket price" and correspondingly contrived "event ticket fees" only serves to deceive the customer and inhibit their ability to comparison shop across marketplaces. The secondary marketplaces should only be allowed to display the "total event ticket price" as referenced in the draft bill.

**Definitions:**

- The definition of 'event ticket fee' should exclude sales taxes – as standard in other industry marketplaces.

**Section 2:**

- **(a) Line 7** – strike "at the beginning of the transaction and prior to the individual's selection of an event ticket to purchase" as that mirrors the NYS language that was

distorted in its interpretation by the marketplaces to enable them to not display the “total event ticket price” as the first price seen by a customer.

- **(b)** – secondary marketplaces never have actual or constructive possession of an event ticket, and they cannot verify a seller has actual or constructive possession. Secondary ticket marketplaces can require sellers who do not have actual or constructive possession to disclose that to the marketplace, and it can be disclosed to the buyer that the ‘seller’ not the ‘marketplace’ does not possess the ticket.

We applaud your leadership and your bipartisan approach on this topic and look forward to working with you as you look to further advance the TICKET Act in a way that is implementable. We appreciate your focus on highlighting concerning trends in the ticketing industry.

Sincerely,

DocuSigned by:  
  
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Michele Rusnak  
Chief Finance and Administrative Officer



September 26, 2023

The Honorable Gus Bilirakis  
Chairman, Subcommittee on Innovation,  
Data and Commerce  
Committee on Energy & Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building

The Honorable Janice Schakowsky  
Ranking Member, Subcommittee on Innovation,  
Data and Commerce  
Committee on Energy & Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building

Dear Chairman Bilirakis and Ranking Member Schakowsky:

DoorDash writes to express our support for Representative Ritchie Torres's [H.R. 1797](#), the "Setting Consumer Standards for Lithium-Ion Batteries Act." It is critical that the United States establish battery safety standards for all micromobility devices so that every American can use these products without putting themselves, their families, or their neighbors at risk.

DoorDash is a technology company that connects consumers with their favorite local businesses in more than 25 countries across the globe. Founded in 2013, DoorDash builds products and services to help businesses innovate, grow, and reach more customers. DoorDash is building infrastructure for local commerce, enabling merchants to thrive in the convenience economy, giving consumers access to more of their communities, and providing work that empowers. With DoorDash, there is a neighborhood of good in every order.

Electric micromobility is a crucial component of transportation in the U.S., particularly for more urban areas. It offers substantial benefits to U.S. communities, workers, and citizens as people take advantage of mobility options that reduce emissions, save space, and mitigate congestion.<sup>1</sup> At DoorDash, we see micromobility as a key way to make deliveries more efficient while also reducing carbon emissions.

However, it is essential that electric micromobility products in the U.S. marketplace are safe to use and do not create safety hazards due to their reliance on lithium-ion batteries. Recent fires in New York City have highlighted the dangers posed by the absence of safety standards for the lithium-ion batteries that power these devices. The absence of these standards is particularly important for food delivery workers, many of whom own these devices and use them to earn extra income.

A safety floor must be put in place to ensure that unsafe batteries do not enter the marketplace. H.R. 1797 would do just that by requiring the Consumer Product Safety Commission (CPSC) to promulgate a final consumer product safety standard for rechargeable lithium-ion batteries used in micromobility devices within 180 days of enactment. The lack of a clear, mandated safety standard has made cheap, imported e-bikes and other micromobility devices powered by substandard lithium-ion batteries far too prevalent. The widespread availability of these inferior products on major e-commerce retailers' websites has also worsened the situation, as consumers are provided little information about battery quality or country of origin. Lastly, many of these products enter the country free of import duty and without oversight from customs, as their artificially low prices can allow them to enter the U.S. through the *de minimis* exemption. Products that cannot meet standards that adequately protect against the risk of fires should

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<sup>1</sup> [Electric Bikes Statistics. Academic Research. PeopleForBikes](#) (Collecting academic studies regarding climate and transportation benefits of electric bicycles).





not be manufactured, imported into, or sold in the U.S. Shutting down the flow of unsafe e-bikes will help make families across the country safer, and protect hardworking communities from the hazards that come from shoddy, foreign-manufactured lithium-ion batteries. The “Setting Consumer Standards for Lithium-Ion Batteries Act” is a crucial first step to addressing these loopholes by ensuring that a clear safety standard exists.

DoorDash has partnered with electric bicycle suppliers to expand access to affordable, safe e-bikes so that Americans who use the DoorDash platform to make deliveries and earn extra income – called Dashers – have more transit options. These partnerships allow Dashers to purchase safe, discounted electric bicycles from reputable manufacturers and expand access to electric bicycle rentals. We’ve also helped educate Dashers and others in the communities we serve about safe e-bike practices, including contributing \$100,000 to the FDNY Foundation’s e-bike and battery safety education campaign. We continue to develop new partnerships that make it easy and affordable to obtain safe mobility devices like e-bikes and keep Dashers informed of best practices in battery safety.

While we’re proud of the work we’re doing to give Dashers more access to safe, reliable e-bikes, we, unfortunately, can’t stop the flow of unsafe or uncertified products into the U.S. Americans may be drawn to these products for many reasons, whether it be cost, easy availability, or a misunderstanding of the product’s certification status. We believe that a CPSC standard for micromobility lithium-ion batteries will materially improve safety by ensuring that all options, at a minimum, protect against the risk of fires or other harms. Dangerous batteries simply should not be sold, imported, or equipped on any vehicle.

We are heartened by the Consumer Product Safety Commission’s recent actions to consider adopting new regulations for electric bicycles, and we will support their efforts to create new battery-safety standards through that process. However, H.R. 1797 is necessary to solve the broader problem of micromobility battery safety, as the issue extends beyond electric bicycles. As new standards are being considered or developed, we will continue to pursue partnerships and investments that help make safe, certified products more readily available to Dashers and help inform them about best practices in battery safety to prevent fires.

Thank you for considering this important legislation.

Sincerely,

A handwritten signature in black ink that reads "Carrianna S Kuruvilla".

Carrianna Suiter Kuruvilla  
Head of Federal Government Relations  
DoorDash

CC: The Honorable Cathy McMorris Rodgers, Chairwoman, House Energy & Commerce Committee  
The Honorable Frank Pallone, Ranking Member, House Energy & Commerce Committee



## Congress of the United States

September 27, 2023

The Honorable Cathy McMorris Rodgers  
Chairwoman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Gus Bilirakis  
Chairman  
Subcommittee on Innovation,  
Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation,  
Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairwoman Rodgers, Ranking Member Pallone, Chairman Bilirakis, and Ranking Member Schakowsky:

We write in support of our bill, H.R.2964, the *Wastewater Infrastructure Pollution Prevention and Environmental Safety* or *WIPPES Act*, a bipartisan, bicameral solution to protect wastewater systems across the country from the damage of non-flushable wipes.

Often times, consumers unknowingly flush wipes incompatible with sewage systems, in part due to a lack of proper disposal instructions on product packaging. These wipes, when entered into sewage systems, often do not break down and cause large obstructions in pipes, leading to clogs within pumps, collection systems, and motors. This leads to significant equipment failures. The 2020 Cost of Wipes Report from the National Association of Clean Water Agencies estimates that non-flushable wipes result in \$441 M in additional costs to keep water facilities functioning.<sup>1</sup>

The *WIPPES Act* would establish a simple source management solution through consistent on-package “Do Not Flush” labeling requirements for non-flushable wipes that is based on laws adopted in several states. This common-sense legislation enjoys the support of a broad cross-

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<sup>1</sup> [https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost\\_of\\_wipes-1.pdf](https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost_of_wipes-1.pdf)

section of industry, wastewater, and environmental stakeholders including the American Society of Engineers, Association of Nonwoven Fabrics Industry, Bay Area Pollution Prevention Group, California Association of Sanitation Agencies, Consumer Healthcare Products Association, Kimberly-Clark, National Association of Clean Water Agencies, National Rural Water Association, National Stewardship Action Council, Proctor & Gamble, Washington Association of Sewer and Water Districts, and the Water Environment Federation.

We appreciate the Subcommittee on Innovation, Data, and Commerce discussing this legislation at its Legislative Hearing on “Proposals to Enhance Product Safety and Transparency for Americans” and urge members to support this legislation.

Sincerely,

  
Lisa C. McClain  
Member of Congress

  
Mary Sattler Peltola  
Member of Congress



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814  
**COMMISSIONER PETER A. FELDMAN**

September 27, 2023

The Honorable Cathy McMorris Rodgers  
Chair  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20510

The Honorable Gus M. Bilirakis  
Chair  
Subcommittee on Innovation, Data, and Commerce  
United States House of Representatives  
Washington, DC 20510

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20510

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data, and Commerce  
United States House of Representatives  
Washington, DC 20510

Dear Chair McMorris Rodgers, Chair Bilirakis, Ranking Member Pallone, and Ranking Member Schakowsky:

I am writing to thank you for circulating draft legislation to improve the safety of motorized retractable awnings. As a Commissioner of the Consumer Product Safety Commission (CPSC), tasked with protecting American consumers from the unreasonable risk of injury associated with consumer products, I can confirm that the hazard pattern associated with these products is troubling.

I appreciate Congress's effort to address this issue by directing CPSC to promulgate a mandatory safety standard for this product category. Consumers should have confidence that the products they use, including awnings, do not pose an unreasonable risk of injury or death. I share your concerns and appreciate the discussion language.

There are steps the agency can take within its existing authority. Should this legislation advance, I commit to work with your office and to offer technical assistance where appropriate.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter A. Feldman".

Peter A. Feldman  
Commissioner



September 26, 2023

The Honorable Gus Bilirakis, Chairman  
Committee on Energy and Commerce  
Subcommittee on Innovation,  
Data, and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jan Schakowsky, Ranking Member  
Committee on Energy and Commerce  
Subcommittee on Innovation,  
Data, and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

On behalf of Consumer Reports (CR), the independent, non-profit, nonpartisan member organization, we write in advance of the Subcommittee's September 27, 2023, hearing to state for the record our endorsement of H.R. 1797, the Setting Consumer Standards for Lithium-Ion Batteries Act. We strongly support this bipartisan legislation, which would ensure the Consumer Product Safety Commission (CPSC) can set strong safety standards for micromobility devices, such as e-bikes, e-scooters, and hoverboards, in a timely manner.

Micromobility products can be a useful, cost-effective, and fun way to get around. They have soared in popularity in recent years, and many of them are manufactured overseas and imported to the U.S. Unfortunately, fires and explosions linked to the products have also proliferated. Since 2021, micromobility devices using high energy density batteries have been linked to hundreds of fires and over two dozen fatalities, including the deaths of multiple children.

Last year, CR published an investigation into the surge of deadly fires linked to e-bikes. While specific information on the manufacturers or brands tied to these fires is not publicly available, fire experts have said they suspect that low-quality batteries from fringe players are often to blame.

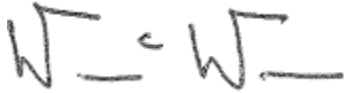
On July 27, 2023, the CPSC held a lithium-ion battery safety forum, in which CR, industry stakeholders such as PeopleForBikes and the National Bicycle Dealers Association, the New York City Fire Department, and numerous safety experts spoke to the potential dangers posed by these products, and what can be done to address the growing crisis. The universal consensus from forum participants was that micromobility products using high energy density batteries should be required to meet a mandatory federal safety standard. Such a standard would level the playing field and help ensure that manufacturers and sellers put safety first. While noting existing legal authority, the CPSC Chair also stated that the agency could move more quickly with the assistance of Congress.

Thankfully, a bipartisan bill before this Subcommittee would address this emerging but addressable hazard. The Setting Consumer Standards for Lithium-Ion Batteries Act (H.R. 1797),

introduced by Rep. Ritchie Torres and New York colleagues of his from each party, would require the CPSC to promulgate a safety standard for rechargeable lithium-ion batteries used in micromobility devices, and require the agency to issue a final rule in a timely manner.

Consumer Reports strongly supports H.R. 1797 and urges every member of the Subcommittee to cosponsor this sensible bill. Thank you for your consideration, and please do not hesitate to reach out to us with any questions.

Sincerely,



William Wallace  
Associate Director, Safety Policy



Gabe Knight  
Safety Policy Analyst

cc: The Honorable Ritchie Torres  
U.S. House of Representatives

Enclosure: Consumer Reports story by Stephanie Clifford, December 8, 2022: “‘Fire! Fire! Fire!’ The Perplexing, Deadly Electric Bike Problem” ([consumerreports.org/health/electric-bikes/electric-bike-fires-and-lithium-ion-batteries-a4632489902](https://www.consumerreports.org/health/electric-bikes/electric-bike-fires-and-lithium-ion-batteries-a4632489902)).





y triggered by the battery in an electric bike/scooter.



September 27, 2023

The Honorable Gus Bilirakis  
Chairman  
Subcommittee on Innovation, Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

On behalf of the undersigned organizations, we write to express support for the *Wastewater Infrastructure Pollution Prevention and Environmental Safety (WIPPES) Act* (H.R.2964) and respectfully request that this letter be included in the September 27, 2023 Subcommittee on Innovation, Data, and Commerce “Proposals to Enhance Product Safety and Transparency for Americans” legislative hearing’s record. This bipartisan legislation takes a straightforward and reasonable approach to addressing the pervasive, but ultimately preventable pollution problem stemming from the improper disposal of non-flushable wipes in the nation’s wastewater systems.

The WIPPES Act provides a common sense “Do Not Flush” labeling requirement for non-flushable wipes packaging and establishes a simple source management solution through consistent on-package consumer education. The wipes industry, clean water sector, civil engineers, and environmental advocates support the WIPPES Act. We believe the legislation will



advance our mutually shared interest to protect public infrastructure and the environment by promoting responsible disposal habits. Due to the lack of consistent and clear disposal packaging instructions, consumers often unwittingly flush these wipes down the toilet. At a national-level, wet wipes are responsible for \$441 million a year in additional operating costs at US clean water utilities.<sup>1</sup> Since these types of wipes are not designed to be flushed, they can clog and damage pipes, pumps, and treatment equipment, resulting in increased operation and maintenance costs for clean water utilities. Additionally, the flushing of these wipes can cause potential environmental harms, such as sewer overflow events, and some may contribute microplastic and microfiber pollution to our water resources.

The WIPPES Act takes a straightforward and reasonable approach to addressing this pervasive, but ultimately preventable pollution problem. This bipartisan legislation provides a common sense “Do Not Flush” labeling requirement for non-flushable wipes packaging that is based upon labeling actions taken by several states to address the issue. As a result, the WIPPES Act establishes a simple source management solution through consistent on-package consumer education.

Thank you for the opportunity to provide comments for the record and your leadership to develop common-sense and bipartisan solutions to the unique problems related to the flushing of non-flushable wipes.

Sincerely,

American Society of Civil Engineers  
Association of Nonwoven Fabrics Industry  
Bay Area Pollution Prevention Group  
California Association of Sanitation Agencies  
Consumer Healthcare Products Association  
Kimberly-Clark  
National Association of Clean Water Agencies  
National Rural Water Association  
National Stewardship Action Council  
Procter & Gamble  
Washington Association of Sewer & Water Districts  
Water Environment Federation

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<sup>1</sup> NACWA. 2020. The Cost of Wipes On America’s Clean Water Utilities: An Estimate of Increased Utility Operating Costs. [https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost\\_of\\_wipes-1.pdf?sfvrsn=b535fe61\\_2#](https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost_of_wipes-1.pdf?sfvrsn=b535fe61_2#)



September 27, 2023

The Honorable Gus Bilirakis  
Chairman  
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U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

On behalf of the California Association of Sanitation Agencies (CASA), we write to express support for the *Wastewater Infrastructure Pollution Prevention and Environmental Safety (WIPPES) Act* (H.R.2964) and respectfully request that this letter be included in the September 27, 2023 Subcommittee on Innovation, Data, and Commerce “Proposals to Enhance Product Safety and Transparency for Americans” legislative hearing’s record. CASA represents more than 125 local public agencies in California engaged in the collection, treatment and recycling of wastewater and biosolids to protect public health and the environment. Our mission is to provide trusted information and advocacy on behalf of California clean water agencies, and to be a leader in sustainability and utilization of renewable resources.

Due to the lack of consistent and clear disposal packaging instructions, consumers often unwittingly flush non-flushable wet wipes down the toilet. However, since these wipes are not compatible with sewer systems, they often do not break down after being flushed. As a result, the flushing of these wipes cause problems for property owners, sewer systems, and ratepayers. Once in the sewer system, these wipes can catch on tree roots and accumulate with fats, oils and grease and become large obstructions in the pipes, as well as septic systems. Further down the line, they weave together and create giant rags which get stuck in pumps, collection systems, and motors, causing backups and equipment failures. In addition to the adverse impacts to clean water infrastructure, there are also significant cost risks for clean water utilities and ratepayers. At a national-level, wet wipes are responsible for \$441 million a year in additional operating costs at US clean water utilities.<sup>1</sup> Additionally, the flushing of these wipes can cause potential environmental harms, such as sewer overflow events, and some may contribute microplastic and microfiber pollution to our water resources.

The WIPPES Act takes a straightforward and reasonable approach to addressing this pervasive, but ultimately preventable pollution problem. This bipartisan legislation provides a common sense “Do Not Flush” labeling requirement for non-flushable wipes packaging that is based on state law developed in California and subsequently adopted in several other states. As a result, the WIPPES Act establishes a simple source management solution through consistent on-package consumer education. Further, it enjoys the support from the clean water sector, civil engineers, the wipes industry, and environmental advocates, as it advances the

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<sup>1</sup> NACWA. 2020. The Cost of Wipes On America’s Clean Water Utilities: An Estimate of Increased Utility Operating Costs. [https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost\\_of\\_wipes-1.pdf?sfvrsn=b535fe61\\_2#](https://www.nacwa.org/docs/default-source/resources---public/govaff-3-cost_of_wipes-1.pdf?sfvrsn=b535fe61_2#)

mutually shared interest to protect public infrastructure and the environment by promoting responsible disposal habits.

Thank you for the opportunity to provide comments for the record. If CASA can be a resource for you and the committee, please do not hesitate to contact me at [alink@casaweb.org](mailto:alink@casaweb.org) or (916) 446-0388.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam D. Link". The signature is fluid and cursive, with a large initial "A" and "L".

Adam D. Link  
Executive Director



# International Association of Fire Chiefs

8251 Greensboro Drive, Suite 650 • McLean, VA 22102  
Tel: 703.273.0911 • IAFC.org

September 27, 2023

The Honorable Gus Bilirakis  
Chair  
Subcommittee on Innovation, Data & Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data & Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

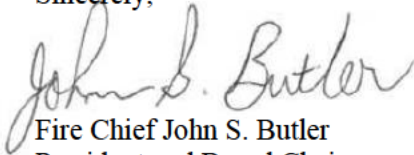
On behalf of the nearly 11,000 members of the International Association of Fire Chiefs (IAFC), I thank you for holding today's legislative hearing to examine H.R. 1797, the *Setting Consumer Standards for Lithium-Ion Batteries Act*. This legislation would require the Consumer Product Safety Commission (CPSC) to issue safety standards on lithium-ion batteries in mobility devices. We ask that you support this legislation.

This bipartisan act would require the CPSC to set a mandatory safety standard for lithium-ion batteries. These are often found in micro mobility devices like e-bikes and e-scooters. With the increased use of micro-mobility devices powered by lithium-ion batteries, it is paramount that we set safety standards to ensure that consumers are not subject to harm. For example, thermal runaway is one of the main risks related to lithium-ion batteries. This phenomenon can produce smoke, fires, and even explosions.

Fires caused by lithium-ion batteries are happening everywhere creating hazards both for firefighters and the American public. Over the last four years in New York alone, there were more than 400 fires related to lithium-ion batteries. These fires resulted in more than 300 injuries, 12 deaths and damage to more than 320 structures and more than 100 non-structures. Most recently, an e-bike caught fire, which caused a 5-alarm fire and tragically burned down a Bronx, NY supermarket and apartment building leaving multiple people injured. On June 21, 2022, the Spokane Fire Department (Spokane, WA) responded to a structure fire caused by a charging lithium-ion battery that created a hazardous situation for the responding firefighters. On March 22 of this year, a lithium-ion battery from a hoverboard ignited a basement fire in Lodi, NJ.

We ask that you support H.R. 1797, the *Setting Consumer Standards for Lithium-Ion Batteries Act*. The consequences of inaction will be felt by first responders. This bill will mitigate the risk of consumer injury as we increase the use of lithium-ion batteries in our mobility devices. I urge your support of this legislation.

Sincerely,



Fire Chief John S. Butler  
President and Board Chair

: kpl

cc: The Honorable Cathy McMorris Rodgers, Chair, House Energy & Commerce Committee  
The Honorable Frank Pallone, Ranking Member, House Energy & Commerce Committee



Statement of  
the  
National Association of Mutual Insurance  
Companies  
to the  
House Energy and Commerce Committee  
Subcommittee on Innovation, Data, and Commerce  
Hearing Entitled  
**“Proposals to Enhance Product  
Safety and Transparency for  
Americans”**  
September 27, 2023

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the House Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce regarding today's hearing: "Proposals to Enhance Product Safety and Transparency for Americans."

NAMIC membership includes more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members companies write \$391 billion in annual premiums and our members account for 68 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

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### **The Rising Cost of Auto Ownership**

NAMIC greatly appreciates Chair Bilirakis and the Subcommittee on Innovation, Data, and Commerce for holding today's important hearing on proposals that will enhance transparency for Americans and improve product safety. We are highly supportive of H.R. 906, the REPAIR Act, and the right to repair. NAMIC is interested in eliminating unfair repair restrictions and promoting solutions that enhance consumer choice in the marketplace, thereby also reducing costs. The purchase and care of a vehicle is a major life event that affects American consumers for a significant period – more than 76% of American commuters use their car to move between home and work every day, and the average American will spend 51 minutes per day behind the wheel this year. Chances are, that vehicle is insured by a NAMIC member.

This hearing is timely, as the most recent Consumer Price Index Report<sup>1</sup> showed that the cost of vehicle repairs is up 17 percent since August 2022 – remaining much faster than the pace of inflation with no relief in sight. This is part of a growing trend, as over the past five years auto repair costs have been rising about four times higher than the pace of inflation, which is already hitting consumers particularly hard. Additionally, the average price of a new car in the U.S. hit \$48,008 in March, up 30 percent from March 2020, according to Kelley Blue Book. At the same time vehicles and repairs cost more, road safety concerns continue to abound as driver behavior, which deteriorated severely during COVID-19, remains sub-optimal, particularly where speeding, seatbelt usage, impaired driving, and distracted driving are concerned. These factors all contribute to the more than six million crashes per year in the U.S., which result in injuries to more than 4.5 million Americans and damage to more than 23 million vehicles – a situation the National Highway Traffic Safety Administration (NHTSA) estimates costs American society as much as \$340 billion per year.<sup>2</sup>

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<sup>1</sup> <https://www.bls.gov/news.release/pdf/cpi.pdf>

<sup>2</sup> National Highway Transportation Safety Administration: *The Economic and Societal Impact of Motor Vehicle Crashes, 2019*. <https://www.nhtsa.gov/press-releases/traffic-crashes-cost-america-billions-2019>

NAMIC members continue to play an essential role in the face of these daunting challenges and cost pressures, providing financial security for drivers at rates that match their risk of loss as accurately as possible.<sup>3</sup> While the dramatic increases in costs attendant to auto ownership have been caused by a variety of factors<sup>4</sup>, current barriers limiting consumer choice regarding where they get their vehicles repaired along with what parts can be used are certainly major contributors to those higher costs consumers are facing. “Right-to-repair” initiatives are critical in reducing crash repair costs, which are unfortunately becoming unsustainable for insurers and their policyholder vehicle owners across the country. The \$60 billion auto repair industry represents the largest market for the repair of consumer goods in the United States.<sup>5</sup> While consumers and insurers struggle more and more with increased cost in that market, parts manufacturers and select body shops remain the only ones who benefit from artificial repair restrictions that maximize the prices of parts and labor.

Vehicles are becoming more complex and computerized, and manufacturers currently control access to critical information necessary for safe repairs. This anticompetitive behavior is exacerbating already skyrocketing repair costs. That is why the legislation being discussed today, H.R. 906, the REPAIR Act, is critical to ensure the independent repair industry has access to all the tools and equipment, wireless transmission of repair and diagnostic data, and on-board diagnostic and telematic systems needed for vehicle repair. NAMIC believes that purchasing a vehicle, especially a newer model, should not mean surrendering consumer choice and abandoning competition in the marketplace. Every week we see dozens of news articles about rising costs in this arena, and this legislation is important to preserve and even improve a competitive environment that benefits consumers.

While not considered in this committee, another important and related issue being discussed on Capitol Hill is increasing access to aftermarket parts. These cosmetic, largely exterior parts, which make up the majority of vehicle damage in crashes, are frequently produced in the same factory as the original equipment manufacturer, or OEM, parts.<sup>6</sup> These alternative parts have been tested time and again by non-profit, independent, data-driven organizations such as the Certified Automotive Parts Association (CAPA)<sup>7</sup> and the Insurance Institute for Highway Safety (IIHS)<sup>8</sup>, and are consistently found to have no negative effect on vehicle safety. Fortunately, these aftermarket crash parts are also frequently much less expensive than OEM parts, making their use in repairs an obvious benefit to consumers. Unfortunately, those who profit from the mandated use of OEM repair parts consistently advocate at the federal and state levels for legislation and regulations to limit the availability and use of less expensive parts when cars are repaired following crashes. H.R. 1707, the SMART Act, would help end abuse of these design patents by reducing the current 14-year window down to 30-months. Increased access to aftermarket parts will work hand in hand with consumer choice when it comes to where, how, and with what parts their vehicles are repaired.

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<sup>3</sup> [https://www.namic.org/pdf/publicpolicy/220104\\_riskier\\_roads.pdf](https://www.namic.org/pdf/publicpolicy/220104_riskier_roads.pdf)

<sup>4</sup> [https://www.namic.org/pdf/publicpolicy/230117\\_namic\\_candid\\_costs\\_of\\_car\\_ownership\\_wp.pdf](https://www.namic.org/pdf/publicpolicy/230117_namic_candid_costs_of_car_ownership_wp.pdf)

<sup>5</sup> Parmakoski, Aaron. “White Paper on the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act, H.R. 6570, 117<sup>th</sup> Congress.” (September 2022)

<sup>6</sup> <https://www.iii.org/article/faqs-about-direct-repair-programs-and-generic-auto-parts>

<sup>7</sup> <https://www.capacertified.org/Overview>

<sup>8</sup> <https://www.iihs.org/news/detail/iihs-responds-to-tests-involving-aftermarket-repair-parts>

## **Consumer Choice**

Conversations about independent repair shops' ability to repair through access to data and aftermarket parts are fundamentally rooted in the broader concept of a right to repair, which is itself a movement grounded in basic property rights and more recently as a reaction to efforts to limit consumer choice. For hundreds of years, public policy has taken issue with post-sale restrictions on individual property. From the automotive perspective, this means that people should have the ability to maintain and fix their vehicles on their own or at a repair facility of their choice with the parts of their choice, rather than having to rely solely on the manufacturer's good graces or permission to do so. When someone purchases a vehicle, it should not mean surrendering that consumer choice differently than with any other consumer good.

The right to repair one's vehicle encompasses more than just the selection of component parts; it is as much about where and by whom a vehicle can be fixed. When the REPAIR Act was introduced in February of 2022, data was cited by the sponsor indicating that 70% of the 288 million registered vehicles in the U.S. are maintained by independent repair facilities – a number that is both a result and an overwhelming endorsement of consumer choice.<sup>9</sup>

Unfortunately, consumers' ability to make their own choices about their vehicles is dwindling as vehicles continue to become more advanced. Manufacturer efforts to hamstring independent repair shops' ability to repair vehicles takes many forms, including required certifications and limiting access to specific technical repair procedures, branded diagnostic tools, prohibitively expensive software, detailed shop manuals and repair information, as well as limits on what parts can be used during a repair. NAMIC firmly believes that consumers should have the option to go to the service operator of their choice, and to choose non-OEM parts if they prefer.

Further, part of ensuring consumers who suffer an automobile crash can make informed decisions about how their vehicles can be repaired is requiring unfettered access to the information generated by and about their vehicle. Contemporary vehicles, sometimes referred to as "connected cars," generate an incomprehensible amount of data and are equipped with as many as two hundred onboard sensors, tracking everything from engine temperature to seatbelt status. Almost all that data, much of which is critical to the maintenance and safe operation of the vehicle, is wirelessly transmitted on a continuous basis to the manufacturer for their use. As we discuss right to repair initiatives and unfair restrictions on consumers, it is critical to think about this vehicle-generated data and the importance of consumers having control over how it is used and access to what it means. Whether it is repairing a vehicle correctly, preventing future crashes, improving driving patterns, etc., this information is important, and at the end of the day consumers should have clear legal ownership of the data that their vehicle produces. Such data, when meaningfully presented, will help consumers make sound choices about the care and repair of their vehicles as well.

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<sup>9</sup> Congressman Bobby Rush press release, Feb 3, 2022.



### **The Importance of the REPAIR Act**

The REPAIR Act will make it easier for consumers and the repair shops of their choice to access data systems that are increasingly common in modern cars. Newer vehicles have hundreds of sensors and technology incorporated throughout, and in the absence of the ability to access certain diagnostic and safety data, which is almost always necessary for safe and complete repairs, consumers are forcibly steered to the original manufacturer and its affiliated dealers. A University of Michigan [study](#) found that dealerships charge consumers nearly 36 percent more for repairs compared to independent repair shops. Importantly, the legislation will require vehicle manufacturers to provide vehicle owners or their designees access to vehicle data and establish a standardized access platform within 12 months.

This bipartisan consumer focused legislation would prohibit manufacturers from imposing technological or legal barriers against drivers who have spent years building trusted relationships with repair facilities by ensuring that vehicle owners can access information and tools necessary to maintain or fix their cars in a timely fashion. The reality of today's auto and auto repair markets are grim for consumers, particularly if they are forced to take their vehicle to a dealer with access to proprietary diagnostic and repair tools that may be hundreds of miles away. Even if they are able to do so, consumers may find themselves facing longer cycle times due to a lack of parts and qualified technicians to complete repairs. A recent industry analysis concluded that repairer backlogs are at an all-time high, with consumers facing a nearly 5-week average backlog<sup>10</sup>; in some instances, consumers find themselves waiting for several months for a single part needed to complete a repair.<sup>11</sup>

The REPAIR Act will promptly expand options for every vehicle owner in America by removing artificial limitations and prohibiting mandates while preserving manufacturers' ability to secure relevant data. Cybersecurity concerns are specifically acknowledged as a valid concern in the bill's proposed findings, and Section 3(4) permits manufacturers to employ necessary technological protections; however, these should not be used as a subterfuge to thwart the true purpose of the bill – consumer access to their own data. The bill further allows for necessary changes over time to avoiding future disputes by remaining technology-neutral and requiring formal agency rulemaking processes to develop security standards through NHTSA following enactment. The establishment of a “Fair Competition After Vehicles are Sold Advisory Committee” is another positive feature of the proposal that creates an additional open and transparent venue for all relevant stakeholders, including auto insurers, to be heard and report back to Congress at least every two years.

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<sup>10</sup> <https://cccis.com/crash-course/>

<sup>11</sup> <https://www.inquirer.com/cars/car-repair-delays-supply-chain-20230221.html>

The ultimate goal of the REPAIR Act is to further enshrine in U.S. law the principles of market competition and affirm that it is the consumer who sits in the driver's seat when it comes to where, how, and who repairs their vehicle. While the right to repair one's possessions has grown as a movement nationwide, it is especially important in the auto space given the ubiquity of cars and our populace's dependence on them. Our day-to-day lives are often extremely influenced by our vehicles' ability to operate; rising costs, long lines at unfamiliar locations, and confusion about the meaning of data generated by one's own vehicle does not have to be the new reality. Transparency, communication, and market competition to foster choice all serve to benefit drivers, and the passing the REPAIR Act is a key way lawmakers can reduce costs and mitigate some of the inconveniences associated with vehicle maintenance and repair for their constituents across the country.

### **A Path Forward**

It is a pivotal time for the right to repair movement, which ultimately affects all Americans. Cost pressures on NAMIC members and their policyholders are rising in every way, and ensconcing this critical consumer protection into federal law will undoubtedly alleviate some of those pressures for the more than 230 million licensed American drivers on the road today. NAMIC believes no one should be forced to drive hundreds of miles to get to a crowded dealership that will undoubtedly charge more than the trusted local repair shop down the street and ultimately take longer to get the job done. Momentum is building, as we can see from actions at the local, state, and federal levels. The REPAIR Act is common sense legislation that will give consumers more options during vehicle repair, make the market more competitive, and reduce costs to consumers at a time when cars and their repairs have never been more expensive.

Testimony for Record in Support of BOSS & SWIFT Act (HR 3660)  
Ticket Buyer Bill of Rights Coalition

*Consumer Action, Consumer Federation of America, Fan Freedom, National Association of Consumer Advocates, National Consumers League, Protect Ticket Rights, Public Knowledge, Sports Fans Coalition, Consumer Federation of California, Virginia Citizens Consumer Council*



The Ticket Buyer Bill of Rights Coalition is a group of consumer advocates who engage lawmakers at the national and state levels on a variety of consumer protection issues. As recent events with botched on-sales, fans not receiving their tickets, and other harms have shown us, the ticketing industry is deceitful to fans, restrictive of consumer rights, and overall does not serve the consumer's interest. Seeing this, together our groups developed the "The Ticket Buyer Bill of Rights", a set of principles we believe should serve as a framework for ticketing legislation that can improve the live events ticketing market that serves millions of fans each year. The Bill of Rights features five pillars:

1. **The Right to Transferability**, where ticket holders decide how to use, sell or give away their tickets if they wish. and not the entity that previously sold the tickets;
2. **The Right to Transparency**, which includes all-in pricing and disclosures of relevant information for the purchasing decision, such as ticket holdbacks;
3. **The Right to Set the Price**, so that companies who originally sold the tickets cannot dictate to fans the price at which they can or cannot resell their purchased tickets, and, lastly;
4. **The Right to a Fair Marketplace**, where fans compete with actual humans, not illegal software bots for tickets.
5. **The Right to Recourse**, where harmed fans retain the choice to seek remedies through the public court system and are not blocked by terms and conditions that force them into private arbitration.

H.R. 3660, The Better Oversight of Stub Sales and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing Act of 2023 (BOSS and SWIFT Act)<sup>1</sup> is the best embodiment of these principles. We encourage Members of the House of Representatives to cosponsor the BOSS and SWIFT Act to help improve transparency in live event ticketing, protect fans and ticket holders, and ensure the market where consumers buy tickets is safe and competitive. Of all the ticketing bills introduced in Congress this year, the BOSS and SWIFT Act is the most comprehensive and will require all corporate players in the system to reform for the sake of fans and to be held more accountable. This pro-consumer legislation will require change for the better for everyone from sports teams, concert promoters, artist management companies, and music venues, to ticket sellers and resellers.

## The Right to Transferability

Fans should have the right to transfer their previously purchased tickets freely and without restrictions, especially those imposed by monopolists in the primary industry seeking to restrict transfer to “double dip” on their customers – the digital nature of today’s tickets only makes matters worse. We believe once a consumer purchases their ticket, it is theirs to do with as they please, regardless if it’s paper or electronic.

Laws in six states protect the right to transferability, and efforts to expand this protection across other states have been met with stiff opposition from industry - Live Nation/Ticketmaster, other primary ticketing companies, promoters, artist groups, teams, and venues. This right should be protected for all fans, at the federal level. Ticket transferability stands as a cornerstone of consumer protection for avid fans. In the world of live events, fans often find themselves securing tickets six months or longer in advance, only to have life's unexpected twists intervene. This rings particularly true for loyal fans who invest in season tickets, often holding multiple tickets for an entire sports season. When circumstances prevent a fan from attending an event, the ability to resell their ticket becomes a lifeline, allowing them to recoup potential losses. However, the significance of fan resale extends beyond individual convenience; it ushers in a wave of consumer savings.

The power of ticket holders to freely transfer tickets they've already purchased fuels the competitive secondary market for sports tickets. Given that market prices typically reflect the laws of supply and demand, many ticket holders willingly offer their tickets at a price lower than their initial purchase cost. This is true of fans and professional ticket resellers. This phenomenon translates into tangible savings for fellow fans, making live events more accessible and affordable.

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<sup>1</sup> H.R.3660 - 118th Congress (2023-2024): BOSS and SWIFT ACT of 2023. (2023, May 26). <https://www.congress.gov/bill/118th-congress/house-bill/3660>

Ticket Buyer Bill of Rights Coalition member, Sports Fans Coalition, recently analyzed more than 25 million tickets purchased on the secondary market since 2017 and determined that the secondary market generated nearly \$260M in savings for fans. On average fans saved enough money per ticket to afford a beer at the game. A common criticism opponents of an open, transparent, secondary market make is that the secondary market only price gouges fans. In sports this is not the case, as the same study by Sports Fans Coalition shows that nearly a third of the time, tickets sell below face value to major league sporting events.<sup>2</sup>

Protect Ticket Rights, another member of the Coalition, did a similar study but for concert tickets.<sup>3</sup> PTR looked at nearly a quarter million tickets purchased on the secondary market in 2023 to the top concerts and tours and found that consumers at these specific events alone saved more than \$7.5 million by buying from secondary ticket exchanges rather than buying directly from the primary event organizer. For individual concerts, fans saved an average of \$46.34 per ticket. For tours, the average savings were \$36.84. In both cases, fans saved enough money to buy merchandise to commemorate what is undoubtedly a once-in-a-lifetime event.

Not only does ticket transferability protect fans from losing out when they get sick, transferability protects fans' ability to comparison shop for deals, and these data clearly demonstrate that many fans can find substantial savings. 2022 polling from Protect Ticket Rights showed that nationally, 81.6% of respondents support transferability and nearly the same amount (79.3%) back rules to protect that right.<sup>4</sup> While indeed both the primary and secondary ticketing markets require reform to make buying and selling tickets more transparent and protected, it is important to note that the secondary resale market represents the only form of competition in ticketing other than a venue box office or its exclusively contracted primary seller. Protecting transferability protects competition.

Section 4(2) of The BOSS and SWIFT Act prohibits primary ticketing companies from restricting fans from transferring their tickets. Section 4(4) also prohibits primary ticketing companies from sanctioning or denying a fan entry to an event based on the fact the ticket was resold or transferred. This is the only legislation in Congress that affirmatively protects fans from restrictions on transfer.

## Right to Transparency

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<sup>2</sup>Sports Fans Coalition, *Ticket transferability helps sports fans save \$260 million over five years*, July 11, 2023 <https://www.sportsfans.org/ticket-transferability-helps-sports-fans-save-260-million-over-five-years>

<sup>3</sup>Protect Ticket Rights, *2023 Top Concert Ticket Resale Savings Report*, September 2023, <https://www.ticketbuyerbillofrights.org/s/2023-Top-Music-Concert-Ticket-Resale-Savings-Report-09122023.pdf>

<sup>4</sup>Protect Ticket Rights, March 2022, <https://www.protectticketrights.com/news/80/Press+Release+National+Poll+Shows+Americans+Want+Government+to+Improve+Live+Event+Ticketing+and+Bet>

The ticketing marketplace is one of the most opaque industries consumers interact with on a regular basis. Fans often don't know the total price of their ticket until the last minute, how many tickets are actually available for sale or that might go on sale at a future date, or even whether they are buying a ticket or the promise of a ticket. Fans deserve a more transparent and fair marketplace which allows them to meaningfully participate in the process from beginning to end. The BOSS and SWIFT Act brings long overdue transparency measures to the ticket sale marketplace, leveling the playing field for consumers who are spending their hard earned money to see their favorite event.

### **All-in Pricing**

Much like elsewhere in the economy, drip pricing in the live event industry is detrimental to consumers. When individuals purchase tickets, whether on the primary or secondary market, they are routinely confronted with substantial additional fees atop the ticket's face value. Shockingly, these extra costs are seldom, if ever, disclosed in the initial advertisements, only emerging at the eleventh hour during the checkout process. Failing to advertise the true and final ticket price constitutes a deceptive and misleading practice, ultimately resulting in consumers paying more than they would have if the advertising had been forthright about the complete cost of the ticket.

The Government Accountability Office's (GAO) examination of the primary ticketing market unveiled a disconcerting trend. For the majority of the events scrutinized, mandatory fees remained conspicuously absent from the advertised price. Consumers could only learn the price of the ticket after selecting a seat, navigating through additional screens, creating an account, or logging into the website, and finally, clicking on "order details." The GAO also found that in a staggering 91% of surveyed events, ticket fees were presented in a significantly smaller font size than the ticket price itself. On average, these primary market fees inflate the face value of a ticket by an astonishing 27%, with some fees soaring to an exorbitant 58% of the ticket's price. Beyond the alarming rate of these fees lies the crux of the issue—the lack of transparent upfront disclosure—a real unfairness to consumers.

Regrettably, the practice of drip pricing extends its reach into the secondary market, further hindering consumers' ability to make well-informed decisions. It stifles fair competition by obscuring the genuine ticket cost until the final stages of the transaction. On average, the fees imposed on secondary market consumers inflate ticket costs by a staggering 31%, with some fees reaching a shocking 56%. As if navigating the ticket-buying process weren't hard enough, the GAO's investigation uncovered another startling revelation: a striking 80% of surveyed

marketplaces impose an unexpected "print-at-home" fee, ranging from \$2.50 to a substantial \$7.95.<sup>5</sup>

Every introduced bill on ticketing in Congress, including H.R. 3950 (the TICKET Act<sup>6</sup>), which many members of the Coalition support, calls for all-in pricing. Representative Gallego's Junk Fee Prevention Act (H.R. 2462) also calls for all-in pricing.<sup>7</sup> President Biden has also weighed in, calling for all-in pricing for tickets.<sup>8</sup> Section 3 of the BOSS and SWIFT Act begins with disclosures of all-in prices. Passing all-in pricing is a consensus issue and should be included in any and all legislative vehicles.

### **Deceptive Ticket Holdbacks**

Undisclosed ticket holdbacks are deceptive. Many times sellers withhold up to half of all tickets for shows as documented by the US GAO<sup>9</sup>, New York Attorney General<sup>10</sup>, and the City and County of Honolulu<sup>11</sup>. This scheme was a huge problem for the Taylor Swift tour, as was documented by the Wall Street Journal<sup>12</sup>. The Journal estimated that 94% of Swift tickets were held back for those with special or exclusive access. Yet while Ticketmaster initially claimed tickets had sold out, sometimes hours before her concert Ticketmaster sent out access codes for thousands of held back tickets.

This deceptive industry scheme creates fake scarcity to induce a ticket-buying frenzy so that consumers panic, and in believing there are few tickets left, are compelled to buy now, often at higher prices than anticipated. Consumers without special or exclusive access to pre-sales are abused during the public on-sale of tickets, where they may miss work and spend hours in an online waiting room only to be left with intentionally opaque and costly options. When the true

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<sup>5</sup> U.S. Gov't Accountability Office, GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018) <https://www.gao.gov/products/gao-18-347>

<sup>6</sup> H.R. 2950 - 118th Congress (2023-2024): Transparency in Charges for Key Events Ticketing Act. (June 9, 2023). <https://www.congress.gov/bill/118th-congress/house-bill/3950>

<sup>7</sup> H.R.2463 - 118th Congress (2023-2024): Junk Fee Prevention Act. (April 14, 2023). <https://www.congress.gov/bill/118th-congress/house-bill/2463/>

<sup>8</sup> The White House, "Remarks by President Biden on Protecting Consumers from Hidden Junk Fees," June 15, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/15/remarks-by-president-biden-on-protecting-consumers-from-hidden-junk-fees/>

<sup>9</sup> U.S. Gov't Accountability Office, GAO-18-347, "Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues", (April 2018) <https://www.gao.gov/products/gao-18-347>

<sup>10</sup> Eric T. Schneiderman, "Obstructed View: What's Blocking New Yorkers from Getting Tickets", Office of New York State Attorney General [https://ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf)

<sup>11</sup> Neal S. Blaisdell, "Ticket Sales Operations, Resolution 19-264", Report No. 20-06, Office of the City Auditor, City of Honolulu, HI, November 2020. [https://www.honolulu.gov/rep/site/oca/oca\\_docs/Final\\_Report\\_Audit\\_of\\_NBC\\_Ticket\\_Sales\\_Operations\\_Reso\\_19-264.pdf](https://www.honolulu.gov/rep/site/oca/oca_docs/Final_Report_Audit_of_NBC_Ticket_Sales_Operations_Reso_19-264.pdf)

<sup>12</sup> Anne Steele, "Taylor Swift Tickets: How Many Might be Left?", The Wall Street Journal, December 10, 2022 <https://www.wsj.com/articles/taylor-swift-tickets-how-many-might-be-left-11670624940>



inventory of tickets is not presented to fans, they are not capable of making the best possible purchase decision.

This past spring, Sports Fans Coalition polled Colorado voters on a number of ticketing related issues and found that nearly 90% of those surveyed support mandating the disclosure of ticket holdbacks.<sup>13</sup> Knowing exactly how many tickets are available for purchase may change a fan's decision about whether it is worth waiting in line or committing to a clunky online queue.

Section 4(1) of The BOSS and SWIFT Act calls for the clear and conspicuous disclosure of this deceptive practice. The BOSS and SWIFT Act is not the only bill that calls for holdback disclosures. Representative Gallego's Junk Fee Prevention Act (H.R. 2463) includes these disclosures as well, albeit through different language.<sup>14</sup> We recommend that thorough holdback disclosures be adopted in any pending ticketing legislation.

### **Speculative Ticketing**

The practice known as speculative ticket sales involves the sale of tickets by a seller who does not currently possess the tickets but intends to acquire them in the future. While most speculative ticket sales do not cause problems for consumers, some have had negative experiences.

Speculative ticket sales essentially constitute a form of "pre-release" ticket purchasing, allowing many consumers to secure tickets and enjoy live events without having to jockey for special access codes or having to miss school or work to sit hours in an uncertain online queue. Concerns regarding speculative ticket sales mainly revolve around a deceptive practice employed by a small percentage of bad actors. This practice misleads consumers into believing the seller already has the tickets. If the seller does not possess or have constructive possession of the tickets, this puts the consumer at risk of a "busted order." Unfortunately, such situations tend to occur when consumers purchase tickets from individuals outside of official venues or from online classified ads, scenarios that lack the purchase protection typically offered by box offices, official online ticket agents, or major online ticket marketplaces with refund safeguards. These consumer harms are exacerbated if the consumer traveled for the event under the false assumption they had a ticket.

To ensure transparency and protect consumers, it is crucial that speculative sales are clearly disclosed as such, allowing buyers to understand the nature of their purchase. Moreover, these

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<sup>13</sup> Sports Fans Coalition, "New poll: Colorado voters overwhelmingly support right to transfer live event tickets and want mandated disclosure of deceptive 'hold backs' when tickets go on sale", May 30, 2023, [https://www.sportsfans.org/new\\_poll\\_colorado\\_voters\\_overwhelmingly\\_support\\_right\\_to\\_transfer\\_live\\_event\\_tickets\\_and\\_want\\_mandated\\_disclosure\\_of\\_deceptive\\_ticket\\_hold\\_backs\\_when\\_tickets\\_go\\_on\\_sale](https://www.sportsfans.org/new_poll_colorado_voters_overwhelmingly_support_right_to_transfer_live_event_tickets_and_want_mandated_disclosure_of_deceptive_ticket_hold_backs_when_tickets_go_on_sale)

<sup>14</sup> H.R.2463 - 118th Congress (2023-2024): Junk Fee Prevention Act. (2023, April 14). <https://www.congress.gov/bill/118th-congress/house-bill/2463/>



transactions should always come with a guarantee, assuring buyers that they will receive what they paid for. The safest form of speculative ticket sales involves informing consumers that they are paying a seller to secure tickets at an agreed-upon price, with a money-back guarantee if the seller cannot fulfill the order. This approach enhances transparency, as consumers are fully aware of what they are purchasing and the slight possibility that the tickets may not be obtained, but their funds will be returned in such a scenario. Buyers are not led to believe that ticket fulfillment is guaranteed from the outset.

Some proposals seek to ban speculative ticketing altogether. While banning deceptive speculative ticketing is good, outright bans can be more difficult to enforce than disclosure requirements. In that light, Section 5(1) of the BOSS and SWIFT Act calls for the clear and conspicuous disclosure of whether or not a ticket is speculative.

### **White Label Websites**

"White label" ticket resale websites operate by leveraging the ticket inventory, website infrastructure, backend capabilities, and order processing systems of larger ticket resale platforms. Regrettably, white label ticket sites frequently employ deceptive tactics aimed at duping fans into paying outrageous prices for tickets. Through the use of misleading URLs, link titles, imagery, and logos, these websites create an illusion that convinces fans they are acquiring tickets from the primary market or an official box office, paying the face value. In reality, they are unwittingly engaging with a third party posing as an official source. This deceitful strategy allows white label ticket sites to inflate ticket prices and impose exorbitant additional fees, often kept concealed until the buyer reaches the point of entering their credit card information.

Section 5(5) of the BOSS and SWIFT Act prohibits the use of these websites and is the only bill in Congress that does so.

### **Dark Patterns**

Clear and conspicuous disclosures need to be the standard for all transparency provisions. However, even that standard may not be sufficient to prevent dark patterns from taking advantage of fans. While hidden fees are the most obvious example of dark patterns, ticketing companies use tools like countdown timers, or messages suggesting they are almost sold to trick fans into making rushed decisions. As, John Breyault of the National Consumers League, a founding Coalition member, wrote in the Wall Street Journal, "Anyone who has ever rushed through the process of buying a concert ticket and knuckled under to ticketers' exorbitant fees, thanks to a ticking time clock at the top of a screen, is familiar with the dark patterns."

Section 3(8) of the BOSS and SWIFT Act prohibits these kinds of dark patterns. No other bill in Congress addresses dark patterns in the ticketing marketplace.

## Right to Set the Price

Price floors and price caps set by primary sellers only restrict consumer choice and harm fans. Primary sellers shouldn't be allowed to tell fans the price at which they can resell a ticket. Doing so only leaves more seats empty come show time, and may jeopardize the substantial savings consumers experience by participating in the existing secondary marketplace.<sup>15 16</sup> Consumers are best protected in an open and transparent marketplace where regulated businesses have to compete in plain sight for their business and where the products being offered for sale are as apparent as the refund protections and guarantees offered by the seller. In ticketing, the advent of online ticket resale marketplaces more than 20 years ago saved consumers the risk of buying tickets from rogue scalpers outside of venues. Arbitrary price fixing could, however, send ticket resale back to the dark alleys where consumer protections don't exist.

### Price Floors

In 2016, the NFL sought to exert control over prices in the secondary ticket market by setting a price floor. This came under scrutiny when the New York Attorney General's office launched an investigation into the NFL for potential antitrust violations related to its NFL Ticket Exchange. The investigation revealed that the NFL's implementation of price floors, which set a minimum value for ticket sales, artificially inflated ticket prices. The New York Attorney General argued that these price floors deceived fans into believing they were purchasing tickets at market prices, when, in reality, they were often paying prices above the actual market value. This situation was further exacerbated by sports leagues mandating the use of official ticket exchanges, where these price floors prevented ticket prices from aligning with demand, particularly for teams with a less-than-stellar performance record.<sup>17</sup>

### Price Ceilings

Just as an artist cannot dictate how and for what price a fan resells a vinyl record after they purchase it, the same should apply to tickets. Artist promoted fan-to-fan exchanges seek to cap the price at which a consumer can resell their ticket. Proponents of these kinds of price ceilings argue that they prevent prices from “skyrocketing” on the secondary market. However, that theory does not hold true under economic testing. The CATO Institute’s analysis of three seasons

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<sup>15</sup> Sports Fans Coalition, *Ticket transferability helps sports fans save \$260 million over five years*, July 11, 2023 [https://www.sportsfans.org/ticket\\_transferability\\_helps\\_sports\\_fans\\_save\\_260\\_million\\_over\\_five\\_years](https://www.sportsfans.org/ticket_transferability_helps_sports_fans_save_260_million_over_five_years)

<sup>16</sup> Protect Ticket Rights, *2023 Top Concert Ticket Resale Savings Report*, September 2023, <https://www.ticketbuyerbillofrights.org/s/2023-Top-Music-Concert-Ticket-Resale-Savings-Report-09122023.pdf>

<sup>17</sup> Eric T. Schneiderman, “Obstructed View: What’s Blocking New Yorkers from Getting Tickets” Office of New York (State Attorney General) [https://ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf)

worth of National Hockey League resale prices showed that states which repealed price ceilings had no change in prices when compared to states which still had resale caps; instead price ceiling laws only have a chilling effect on ticket supply to the secondary market.<sup>18</sup>

Section 4(3) of the BOSS and SWIFT Act prohibits setting price floors and price ceilings, and is the only proposal to protect a free market for fans.

## Right to a Fair Marketplace

Fans should not have to compete with computer software designed to scoop up tickets. In addition, companies should be required to report any bot behavior they catch to law enforcement.

While software bots employed to acquire tickets are a scourge on the ticket buying ecosystem, it's important to recognize that primary ticketing companies, like Ticketmaster have conveniently pointed to bots as the sole culprits for all of the problems fans face when buying tickets.<sup>19</sup> However, federal law already prohibits the use of bots for purchasing event tickets. Regrettably, this legislation has only been enforced once<sup>20</sup>, primarily because these ticketing giants have failed to report such criminal activities to law enforcement, leaving the Federal Trade Commission with little ability to locate and penalize offenders.

Given their significant influence and market presence, corporations like Ticketmaster and AXS possess the unique capacity to play a pivotal role in combating bots. In 2018, Ticketmaster claims to have stopped more than 10 billion bot purchase attempts<sup>21</sup>, and did the FTC receive any of this data? If they had, would there not have been more enforcement actions?

Establishing reporting requirements is a pragmatic and necessary stride toward enhancing the overall fan experience. It is incumbent upon these industry leaders to collaborate with law enforcement, making concerted efforts to halt bot-related misconduct and restore fairness to ticket distribution.

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<sup>18</sup> David E Harrington, "Uncapping Ticket Markets," CATO Institute, Fall 2010, <https://www.cato.org/regulation/fall-2010/uncapping-ticket-markets>

<sup>19</sup> Ben Sisario, "Live Nation Says a Bot Attack Led to a 'Terrible Consumer Experience, Which We Deeply Regret,'" The New York Times, January 24, 2023, <https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-bot-attack>

<sup>20</sup> Bureau of Competition & Office of Technology. "FTC Brings First-Ever Cases under the Bots Act." Federal Trade Commission, January 22, 2021. <https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act>

<sup>21</sup> "Ticketmaster Discusses How to Protect Fans at the FTC Bots Workshop," Ticketmaster, February 8, 2022, <https://business.ticketmaster.com/business-solutions/ticketmaster-discusses-how-to-protect-fans-at-the-ftc-bots-workshop/>.

Section 3(10) of the BOSS and SWIFT Act requires all market participants to report bots, enabling law enforcement to finally put a stop to this criminal practice.

## Right to a Recourse

Ticket buyers must be assured of their right to access remedies through the public court system when they are deceived, defrauded, or otherwise harmed by sellers in the marketplace. However, the take-it-or-leave-it terms and conditions for concert, sports, and other event tickets contain requirements that force consumers to resolve disputes with ticket sellers and venues in private, secret arbitration proceedings instead of in the public court system.<sup>22</sup> These forced arbitration clauses often also prohibit consumers from banding together in class actions to address widespread or systemic harm. Forced arbitration must be banned from all fine-print language that accompanies ticket purchases and other fan-seller interactions in the ticketing marketplace.

A forced arbitration clause typically dictates the rules, including choosing the arbitration provider, the arbitration's location, the payment terms, and setting forth other rules such as secrecy requirements. Private arbitration generally lacks procedural protections that are assured in the public courts, including the ability to obtain key evidence necessary to prove one's case, and the right to appeal, which is rarely available. Studies have shown that consumers forced into arbitration are less likely to win cases and are generally disadvantaged.<sup>23</sup>

In the event ticket market, arbitration clauses typically appear in the fine print on the "back" of electronic tickets or are situated on corporate websites via click wrap or browsewrap agreements.<sup>24</sup> In a single transaction to purchase tickets, a ticket buyer online may come across boxes and links to multiple terms and conditions from a ticket seller as well as a venue, both of which will impose forced arbitration requirements before a dispute even arises.

In the last several years, consumers have attempted to pursue legal complaints against sellers and venues for serious and valid claims, such as discrimination under the Americans with Disability Act; negligence that caused serious physical injuries at venues; the retroactive changing of a refund policy after the coronavirus pandemic in violation of the law or failure to provide a full refund for tickets purchased for events canceled due to the pandemic; and anticompetitive practices, including "supracompetitive fees on primary and secondary ticket purchases on the seller's online platforms."<sup>25</sup> In these instances, the ticket seller or venue sought to enforce an

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<sup>22</sup> See, e.g. Ticketmaster Terms of Use, <https://am.ticketmaster.com/inconcerts/terms>.

<sup>23</sup> See, e.g. Heidi Shierholz, *Correcting the Record*, Economic Policy Institute (Aug. 1, 2017), <https://www.epi.org/files/pdf/132669.pdf>.

<sup>24</sup> See, e.g. *Naimoli v. Pro-Football, Inc.*, Civil Action No. TDC-22-2276, 2023 U.S. Dist. LEXIS 164632 (D. Md. Sep. 14, 2023) and *Dickey v. Ticketmaster LLC*, No. CV 18-9052-GW(GJSx), 2019 U.S. Dist. LEXIS 231895 (C.D. Cal. Mar. 12, 2019).

<sup>25</sup> *Dickey*, 2019 U.S. Dist. LEXIS 231895 (C.D. Cal. Mar. 12, 2019); *Egan v. Live Nation Worldwide, Inc.*, 764 F. App'x 204 (3d Cir. 2019); *Hansen v. Ticketmaster Entm't, Inc.*, No. 20-cv-02685-EMC, 2020 U.S. Dist. LEXIS 233538 (N.D. Cal. Dec. 11, 2020); *Heckman v. Live Nation Entm't, Inc.*, No. CV 22-0047-GW-GJSx, 2023 U.S. Dist. LEXIS 145793 (C.D. Cal. Aug. 10, 2023); *In re Stubhub Refund Litig.*, No. 22-15879, 2023 U.S. App. LEXIS 20687 (9th Cir. Aug. 9, 2023).

arbitration clause and deprive the consumers of their choice of going to court. Consumers also pursued claims on behalf of themselves and others who were harmed by the same alleged misconduct, but class action bans in the forced arbitration clauses often prevented consumers from doing so.

Recently, when Ticketmaster’s ticketing platform caused upheaval during the sale of tickets for the singer Taylor Swift’s “Era’s Tour,” harmed concertgoers filed a class action, alleging “anticompetitive and misleading conduct with respect to the (seller’s) handling of the presale, sale, and resale of concert tickets” to the tour.<sup>26</sup> While it is in the public interest for such claims with potentially broad impact to be heard in open court, the ticket seller is seeking to force its customers into private, secret arbitration.<sup>27</sup>

Commendably, the BOSS and SWIFT Act includes a private right of action for injured ticket buyers to pursue claims, but it does not ensure that consumers can choose how to resolve those disputes after they arise. We urge a provision in the legislation be included to prohibit forced arbitration clauses in the terms and conditions of ticket purchases.

Section 6(c) of the BOSS and SWIFT Act is the only proposal which grants fans the ability to advocate for themselves and enforce their rights.

## Conclusion

While many members of the Ticket Buyer Bill of Rights Coalition support the TICKET Act, it is not as comprehensive of a reform package as the BOSS and SWIFT Act. BOSS and SWIFT is the only bill that provides fans with the consumer protections they need to improve the ticket buying experience, prevent fraud, and inject competition into a consolidated marketplace.

We urge the members of the committee to support the BOSS and SWIFT Act and comprehensively reform both primary and secondary live event marketplace participants.

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<sup>26</sup> Class Action Complaint, *Sterioff v. Live Nation Entertainment, Inc., And Ticketmaster, LLC*, Case No. 2:22-cv-9230, (C.D. Cal. Dec. 20, 2022).

<sup>27</sup> Mike Scarcella, *Live Nation says Taylor Swift fans can't sue over ticket debacle*, REUTERS, Feb. 27, 2023, available at <https://www.reuters.com/legal/live-nation-says-taylor-swift-fans-cant-sue-over-ticket-debacle-2023-02-27/>. See, *Sterioff v. Live Nation Ent., Inc.*, No. CV 22-9230-GW-GJSx, 2023 U.S. Dist. LEXIS 120894 (C.D. Cal. July 12, 2023). Case is ongoing.



**Candice S. Miller**

Public Works Commissioner  
Macomb County

September 26, 2023

RE: Wastewater Infrastructure Pollution Prevention and Environmental Safety Act

Honorable Members of Congress,

As several people have already pointed out since its introduction last spring, the Wastewater Infrastructure Pollution Prevention and Environmental Safety ACT (WIPPES) is common sense legislation, requiring wipes manufacturers to properly label on the package that the wipes are not flushable. I fully support this important legislation.

Nationally, these wipes are wreaking havoc on our underground infrastructure. Many consumers who use wet wipes may not be aware of the damage caused by wipes to their plumbing at their home, to septic systems and to critical wastewater treatment facilities. Therefore, the packaging clearly needs to be marked, “Do Not Flush.”

The WIPPES Act addresses the growing and expensive problem of these wipes being flushed into sewers which create obstructions and damage pipes for residential, commercial and industrial property owners, but also impact wastewater pump stations. Deep below the surface at these pumping stations, wipes can slip through metal bars screens that remove much of – but not all – of the debris that flows into those stations. Wipes then get into the pumps, slowing their efficiency, damaging mechanical equipment and increasing the risk of sewage backups into basements. Flushed wipes also have led to an increase in plastic micro-fibers from the wipes making their way through the wastewater system and back into the environment.

The use of so-called “disposable” wipes has proliferated, especially during the pandemic. For example: In early 2018, approximately 70 tons of debris that had accumulated over a period of three years was removed from the Northeast Sewage Pumping Station in Detroit, a regional facility which conveys the sanitary sewage from a total of 23 communities from neighboring Macomb and Oakland counties. Three years later, a crew removed approximately 270 tons of debris. That work took more than a month-and-half at a cost of approximately \$450,000.

From spring 2018 to spring 2020, the Macomb County Public Works Office spent approximately \$100,000 to remove two large masses of wipes from the sewer system – including a 19-ton mass of wipes and accumulated grease that attached to the sewer system was removed in 2018. The gloppy mass was dubbed the Macomb County “Fatberg” and was displayed at the Michigan Science Center in Detroit. In 2019, workers removed a 1-ton mass of wipes that became known as the

“Ragball.” It was composed of thousands of wipes that became knotted together in a different section of sewer.

Thank you to Congresswoman Lisa McClain and the co-sponsors of the bill for introducing the bipartisan, bicameral WIPPES Act, to protect our vital, expensive underground infrastructure and the environment from these non-flushable wet wipes.

I urge you to pass the Wastewater Infrastructure Pollution Prevention and Environmental Safety Act.

Sincerely,



Candice S. Miller

Macomb County Public Works Commissioner



# “Don’t feed the fatberg!” an assessment of “flushable” consumer products and fats, oils, and greases accumulation in sewer systems

Macomb County's Public Works Office unveiled "a collection of fats, oils, and greases (FOG) identified with solid items in the pipes and deemed the "fatberg" the 100-foot long sewer main cost about \$100,000 to dispose of. The UK spends \$5.7 million every year on FOG removal. When blockages do occur, the raw sewage overflows into the drainage pipes, creating a noxious byproduct. The estimated cost of a single fatberg is a staggering \$1 million. The estimated cost of a single fatberg is a staggering \$1 million.

**T T**

Each September 2018 Macomb County's Public Works Office unveiled "a collection of fats, oils, and greases (FOG) identified with solid items in the pipes and deemed the "fatberg" the 100-foot long sewer main cost about \$100,000 to dispose of. The UK spends \$5.7 million every year on FOG removal. When blockages do occur, the raw sewage overflows into the drainage pipes, creating a noxious byproduct. The estimated cost of a single fatberg is a staggering \$1 million. The estimated cost of a single fatberg is a staggering \$1 million.

Sample collected at home

B 58 lbs (20 lbs)      B 672 lbs (40 lbs)

**M T**

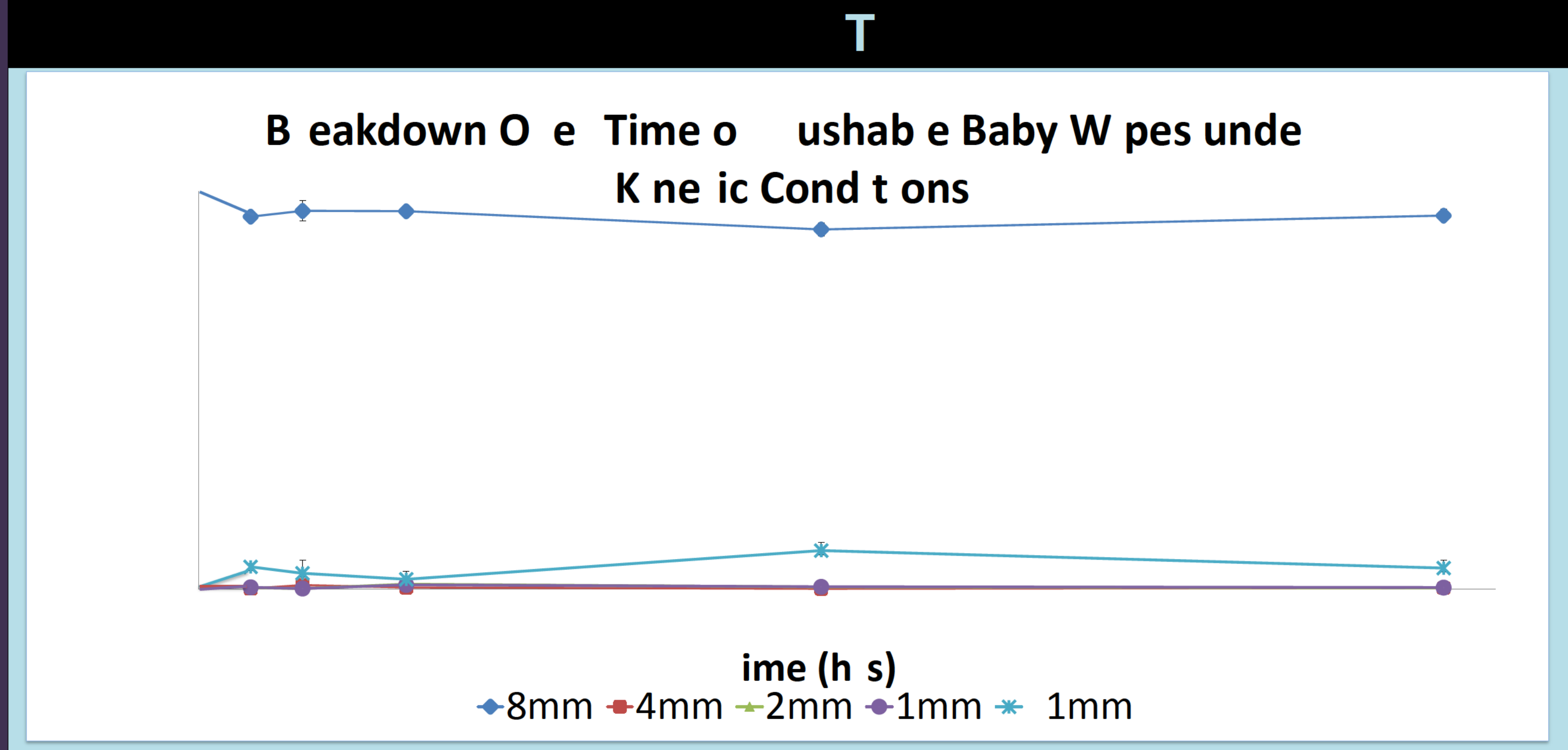
Single Run of Wipes

Sieve Size Opening

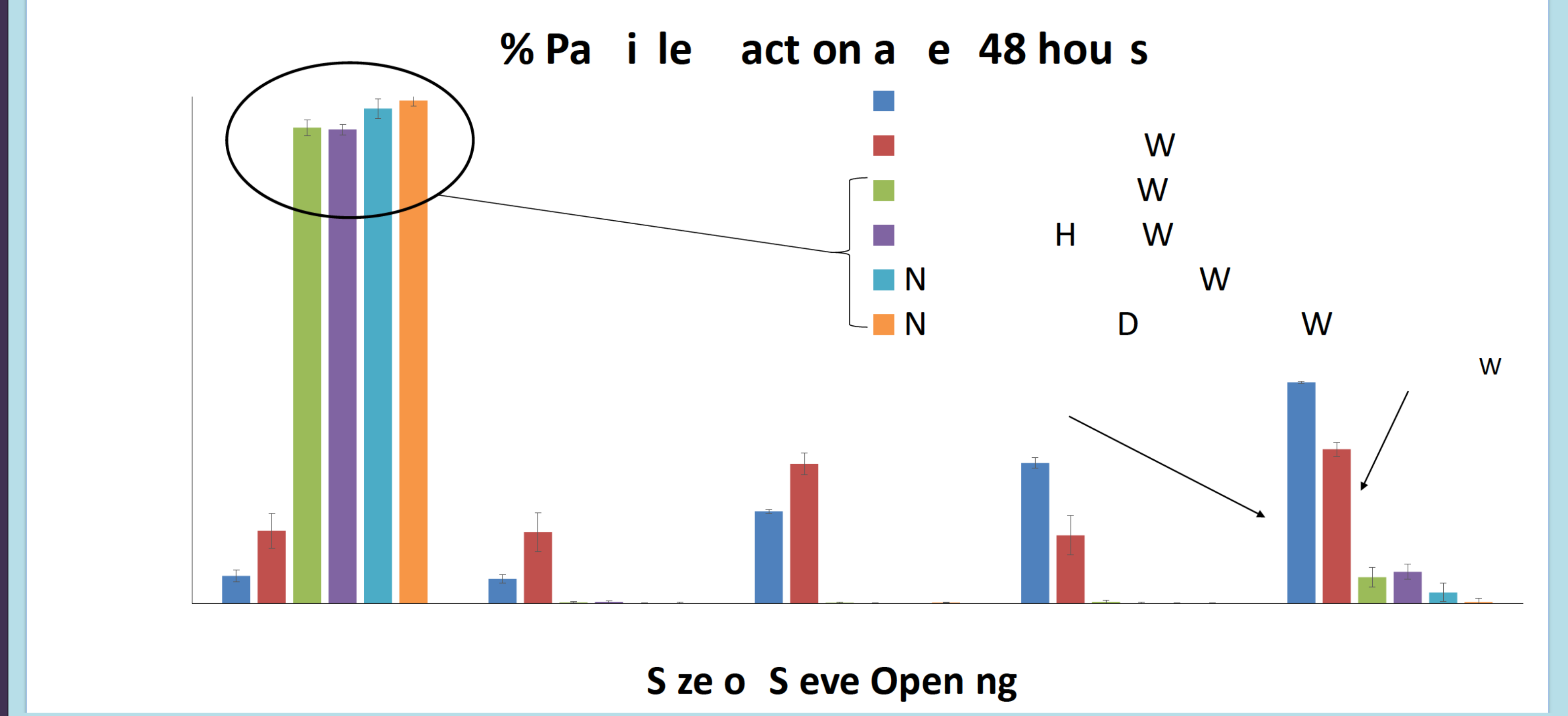
- 8 mm
- 4 mm
- 2 mm
- 1 mm

Hours: 0, 2, 4, 8, 24, 48

Wipes were removed in 500 ml collection vials at 0, 2, 4, 8, 24, and 48 hours. In the collection vial, the wipe was placed in a bag of sieves (smallest on bottom) with 2, 4, and 8 mm wide openings. The material caught in the sieves was separated by weighing the amount. The collection pans were placed in a hood on a table atop a scale. The excess water was evaporated in the oven at 100°C overnight. The dry pans were placed on a scale to determine the weight. The zero-ounce (sh) wipe was placed directly in the oven and the weight was averaged to determine the average dry weight.



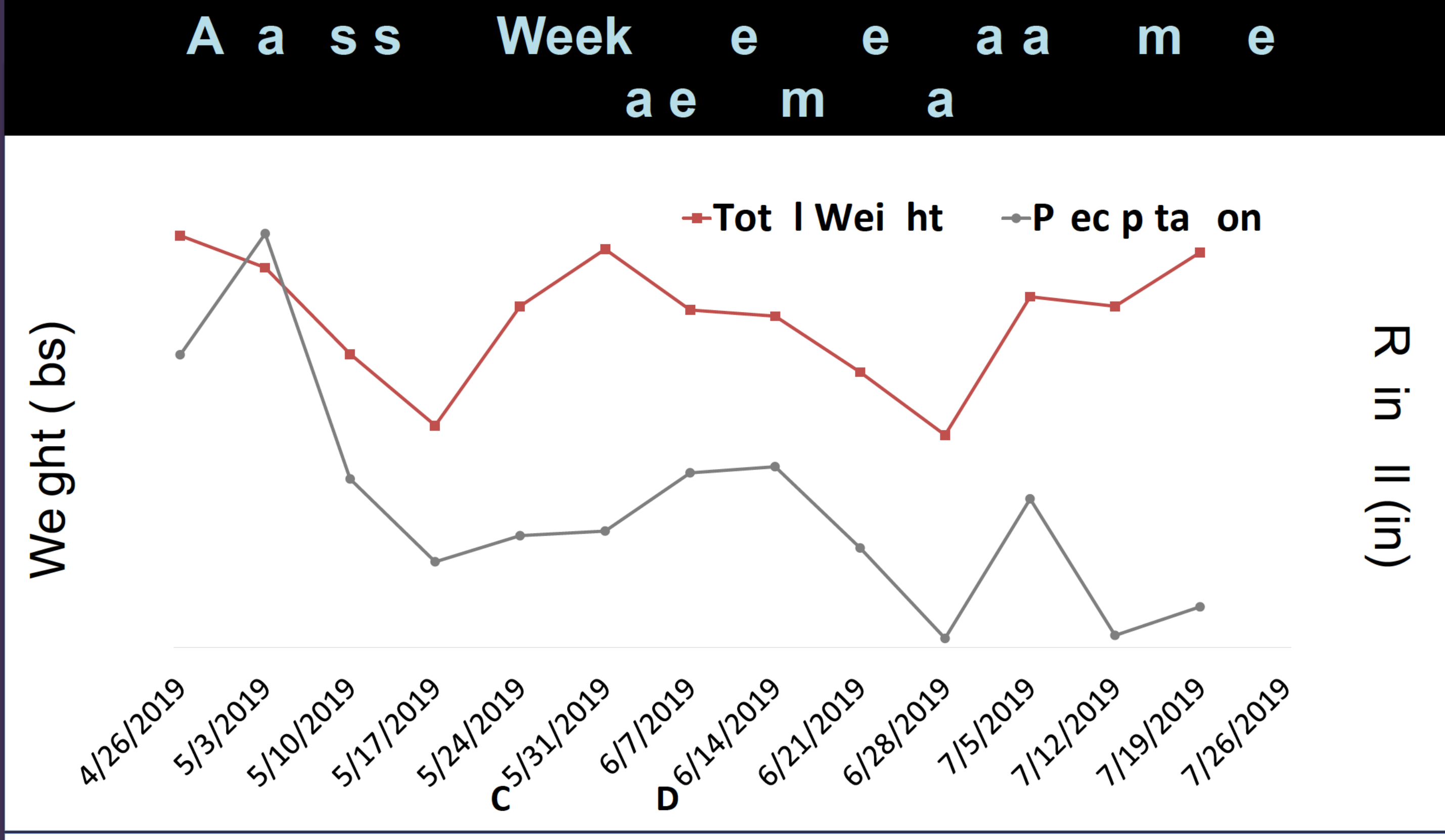
At the end of most tests, over 48 hours, in total, on the tap water, the test results showed that 93% of the weight of the wipe remained in the sieve throughout the 48-hour period.



Complete breakdown of wipes occurring 48 hours or less is minimal. Most wipes were at least 93% intact with their original form. 5% of one flushable adult wipe broke down into pieces.

**S S A S A E W E S**

With the new flushable consumer products that have been a notable concern, the actual biodegradability of the wipes that are being accumulated in the sewer lines. Although marketed as flushable, they can accumulate in sewer systems and contribute to FOG formation.



During the course of the late spring and summer months, the total weight of the fatbergs removed from the sewer system was 1,000 lbs.

me does not substantially contribute to the efficiency of a wipe breakdown. Without effective breakdown, wipes are bound to accumulate in the sewer system. The biodegradability of these other wipes will vary when flushed and potentially contribute to FOG formation. The biodegradability of these other wipes will vary when flushed and potentially contribute to FOG formation.



# DON'T feed the FATBERG



## What is Fatberg?

The Macomb County Fatberg is a large build-up of Fats, Oils and Grease, known in the sewer business as “FOG,” that accumulated in the Lakeshore Interceptor, a large sewer line in Clinton Township. As the Fatberg grew, other items become lodged in it, such as diaper wipes, sanitary products and related items. Remember, only waste water and toilet paper should enter the sewer.

## What causes a Fatberg?

Some of the common items that can cause a fatberg are meat fats, lard, grease, cooking oil, sauces, butter, margarine, liquid from a slow cooker and food scraps.

## How big is Fatberg?

The Macomb County Fatberg was about 100 feet long, 10 feet wide and as much as 6 feet tall when it was discovered and broken up. It weighed about 19 tons.

## How was Fatberg removed?

Much of the fatberg had to be cut apart as it had become completely solid. Other parts were broken off using high-pressure water jets. It was a dirty and dangerous job.

## How did Fatberg cause a problem?

As it grew, it increasingly impeded water flow in the sewer line. Left unchecked, this would have caused a clog that could have caused sewage to back up in to hundreds, maybe even thousands of home. These same types of clogs — smaller Fatbergs — can also happen in smaller municipal sewer lines or in residential lines. Obviously, the Fatberg had to be removed before these back-ups could occur. Removing the Macomb County Fatberg cost about \$100,000 — money that could be much better spent working on other projects or on reducing our overall budget and passing those savings on to rate payers.

## What steps can I take at home to protect my pipes and prevent another Fatberg?

For residential buildings such as single family homes or condominiums, the prevention of fat, oil and grease buildup typically lies with each individual. Some best practices to avoid the gross and costly results of FOG buildup include the following:

- Wipe greasy cooking utensils with a paper towel before washing. A large amount of FOG buildup comes from washing greasy dishes.
- Minimal use of garbage disposals will help reduce blockages in your kitchen sinks from food particles combining with grease in the pipe.
- Carefully pour the used cooking oil and grease into its original container or another sealable container and throw it in the trash when cool.

## What do I do if I have a mini-Fatberg in my home?

Once a fatberg forms in your home pipes, it is very difficult to eliminate and often requires a professional sewer cleaning company. Periodically pouring boiling water down drains can help loosen build up and flush out drain pipes.

## What about chemical drain cleaners?

Chemical drain cleaners should be used very sparingly. They can cause two problems: 1) repeated and frequent use of these highly corrosive products can greatly accelerate the corrosion and failure of your home pipes, and 2) these chemicals are generally not removed in the waste water treatment process, meaning the chemicals ultimately end up in our Great Lakes, a very unwelcome addition to our waterways.



Macomb County Public Works Office

Candice S. Miller, Commissioner

Publicworks macombgov.org











The 2018 Macomb County  
Fatberg in the pipe



























**Robert F. O’Koniewski, Esq.**

Executive Vice President and  
General Counsel

**Statement of the Massachusetts State Automobile Dealers Association  
Submitted for the Hearing Entitled  
“Proposals to Enhance Product Safety and Transparency for Americans”  
Before the House Subcommittee on Innovation, Data, and Commerce  
September 26, 2023**

Hon. Cathy McMorris Rodgers  
Chair, Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Frank Pallone  
Ranking Member, Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Gus Bilirakis  
Chair, Subcommittee on Innovation,  
Data, and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Jan Schakowsky  
Ranking Member, Subcommittee on Innovation, Data,  
and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

**RE: Opposition to H.R. 906, *The Right to Equitable and Professional Auto Industry Repair Act***

Dear Chairs Rodgers and Bilirakis and Ranking Members Pallone and Schakowsky,

**On behalf of the Massachusetts State Automobile Dealers Association (MSADA), I respectfully submit our opposition to H.R. 906, the “REPAIR Act”, so-called “right to repair” legislation presently before your committees.** Thank you for the opportunity to submit testimony for the record in opposition to this legislation. MSADA represents the interests of the 427 franchised new-car and truck dealers in the Commonwealth, who employ over 20,000 men and women across the state and whose economic activity represents almost 20% of the Massachusetts retail economy.

Here in Massachusetts, most of our franchised auto and truck dealerships are family-owned and operated small businesses, who play a vital role in the local and state economy, especially by providing career opportunities at dealerships and in the vehicle-repair field. Our Association has been in the middle of this debate throughout the current century. From our perspective, this has always been a solution in search of a problem that does not exist. This is not to make light of the impetus behind right to repair legislation over the last two decades – ensuring that repairers of all stripes can have access to the diagnostic and repair information, tooling, and software that they need to best serve consumers, whether those vehicle owners go to franchised dealerships or independent repair stations for their service needs.

Please accept this correspondence, however, as our effort to push back against several myths that the aftermarket community has perpetrated successfully within our state’s political arena to get legislation passed through the Massachusetts legislature, our constitutional initiative petition process, and now in the halls of Congress. Further, we write with experience on both sides of the debate. As franchised dealers our members need to be all-in on service and repair commitments – warranty, recall, and post-warranty – as dictated by their franchisor manufacturers. But most of our dealers also operate as independent repairers, making the necessary investments in tooling and training to be able to diagnose and repair vehicles outside the scope of their own franchise line makes.

**We have had a so-called “right to repair” law on the books in Massachusetts since August 2012, although we did not get to that destination via an easy route.** At that time, in the face of a potential November 2012 ballot question, MSADA worked closely with key legislators and the independent repair advocates to craft a sensible law that recognized the true realities of the automotive repair industry. That law, MGL Chapter 93J (Chapter 241 of the 2012 Acts), took effect with Model Year 2018 vehicles and ensured that all repairers – franchised dealer and independent alike – had access to diagnostic and repair information, tooling, and software on equal footing.

Unfortunately, due to the legislative and gubernatorial actions occurring well beyond the July 2 deadline when the ballot question could have been pulled back by its proponents, the initiative petition that prompted the enactment of this law remained before the voters on the November ballot as Question #1. To prevent passage of Question #1, the motor vehicle manufacturers and the Massachusetts Right to Repair (RTR) Coalition pledged to fund a joint campaign to educate voters to “Vote No on #1 since the Legislature and the Governor have acted to address the issue.” Despite those efforts, the voters overwhelmingly approved that initiative petition, thereby creating another Chapter 93J (Chapter 368 of the 2012 Acts) that conflicted substantially with the earlier compromise law and was to take effect with Model Year 2015 vehicles.

Subsequently, in a unified effort, our Association, along with the manufacturers and the RTR Coalition, worked with the Massachusetts Legislature to enact reconciliation legislation to resolve the conflict between the two “right to repair” laws that passed in 2012. Governor Deval Patrick signed the reconciliation bill into law in late November 2013 (Chapter 165 of the 2013 Acts), which created MGL Chapter 93K; this law essentially amended the provisions of the 2012’s compromise law to phase in statutory requirements for medium- and heavy-duty trucks up to the Model Year 2018 requirement, while repealing the initiative petition law. The timely passage of Chapter 93K prevented the economic disruptions that were forecast for January 2014 if the initiative petition law had not been repealed.

To enhance the Massachusetts 2013 law nationally, the vehicle manufacturers (through the Alliance of Automobile Manufacturers and the Association of Global Automakers) and the independent repair community (through the Automotive Aftermarket Industry Association and the Coalition for Auto Repair Equality) executed a **memorandum of understanding (MOU) in January 2014** that, utilizing the Massachusetts law as its framework, committed the manufacturers to providing diagnostic and repair information, tooling, and software to independent repairers in all 50 states and the District of Columbia.

**From that point on into late 2019, the parties interacted without incident across the country to the point that no repairer ever indicated that he or she was not receiving the promised diagnostic and repair information. The independent repair community was seemingly content enough that no other right to repair law was ever enacted in another state. In fact, the necessary information to repair vehicles is already available to independent repair shops, which currently perform over 70% of all non-warranty repairs.**

This all changed in August 2019 when the aftermarket industry decided to pursue yet another initiative petition in Massachusetts to expand the scope of the 2013 law. Repairers were no longer content with the information and tooling needed to repair and diagnose vehicle problems. “Right to repair” was now all about having access to the information being collected in the vehicles, especially data being stored and made available in vehicles’ telematics systems. We now were facing a situation that was no longer about being able to repair vehicles; it was now about monetizing data in the vehicles to the benefit of not the car owner but to the aftermarket industry.

To realize this all one needs to do is review the testimony from the January 2020 public hearing the Massachusetts Legislature’s Joint Committee on Consumer Protection and Professional Licensure held on the initiative petition as required by our state constitution. It is available for anyone to view. The right to repair proponents admitted that, since the passage of the 2013 law, no repairer has reported an



instance of not being able to have access to the diagnostic and repair information and tooling. The proponents now were alleging the manufacturers, in the future, will deny diagnostic and repair information through telematics – which would be a practice prohibited in the 2013 law. The independent repair community argued a new law was needed so that repairers and aftermarket companies can possess unfettered access to information in the vehicle telematics systems and that repairers should be notified immediately if a vehicle had an issue requiring service attention.

That proposed initiative petition went to the November 2020 ballot, where the voters ultimately passed it. The right to repair statute was thrown immediately into limbo, however, as the manufacturers filed litigation in Boston's federal district court to halt its potential implementation. (*Alliance for Automotive Innovation vs. Maura Healey, Attorney General of the Commonwealth of Massachusetts*) With the commencement of the litigation, our attorney general, Maura Healey, said she would not enforce the law while the parties battled it out in court. With the completion of the trial in late July 2021, the judge has yet to issue a decision, however.

**Since then, the industry has seen several other events unfold, none of which have helped to resolve the situation:**

- Some vehicle manufacturers, in an effort not to be penalized for violating the new law, have shut off the telematics systems in their newer model vehicles, which has only served to anger car buyers who are not receiving certain safety and informational features built into the vehicles. In the meantime, other manufacturers have done nothing to alter their vehicles' telematics capabilities.
- Our new attorney general, Andrea Campbell, elected in November 2020 as our former attorney general was elected governor, announced in March of this year that her office would begin enforcement of the law on June 1, with no clear indication of what that means, as her office can act upon appropriate complaints filed with the office. As of this writing, to the best of our knowledge, there have been no complaints filed.
- Subsequent to Attorney General Campbell's enforcement announcement, the National Highway Transportation Safety Administration (NHTSA) issued two letters regarding the manufacturers' potential conduct under the state law. The first letter, issued June 13, 2023, to 22 vehicle manufacturers and filed with the federal district court, informed the manufacturers that the so-called "right to repair" law conflicts with, and is therefore pre-empted by, existing federal law, namely the National Traffic and Motor Vehicle Safety Act. In the letter, NHTSA warned the manufacturers not to comply with the Massachusetts right to repair law. NHTSA was attempting to discourage the manufacturers from altering telematics systems in a way that allowed for compliance with the law but could put the vehicles in violation of federal law and regulations, thereby creating potentially hazardous conditions for vehicle owners and drivers.
- As you may recall, this first letter prompted considerable outcry from Congress against the NHTSA letter, specifically from our U.S. Senators, Elizabeth Warren and Ed Markey, leading to yet another NHTSA letter. This second letter, sent to our attorney general, acknowledged that independent repairers can still access the repair data through short-range telematics technology such as Bluetooth, stating, "One way that vehicle manufacturers can comply with the Data Access Law is by providing independent repair facilities wireless access to a vehicle from within close physical proximity to the vehicle, without providing long-range remote access."
- As this continued, the vehicle manufacturers, the Automotive Service Association, and the Society for Collision Repair Specialists reaffirmed a commitment to abide by the 2014 MOU, especially regarding access to diagnostic and repair information and tech education and training. In essence, the major players basically came out and said all the information repairers need is out there and available; as updates occur independent repairers will have them; and consumers will continue to be served by their repairer of choice, whether it is the local independent or their favorite dealer.

- As H.R. 906 sits before you, the U.S. Government Accountability Office (GAO) has been visiting with dealers and other parties across the country to assess the impact of the Massachusetts so-called “right to repair” law and the 2014 MOU. On July 27, the GAO visited Herb Connolly Chevrolet in Framingham and MetroWest Subaru in Natick and obtained dealer input regarding the right to repair matter. MSADA has yet to see the final report.

**Thus, over the past decade, we went from enacting a law that benefits repairers and vehicle owners, to absolute chaos in the industry as the aftermarket automotive parts companies pushed successfully at the ballot for an over-reach to grab telematic data not needed to diagnose and repair a vehicle, to ongoing federal litigation in which there has been no decision rendered, to inconsistent communications from a key federal agency overseeing these issues.**

**Throughout all this, especially during the suspension of enforcement of the 2020 amendments, there has been no instance reported to the best of our knowledge of a repairer not having access to the necessary diagnostic and repair information or tooling nor of a car owner not being able to have his or her vehicle repaired by their repairer of choice, be it the independent or the franchised dealership. Again, the necessary information to repair vehicles is already available to independent repair shops, which currently perform more than 70% of all non-warranty repairs.**

If Congress were truly interested in making sure independent repairers had access to diagnostic and repair information, we would respectfully suggest taking the text of our 2013 law and incorporating that into the federal Code. H.R. 906 goes well beyond that intent. The proponents for H.R. 906 continue to push a false narrative under the guise of “right to repair” based on several myths and potential technological intrusions if the text of H.R. 906 were to become law.

First, legislative proponents, whether in Massachusetts, in other states, or now before Congress, push the tale that independent repairers do not have access to the information needed to diagnose and repair vehicles. In over twenty years of dealing with this issue, that is bunk. Even before the passage of our 2013 law, independent repairers testified that they had access to all the information and data they needed. The 2013 law ensured it, and the parties committed to the access nationally with the 2014 MOU. Even then, the proponents admitted to legislators here that they have not had any issue obtaining repair and diagnostic information and tooling. The parties continue to abide by the MOU and have, in fact, reaffirmed that commitment most recently during this ongoing debate. I would submit to you that, if a repairer states that he or she cannot have access to the necessary diagnostic or repair information, then I would have to question that individual’s competency in the business.

Second, legislative proponents love to tout that the manufacturers will hide diagnostic and repair information in the vehicle telematics, to which only franchised dealerships will have access, thereby denying the independent repairers the ability to serve their customers properly. Again, do not let the facts stand in the way of a good story. Our 2013 law essentially prevents a manufacturer from acting in that manner. But more importantly, the national MOU prohibits a manufacturer from using telematics systems to prevent independent repairers from having access to the same information needed to diagnose and repair a vehicle as that provided to their franchised dealerships.

Third, legislative proponents for over twenty years have pushed the story that manufacturers strive to limit consumer choice in order to drive car owners to their franchised dealers for vehicle repair needs, forcing them to pay higher prices for those repairs. Frankly, consumers have no shortage of competitively priced repair choices, whether it is at a franchised dealership or an independent shop. Independent repairers conduct over 70% of the post-warranty work on motor vehicles; that is a statistic that has not changed since before the 2013 law and after. Further, the franchised dealership must offer repair pricing at competitive prices given the fact that the industry is dominated by independent repairers and franchised dealerships compete with dealers of the same line-make in the same market.



Fourth, H.R. 906 is not drafted in a manner to just guarantee repairers have equal access to diagnostic and repair information and tooling at a national level as based on our 2013 law. H.R. 906, in the alternative, would undermine vehicle manufacturers' intellectual property rights. The bill would compel the manufacturers to provide any "aftermarket parts manufacturer" the information necessary "to produce or offer compatible aftermarket parts." (Page 4, lines 8-13, inclusive) This provision would unfairly promote the interests of aftermarket parts companies by allowing aftermarket parts manufacturers to gain access to the automakers' proprietary information. This federally mandated giveaway of proprietary information could then be used to facilitate reverse engineering of genuine, original auto and truck parts, including safety-critical parts, especially by entities based in countries that do not have the best interests of the United States and our economy at heart. Moreover, we believe the passage of legislation that grants secondary parts manufacturers access to the proprietary property of another company will lead to other third-party suppliers in other industries to seek the same Congressional exemption. Such a result could adversely impact the intellectual property rights of manufacturers throughout the United States.

Finally, as the manufacturers have argued in federal court here with their litigation against the 2020 amendments to our 2013 law, H.R. 906 would create new privacy breaches as well as vehicle security and safety risks. The NHTSA letters also directly spoke to some of these issues arising from the 2020 amendments. The bill would force the vehicle manufacturers to release information that has nothing to do with diagnosing and repairing a motor vehicle. For example, the bill would mandate that the manufacturers provide all the "vehicle-generated" data unconditionally, which may include sensitive private information, to any person the vehicle owner has designated. which could create serious privacy, data security, and automotive safety concerns.

Thank you for the opportunity to comment on this legislation. H.R. 906 far exceeds the scope necessary to allow independent repairs to diagnose and service their customers' vehicles. A simple reaffirmation of our 2013 law and the 2014 MOU would accomplish that. However, since you are presented with a bill that far exceeds that intent, we would respectfully request this legislation not move further in the legislative process. Until evidence emerges that repairers cannot do their jobs effectively and car owners' vehicles are not being properly repaired, this bill will continue to be a solution in search of an elusive problem, one that truly does not exist.

I have attached a copy of the 2013 Massachusetts so-called "right to repair" law and a copy of the 2014 MOU. Should you require any additional information, please do not hesitate to reach out to us. We also gladly hold ourselves out as a resource should you decide to conduct additional investigations or redraft this flawed proposal.

Sincerely,



Robert O'Koniewski

CC: Members, Massachusetts Congressional Delegation

Encl: (1) 2013 Massachusetts RTR law; and (2) 2014 RTR Memorandum of Understanding

## Acts (2013)

### Chapter 165

#### AN ACT RELATIVE TO AUTOMOTIVE REPAIR.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the availability of automotive repair information, therefore it is hereby declared to be an emergency law.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Chapter 93J of the General Laws, inserted by chapter 241 of the acts of 2012, is hereby repealed.

SECTION 2. Chapter 93J of the General Laws, inserted by chapter 368 of the acts of 2012, is hereby repealed.

SECTION 3. The General Laws are hereby further amended by inserting after chapter 93I the following chapter:-

#### CHAPTER 93K. AUTOMOTIVE REPAIR

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Dealer”, any person or business who, in the ordinary course of its business, sells or leases new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a class 1

license pursuant to sections 58 and 59 of chapter 140 and diagnoses, services, maintains or repairs motor vehicles or motor vehicle engines pursuant to said franchise agreement.

“Fair and reasonable terms”, in determining whether a price is on “fair and reasonable terms” consideration may be given to relevant factors, including, but not limited to:

- (i) the net cost to the manufacturer franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates or other incentive programs;
- (ii) the cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component; provided, however, that amortized capital costs for the preparation and distribution of the information may be included;
- (iii) the price charged by other manufacturers for similar information;
- (iv) the price charged by manufacturers for similar information prior to the launch of manufacturer web sites;
- (v) the ability of aftermarket technicians or shops to afford the information;
- (vi) the means by which the information is distributed;
- (vii) the extent to which the information is used, which includes the number of users, and frequency, duration and volume of use; and
- (viii) inflation.

“Franchise agreement”, an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

“Heavy duty vehicle”, any vehicle having a gross vehicle weight rating of more than 14,000 pounds; provided, however, that heavy duty vehicles built to custom specifications sold in the commonwealth for commercial purposes shall not be required to comply with subsection (d) of section 2.

“Immobilizer system”, an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorization code.

“Independent repair facility”, a person or business operating in the commonwealth that is not affiliated with a manufacturer or manufacturer’s authorized dealer of motor vehicles, which diagnoses, services, maintains or repairs motor vehicles or motor vehicle engines; provided, however, that for the purposes of this chapter, a dealer, notwithstanding its affiliation with any manufacturer, shall be considered an independent repair facility for the purposes of those instances when said dealer diagnoses, services, maintains or repairs motor vehicles or motor vehicle engines that are not affiliated with the dealer’s franchise manufacturer.

“Manufacturer”, any person or business engaged in the business of manufacturing or assembling new motor vehicles.

“Motor vehicle”, a vehicle, originally manufactured for distribution and sale in the United States, driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but excluding: (i) a vehicle that may be operated only on a rail line; (ii) a recreational vehicle or auto home equipped for habitation; (iii) an ambulance; (iv) a bus, motor coach or trackless trolley designed for the carriage of persons for hire or for school-related purposes; (v) vehicles used exclusively for the building, repair and maintenance of highways or designed primarily for use elsewhere than on the traveled part of ways; (vi) any vehicle excluded from the definition of “motor vehicle” in chapter 90; and (vii) a motorcycle, as defined in section 1 of chapter 90.

“Owner”, a person or business who owns or leases a motor vehicle registered in the commonwealth.

“Trade secret”, anything tangible or intangible or electronically stored or kept which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition in 18 U.S.C. 1839(3).

Section 2. (a) Except as provided in subsection (e), for model year 2002 motor vehicles and thereafter and model year 2013 heavy duty vehicles and thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available for purchase by owners of motor vehicles manufactured by such manufacturer and by independent repair facilities the same diagnostic and repair information, including repair technical updates, that such manufacturer makes available to its dealers

through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system shall be made available to owners and to independent repair facilities in the same form and manner and to the same extent as is made available to dealers utilizing such diagnostic and repair information system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms.

(b) A manufacturer that sells any diagnostic, service or repair information to an independent repair facility or other third party provider in a format that is standardized with other manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions which a dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer to continue purchasing diagnostic, service or repair information in a proprietary format, unless such proprietary format includes diagnostic, service, repair or dealership operations information or functionality that is not available in such standardized format.

(c) (1) For model year 2002 motor vehicles and thereafter and model year 2013 heavy duty vehicles and thereafter, each manufacturer of motor vehicles sold in the commonwealth shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate the same functional repair capabilities that such

manufacturer makes available to dealers. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

(2) Any diagnostic tool or information necessary to diagnose, service or repair a motor vehicle that a manufacturer sells to an independent repair facility in a manner and on terms and conditions more favorable than the manner and the terms and conditions which a dealer obtains the same diagnostic tool or information necessary to diagnose, service or repair a motor vehicle, shall also be offered to the dealer in the same manner and on the same terms and conditions as provided to such independent repair facility.

A manufacturer that sells to an independent repair facility any diagnostic tool necessary to diagnose, service or repair a motor vehicle and such diagnostic tool communicates with the vehicle using the same non-proprietary interface used by other manufacturers, the manufacturer delivering such a diagnostic tool shall be prohibited from requiring any dealer from continuing to purchase that manufacturer's proprietary tool and interface unless such proprietary interface has a capability not available in the non-proprietary interface.

(3) Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer shall be



considered to have satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

(d) (1) Beginning in model year 2018, except as provided in subsection (e), manufacturers of motor vehicles sold in the commonwealth, including heavy duty vehicles that are not heavy duty vehicles built to custom specifications sold in the commonwealth for commercial purposes, shall provide access to their onboard diagnostic and repair information system, as required under this section, using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer and: (i) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers standard J2534, Society of Automotive Engineers J1939, commonly referred to as SAE J2534 and SAE J1939, the International Organization for Standardization standard 22900, commonly referred to as ISO 22900 or any successor to SAE J2534, SAE J1939 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Organization for Standardization; (ii) an onboard diagnostic and repair information system integrated and entirely self-contained within the vehicle, including, but not limited to, service information systems integrated into an onboard display; or (iii) a system that provides direct access to onboard diagnostic and repair information through a non-proprietary vehicle interface, such as ethernet, universal serial bus or digital versatile disc. Each manufacturer shall provide access to the same onboard diagnostic and repair information available to their dealers, including technical updates to such onboard systems, through such non-proprietary interfaces as referenced in this paragraph. Nothing in this chapter shall

be construed to require a dealer to use a non-proprietary vehicle interface specified in this paragraph, nor shall this chapter be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device; provided, however, that: (i) the manufacturer also complies with this paragraph; and (ii) the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms and otherwise complies with subsection (a).

(2) No manufacturer shall be prohibited from making proprietary tools available to dealers if such tools are for a specific specialized diagnostic or repair procedure developed for the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through a non-proprietary interface set out in paragraph (1). Provision of such proprietary tools under this paragraph shall not constitute a violation of this chapter even if such tools provide functions not available through the interface set forth in paragraph (1); provided, however, that such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this paragraph authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in paragraph (1), for diagnostic or repair procedures that fall outside the provisions of this paragraph or to otherwise operate in a manner inconsistent with paragraph (1).

(e) Manufacturers of motor vehicles sold in the commonwealth 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

excluded under this subsection, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

(f) With the exception of telematics diagnostic and repair information that is provided to dealers, necessary to diagnose and repair a customer's vehicle and not otherwise available to an independent repair facility via the tools specified in paragraph (1) of subsection (c) and paragraph (1) of subsection (d), nothing in this chapter shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from a motor vehicle by mobile communications; provided, however, that nothing in this chapter shall be construed to abrogate a telematics services contract or other contract that exists between a manufacturer or service provider, an owner or a dealer. For the purposes of this chapter, telematics services shall include, but not be limited to, automatic airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location, remote door unlock, transmitting emergency and vehicle location information to public safety answering points and any other service integrating vehicle location technology and wireless communications. Nothing in this chapter shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

Section 3. Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section 4. Notwithstanding any general or special law to the contrary, nothing in this chapter shall be construed to abrogate, interfere with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise agreement executed and in force between a dealer and a manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to such franchise agreement; provided, however, that any provision in a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section 5. Nothing in this chapter shall be construed to require manufacturers or dealers to provide an owner or independent repair facility access to non-diagnostic and repair information provided by a manufacturer to a dealer or by a dealer to a manufacturer pursuant to the terms of a franchise agreement.

Section 6. (a) In addition to any other remedies that may be available, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter 93A.

(b) An independent repair facility or owner who believes that a manufacturer has failed to provide information or a tool required by this chapter shall notify the manufacturer, in writing, through the National Automotive Service Task Force Service Information Request process, or its successor organization or process, and give the manufacturer 30 days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent litigation pursuant to chapter 93A.

(c) If a manufacturer fails to respond to the notice provided pursuant to subsection (b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in the superior court or, if applicable, in the federal district court for the district of Massachusetts. Such complaint shall include, but not be limited to: (i) written information confirming that the complainant has visited the relevant manufacturer website and attempted to effect a proper repair utilizing information provided on such website, including communication with customer assistance via the manufacturer's toll-free call-in assistance, if made available by the manufacturer; (ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's scan or diagnostic tool necessary for such repair; and (iii) evidence of manufacturer notification as set out in subsection (b).

(d) Except in the instance of a dispute arising between a franchisor manufacturer and its franchisee dealer related to either party's compliance with an existing franchise agreement, which is required to be resolved pursuant to chapter 93B, a dealer shall have all the rights and remedies provided in this chapter, including, but not limited to, exercising the rights and remedies allowed an independent repair facility.

*Approved, November 26, 2013.*



**AUTO ALLIANCE**  
DRIVING INNOVATION®

**AAIA**<sup>®</sup>  
Automotive Aftermarket  
Industry Association

GlobalAutomakers

**CARE**  
Coalition for Auto Repair  
Equality

## MEMORANDUM of UNDERSTANDING

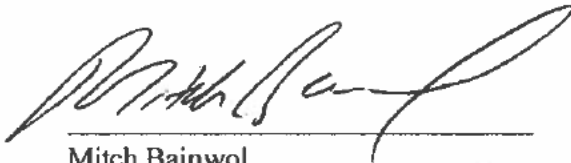
The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth (15th) day of January, 2014 and voluntarily agree as follows:

1. The Original Parties fully support this MOU and attached “Right to Repair” (R2R) agreement (“R2R Agreement”). Automobile manufacturer members of the Alliance and Global Automakers indicate their individual company’s agreement to comply with the MOU and R2R Agreement in all fifty (50) States and the District of Columbia through their individual letters of endorsement.
2. Until such time as the provisions of Section 2(c)(i) (common interface device) of the R2R Agreement have been fully implemented, with respect to model year 2018 and newer vehicles, for two years or January 2, 2019, whichever is earlier, and provided the OEMs comply with the MOU during this period, CARE and AAIA agree to continue to work with other Original Parties to fully implement the MOU and to oppose and not to fund or otherwise support, directly or indirectly, any new state R2R legislation.
3. The Original Parties agree to work to strongly encourage any new entrants to the U.S. automotive market or to R2R issues to become signatories to the MOU.
4. The Original Parties agree to work together to resolve any future or related R2R issues that might otherwise be the subject of state legislation and, subject to the mutual consent of the Original parties, amend the MOU and R2R Agreement to include these additional matters.
5. Once the Original Parties have signed on to the MOU, additional parties may join but any amendments or revisions to the terms of the MOU and R2R Agreement, triggered by admission of additional participants, shall require consent of the Original Parties.
6. The Original Parties agree to meet as needed and at least semi-annually, to assess how the MOU is operating, address operational concerns and discuss any other matters relevant to R2R or the MOU or future amendments or parties to the MOU. In the event that one of

the Original Parties concludes that, due to changed circumstances, the MOU or R2R Agreement may no longer be viable, that party shall, upon thirty (30) days written notice to the other three Original Parties, call a meeting to discuss the need for the MOU and R2R Agreement to continue.

7. The Original Parties agree that should a state(s) pass a law relating to issues covered by this MOU and R2R Agreement, after the effective date of the MOU and R2R Agreement, any automobile manufacturer member of the Alliance and Global Automakers may elect to withdraw its letter of endorsement for the MOU and R2R Agreement partially or entirely for the impacted state(s).

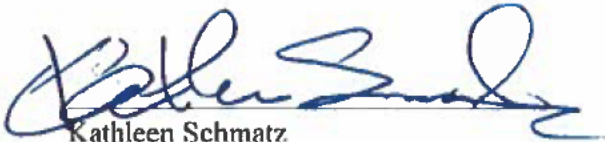
Signed on this 15<sup>th</sup> day of January, 2014:



Mitch Bainwol  
President & CEO  
Alliance of Automobile Manufacturers



Michael Stanton  
President & CEO  
Association of Global Automakers



Kathleen Schmatz  
President & CEO  
Automotive Aftermarket Industry Association



Ray Pohlman  
President  
Coalition for Auto Repair Equality

## R2R AGREEMENT

**Section 1.** As used in this agreement, the following words shall, unless the context clearly indicates otherwise, have the following meanings:

**“Dealer”**, any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a license, as required under applicable law, and is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines pursuant to said franchise agreement.

**“Franchise agreement”**, a written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

**“Fair and Reasonable Terms”** Provided that nothing in this MOU and R2R Agreement precludes an automaker and an owner or independent repair shop who is subject to the agreement from agreeing to the sale of information and tools on any other terms on which they agree, in determining whether a price is on “fair and reasonable terms,” consideration may be given to relevant factors, including, but not limited to, the following:

(i) The net cost to the manufacturer’s franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included.

(iii) The price charged by other manufacturers for similar information.

(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.

(v) The ability of aftermarket technicians or shops to afford the information.

(vi) The means by which the information is distributed.

(vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.

(viii) Inflation.

**“Immobilizer system”**, an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorization code.



**"Independent repair facility"**, a person or business that is not affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines;

**"Manufacturer"**, any person or business engaged in the business of manufacturing or assembling new motor vehicles.

**"Dispute Resolution Panel (DRP)"**, a 5-person panel established by the Original Parties comprised of the following: one Alliance representative, Alliance member or Alliance designee, one Global Automakers representative, Global Automakers' manufacturer member or Global Automakers designee, two representatives of the independent vehicle repair industry to be selected and mutually agreed upon by AAIA and CARE, and one DRP Chair. The DRP Chair shall be an independent professional mediator with no affiliation to any of the Original Parties, shall be selected by unanimous consent of the Original Parties and shall be funded in equal amounts by each of the Original Parties. The Original Parties shall, at one of the two annual meetings, have an opportunity to revisit their respective representative or ask the Original Parties to revisit the person acting as DRP Chair.

**"Motor vehicle"**, any vehicle that is designed for transporting persons or property on a street or highway and that is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States, but excluding (i) a motorcycle; (ii) a vehicle with a gross vehicle weight over 14,000 pounds; or (iii) a recreational vehicle or an auto home equipped for habitation.

**"Owner"**, a person or business who owns or leases a registered motor vehicle.

**"Trade secret"**, anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of 18 U.S.C. § 1839(3).

## **Section 2.**

(2)(a). Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles and thereafter, a manufacturer of motor vehicles sold in United States shall make available for purchase by owners of motor vehicles manufactured by such manufacturer and by independent repair facilities the same diagnostic and repair information, including repair technical updates, that such manufacturer makes available to its dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system shall be made available to owners and to independent repair facilities in the same form and manner and to the same extent as is made available to dealers utilizing such diagnostic and repair information system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms.

**(2)(b)(i)** For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor vehicles sold in the United States shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate the same functional repair capabilities that such manufacturer makes available to dealers. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

**(ii)** Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

**(2)(c)(i)** Commencing in Model Year 2018, except as provided in subsection (2)(e), manufacturers of motor vehicles sold in the United States shall provide access to their onboard diagnostic and repair information system, as required under this section, using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer and:

**(a)** a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers SAE J2534, the International Standards Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Standards Organizations; or,

**(b)** an on-board diagnostic and repair information system integrated and entirely self-contained within the vehicle including, but not limited to, service information systems integrated into an onboard display, or

**(c)** a system that provides direct access to on-board diagnostic and repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board diagnostic and repair information available to their dealers, including technical updates to such on-board systems, through such non-proprietary interfaces as referenced in this paragraph. Nothing in this agreement shall be construed to require a dealer to use the non-proprietary vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this subsection, nor shall this agreement be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device, provided that the manufacturer also complies with Section 2(c)(i) and the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms, and otherwise complies with Section 2(a).

**(2)(c)(ii)** No manufacturer shall be prohibited from making proprietary tools available to dealers if such tools are for a specific specialized diagnostic or repair procedure developed for

the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through the non-proprietary interface set out in (2)(c)(i). Provision of such proprietary tools under this paragraph shall not constitute a violation of this agreement even if such tools provide functions not available through the interface set forth in (2)(c)(i), provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(c)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in (2)(c)(i), for diagnostic or repair procedures that fall outside the provisions of (2)(c)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(c)(i).

**(2)(d)** Manufacturers of motor vehicles sold in the United States 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 excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

**(2)(e)** With the exception of telematics diagnostic and repair information that is provided to dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to an independent repair facility via the tools specified in 2(c)(i) above, nothing in this agreement shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from the vehicle by mobile communications; provided, however, that nothing in this agreement shall be construed to abrogate a telematics services or other contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a dealer. For purposes of this agreement, telematics services include but are not limited to automatic airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location, remote door unlock, transmitting emergency and vehicle location information to public safety answering points as well as any other service integrating vehicle location technology and wireless communications. Nothing in this agreement shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

**Section 3.** Nothing in this agreement shall be construed to require a manufacturer to divulge a trade secret.

**Section 4.** Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this agreement shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any franchise agreement executed and in force between a dealer and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to such franchise agreement.

**Section 5.** Nothing in this agreement shall be construed to require manufacturers or dealers to provide an owner or independent repair facility access to non-diagnostic and repair information

provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to the terms of a franchise agreement.

**Section 6.** If an independent repair facility or owner believes that a manufacturer has failed to provide the information or tool required by this MOU, he may challenge the manufacturer's actions by first notifying the manufacturer in writing. The manufacturer has thirty (30) days from the time it receives the reasonably clear and specific complaint to cure the failure, unless the parties otherwise agree. If the complainant is not satisfied, he has thirty (30) days to appeal the manufacturer's decision to the DRP. The DRP shall be convened by the Chair within thirty (30) days of receipt of the appeal of the manufacturer's decision. The DRP will attempt to reach agreement between the parties. If unsuccessful, the DRP shall convene and issue its decision. The decision must be issued within 30 days of receipt of the appeal of the manufacturer's decision, unless otherwise agreed to by the parties. The DRP decision shall be disseminated to the complainant, the manufacturer, and the Original Parties. If the manufacturer and complainant still cannot reach agreement, the complainant may take whatever legal measures are available to it.



September 26, 2023

The Honorable Gus Bilirakis  
Chairman  
House Committee on Energy and Commerce  
Subcommittee on Innovation, Data, and  
Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
House Committee on Energy & Commerce  
Subcommittee on Innovation, Data, and  
Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky:

As the House Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce holds a hearing on “Proposals to Enhance Product Safety and Transparency for Americans,” the Travel Technology Association submits the following letter for the record on the discussion draft H.R. \_\_\_\_, No Hidden Fees on Extra Expenses for Stays (FEES) Act. This legislation seeks to prohibit unfair and deceptive advertising of prices for hotel rooms and other places of short-term lodging.

The Travel Technology Association (“Travel Tech”) is the voice of the travel technology industry, advocating for public policy that promotes transparency and competition in the travel marketplace, encourages innovation, and empowers traveler choice. We represent the leading innovators in travel technology, including Online Travel Agencies (“OTAs”) and metasearch engines, short-term rental platforms, travel management companies, and Global Distribution Systems (“GDS”).

Travel Tech member companies created the infrastructure and Internet-based marketplace from which travelers, suppliers, and intermediaries benefit today. Through their platforms and services, our members provide suppliers with access to the vast and diverse travel marketplace while offering consumers transparency, a wide range of options, and customized experiences when purchasing and managing their travel.

Promoting transparency is a top priority for Travel Tech and its members. It is essential that travelers make informed decisions without hidden surprises or unexpected expenses. When travelers have complete pricing details, they can accurately compare different options and make choices that align with their preferences and budget. This transparency enables travelers to plan more effectively and promotes fair marketplace competition.



Public policy that supports clear and upfront information about the total cost of travel early in the planning process and across all booking and advertising channels encourages competitive pricing practices. Congress should enact a single national standard to create uniformity and certainty for hotels, short-term rentals, online ticket agents, metasearch agents and any others, and **most of all, travelers, who will have a better understanding of what is included in advertised pricing for lodging.**

Without a national standard, a “patchwork” of state regulations, with different regulations and potential penalties, would likely emerge. This would place a significant compliance burden on the travel technology industry. A patchwork would also be a source of great confusion for consumers to know whether they are covered by their state regulations or the regulations of the state where their lodging choice is located. Consumers in Florida seeking stays in California or Illinois and vice versa should see the same prices with mandatory fees included.

H.R.\_\_\_\_, No Hidden Fees on Extra Expenses for Stays (FEES) Act is an excellent first step forward. This bill seeks to set one national uniform standard for the display of pricing inclusive of mandatory fees paid by the consumer at hotels and other places of short-term lodging. The legislation would preempt state laws.

Travel Tech has worked closely with subcommittee staff and greatly appreciates their leadership as well as that of its sponsor Rep. Young Kim (R-CA-40) on the legislation. Travel Tech strongly support efforts to move it forward quickly, but have identified the following key changes in our feedback:

- **With regard to Sec. 2: Prohibition on unfair and deceptive advertising of hotel room and other short-term lodging prices:** As currently drafted, H.R.\_\_\_\_, No Hidden Fees on Extra Expenses for Stays (FEES) Act includes a “safe harbor” provision that requires covered providers to make a “reasonable effort” to obtain the mandatory fee if it is not first provided. Accommodation suppliers determine the rates, terms, and mandatory fees. Internet platforms – which include online ticket agents and metasearch platforms – then publish, disclose and share those rates, terms, and fees, to the extent this information is provided to them.

Given the scale at which Travel Tech member companies operate, wherein millions upon millions of rooms and rates from thousands and thousands of hotels across the United States are displayed in real-time, they could not reasonably seek out hotels and hold them to account if they did not first pro-actively share their mandatory fees. The

onus to provide the mandatory fee information must stay with the entity setting the consumer-paid mandatory fee. Furthermore, the legislation should also address situations when incorrect mandatory fee information is provided by the entity setting the fee.

To these ends, we recommend that this section of the bill read as follows: “No person covered by subsection (a)(1) may be found in noncompliance with this section if the person is unable to meet a requirement in this section due to the lack of complete and accurate information or data provided directly or through a third party intermediary by a place of short-term lodging to such person.”

- **With regard to Sec. 5 Definitions. (2) Covered Provider:** The current draft legislation defines a “covered provider” as a “place of short-term lodging, an online travel agency, or a metasearch website.” However, the terms “online travel agency” or “metasearch” do not have definitions in statute.

To control for this issue and future-proof this legislation as well, Travel Tech recommends replacing “online travel agency” and “metasearch website” with “a provider of a place of short-term lodging, an internet website, application, or other centralized platform, or any person that advertises, displays, markets, or otherwise offers for sale a place of short-term lodging.” It is likely in the future that consumers will book their travel through Artificial Intelligence or voice commands. Such tools should be subject to this law in the future just as Travel Tech members would be today.

- **With regard to Sec. 5 Definitions. (3)(A) Mandatory Fee:** As it currently stands, the legislation defines “Mandatory Fee” as “each mandatory fee that is assessed by the covered provider and paid directly by the consumer.” As discussed above and widely known, it is the place of short-term lodging that sets the mandatory fees paid directly by consumers. This definition should be changed to read, “each mandatory fee that is assessed by the short-term lodging provider and paid directly by the consumer.” “Short-term lodging provider” is rightly defined in the draft bill as “a hotel, motel, inn, short-term rental, or other place of lodging that advertises at a price that is a nightly, hourly, or weekly rate.”

Earlier this year, Travel Tech responded to the Federal Trade Commission’s Advance Notice of Proposed Rulemaking regarding the “prevalence of fee practices that may be unfair or deceptive acts or practices,” (Commission Matter No. R207011). In our comments, we detailed how Travel Tech members already provide travelers with all information provided to them by accommodation suppliers so consumers are aware of the resort fees that will be assessed on-



site. Our comments also stated that, “a]ny regulation in this area must apply equally to all entities advertising travel pricing information to consumers both online and offline. Without a level playing field, it could distort the online marketplace for travel, and lead to more consumer frustration, and not less.” With our proposed edits, H.R. \_\_\_\_, No Hidden Fees on Extra Expenses for Stays (FEES) Act will set the right balance among suppliers and platforms.

Thank you for your consideration of our proposed changes and we stand ready to support efforts in moving amended legislation forward immediately.

Sincerely,

*Laura Chadwick*

Laura Chadwick  
President & CEO  
[lchadwick@traveltech.org](mailto:lchadwick@traveltech.org)





September 27, 2023

The Honorable Gus Bilirakis  
Chair  
Subcommittee on Innovation,  
Data, and Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation,  
Data, and Commerce  
United States House of Representatives  
Washington, DC 20515

Dear Chair Bilirakis and Ranking Member Schakowsky,

On behalf of America's hotel and lodging industry, we thank you for your leadership and continued support. We write today to express support for Representative Young Kim's (CA-40) proposed legislation that would codify consistent and broadly applicable mandatory fee disclosure and display requirements across the entire lodging booking and advertising ecosystem.

AHLA is the singular voice representing every segment of the hotel industry including major chains, independent hotels, management companies, REITs, bed and breakfasts, industry partners, and more. We support and advocate on behalf of the hospitality industry to build a vibrant and united hospitality industry that powers America's economy. The industry is made up of more than 62,000 hotels, 33,000 of which are small businesses, comprising 5.6 million rooms across the United States. These hotels generate more than \$300 billion in sales every year and support more than 8.3 million jobs. Hotels are integral contributors to communities across the country and annually generate nearly \$75 billion in tax revenue at the federal, state, and local levels.

While hotels disclose mandatory additional fees to consumers in accordance with existing FTC guidance now, it is critical that any updated display requirements apply across the competitive lodging advertising and booking landscape. Recently, many of the largest hotel chains that AHLA represents (including Marriott International, Hilton, Choice Hotels International, Omni Hotels & Resorts, and Hyatt) have implemented, or announced plans to imminently implement, changes to ensure that mandatory fees are displayed upfront in the pricing consumers are offered through their owned channels.

AHLA is supportive of the framework put forth by Representative Kim in the discussion draft of the No Hidden Fees on Extra Expenses for Stays Act. This bill would create a national standard for display of lodging prices and require that any mandatory fees be included in prices wherever they are advertised, distributed, and sold.

Critically, as consumers shop for and book lodging through a wide variety of channels and providers, this proposed legislation would apply to third-party distributors, such as online travel agencies, metasearch sites, such as Google, as well as short-term rental platforms, such as Airbnb and VRBO. Any regulation mandating fee display and disclosure must be consistently applied to all accommodation providers, advertisers, and broader industry participants to ensure consumers



see the same information, in a consistent manner, anywhere they shop. A level competitive playing field for industry participants paired with clear and consistent display for consumers is of paramount importance and we believe this drafted legislation achieves those goals.

AHLA and its members look forward to working with Representative Kim, members of the committee, and your colleagues across Congress on legislation to establish a uniform standard for lodging pricing display. We appreciate your work on this important topic and appreciate the opportunity to provide this statement.

Sincerely,

Chirag Shah  
Senior Vice President, Federal Affairs & Policy Counsel



CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

September 27, 2023

The Honorable Gus Bilirakis  
Chairman, Subcommittee on Innovation,  
Data, and Commerce  
House Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member, Subcommittee on  
Innovation, Data, and Commerce  
House Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky,

Thank you for hosting this critical hearing on Proposals to Enhance Product Safety and Transparency for Americans. I would also like to thank the witnesses for attending today to examine and discuss policies designed to ensure the safety of all Americans, especially our children. The expertise and real-world experience you all bring to the table are essential in the lawmaking process.

I am pleased that the subcommittee included today's discussion of the *Youth Poisoning Protection Act (H.R. 4310)*, which I was proud to introduce alongside Representatives Lori Trahan, Katie Porter, and Chris Stewart.

The mental health crisis in our country has continued to worsen, with death by suicide as one of the leading causes of death in the U.S. According to the Centers for Disease Control and Prevention, in 2021, more than 48,000 people died by suicide in the U.S., and 12 percent of those individuals died using poison.

H.R. 4310 would ban high-concentration sodium nitrite from commerce by adding such products to the list of banned hazardous products under the Consumer Product Safety Act. The legislation defines high concentrations of sodium nitrite as greater than 10%. There are no known consumer products that need to contain sodium nitrite above this level. Our legislation would not affect sales of high-concentration sodium nitrite to businesses, researchers, or medical institutions.

The enactment of the bipartisan, bicameral *Youth Poisoning Protection Act* would prevent consumers, especially vulnerable youth, from easily obtaining poisonous substances that have been made more dangerous by online suicide forums. These forums provide detailed instructions and real-time guidance on how to commit suicide using sodium nitrite. This vital piece of

legislation will take steps to protect our young people while addressing suicide and mental illness.

I appreciate my colleagues on the Energy and Commerce Committee for considering policies to prevent poisonous substances from getting into the hands of vulnerable youth and encourage the committee to advance H.R. 4310 in a future committee markup.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Carey". The signature is fluid and cursive, with the first name "Mike" being more prominent than the last name "Carey".

Mike Carey

Member of Congress

September 27, 2023

The Honorable Gus Bilirakis  
Chairman  
Subcommittee on Innovation, Data,  
and Commerce  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data,  
and Commerce  
House Committee on Energy and Commerce  
2322A Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member

As the singular, authoritative, and respected voice of the automotive innovation (“AutoInnovators”) welcomes your committee with its perspective on the importance of right-to-repair of automotive repair in the U.S.

Focused on creating a safe, clean and transformative path for all to represent the entire ecosystem, from manufacturers production to technician vehicle clean, parts to equipment suppliers, battery makers. As the national places manufacturing sector, the automotive industry 10 million U.S. jobs and a major component of the country's economic

When it comes to the automotive repair industry, consumers have a range of choices including dealer chain repair, independent repair facility.

For the vast majority of automotive diagnostic and repair work is performed by independent repair facilities.

Information available to the independent repair community. Massachusetts AutoInnovators, which provides information and tools needed to diagnose and repair at a fair and reasonable price. Protecting consumer protections.

In 2014, representatives from the auto industry and the independent repair industry came together to craft a national memorandum of understanding (MOU) that memorialized automaker commitments to follow the Massachusetts law across the entire country. That national MOU remains in place today and is working well. In fact, the national automotive MOU has been cited by the Federal Trade Commission (FTC) in their 2021 Nix the Fix report (Report) as an ideal model for other industries to follow when looking to ensure consumer repair options. Specifically, the Report states the automotive MOU “...had the effect of creating a broad, if not complete, right to repair in the automotive industry across the United States.”<sup>1</sup>

The national MOU also had the foresight to recognize the automotive industry is constantly evolving and was intentionally futureproofed. For example, as vehicles become more connected, certain categories of vehicle data may be accessible via telematic data systems. The national MOU contemplated this evolution of the industry and explicitly requires that automakers make telematics information available to independent repairers and vehicle owners if that information is needed to repair a vehicle, available to an automaker’s authorized dealer network, and not otherwise available through another source. Likewise, the national MOU accommodates the industry-defining shift toward electric vehicles and does not distinguish among powertrains. Whether a vehicle is powered by an internal combustion engine or an electric motor, automakers are committed to the obligations laid out in the national MOU.

Building on the strength and effectiveness of the national MOU, this July, Auto Innovators announced an additional [commitment](#) to right-to-repair with the Automotive Service Association (ASA) and the Society of Collision Repair Specialists (SCRS), two of the largest and most well-respected associations representing independent repairers. This latest commitment between independent repairers and automakers reflects our collective commitment to our shared customers – vehicle owners – and the preservation of consumer choice in automotive repair. Since it was announced, Tesla and Rivian have endorsed this new commitment and we continue to welcome consideration from other companies and organizations.

This landmark agreement should reassure the subcommittee that independent repairers and automakers are not at odds when it comes to right-to-repair. Rather, they are in lockstep on this fundamental principle: consumers should have choice when it comes to repair options and the ability to have their vehicle serviced anytime, anywhere, anyplace.

Legislation before the subcommittee today - H.R. 906, the Right to Equitable and Professional Auto Industry Repair Act (REPAIR Act) - does not advance consumers’ ability to have their vehicles repaired by the repairer of their choice. Instead, it is a mandate for a complex technical solution to a undefined problem, creating new privacy and security risks, and opening the door to expand the scope

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<sup>1</sup> Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), available at [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf), p. 45.



well beyond vehicle repair. There are three key concerns to highlight for the subcommittee's consideration:

1. **The Bill Flings Open Access to Vehicle Data Without Corresponding Consumer Protections:** On enactment, the bill grants immediate access to vehicle-generated data for third parties designated by motor vehicle owners. But the bill provides no consumer protections to address important issues, such as how third parties will confirm the identity of vehicle's true owner, how third parties will obtain consent, limits on designees' access to vehicle-generated data, liability and accountability for those accessing data, or how privacy and cybersecurity would be addressed before regulations are issued by NHTSA and the FTC.
2. **NHTSA has Long Maintained that the Key Attributes of the Bill's Standardized Access Platform are Inherently Unsafe:** NHTSA has [continuously](#) warned that an open data access platform presents a major safety threat when it is able "to, at scale, remotely access and send commands that affect a vehicle's critical safety systems." NHTSA has [further noted](#) how malicious actors "could utilize such open access to remotely command vehicles to operate dangerously, including attacking multiple vehicles concurrently." All those elements appear to be minimum features contemplated for the bill's "standardized access platform" (for example, section 3(a)(2)(B) and 7(a)(17) regarding real-time, bidirectional, remote wireless access). While there are alternative methods for safely making repair data accessible, the bill rejects them in order to mandate a singular, technology-specific approach questioned by independent safety regulators.
3. **The Bill's Scope Far Exceeds Right to Repair:** Although this legislation has been framed as being about what is generically called the "right to repair," it involves data far beyond what is necessary for diagnostics and repair. The public should beware that this bill would provide a pathway for third parties to access virtually any type of vehicle data. Moreover, this broader scope is better suited to legislation that more comprehensively addresses issues arising from data generally, such as privacy.

This broad scope is most notably apparent from the bill empowering the FTC to require access for "designees" to additional types of data, to be used "for additional purposes" and "regardless of whether those types of data are related to motor vehicle repair" Clearly, this policy has no bearing on right to repair.

These are but a few of the many concerns raised by the approach outlined in this legislation. Further, last year Ranking Member Schakowsky requested that the Government Accountability Office (GAO) conduct a review of many of the questions at the heart of this legislation, including the state of competition in automotive repair and federal agencies' abilities to oversee competition in automotive repair. Auto Innovators supported this prudent step to evaluate the automotive repair landscape and believes this report should inform any effort to legislate on this topic.

This is an exciting and transformative moment for the global auto industry as new technologies reshape personal transportation. Without question, the evolution of automotive technology will change

how consumers, businesses, and society interact with vehicles. This will not happen overnight, but rather than viewing innovation as an impediment to the status quo, it is an opportunity for collective growth. At this time of tremendous innovation, automakers remain committed to providing independent repairers with the tools, information and training necessary to keep pace with this generational transformation of the industry.

On behalf of our members and the millions American jobs they support - including those across the independent repair community - we look forward to working with you on this important topic and other measures necessary to keep the United States at the forefront of defining the cleaner, safer, and smarter future for the auto industry.

Sincerely,

A handwritten signature in black ink that reads "Garrick C. Francis". The signature is written in a cursive, flowing style.

Garrick Francis  
Vice President, Federal Affairs  
Alliance for Automotive Innovation

Attachments:  
Automotive Repair Data Sharing Commitment – July 2023



July 11, 2023

The Honorable Maria Cantwell  
Chairwoman  
U.S. Senate Committee on Commerce,  
Science, and Transportation  
Washington, D.C. 20510

The Honorable Ted Cruz  
Ranking Member  
U.S. Senate Committee on Commerce,  
Science, and Transportation  
Washington, D.C. 20510

The Honorable Cathy McMorris Rodgers  
Chairwoman  
U.S. House Committee on Energy and  
Commerce  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member  
U.S. House Committee on Energy and  
Commerce  
Washington, D.C. 20515

The Honorable Jim Jordan  
Chairman  
U.S. House Committee on the Judiciary  
Washington, D.C. 20515

The Honorable Jerrold Nadler  
Ranking Member  
U.S. House Committee on the Judiciary  
Washington, D.C. 20515

The Honorable Dick Durbin  
Chairman  
U.S. Senate Committee on the Judiciary  
Washington, D.C. 20510

The Honorable Lindsey Graham  
Ranking Member  
U.S. Senate Committee on the Judiciary  
Washington, D.C. 20510

Dear Chairwoman Cantwell, Ranking Member Cruz, Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Jordan, Ranking Member Nadler, Chairman Durbin, and Ranking Member Graham:

We write today with an important announcement on a national automotive right-to-repair commitment between representatives of the independent repair community and automobile manufacturers.

The attached commitment – entered into by the [Automotive Service Association](#), the [Society of Collision Repair Specialists](#), and [Alliance for Automotive Innovation](#) – is noteworthy for it represents thousands of auto repair professionals and small businesses in all 50 states as well as the manufacturers producing most vehicles sold in the U.S.

The Federal Trade Commission, the government's top consumer protection and competition agency, has rightfully placed a focus on the repair options available to consumers for all the products they purchase – far beyond just automobiles. They have previously highlighted the automotive repair marketplace as a model for other industries to follow, noting it is “working well.” We agree! Today, 70 percent of post-warranty vehicle repairs today happen outside the dealer network, while automakers' own certified collision networks are comprised of shops that are more than 70 percent non-dealer owned. In other words, competition is alive and well in the auto repair industry.

Our commitment ensures that this competition remains and guarantees consumers a range of service options for their vehicles well into the future, including independent repairers, national service chains, authorized dealers, or undertaking the repair themselves, if technically inclined. It also guarantees the country's small and independent auto repairers continued unrestricted access to the various tools, information, and data needed to repair vehicles.

This commitment was created with our mutual and valued customers in mind: vehicle owners. It affirms that consumers deserve access to safe and proper repairs throughout a vehicle's lifecycle. Finally, it is built to last because it anticipates changes in automotive technologies and market evolutions.

It should reassure you that independent repairers and automakers are not at odds on automotive data access, but rather in lockstep on this fundamental principle: consumers should have choice when it comes to repair options and the ability to have their vehicle serviced in well-equipped shops by well-trained technicians anytime, anywhere, anyplace.

We have attached a copy of our full commitment to this letter, but highlight a few points below:

- **Access to diagnostic and repair information:** We reaffirm the 2014 Memorandum of Understanding and commit that independent repair facilities shall have access to *the same* diagnostic and repair information that auto manufacturers make available to authorized dealer networks. This applies to all vehicle technologies regardless of powertrain, including gasoline, diesel, fuel cell, electric battery, hybrid, and plug-in hybrid electric powertrains. This also applies to telematic data needed to diagnose and repair a vehicle if not otherwise available.
- **Education and training:** We pledge to work together on education and training programs so mechanical and collision repair facilities are aware of their right to this information and know exactly where to find it, whether directly through an automaker's repair website, a shared access point like [www.OEM1Stop.com](http://www.OEM1Stop.com) or via third-party information providers, software, and tools.
- **Future Advancements:** Automotive technology continues to advance, with nearly every vehicle now equipped with advanced safety features and increasingly efficient propulsion systems. Repairers meet this challenge every day through investments in training and equipment. As vehicle technologies and obligations on repairers evolve, this

commitment provides an avenue to ensure a level playing field and a forum to discuss future repairer needs as they arise.

Collectively, we recognize the importance of providing a wide range of repair options to meet the needs of our shared customers throughout the lifecycle of a vehicle. This renewed commitment should give policymakers full confidence that repairers and manufacturers are committed to cooperation and allied on this shared goal.

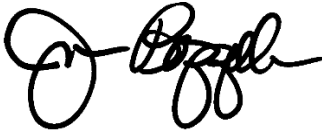
Sincerely,



Julie Massaro  
President  
Automotive Service Association



Aaron Schulenburg  
Executive Director  
Society of Collision Repair Specialists



John Bozzella  
President and CEO  
Alliance for Automotive Innovation

Cc: The Honorable Ann Carlson, Acting Administrator, National Highway Traffic Safety Administration  
The Honorable Lina Khan, Chair, Federal Trade Commission  
The Honorable Earl L. "Buddy" Carter (R-GA), Vehicle Data Access Caucus  
The Honorable Darren Soto (D-FL), Vehicle Data Access Caucus

Enclosure: Appendix 1 – Commitment on Automotive Repair Information Sharing

## Appendix 1



### Automotive Repair Data Sharing Commitment

This commitment was created with one group of people in mind: vehicle owners. It recognizes and reaffirms the belief that consumers should have access to safe and proper repairs throughout a vehicle's lifecycle.

The parties commit to ensure consumer choice in vehicle repair decisions and support the independent repair community as provided below and as outlined in the existing 2014 Memorandum of Understanding:

**Access to diagnostic and repair information** – There shall be available for purchase by owners of motor vehicles and by independent repair facilities on fair and reasonable terms the same diagnostic and repair information, including service manuals and technical repair updates, that a manufacturer makes available to its authorized dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible repair information system.

**Access to vehicle systems** – There shall be available access to vehicle diagnostic systems through (i) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers standard J2534, commonly referred to as SAE J2534, the International Organization for Standardization standard 22900, commonly referred to as ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Organization for Standardization; (ii) an onboard diagnostic and repair data system integrated and entirely self-contained within the vehicle, including, but not limited to, diagnostic or service information systems integrated into an onboard display; or (iii) a system that provides direct access to onboard diagnostic and repair data through a non-proprietary vehicle interface, such as ethernet, universal serial bus or digital versatile disc; provided that each manufacturer provides access to the same onboard diagnostic and repair data and functions available to their dealers, including technical updates to such onboard systems, through such non-proprietary interfaces as referenced in this paragraph.

**Alternate Fueled Vehicles** – Just as is the case for traditional internal combustion vehicles, access to vehicle diagnostic data and to vehicle systems for diagnostic and repair purposes shall be available for purchase by vehicle owners and by independent repair facilities on fair and reasonable terms for alternately fueled vehicles. This commitment applies to all vehicle technologies regardless of powertrain, including gasoline, diesel, fuel cell, electric battery, hybrid, and plug-in hybrid electric powertrains.



**Telematics** – Telematics systems shall not be used to circumvent the commitments made in this commitment to provide independent repair facilities with access to vehicle diagnostic data. To the extent that specific telematic diagnostic and repair data is needed to complete a repair, and also provided to an automaker’s authorized dealers, the automaker shall make such information available to vehicle owners and independent repair facilities, if it is not otherwise available through a tool or third-party service information provider. This does not apply to any telematics data beyond what is necessary to diagnose and repair a vehicle.

**Access to tools** – There shall be made available for purchase by owners of motor vehicles and by independent repair facilities diagnostic repair tools incorporating the same functional capabilities that a manufacturer makes available to its authorized dealers.

**Fair and Reasonable Terms** – There shall be access to diagnostic and repair information and tools on fair and reasonable terms, consistent with U.S. Environmental Protection Agency, California Air Resources Board, and Massachusetts statutory requirements.

**Support of Third-Party Tool Manufacturers** – Diagnostic and repair information shall be made available to each third-party tool manufacturer and each third-party service information provider with whom a manufacturer has appropriate licensing, contractual, or confidentiality commitment for the sole purpose of building diagnostic tools and third-party service information publications and systems.

**Trade secret protections** – Nothing in this commitment shall be construed to require a manufacturer to divulge a trade secret.

**Education** – The parties shall develop a plan to educate both mechanical and collision repair facilities on the avenues by which they can access repair information, including directly through manufacturer repair websites, on [www.oem1stop.com](http://www.oem1stop.com), or by accessing third-party tool and data service providers, among others.

**Training** – The parties shall review existing training options for both mechanical and collision repair facilities and work to ensure repairers have access to the latest training opportunities.

### **Working Together to Address Any Identified Gaps**

As a complement to the existing process for resolving disputes involving the availability of diagnostic and repair information from specific manufacturers established in the 2014 MOU, the parties commit to establish a Vehicle Data Access Panel (VDAP) to identify issues a party may have with respect to the availability of diagnostic data and repair information as pledged in this commitment and collaborate on potential solutions where feasible. The VDAP shall be comprised of representatives from Automotive Service Association, Society of Collision Repair Specialists and Alliance for Automotive Innovation, and shall meet, at a minimum, biannually.

## **Periodic Review to Ensure Continued Relevancy**

In recognition of this industry's dynamic marketplace, the parties commit to review this commitment annually and update, if appropriate. To that end, the parties shall establish a Data Access Working Group to consider any technological advancements that may alter the vehicle repair marketplace. The size and membership of this Working Group shall be established by the parties and can be altered at any time with the commitment of the signing parties.

## **Cooperation and Advocacy**

**Federal legislation** – The parties commit to working together in support of federal legislation to codify the various provisions of this commitment, ensuring consumer choice in vehicle repair across the country. The parties also commit to working together against any legislation that is in direct conflict with the tenets of this document.

**Federal regulations** – The parties commit to working together in support of a petition to the Environmental Protection Agency to ensure reparability of electric vehicles by requiring standardized data communication protocols from OBDII-type connectors on all battery electric, plug-in hybrid, hybrid, and fuel cell vehicles model year 2026 and beyond in alignment with California's Advanced Clean Cars II regulation.

**State legislation** – The parties commit to working together against any legislation that is in conflict with the tenets of this commitment. Engagement on state legislation not in conflict with the tenets of this commitment shall be evaluated on its merits and subject to the commitment of the parties.

## **Signing Parties**

### **Automotive Service Association (ASA)**

ASA is the largest and oldest national organization committed to protecting the automotive repair industry with ONE VOICE. Our members own and operate automotive mechanical and collision repair facilities responsible for the majority of all, post warranty, repair services in the United States. ASA advocates for the interests of its members and their customers in Washington, D.C. The education, resources, and services ASA provides empowers its members in all 50 states to remain trusted stewards of mobility in their communities. [www.ASAShop.org](http://www.ASAShop.org)

### **Society of Collision Repair Specialists (SCRS)**

Through our direct members and affiliate associations, SCRS proudly represents over 6,000 collision repair businesses and 58,500 specialized professionals who work to repair collision-damaged vehicles. Since 1982, SCRS has served as the largest national trade association solely dedicated to the hardworking collision repair facilities across North America. Since its formation, SCRS has provided repairers with an audible voice, and an extensive grassroots network of industry professionals who strive to better our trade. Additional information about SCRS including other news releases is available at the SCRS website. [www.scrs.com](http://www.scrs.com)

### **Alliance for Automotive Innovation**

From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.

[www.autosinnovate.org](http://www.autosinnovate.org)

#### **Effective Date**

This Commitment is effective immediately upon signed letter transmittal to Chairwoman Cantwell, Ranking Member Cruz, Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Jordan, Ranking Member Nadler, Chairman Durbin, and Ranking Member Graham.



September 27, 2023

The Honorable Gus Bilirakis  
Chairman  
Subcommittee on Innovation, Data,  
and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data,  
and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20510

Dear Chairman Bilirakis and Ranking Member Schakowsky:

MEMA Aftermarket Suppliers – a membership group within MEMA, The Vehicle Suppliers Association – is comprised of the companies that manufacture and remanufacture parts, components, and systems for use in the motor vehicle aftermarket. Aftermarket suppliers ensure that quality parts and service choices are available to the 294 million vehicles on our nation’s roads. Suppliers are the foundation of a vibrant aftermarket industry, which employs more than 4 million Americans across manufacturers, motor vehicle repair facilities, distribution centers, and services providers. Furthermore, the independent aftermarket currently services around 70 percent of motor vehicle repairs in the United States.

We applaud the Subcommittee for holding today’s hearing to examine this critical question, and we respectfully share our views on “Proposals To Enhance Product Safety And Transparency For Americans.” MEMA strongly supports H.R. 906, the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act.

## **BACKGROUND**

For more than 100 years, vehicle owners have been able to choose where and with what parts and components to repair their vehicles. For some vehicle owners, those repairs have been “do-it-yourself” or, in the case of fleet owners, completed by an employee of the fleet. Other repairs have been performed at a dealer service center. The vast majority of repairs are conducted at independent aftermarket repair facilities.

These repair choices allowed the development of a vibrant and competitive marketplace that provides consumers with multiple options at different price points and availability. Additionally, the competition guarantees that consumers can choose quality repair locations that are convenient, affordable, and able to service their vehicles in a timely fashion.

As vehicle technology continues to advance and vehicle systems become more automated, new barriers to the competitive motor vehicle repair market are

**MEMA, The Vehicle Suppliers Association**

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emerging. These barriers limit consumer choice and access to affordable alternatives beyond the dealership. Federal and state policies, including cybersecurity and privacy provisions, must preserve consumer choice in where, how, and with what parts to repair vehicles.

The automotive aftermarket industry is committed to ensuring safe, affordable, and accessible vehicle service, maintenance, and repair for consumers. Without action by either federal or state legislatures, vehicle original equipment manufacturers (OEM) and their dealer networks will have a monopoly, preventing consumer choice. A lack of competition in the aftermarket could increase the costs and time investments to consumers, limit interoperability and advancement, and impact consumer safety.

## **CONSUMERS ALREADY FACE REPAIR RESTRICTIONS**

Despite provisions in place to protect consumers, such as the 2014 Memorandum of Understanding (MOU) between automakers and the aftermarket<sup>1</sup> and federal laws enforced by the Federal Trade Commission (FTC), consumers seeking vehicle repairs currently face repair restrictions established by multiple vehicle manufacturers. In its 2021 report, "Nixing the Fix," the FTC noted that the 2014 MOU, "had the effect of creating a broad, if not complete, right to repair in the automotive industry across the United States."<sup>2</sup> Congress is now called on to address this challenge, including by the FTC, which stated, "The Commission also stands ready to work with legislators, either at the state or federal level, in order to ensure that consumers have choices when they need to repair products that they purchase and own."<sup>3</sup>

The claims by automakers and others that U.S. consumers do not experience repair restrictions are both untrue and self-serving. Vehicle owners currently face restrictions that range from failures to make diagnostic tools available to independent repair shops, limits to electronic control modules that will only work when parts with the vehicle identification number (VIN) are installed which effectively locks out aftermarket parts, and restricting sales and purchases of essential parts or information to dealer networks only. A more thorough description of repair restrictions that have been identified by MEMA Aftermarket Suppliers is included with this letter.<sup>4</sup>

## **CONSUMERS WILL BE HURT WITH FEWER REPAIR OPTIONS**

Preventing the aftermarket from having access to vehicle data will remove the choice consumers currently have to repair and maintain their vehicles by relying on the independent aftermarket. In a competitive market, consumers prefer independent service providers over OEM dealers for post-warranty repairs by a ratio of 70 percent

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<sup>1</sup> Auto Care Association (formerly Automotive Aftermarket Industry Association); Coalition for Auto Repair Equality; and Alliance for Automotive Innovation (formerly Alliance of Automobile Manufacturers and Association of Global Automakers). "Memorandum of Understanding." January 15, 2014.

<sup>2</sup> Federal Trade Commission. "Nixing the FIX: An FTC Report to Congress on Repair Restrictions." Federal Trade Commission." May 2021.

<sup>3</sup> Ibid.

<sup>4</sup> See Attachment

to 30 percent; a split that has persisted for decades. An independent study conducted by a firm that works with both automakers and the aftermarket estimated that if repair restrictions were not addressed, that share would drop to 56 percent by 2035 and continue to decline in the future.<sup>5</sup> The sole reason for this estimate is the inability of the independent repair community to continue to service vehicles as they do today. By locking independent service providers out of the market, repair restrictions artificially distort consumers' natural preference for more cost-effective independent maintenance, repair services, and implement monopoly pricing.

Recently, the Automotive Service Association (ASA), the Society of Collision Repair Specialists (SCRS), and the Alliance for Automotive Innovation shared with legislators on Capitol Hill a "right to repair pact" between the three associations. This pact recognizes that there is a need to address motor vehicle right to repair and that legislation is necessary to protect consumers long-term. This contradicts vehicle manufacturers' routine statements that the 2014 MOU provides all data necessary to repair and maintain vehicles.

At the same time, the pact falls short of addressing the current challenges faced by the independent aftermarket. The agreement demonstrates that stakeholders can and should collaborate to find a solution that is in the best interest of the motoring public and the marketplace.

Unfortunately, this agreement was reached between the automakers and a small subset of aftermarket stakeholders at the exclusion of other, essential stakeholders such as aftermarket suppliers and manufacturers, parts distribution and retail, and other groups that represent larger segments of independent repair shops.

Additionally, the document does not apply to all OEMs and does not address:

- A binding enforcement mechanism;
- All on-road vehicles including light-duty, medium-duty, and heavy-duty;
- Direct access for vehicle owners or the aftermarket to telematically-generated repair and maintenance data rather than requiring access through OEM controlled systems and tools; or
- Bi-directional communications.

In short, the 2023 agreement does not address the shortcomings of the 2014 MOU or the difficult issues that face consumers today and increasingly into the future.

## **VEHICLE MANUFACTURERS AND AUTO DEALERS SEEK TO MONETIZE DATA**

Vehicle technology advances are leading to new business opportunities for vehicle manufacturers and dealers including connectivity, new technologies, and data. Automated driving, connectivity, electrification, and shared mobility are changing the way consumers and fleets purchase vehicles—and these highly technical vehicles are capable of generating hundreds of terabytes of data per day. The ownership and use

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<sup>5</sup> Roland Berger. "The U.S. Automotive Aftermarket in 2035." May 1, 2022.



of vehicle-generated data is a new and growing business and policy topic, leading to both wide-ranging potential and emerging challenges.

Additional sensors, advanced driver assistance systems (ADAS), electronic control modules, and automated driving technologies lead to a significant number of vehicles and vehicle components that generate and store data. OEMs and new car dealers are developing business plans to benefit from these advances. Many of these new business plans are focused on monetizing data throughout a vehicle’s life cycle and are subscription-based, requiring payment for connectivity services, over-the-air updates, and comfort features. Additionally, OEMs are monetizing vehicle-generated data and forming business-to-business relationships to further utilize this data.

In 2016, McKinsey & Company published a report that found that vehicle data monetization could add up to \$450 billion–\$750 billion in revenue for vehicle manufacturers and dealers globally by 2030.<sup>6</sup> In 2021, McKinsey noted that the uptake on monetizing data has been slower than expected but found that the opportunity for vehicle data monetization continues to grow.<sup>7</sup>

The questions surrounding who owns and should have access to vehicle-generated data, the monetization of vehicle-generated data, and the protection of this data are all critically important, complex topics that Congress must address. However, without immediate congressional action on the narrow subset of data necessary for repair, maintenance, and service, consumers will lose the option of choosing independent aftermarket components, repairs, and service. The opposition to the REPAIR Act by vehicle manufacturers and new vehicle dealers is focused on potential new revenue streams at the expense of vehicle owners.

## **POLICY SOLUTIONS MUST PROTECT COMPETITION AND VEHICLE SAFETY**

The aftermarket industry seeks policy solutions that will allow competition to continue in the aftermarket. Vehicle manufacturers have historically shared with Congress that providing access to vehicle data with the independent aftermarket would create a vehicle safety and cybersecurity risk. This is simply not the case. Currently, both dealer service bays and independent aftermarket repair shops use real-time, bi-directional data to repair and maintain vehicles. This bi-directional interaction with the vehicle is used to diagnose and test vehicle systems requiring repair and to turn off dashboard warning lights that indicate that something on the vehicle needs attention after the repair is complete.

Aftermarket repair shops are already facing difficulties accessing some vehicle data, requiring the consumer to make unnecessary choices. These choices can include visiting the dealer to perform a repair, ignoring the light, or, even worse, deactivating

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<sup>6</sup> Bertonecello, Michele, Gianluca Camplone, Paul Gao, Hans-Werner Kaas, Detlev Mohr, Timo Möller, and Dominik Wee. McKinsey & Company. “Monetizing Car Data New Service Business Opportunities to Create New Customer Benefits.” September 2016.

<sup>7</sup> Bertonecello, Michele, Christopher Martens, Timo Möller, and Tobias Schneiderbauer. McKinsey & Company. “Unlocking the Full Life-Cycle Value from Connected-Car Data.” February 11, 2021.

the warning light entirely. Each of these choices has a downside for the consumer, from increased costs for the dealer visit to environmental impacts and safety risks from unperformed repair and maintenance.

## **TECHNOLOGY ADVANCES ARE CHANGING REPAIR NEEDS**

New technologies create technological barriers that impair the ability of a motor vehicle owner and their chosen vehicle repairer to diagnose, repair, and maintain vehicles. Additionally, federal and state requirements such as the Magnusson Moss Warranty Act have not been updated to take into consideration emerging technological barriers. Taken together, technological and legal barriers eliminate consumer choice and hinder a competitive market.

For example, the deployment of advanced safety and crash avoidance features such as rearview cameras and advanced driver assist systems (ADAS) has dramatically increased over the last decade due to both consumer demands for safety technology and federal requirements to install advanced systems. As new technologies are deployed, the number of sensors and cameras on vehicles are quickly increasing. Rearview cameras have been required on all new vehicles under 10,000 pounds since May 1, 2018<sup>8</sup>, and front crash prevention will be required on all new vehicles as the National Highway Transportation Safety Administration (NHTSA) implements congressional requirements outlined in the Infrastructure Investment and Jobs Act (IIJA).<sup>9</sup>

A study released by the Insurance Institute for Highway Safety (IIHS) in February 2023 found that the confusion around repairing these advanced crash avoidance features was growing as the popularity of the features grew. Improperly calibrated sensors and cameras can have catastrophic results. If an automatic braking system is receiving inaccurate information due to an improperly calibrated sensor, the vehicle might not be able to stop in time to avoid a crash. IIHS found that repairers are facing challenges in gaining access to repair instructions for these features, and the study finds that databases with comprehensive repair information are out of reach for most technicians. IIHS recommends that vehicle manufacturers simplify scanning and calibration procedures and establish a centralized database with repair and calibration specifications and instructions.<sup>10</sup>

MEMA Aftermarket Suppliers recognize that advanced vehicle technologies will change the necessary skills for vehicle service and repair technicians. The education requirements for service and repair technicians – in both the dealer network and independent repair shops – will require updates, and additional training and certification systems may be necessary. MEMA Aftermarket Suppliers are committed to supporting these essential changes to education and training.

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<sup>8</sup> Federal Motor Vehicle Safety Standards; Rear Visibility, 2014.

<sup>9</sup> Crash Avoidance Technology, 49 U.S.C. Sec. 30129 (2021)

<sup>10</sup> Mueller, Alexandra S., Cicchino, Jessica B., Zuby, David S., Calvanelli, Jr., Joseph V. Insurance Institute for Highway Safety. "Consumer Experiences with Crash Avoidance Feature Repairs." February 2023.

## **CYBERSECURITY PROTECTIONS ARE CRITICAL TO VEHICLE REPAIR**

Providing independent aftermarket direct access to vehicle data for repair, service, and maintenance needs can be done in a safe, cybersecure, and controlled manner that will not put the motoring public at risk. MEMA Aftermarket Suppliers supports policies that would allow the vehicle OEM to utilize cryptographic or technological protections in order for the aftermarket industry to continue to have the same ability to diagnose, repair, and maintain a motor vehicle in the same manner as any motor vehicle manufacturer or motor vehicle dealer.

The independent aftermarket can continue to be trusted partners in repairing, maintaining, and servicing American's cars and trucks. The aftermarket currently protects safety, cybersecurity, and privacy and is committed to continuing these protections. The industry has repaired electronics, software, and safety systems – effectively – for decades. The independent aftermarket has dealt with private, security data such as key codes to provide replacement key fobs to vehicles. This secure data sharing has been conducted in an effective, cooperative way with automakers for decades. The aftermarket has well-established training and certification systems in the industry. As many technology leaders among our members can attest, the technology solutions are available to provide both cybersecurity protections and vehicle repair.

In the 2022 "Cybersecurity Best Practices for the Safety of Modern Vehicles"<sup>11</sup>, NHTSA recognizes the need for a balance between third party serviceability and vehicle cybersecurity. NHTSA states, "...cybersecurity should not become a reason to justify limiting serviceability. Similarly, serviceability should not limit strong cybersecurity controls." Additionally, FTC has indicated that, "The record contains no empirical evidence to suggest that independent repair shops are more or less likely than authorized repair shops to compromise or misuse customer data."<sup>12</sup>

## **US COPYRIGHT OFFICE HAS ACKNOWLEDGED SOFTWARE ISSUES AND REPAIR**

Software programs such as those used in vehicles are protected in the U.S. by the Copyright Act. Copyright law restricts parties from making, selling, or copying unauthorized copies of copyrighted material, including software. The 1998 Digital Millennium Copyright Act (DMCA) bolstered these protections. This law prohibits the circumvention of technical protection measures (TPMs) set by copyright owners to restrict access to copyrighted works. The effect of this provision was to restrict the ability to access such copyrighted programs, including access by third-party repairers in repairing and servicing vehicles. An exemption on such anti-circumvention restrictions was made in 2015 to allow vehicle owners access to computer programs related to technology in their own vehicles. However, third parties, including the

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<sup>11</sup> National Highway Traffic Safety Administration. *Cybersecurity Best Practices for the Safety of Modern Vehicles*. September 2022.

<sup>12</sup> Federal Trade Commission. "Nixing the FIX: An FTC Report to Congress on Repair Restrictions." Federal Trade Commission." May 2021.

aftermarket industry, remained subject to the restriction and were unable to lawfully access such software.<sup>13</sup>

In 2018, the exemption on the DMCA’s anti-circumvention restrictions was expanded to allow third-party service providers to access copyrighted computer programs in vehicles that control the vehicle’s functioning.<sup>14</sup> The rule also allows access to vehicular computer programs designed for the control of telematics or entertainment systems. The exemption applies, however, only when circumvention, including the access to programs for the control of telematics or entertainment systems, is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle function. In 2021, these exemptions were extended. The Copyright Office is currently conducting its triennial review of exemptions, and MEMA Aftermarket has requested an extension of these exemptions.<sup>15</sup>

By granting and extending these exemptions allowing access to copyrighted software, the Copyright Office has acknowledged the growing integration of technology in vehicles and the need for third-party technicians to be able to access copyrighted software, including software related to telematics and entertainment systems, to effectively service and repair vehicles. This allows independent third-party repairers to access software without infringing the DMCA, meaning consumers will no longer be restricted to accessing software themselves to service and repair their vehicles or having to rely on manufacturers for that purpose. Ultimately, providing the freedom to lawfully access software to repair vehicles, protects both the long-standing competition within vehicle repair and provides consumers with options for the service of their vehicles.

## **CONGRESS MUST PASS COMPREHENSIVE REPAIR LEGISLATION**

MEMA Aftermarket supports comprehensive repair access legislation. Such legislation must include:

- All vehicles in operation, including light-duty, medium-duty, and heavy-duty vehicles;
- Access to telematics and diagnostics data beyond that available just through the OBDII port;
- An enforcement mechanism;
- The ability for independent repair shops, using bi-directional communication, to update vehicles and parts to the latest software;
- The authority for NHTSA to set cybersecurity rules governing wireless access;

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<sup>13</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2015, 80 Fed. Reg. 65944 (October 28, 2015).

<sup>14</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2018, 83 Fed. Reg. 54010 (October 26, 2018).

<sup>15</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2021, 86 Fed. Reg. 59627 (October 28, 2021).

- Language addressing the risk of repair monopolies; and
- Language to protect consumers' access to both light-duty and heavy-duty vehicle repair, maintenance, and parts of their choosing through all iterations of vehicle technology on the road today and to come.

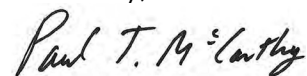
In February 2023, a bipartisan group of Members of Congress, led by Reps. Neal Dunn (R-FL), Brendan Boyle (D-PA), Warren Davidson (R-OH), and Marie Gluesenkamp Perez (D-WA) introduced H.R. 906, the REPAIR Act. This comprehensive bill addresses the issues facing the independent aftermarket and will protect consumer's ability to choose where and with what parts to repair their vehicles. MEMA Aftermarket Suppliers urges Members of the Subcommittee to support this legislation and for the Committee to take action on the REPAIR Act this year.

## CONCLUSION

MEMA Aftermarket Suppliers welcomes the opportunity to constructively engage with stakeholders on how to best protect consumers financially and against potential cyber-threats, how to secure the intellectual property of the OEMs and the original equipment suppliers who developed much of the systems and components that are subject to this debate, and how to preserve the competition within the aftermarket that provided consumers a choice in how to maintain a vehicle for decades.

MEMA Aftermarket Suppliers is available to discuss this with the Subcommittee and would like to reach a solution that is acceptable to all parties. Should you have questions or concerns, please contact Catherine Boland, vice president, legislative affairs at [cboland@mema.org](mailto:cboland@mema.org) or 301-509-2791.

Sincerely,



Paul McCarthy  
President and Chief Operating Officer  
MEMA Aftermarket Suppliers

Attachment

# U.S. Passenger Vehicle Repair Restrictions/Limitations

The following are actual, recent and/or currently ongoing examples of vehicle OEM procedural or technology-based issues that limit the ability for vehicles to be serviced wherever vehicle owners prefer and with the parts that vehicle owners choose. The current list is as of 9/2023 and will be continuously updated.

Type/Category	Description	Resulting Impact
<p><b>SPOTLIGHT CASE</b></p> <p>Diagnostic Tools</p>	<p>Limited or no availability of TEHCM and inability to reflash software for the Ford Fiesta (2011-16) and Focus (2012-2016) models with dual clutch transmissions</p>	<p>Limited or no availability of TEHCM and inability to reflash software for the Ford Fiesta (2011-16) and Focus (2012-2016) models with dual clutch transmissions</p>
<p>Diagnostic Information</p>	<p>J2534 and other diagnostic information is often not available for certain models. Several OEMS block access to certain active tests, adaptive and security related functions. On some occasions, this information is made available several months after a subscription is paid for.</p>	<p>Vehicle owners have to wait for weeks or months for their vehicles to be diagnosed and repaired, or they have to take their vehicles to the OE dealer, which results in more expensive repairs, or they might choose to delay or forgo repairs due to the additional costs, which could create unsafe conditions.</p>
<p>Diagnostic Information</p>	<p>EPA Required diagnostic data not current and missing information to complete bi-directional functions</p>	<p>Limited or no availability of TEHCM and inability to reflash software for the Ford Fiesta (2011-16) and Focus (2012-2016) models with dual clutch transmissions.</p>
<p>Diagnostic Information</p>	<p>Nissan ASIST not available to independent repairers</p>	<p>Some repairs require the use of a data file named a FAST file, available to dealers via ASIST. Independent repairers must request the FAST file from a 3rd party. There are problems with how long it takes to get these files and the accuracy of the application of the file. Mobile repairers perform many of these types of programming events for collision and service repair shops and report that there is almost no chance that their request will be fulfilled in such a way that the repairer can complete the repair when they determine a FAST file is necessary.</p>



# U.S. Passenger Vehicle Repair Restrictions/Limitations

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Type/Category	Description	Resulting Impact
Diagnostic Tools	Automakers routinely fail to release a diagnostic tool for new models or delay shipping them. There are reports of tools being deactivated by automakers, which prevents technicians from accurately identifying the causes of problems.	Vehicles cannot be serviced for weeks or months, or they have to be taken to the OE dealer service departments, which severely restricts consumer choice and increases costs.
Diagnostic Information	The release of service manuals, service procedures, and diagnostic trouble codes (DTCs) to the aftermarket has been delayed in many instances by automakers.	Vehicles cannot be serviced for weeks or months, or they have to be taken to the OE dealer service departments, which severely restricts consumer choice and increases costs.
Security Gateways	Automakers have prevented diagnostic tools and plug-in devices (dongles) from interfacing and connecting with the on-board computer networks through the addition of secure gateways (software/password-based protocols) that are no longer accessible by the aftermarket.	Incorrect diagnoses can lead to improper repairs and vehicles that do not operate properly, or vehicles must be taken to the OE dealer service departments, which limits choice and increases costs.
VIN Paired/Burned ECUs	Automaker-embedded software prevents reuse or remanufacturing of computing modules, which are paired, locked/connected, or "burned" to a specific vehicle (VIN).	This practice restricts competition, which causes consumers to pay higher part prices.
Subscription-based Limitations	New automaker modules cannot be installed without a subscription to the automaker's service programming application.	DIYers and any repair shop without the subscription cannot complete the repair. Multiple subscriptions to enable repair facilities to service various makes and models add significant expenses that are paid indirectly by consumers.

# U.S. Passenger Vehicle Repair Restrictions/Limitations

The following are actual, recent and/or currently ongoing examples of vehicle OEM procedural or technology-based issues that limit the ability for vehicles to be serviced wherever vehicle owners prefer and with the parts that vehicle owners choose. The current list is as of 9/2023 and will be continuously updated.

Type/Category	Description	Resulting Impact
Missing Configuration Information	Automaker purposely withholds configuration data and other critical programming information required to complete programming jobs for select parts with “proprietary” information integrated into the parts.	This prevents aftermarket technicians from completing simple tasks and results in more expensive repairs by the independent shops or vehicles taken to the dealer, which also results in more expensive repairs for consumers.



September 27, 2023

Hon. Cathy McMorris Rodgers  
Chair, Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Frank Pallone  
Ranking Member, Committee on Energy  
and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Gus Bilirakis  
Chair, Subcommittee on Innovation, Data,  
and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Hon. Jan Schakowsky  
Ranking Member, Subcommittee on  
Innovation, Data, and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chair Rodgers, Chair Bilirakis, Ranking Member Pallone and Ranking Member Schakowsky:

The National Automobile Dealers Association (NADA), representing over 16,000 franchised new car dealers who employ 1.1 million Americans, and the American Truck Dealers (ATD), a division of NADA representing over 3,200 franchised medium- and heavy-duty truck dealers nationwide, strongly oppose H.R. 906, the “Right to Equitable Parts and Repair Act” (REPAIR Act).

H.R. 906 is built on a faulty premise that independent repair shops are not able to obtain parts or data necessary to service and repair vehicles. However, this issue was rectified years ago<sup>1</sup>, and today 100% of all information independent repair shops need to repair vehicles is readily available. Several large public companies,<sup>2</sup> completely independent of auto manufacturers, provide affordable access to service and repair information for independent repairers, individual owners, and franchised dealerships. As a fail-safe to fill any gaps, the industry has a long-standing formal process to ensure data is made available from every truck and auto manufacturer (through the [National Automotive Service Task Force](#)) and that process continues to work well. As a result, independent repair shops and currently perform more than *75% of all non-warranty repairs*.

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<sup>1</sup> Both light duty and heavy-duty vehicle manufacturers have entered into nationwide [agreements](#) to provide this information, including telematics information.

<sup>2</sup> For example, AutoZone which owns 100% of ALLDATA ([www.alldata.com](http://www.alldata.com)), claims: “We’re the industry’s #1 choice for OEM-accurate mechanical and collision repair information, shop management software and support services, trusted by more than 400,000 technicians in over 115,000 shops worldwide. ALLDATA Repair delivers online OEM repair information in a single, reliable source, with factory-direct diagrams, repair procedures, TSBs, DTCs, and more. ALLDATA doesn’t alter the OEM data, **so you get exactly what you need from each manufacturer** – all in one easy-to-use program (emphasis added).”

H.R. 906 creates new privacy, vehicle security and safety risks by requiring vehicle manufacturers to provide any third-party with “bi-directional” access to vehicle telematics systems “without restrictions or limitations.” This overbroad requirement not only allows access to all the vehicle’s data, but also allows data to be sent to vehicles. It is unrelated to the servicing of the vehicle and creates serious privacy and safety concerns by unnecessarily exposing sensitive consumer information and jeopardizing the security of vehicle driving functionality and driver safety.

H.R. 906 is similar to a 2020 Massachusetts law passed by ballot initiative that requires new vehicles be equipped with an “open data platform.” The National Highway Traffic Safety Administration (NHTSA) noted the “significant safety concerns”<sup>3</sup> such a requirement would raise, stating:

“Open access to vehicle manufacturers’ telematics offerings with the ability to remotely send commands allows for manipulation of systems on a vehicle, including safety-critical functions such as steering, acceleration, or braking, as well as equipment required by Federal Motor Vehicle Safety Standards such as air bags and electronic stability control. A malicious actor here or abroad could utilize such open access to remotely command vehicles to operate dangerously, including attacking multiple vehicles concurrently. Vehicle crashes, injuries, or deaths are foreseeable outcomes of such a situation.”

On Aug. 22, NHTSA provided a refinement of its position in a follow up letter to the Massachusetts Attorney General, [stating](#) that automakers could share diagnostic data with independent shops using short-range wireless technology. NHTSA said that automakers should be allowed “a reasonable period of time” to put the technology in place. While NHTSA’s noting that “close range” (e.g., Bluetooth) access to data may not present all the same safety concerns, we share the concerns of those who believe that even that important limitation would expose vehicles to substantial cybersecurity risks.

H.R. 906 undermines intellectual property rights. This legislation compels auto and truck manufacturers to provide any “aftermarket parts manufacturer” the information necessary “to produce or offer compatible aftermarket parts,” meaning parts not made by the truck or auto manufacturer. This unfairly promotes the interests of aftermarket companies by allowing aftermarket parts manufacturers to gain access to automakers’ proprietary information. This giveaway of proprietary information could then be used to facilitate reverse engineering of genuine, original auto and trucks parts, including safety-critical parts.

The bill is also flawed because it treats heavy-duty trucks the same as light-duty vehicles and makes no provision acknowledging the vast differences between these two types of vehicles.

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<sup>3</sup> Kerry E. Kolodziej, Assistant Chief Counsel, National Highway Traffic Safety Administration, [Letter](#) to Counsel for Vehicle Manufacturers (June 13, 2023)

As you are aware, many federal laws and regulations governing safety, fuel economy and emissions have been bifurcated, with separate rules for light-duty vehicles and another set of rules for heavy-duty vehicles. The law treats these vehicles separately because of the vast differences between these two types of vehicles. For example, heavy-duty trucks are custom built and exclusively sold to businesses or governments. In contrast, light-duty vehicles are mass produced for the public. Light-duty vehicles are designed primarily to carry passengers; heavy-duty trucks are designed to carry freight or perform a specific job. Despite all these differences, H.R. 906 regulates a sedan the same as a Class 8 heavy duty truck.

The REPAIR Act is a solution in search of a problem and has very little to do with repairing a vehicle. NADA/ATD urges members of the House Energy and Commerce Committee to oppose H.R. 906.

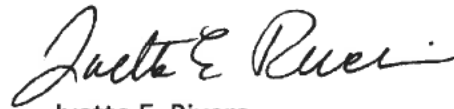
Sincerely,



David W. Regan

Executive Vice President

National Automobile Dealers Association



Ivette E. Rivera

Senior Vice President

National Automobile Dealers Association

cc: House Energy and Commerce Committee Members

**House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce**  
**Legislative Hearing on “Proposals to Enhance Product Safety and Transparency for Americans”**  
**Testimony on behalf of Congressman Bill Pascrell, Jr.**  
September 27, 2023

Chair Cathy McMorris Rodgers, Chair Gus Bilirakis, Ranking Member Frank Pallone, Jr. and Ranking Member Jan Schakowsky, I appreciate that the Subcommittee on Innovation, Data, and Commerce is holding today’s legislative hearing on H.R.3660, the Better Oversight of Stub Sales and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing Act (BOSS and SWIFT ACT). Thank you very much for the opportunity to submit testimony on behalf of H.R. 3660, a comprehensive, pro-consumer plan providing needed transparency and regulation for the badly corrupted live events ticket marketplace. I am especially grateful for Congressman Pallone’s support and partnership on H.R. 3660.

One of the great indignities American consumers face is buying a ticket to a live event like a concert or ballgame. Fans all know the frustration [All Too Well](#). Often, consumers are in line past [Midnights](#) trying to buy tickets, but end up being sold out. Sometimes you get sent to a shadowy website where nosebleed seats are over \$1,000.

When consumers can get seats, there is a small fortune added at the last second in phony-baloney fees that are a [Death by a Thousand Cuts](#). No consumer should have to auction a kidney to get a pair of concert tickets. We should not [tolerate it](#). Recent analysis shows that preserving ticket transferability has helped consumers beyond our [Wildest Dreams](#) by saving sports fans almost \$260 million.<sup>1</sup>

Fans also know the frustratingly opaque ticketing process. It led to high prices and massive consumer issues for recent Bruce Springsteen and Taylor Swift tours. It was an especially [Cruel Summer](#) for Swifties looking for tickets and who became the latest victims. They are part of a long conga line of cases where fans are treated poorly. Consumers know the marketplace needs [Change](#). But we have known the ticketing marketplace has been unfair for years before the latest Taylor Swift tour fiasco. Live events make up a \$9 Billion market. The market impacts millions and millions who get ripped off, especially by Live Nation/Ticketmaster.

I have worked on this issue for almost [Fifteen](#) years. The market is criminally under-regulated. This industry is the Wild West: mammoth, opaque, and speculative. Swindling consumers is something I am proud to fight against and anyone who stands in my way means that we got [Bad Blood](#)! I have fought well funded and powerful opposition to the reforms that American consumers want and need. There are no rules and transparency. Ticket companies get rich, and the fans get poor. It is not a [Glitch](#).

This is a fight I have taken on with [Eyes Open](#). One company, Live Nation/Ticketmaster, controls everything: recording, licensing, venue ownership, ticketing and concessions down to the hot dog guy.

With today’s consideration of H.R. 3660, I have one message for Live Nation/Ticketmaster: [Look What You Made Me Do](#).

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<sup>1</sup> [https://www.sportsfans.org/ticket\\_transferability\\_helps\\_sports\\_fans\\_save\\_260\\_million\\_over\\_five\\_years](https://www.sportsfans.org/ticket_transferability_helps_sports_fans_save_260_million_over_five_years)



**House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce**  
**Legislative Hearing on “Proposals to Enhance Product Safety and Transparency for Americans”**  
**Testimony on behalf of Congressman Bill Pascrell, Jr.**  
September 27, 2023

The newer, tougher, stronger, *Fearless* version of the most consumer friendly ticketing reform legislation is the BOSS and SWIFT ACT. My plan creates fair rules and brings needed *Daylight*. No more hidden fees. No more *Labyrinth* of shady gimmicks. *this is me trying* to make a change in the ticketing marketplace. Specific requirements for the BOSS and SWIFT ACT include:

### **General Market Place Reforms**

Requirements on the primary ticket seller, secondary ticket seller, and secondary ticket sales marketplace include:

- Mandatory all-in pricing to ensure the true ticket price is clearly displayed and does not change during the checkout process.
- Clear disclosures of refund policies and guarantees for consumers to have the choice of a full refund or a replacement ticket in a comparable or upgraded location if a ticket is not delivered.
- Disclosing to buyers whether a ticket is being offered as a primary sale or secondary sale.

### **Primary Market Place Reforms**

- Transparency on the total number and cost of tickets that will be offered for sale to the general public.
- Preserving ticketing transferability so consumers are not restricted from reselling their tickets or facing a price ceiling or floor on ticket resales.
- Ensure fans cannot be sanctioned for reselling a ticket.

### **Secondary Market Place Reforms**

- Clamping down on unauthorized speculative ticket sales.
- Protecting consumers who receive tickets that do not match the description of those purchased.
- Disclosing to purchasers when the secondary seller is the primary ticket seller, venue, team, or artist associated with the event.
- Prohibiting unauthorized insiders from selling tickets at marked up prices
- Restricting resellers from selling the same seat to more than one person at the same time.

Our bill is endorsed by major consumer protection groups including the Consumer Action, Consumer Federation of America, Fan Freedom, National Association of Consumer Advocates, National Consumers League, Protect Ticket Rights, Public Knowledge, Sports Fans Coalition, Consumer Federation of California, Virginia Citizens Consumer Council, and Consumer Protection.<sup>2</sup>

Congressman Pallone and I first offered our legislation back in 2009 when Garden State fans flooded congressional offices with complaints after they tried to buy Bruce Springsteen tour tickets and were surreptitiously directed to secondary sites with inflated prices. I am pleased that the Committee is considering our updated and pro-consumer BOSS and SWIFT ACT. It is gaining traction, but we are not *Out of the Woods* yet.

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<sup>2</sup> <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=5369>



**House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce**  
**Legislative Hearing on “Proposals to Enhance Product Safety and Transparency for Americans”**  
**Testimony on behalf of Congressman Bill Pascrell, Jr.**  
September 27, 2023

*'tis the damn season* for Congress to look out for fans. Because *It's Nice To Have A Friend*. Consumers have one in me. I will keep fighting for pro-consumer reform to the ticketing marketplace and for passage of the BOSS and SWIFT ACT. Passing an already anemic ticketing bill is a massive missed opportunity to fix the corrupt and broken ticket market.

*long story short*, Americans have a right not to be ripped off. Reining in a ticket industry run amok will not go out of *Style*. It is time. Are you *...Ready for It?*

A handwritten signature in blue ink that reads "Bill Pascrell Jr." in a cursive style.

Congressman Bill Pascrell, Jr.  
Member of Congress

**Statement for the Record**  
**American Cleaning Institute**  
**U.S. House Committee on Energy & Commerce**  
**Regarding “Proposals to Enhance Product Safety and Transparency for Americans.”**  
**September 27, 2023**

The American Cleaning Institute (ACI) is a trade association of roughly 150 members, ranging from large manufacturers to the small companies that round out the U.S. cleaning product supply chain. Broadly speaking, products that are found under your sink or stored in your laundry room are brought to you by ACI member companies.

ACI submits this statement for the record in support of Congressman Bucshon’s draft legislation to establish a federal standard for ingredient communication in cleaning products.

Today, the trend toward ingredient transparency and communication is real and growing. A report<sup>1</sup> by the Food Marketing Institute showed that 81% of consumers said that transparency is important when shopping online and in-stores. Since 2010, the cleaning products industry has been an active leader in developing consumer-focused ingredient communication, including developing initiatives for four major product categories and creating a proactive and voluntary system for providing ingredient information to consumers. Simply put, consumers have a right to know, understand and trust what ingredients are in the cleaning products they use and keep in their homes.

In 2017, California lawmakers convened stakeholders, including environmental and public health advocates, consumer groups, and industry representatives, to prioritize consumer transparency and pass the California Cleaning Products Right to Know Act. The law was a historic first in providing important cleaning product labeling transparency to consumers. Since then, this collaborative effort has equipped consumers with easy access to the information about what is in their cleaning products.

This legislation would both build upon and strengthen the California law, and importantly, create a consistent national standard. The California law sets cleaning products in line with the ingredient transparency requirements of cosmetics and food products. This is a pro-consumer bill that provides clarity on how cleaning product manufacturers inform consumers about the ingredients in their products on-package, online or in-app. With this approach, the bill would empower consumers as they seek additional information about the cleaning products they buy.

It is worth noting that national labeling standards are common and exist across many other industries – most notably food and drugs. In response to a Question for the Record from this very Subcommittee during last April’s Federal Trade Commission (FTC) Oversight hearing, FTC Chair Lina Khan recognized the importance of a uniform standard for ingredient labeling to inform consumer choice, writing:

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<sup>1</sup> Shoup, Mary Ellen. “Consumers Seek Transparency Online and In-Store: FMI and Label Insight Study.” Foodnavigator, June 26, 2020. <https://www.foodnavigator-usa.com/Article/2020/06/26/Consumers-seek-transparency-online-and-in-store-FMI-and-Label-Insight-study>.

*“In the context of cleaning products, uniform labeling would allow consumers to better understand the risks and benefits associated with the chemicals that make these products work.”*

Action to establish an ingredient labeling standard for cleaning products is long overdue as inconsistent labeling laws and regulations ultimately reduce transparency for consumers.

The American Cleaning Institute and its members are encouraged by the recognition of the need for a national ingredient labeling standard for cleaning products and the momentum behind this proposal with the Committee’s attention to this important matter today.

The American Cleaning Institute asks that the Subcommittee and full Committee support Congressman Bucshon’s ingredient communication legislation.



**American  
Red Cross**



September 25, 2023

Dear Congresswoman Cathy McMorris Rodgers, Congressman Frank Pallone,  
Congressman Gus Bilirakis and Congresswoman Jan Schakowsky,

We write to thank you, the Energy and Commerce Committee and the Innovation, Data, and Commerce Subcommittee, for holding a hearing, “Proposals to Enhance Product Safety and Transparency for Americans,” and including HR 5202, the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act, led by Reps. Wasserman Schultz, Burgess, Carter, Allred, Castor, Williams, Garcia, Flood, Ross, Bacon, and Gottheimer.

Water provides opportunities for fun, fitness, sport, competition, rehabilitation and employment - but it also carries significant risks that can lead to tragic consequences, such as drowning. Drowning is a leading cause of injury death in the United States - especially for children but for people of all ages.

This bill supports the multi-pronged approach needed to prevent drowning including factors such as:

- Eliminating hazards, such as dangerous drains;
- Raising awareness of the risks around water; and
- Equipping children and adults with knowledge and skills to help them be safer in and around water.

As leading nonprofits advancing swim instruction and safety programs, we are delighted that nonprofits are now eligible grantees in the swim safety and education programs authorized in the bill. For all these reasons, we urge you to support the Virginia Graeme Baker Pool and Spa Safety Act (VGSA) reauthorization for markup and final passage.

Thank you for your support.

Connie Harvey  
Director, Centennial Aquatics Initiative  
American Red Cross

Katie Adamson  
Vice President, Health Partnerships and Policy  
YMCA of the USA



**STATEMENT OF THE**

**AMERICAN ALLIANCE FOR VEHICLE OWNERS' RIGHTS**

**BEFORE THE**

**HOUSE ENERGY AND COMMERCE COMMITTEE'S**

**INNOVATION, DATA, AND COMMERCE SUBCOMMITTEE'S**

**HEARING ON**

**"PROPOSALS TO ENHANCE PRODUCT SAFETY AND TRANSPARENCY FOR**

**AMERICANS"**

**FOCUS ON H.R. 906 – THE "REPAIR" ACT**

**SEPTEMBER 27, 2023**

The undersigned organizations and companies of the American Alliance for Vehicle Owners' Rights ("AAVOR") respectfully submit this statement to the House Energy and Commerce Committee's Subcommittee on Innovation, Data and Commerce and ask that it be made part of the official hearing record for the September 27, 2023 hearing on H.R. 906, the "REPAIR" Act.

**Background on AAVOR**

AAVOR is a diverse group of stakeholders united by the common goal of guaranteeing the right of all vehicle owners and users to have access to, and control of, the data generated by their vehicles. AAVOR's members represent interests from across the mobility ecosystem, including consumer advocates, fleet owners

and operators, shared mobility service providers, preventative automotive maintenance and repair providers, insurers, automotive recyclers, and telematics providers.

### **AAVOR's Position on H.R. 906**

AAVOR welcomes the introduction of H.R. 906 in so much as it helps to shine a bright light on the issue of vehicle owner control over, and access to, data generated by the vehicles they own. Congress first established the principle that the owner of a motor vehicle “owns” the data generated by that vehicle when it enacted the “Driver Privacy Act of 2015” (“DPA15”) as Section 24302 of the 2015 surface transportation bill. DPA15 applied this principle to the limited data point collected by a vehicle’s “electronic data recorder” (“EDR”, a.k.a. “black box”). In short, DPA15 stated that a vehicle’s owner “owns” the data generated and stored by their vehicle’s EDR.

H.R. 906 seeks, in part, to expand on DPA15 by extending the data ownership principle to all vehicle repair and maintenance data. This is a very positive step from AAVOR’s point of view. But it is only the beginning of the needed expansion of covered data – which H.R. 906 seems to recognize by authorizing the expansion of covered vehicle data through rulemaking by the FTC.

### **AAVOR Urges Congress to Take Comprehensive, Not Piecemeal, Approach to Vehicle Data Access**

As vehicles are increasingly “computers on wheels,” AAVOR urges legislators, to think more broadly about comprehensive federal regulation of vehicle data access. Repair and maintenance data – such as that included in H.R. 906 and the recent right to repair agreement -- currently represents less than 25% of the data generated by today’s vehicles. For today’s electric vehicles that gather massive amounts of data on battery performance and charging progress, and tomorrow’s autonomous vehicles that will be gathering data regarding the environment around the vehicle as well as the vehicle systems, a focus solely on repair and maintenance data is woefully inadequate.

That is why the repair and maintenance focus of H.R. 906 and of the OEM/garages agreement should not limit this Subcommittee’s or Congress’ focus on the rights of

vehicle owners to control and access all of the data generated by their vehicles. AAVOR urges legislators to craft federal legislation that addresses all vehicle data access, not just a small slice of the data being generated by today's and tomorrow's vehicles.

### **The “Road Ahead” for Vehicle Data Access**

Vehicle generated data is the new frontier for the development of the future of mobility. Today's connected vehicles (cars, trucks and buses) offer consumers innovative new services, and bring significant downstream business development potential for all stakeholders in the on-road transportation sector, including, but not limited to, navigation (real-time localization/traffic information), infotainment (access to online movies/music), maintenance (fleet management/remote diagnostics/vehicle recovery), insurance (pay-as-you-drive/claim investigation), traffic efficiency (reduced congestion), sustainability (reduced fuel consumption and emissions), and safety.

However, this requires the right legal framework, which enables all stakeholders to access data generated by vehicles, starting with individual consumers and fleet owners, and extending through OEMs, parts manufacturers and suppliers, vehicle repairers, and the other many players across the entire transportation sector.

AAVOR is convinced that Congress must take a lead role in guaranteeing vehicle owners and lessees access to and control of all data generated, collected and stored by vehicles. And, simply stated, H.R. 906's limited data access provisions don't get it done.

AAVOR supports enactment of federal policies that safeguard the rights of vehicle owners to:

- securely access and control their vehicle data (including authorizing access by third parties);
- directly, through in-vehicle access, in real-time;
- through a technology-neutral, standards-based, cybersecure interface;
- that provides interoperable and bi-directional communication with the vehicle.



The rights of vehicle owners to control and access the data generated by their vehicles is too important to be left unaddressed by federal legislation – or to the piecemeal approach embodied in H.R. 906. AAVOR supports federal efforts – including the work of the bi-partisan Congressional Vehicle Data Access Caucus established by Reps. Carter (R-GA) and Soto (D-FL) -- to establish a comprehensive framework for securing the continued rights of vehicle owners – and entities that secure the express permission of vehicle owners -- to control and access vehicle-generated data on a real-time, secure and competitive basis.

AAVOR appreciates the opportunity to submit this statement to the Subcommittee today and looks forward to working with its leadership and members to secure enactment of federal vehicle data access legislation in the near future. If you have questions about AAVOR’s views on the issues covered in these comments, on H.R. 906, or on other policy matters related to vehicle data access, competition, consumer protection or privacy, please do not hesitate to contact Greg Scott at 202-297-5123 or at [gscott@aavor.org](mailto:gscott@aavor.org).

American Bus Association

NAFA Fleet Management Association

American Car Rental Association

National Consumers League

American Property Casualty  
Insurance Association

Owner Operator Independent Drivers  
Association

Automotive Recyclers Association

Preventative Automotive  
Maintenance Association

Mobile Electronics Association

**STATEMENT OF THE**

**AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION**

**BEFORE THE**  
**HOUSE ENERGY AND COMMERCE**  
**INNOVATION, DATA, AND COMMERCE SUBCOMMITTEE'S**  
**HEARING ON**

**“PROPOSALS TO ENHANCE PRODUCT SAFETY AND TRANSPARENCY FOR**  
**AMERICANS”**

**FOCUS ON H.R. 906 – THE “REPAIR” ACT**

**SEPTEMBER 27, 2023**

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for auto, home, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back over 150 years. APCIA members represent all sizes, structures, and regions-protecting families, communities, and businesses in the U.S. and across the globe.

**H.R. 906 – The Right to Equitable and Professional Auto Industry Repair (REPAIR) Act**

APCIA commends the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce for holding this hearing to discuss H.R. 906, The Right to Equitable and Professional Auto Industry Repair (REPAIR) Act. APCIA strongly supports vehicle owners having greater choice for vehicle maintenance, service, and repair. The costs to repair and maintain vehicles today are high. And, a recent study from the University of Michigan found that dealerships charge consumers 36% more for repairs compared to independent repair shops.<sup>1</sup> When a vehicle is damaged in an accident, most often it is auto insurance that pays the bill, so repair costs are a key driver of auto insurance premiums that consumers pay.

In the last five years, the cost of auto repair has risen by more than 42 percent, and auto body repair work has risen by more than 31 percent<sup>2</sup>, primarily driven by the increasing technological

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<sup>1</sup> <https://carcoalition.com/wp-content/uploads/2020/07/Repair-Act-white-paper-09-13-2022-1.pdf>

<sup>2</sup> Consumer Price Index, August 2023 compared to 2019, Bureau of Labor Statistics

complexity of vehicles. Maintaining a competitive market for vehicle parts and repairs is essential to control costs for consumers. The REPAIR Act will help ensure a competitive market for vehicle repair and maintenance by providing more choice in auto repair.

### **Broader Vehicle Data Access is Needed**

The vehicle repair and maintenance being discussed today with respect to the REPAIR Act represents only a fraction of the data generated by today's vehicles. Currently, automated driver assistance system (ADAS) and automated driving system (ADS) technology is rapidly increasing automation of the driving function. As these innovations fundamentally change the nature of driving, property casualty insurers will have a key role to play in encouraging the safe and efficient introduction of advanced vehicle technology. To fulfill that role, insurers must have access to information and data to innovate and develop services, products, and pricing to support the new automotive technologies. Other industries will also need access to vehicle data to provide cost effective services to consumers. To meet all these needs, congress should make clear that vehicle owners' control and can grant access to ALL of their vehicle-generated data.

As the Subcommittee studies driving innovation, it is important that members of congress understand the needs of the automobile insurance industry so that insurers can continue to efficiently provide protection to vehicle passengers and the vehicles. Today, the automobile insurance industry faces disruption on several fronts. While car accidents have been down during the pandemic with fewer drivers on the roads, the trend in recent years has, unfortunately, been an increase in the number of accidents, injuries, and deaths on our roads. These tragedies come at a time when vehicles are safer than ever due to better construction and crash avoidance technology. However, those same improvements that make vehicles safer also significantly increase the cost of repairs. The cost of medical care for auto accident victims is also increasing much faster than the rate of inflation.

While navigating these issues, insurers will be challenged to make fundamental changes in how they assess risk as the focus moves from the human driver towards the technology that operates the vehicle. While vehicle characteristics have always played a role in pricing auto insurance, assessing accident risk has primarily focused on drivers. Going forward, insurers will need to identify vehicles equipped with automated driving technology and have that identification reflected in motor vehicle records and crash reporting to assess the risk of different automated or autonomous driving systems, just as they are able to differentiate between drivers today.

Similarly, when determining liability in an auto accident claims situation, the primary approach today is to interview the drivers. With autonomous vehicles, insurers will need access to recorded vehicle data to provide evidence on why a crash happened, and what role an automated driving feature may, or may not have played in the crash.

Access to and sharing of automated or autonomous vehicle data is a critical issue, not only for insurers, but for automotive technology developers, manufacturers, vehicle owners and numerous other stakeholders. At a minimum, vehicle owners or lessees should have the ability to authorize access to vehicle data to third parties with whom they wish to share data for any reason and APCA

urges the committee to address the broader data access issue as the REPAIR Act is considered. This can be accomplished while protecting an individual's privacy and protecting developers' intellectual property.

September 25, 2023

Chair Cathy McMorris Rodgers  
Ranking Member Frank Pallone  
Subcommittee Chair Gus Bilirakis  
Subcommittee Ranking Member Jan Schakowsky  
U.S. House of Representatives  
House Energy & Commerce Committee  
Washington, DC 20515


Dear Chairs McMorris Rodgers & Bilirakis and Ranking Members Pallone & Schakowsky:


Please accept this letter as our strong and enthusiastic support for the Re-authorization of the Virginia Graeme Baker Pool & Spa Safety Act (HB 5202). We respectfully ask that the bill be favorably heard and moved to a markup and final passage.


As you know so well, the VGB Act was passed by Congress with bipartisan support in 2007 and signed into law by President George W. Bush. The VGB Act changed, for the better, the way public pools and spas are built and maintained in this country and was designed to prevent pool and spa entrapments. Notably and significantly, since the passage of the Act, there has not been a single entrapment death in a public pool anywhere in the nation. The Act also addressed water safety education by establishing and funding the Pool Safety Campaign and an incentive grant program for States and Municipalities to both motivate them to legislatively address risks associated with residential pools/spas and, in turn, provides funds to help enforce the laws and educate caregivers about what they can do to prevent entrapments and traditional forms of drowning.

Now 15 years later, we agree with many of your colleagues that it is time to revisit the law to make sure we are continuing the great success from the past, and also refresh the law so that we are properly addressing other water safety risks in the future. This re-authorization does just that. If passed, it will ensure that the Consumer Product Safety Commission's (CPSC) authority to act is maintained, continues the critical funding for the incentive grant program and the accompany education campaigns, expands the eligibility for the grant fund grantees to qualified non-profits.

Best regards,

  
Nancy Baker  
Parent Advocate  
Proud mother of Graeme Baker

  
Katey & Scott Taylor  
Co-founders, Abbey's Hope Charitable Foundation  
Proud parents of Abbey Taylor

  
Karen & Brian Cohn  
Co-founders, The ZAC Foundation  
Proud parents of Zachary Cohn



September 27, 2023

Chair Cathy McMorris Rodgers, Energy & Commerce Full Committee  
Ranking Member Frank Pallone, Energy & Commerce Full Committee  
Chair Gus Bilirakis, Subcommittee on Innovation, Data & Commerce  
Ranking Member Jan Schakowsky, Subcommittee on Innovation, Data & Commerce

Dear Members of the House Committee on Energy and Commerce, Innovation, Data, and Commerce Subcommittee,

On behalf of more than 3,800 members of the Pool and Hot Tub Alliance (PHTA) please accept this letter supporting the re-authorization of the Virginia Graeme Baker Pool and Spa Safety Act (H.R. 5202) sponsored by Representatives Wasserman Shultz, Burgess, Carter, Allred, Castor, Williams, Garcia, Flood, Ross, Bacon, and Gottheimer.

PHTA, a nonprofit organization, was established in 1956 to support, promote, and protect the common interests of the \$50 billion pool, hot tub, and spa industry. PHTA provides education, advocacy, ANSI accredited standards development, research, and market growth initiatives to increase our members' professionalism, knowledge, and profitability. Additionally, PHTA promotes the use of pools by expanding swimming, water safety, and related research and outreach activities aimed at preventing drowning by teaching more people to swim, making swimming environments safer, and keeping pools open to serve communities.

The passage of the Virginia Graeme Baker Act (VGBA) changed the way swimming pools and spas are built by requiring drain covers and anti-entrapment systems for public pools. During the time the VGBA was working its way to then President Bush's desk, PHTA published the ANSI/PHTA/ICC-7 Standard for Suction Entrapment Avoidance, the first comprehensive systems approach to engineering swimming pools and spas to eliminate suction entrapment events. Most recently, this standard received an update in late 2020. ANSI/PHTA/ICC-7 protects against the three root causes of entrapments: suction, water velocity, and mechanical binding. Further, compliance with our ANSI/APSP/ICC-16 Standard for Suction Fittings, also known as the Drain Cover Standard, is a requirement of the VGBA.

The Drain Cover standard was developed and continues to improve with input from the Consumer Product Safety Commission staff and serves as an excellent example of collaboration between industry and government to protect all pool and spa users. Since the passage of VGBA in 2007, there has not been an entrapment death in a public pool anywhere in the United States.

Passing H.R. 5202 reiterates Congress's commitment to water safety and drowning prevention. It also improves the Consumer Product Safety Commission's ability to administer critical educational and grant programs and expands potential recipients to nonprofit entities thereby increasing the impact of VGBA funded safety programs.

We appreciate the subcommittee's consideration of the reauthorization of the Virginia Graeme Baker Act to be moved to final passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Wiley', with a stylized flourish extending to the right.

Justin Wiley  
Vice President  
Government Relations  
Standards and Codes





September 21, 2023

Chair Cathy McMorris Rodgers, Energy & Commerce Full Committee  
Ranking Member Frank Pallone, Energy & Commerce Full Committee  
Chair Gus Bilirakis, Subcommittee on Innovation, Data & Commerce  
Ranking Member Jan Schakowsky, Subcommittee on Innovation, Data & Commerce

Dear Esteemed Members of Congress:

Please accept this letter as our strong and enthusiastic support for the Re-authorization of the Virginia Graeme Baker Pool & Spa Safety Act (HB 5202). The VGB Act was originally passed by Congress with bipartisan support in 2007 and signed into law by President George W. Bush to protect children and make pools safer.

In June of 2007, our six-year old daughter Abigail suffered a horrific injury while swimming in a public pool. That injury ultimately took her life. Abbey was playing in a wading pool when she unknowingly sat on a drain that was poorly maintained and unequipped with the appropriate safety devices. The powerful suction of the pool eviscerated Abbey. Her small intestine was ripped from her body. The serious injury was followed by 9 months of medical care, including 16 different surgeries, a triple organ transplant, several infections and most of her sixth year of life in a hospital bed. Despite the best medical care and attention and our constant vigilance and prayers, Abbey died March 20, 2008.

Abbey's hope was that no child should ever suffer like she did as a result of an improperly maintained pool. In her memory, we established our Foundation. One of our greatest achievements was helping the United States Congress to pass *The Virginia Graeme Baker Pool Safety Act* (VGB Act) which requires entrapment safety devices on all public pools. The law was signed by President Bush in 2007. The law was named after Secretary of State James Baker's granddaughter who died in a tragic pool entrapment. Significantly, since the passage of this law, there has not been a single entrapment death at a public pool or spa. The passage of the Act alone, however, is not enough. In order to make it effective, states must comprehensively and thoroughly inspect those public pools and spas to ensure that they are compliant with the requirements of the Act. Pool inspectors, with the proper authority, make sure pools and spas are safe from all perspectives, flow rates, drain covers, barriers, chemicals and ensuring someone is maintaining those pools properly.

The VGB Act changed, for the better, the way public pools and spas are built and maintained in this country and was designed to prevent pool and spa entrapments. Notably and significantly, since the passage of the Act, there has not been a single entrapment death in a public pool anywhere in the nation. The Act also addressed water safety education by establishing and funding the Pool Safety Campaign and an incentive grant program for States and Municipalities to both motivate them to legislatively address

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risks associated with residential pools/spas and, in turn, provides funds to help enforce the laws and educate caregivers about what they can do to prevent entrapments and traditional forms of drowning.

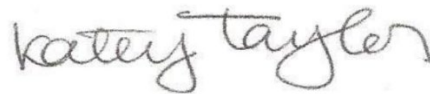
Now 15 years later, we agree with many of your colleagues that it is time to revisit the law to make sure we are continuing the great success from the past, and also refresh the law so that we are properly addressing other water safety risks in the future. This reauthorization does just that. If passed, it will ensure that the Consumer Product Safety Commission's (CPSC) authority to act is maintained, continues the critical funding for the incentive grant program and the accompany education campaigns, expands the eligibility for the incentive grant fund grantees to qualified non-profits and builds a stronger infrastructure at the CPSC to make sure the efforts are implemented more robustly and effectively.

Please know that Abbey's Hope stands ready, willing and able to help with your effort in any fashion. If we can be of service, please contact us personally at 952-303-5421 or our Executive Director Alan Korn at 202-537-7233.

Best regards,

A handwritten signature in black ink, appearing to read 'SAR', with a long horizontal flourish extending to the right.

Scott Taylor  
Chairman & Co-founder

A handwritten signature in black ink, reading 'katey taylor', written in a cursive style.

Katey Taylor  
President & Co-founder

DEBBIE WASSERMAN SCHULTZ  
25<sup>TH</sup> DISTRICT, FLORIDA

CO-CHAIR,  
DEMOCRATIC STEERING & POLICY  
COMMITTEE

DEMOCRATIC DEAN & CO-CHAIR,  
FLORIDA DELEGATION



COMMITTEE ON APPROPRIATIONS

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SELECT SUBCOMMITTEE ON THE  
WEAPONIZATION OF THE FEDERAL  
GOVERNMENT

## Congress of the United States House of Representatives

### Written Testimony from Congresswoman Debbie Wasserman Schultz (FL-25) House Energy and Commerce Committee, Innovation, Data, and Commerce Subcommittee hearing, “Proposals to Enhance Product Safety and Transparency for Americans.”

September 27, 2023

#### Re: Virginia Graeme Baker Pool and Spa Safety (VGB) Reauthorization Act (H.R.5202), Reps. Wasserman Schultz, Burgess, Carter, Allred, Castor, Williams, Garcia, Flood, Ross, Bacon, and Gottheimer

Thank you, Chairman Gus Bilirakis and Ranking Member Jan Schakowsky, and Members of the House Energy and Commerce (E&C) Committee Innovation, Data, and Commerce (IDC) Subcommittee, for the opportunity to submit written testimony regarding the Virginia Graeme Baker Pool and Spa Safety (VGB) Reauthorization Act (H.R.5202).

Drownings and near-drownings in pools and spas pose a significant public health risk to our nation’s children. Drowning is a public health crisis, and, according to the CDC, it remains the leading cause of unintentional death for children ages one to four, and the second leading cause of death by unintentional injury for kids aged 5-14. Further, drowning death rates for American Indian and Black individuals demonstrate high disparities that greatly affect these communities and their families. However, we are not powerless in addressing these tragedies, and strong education, awareness, and enforcement efforts can help make children safer around the water and save lives.

The Virginia Graeme Baker Pool and Spa Safety (VGB) Reauthorization Act (H.R.5202), first authorized in 2008, is a bipartisan bill aimed at improving the safety of all pools and spas by increasing the layers of protection and promoting uninterrupted supervision to prevent child drowning and entrapment. As you may know, the VGB Act was originally passed by Congress with bipartisan support in 2007 and signed into law by President George W. Bush. The VGB Act changed, for the better, the manner in which public pools and spas are built and maintained in the United States and was designed to prevent pool and spa entrapments. Most significantly, since the passage of the Act, there has not been a single entrapment death in a public pool anywhere in the nation.

[WASSERMANSCHULTZ.HOUSE.GOV](http://WASSERMANSCHULTZ.HOUSE.GOV)

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25<sup>TH</sup> DISTRICT, FLORIDA

CO-CHAIR,  
DEMOCRATIC STEERING & POLICY  
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DEMOCRATIC DEAN & CO-CHAIR,  
FLORIDA DELEGATION



## Congress of the United States House of Representatives

COMMITTEE ON APPROPRIATIONS

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WEAPONIZATION OF THE FEDERAL  
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As originally passed into law, the VGB Act has three principal elements:

1. First, to require every public pool in the US to install safe drain covers that prevent suction entrapment;
2. Second, a grant program to provide critical support for local officials to educate communities about drowning and entrapment dangers; and
3. Third, a national public education campaign, “Pool Safely,” that raises awareness about drowning prevention.

The VGB Reauthorization Act will continue to carry out these primary functions in the tradition built on over a decade’s worth of expertise in proper execution of the programs. The VGB Reauthorization Act extends grant program eligibility to non-profit organizations to expand the reach to even more communities and families. It also creates a grant awareness campaign to increase participation across the country. Further, the bill increases relevant staffing at the CPSC, and incorporates provisions concerning oversight and reporting to continue to learn how to improve the programs in the future.

Keeping the VGB Grant Program and the “Pool Safely” campaign active and robust has had a strong and lasting impact on our communities by preventing drownings and near-drownings. As such, it is necessary to amend and reauthorize this program to ensure it continues to benefit our communities as intended. With this reauthorization, we will ensure that the infrastructure, resources, commitment, and robustness of the program reflects the seriousness of this public health issue.

This legislation is supported by a wide range of national and local stakeholders, which includes non-profit organizations, parent advocacy groups, and more: Abbey’s Hope Charitable Foundation, American Academy of Pediatrics, American Red Cross, AquaStar Pool Products, Because of Brayden, CamerEye, CAST Water Safety Foundation, Cayla’s Coates, Colin’s Hope, CPR Party, D&D Technologies, Drennan’s Dreams, Independent Pool & Spa Service Association, Jack Helbig Memorial Foundation, Jasper Ray Foundation, The Josh Project, Joshua Collingsworth Memorial Foundation, Judah Brown Project, Just Against Children Drowning, Kacen’s Cause, The Ken Brindley Memorial Foundation, Live Like Cati, Levi’s Legacy, Lifesaver Pool Products, The LV Project, Miss Tristan Foundation, National Drowning Prevention Alliance, No More Under, Olympic Pools, Pool & Hot Tub Association, Rees Spect the Water, Rory the Warrior, Safe Kids Worldwide, Sisters Too, Stew Leonard Children’s Charities, Swim 4 Elise, Swim On Foundation, Tadpole Pool Service, Team Kareem, Total Aquatic Programming, YMCA, and The ZAC Foundation.

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**Congress of the United States**  
**House of Representatives**

No work we do in Congress is more important than keeping our children healthy and safe. This is the mission at the core of the VGB Reauthorization Act, which will continue saving countless lives over years to come. It is critical that we continue this bipartisan, common-sense law to expand its life-saving impact.

Thank you for your consideration,

A handwritten signature in blue ink that reads "Debbie Wasserman Schultz".

Debbie Wasserman Schultz (FL-25)

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## **Written Testimony of**

**Carrie Goldberg**

Founder, C. A. Goldberg, PLLC

**Naomi Leeds**

Associate, C.A. Goldberg, PLLC

**Before the U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Innovation, Data, and Commerce**

**Hearing on  
“Proposals to Enhance Product Safety and Transparency for Americans”**

**In support of  
H.R. 4310 The Youth Poisoning Protection Act**

September 27, 2023

Chair McMorris-Rodgers, Ranking Member Pallone, Subcommittee Chair Bilirakis and Ranking Member Schakowsky, and all distinguished members of the House Subcommittee on Innovation, Data, and Commerce. Thank you for considering proposals aimed at saving lives, increasing safety, and encouraging transparency in commerce.

We submit this written in support of H.R. 4310, The Youth Poisoning Protection Act (“YPPA”) which bans the sales of high concentration Sodium Nitrite to households.

C.A. Goldberg, PLLC is a law firm that represents over three dozen families throughout the country that were destroyed by sales of high concentration Sodium Nitrite to suicidal children and young adults. Each of these families is left grieving a lost loved one who never should have had access to high purity Sodium Nitrite. But amidst their grief, the families are fueled by the prospect of preventing America’s parents, siblings, partners, children, and friends from suffering the preventable losses they’ve suffered. The YPPA is crucial to that goal by restricting sales of high concentration Sodium Nitrite—a poison that was being delivered to households across the Nation but that has no household use and is as lethal as cyanide.

We send this letter on behalf of twelve of the families we represent, all of whom are in active litigation pertaining to the online retail of Sodium Nitrite.



C.A. GOLDBERG

PLLC, NEW YORK

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Our firm first discovered the prevalence of online sales of Sodium Nitrite while investigating the pro-suicide forum sanctioned-suicide.org which contained a “suicide wiki” with instructions about how to die from Sodium Nitrite and links to online retailer who sell the poison. The site recommended Sodium Nitrite as a quick, cheap, reliable suicide measure that could be home delivered within a day. The suicide forum also recommended that users purchase scales to properly measure the dose and anti-emetics to prevent vomiting. Amazon.com, the online retailer most widely recommended on the site, indeed not only sold Sodium Nitrite and 1-day delivered it, but also would “recommend” that users who purchased it also purchase the very accoutrements (scale, anti-emetics, and also a manual about how to die from Sodium Nitrite) discussed on the suicide forum. Per the forum, mixing a spoonful of the powder with water and drinking it would cause a “painless” death in under an hour. As we would later learn from graphic images and autopsy reports, the site was correct about it reliably causing death in this trace amount, but very wrong about the painlessness.

In April 2021, we became the lawyers of Ruth Scott, a heartbroken mother from Schertz, Texas who lost her only son.

Four months prior, on December 27, 2020, Ruth came home from her night shift to find her only son, 27-year-old Mikael in a fetal position dead with blackened lips and chocolatey brown blood coming out of his nose. After the police left, Ruth discovered a white plastic bottle that said “HiMedia RM 417-500G Sodium Nitrite” in the corner of Mikael’s bedroom. A search of Mikael’s emails revealed he’d been on the website Sanctioned-Suicide.org and had gotten the Sodium Nitrite for \$19.49 along with a mini scale Prime Delivered from Amazon four days prior. When Ruth tried to alert Amazon about the tragedy and how consumers were being directed to this poison, she received an email back from “Marvin” at Amazon who said: “I’m sorry about the trouble you had with Sodium Nitrite. . . But at least your son is now on our God’s hand.”

Upon being retained by Ruth, we immediately contacted Amazon to alert them that they were inadvertently (so we assumed) selling a chemical with no household application other than suicide. We expected them to discontinue selling the product and our job would be done. Instead, Amazon hired outside counsel who by letter on May 11, 2020, defended their actions because the suicide was done “using a legally sold product.” For the next 18 months, Amazon continued selling high concentration Sodium Nitrite, despite the pleas from us and our growing number of clients. Meanwhile the body count mounted, partly driven by the surge in teen depression during the pandemic.

Soon, the online retailer was not just ignoring warnings about this threat to public health from its consumers and lawyers, but also those from Congress.

On January 25, 2022 the United States Congress sent a letter to President and Chief Executive Officer of Amazon, Andy Jassy, expressing its deep concern that Amazon is providing “minors and adults with easy access to sodium nitrite, a deadly chemical.” Congress expressed the belief that Amazon’s frictionless sale of Sodium Nitrite combined with its speedy delivery caused deaths. (“When a person is having suicidal thoughts, limiting fast access to methods by which to die can make the difference between life and

death, making the fact that sodium nitrite can be sold and delivered overnight with Amazon Prime, a grave concern.”<sup>1</sup> (See attached) Congress requested information on 15 different points, including the units of Sodium Nitrite sold, Amazon’s manipulation of user reviews, Amazon’s labeling, and Amazon’s encouragement of sales of Sodium Nitrite. On February 5, 2022, Amazon’s Vice President of Public Policy, Brian Huseman, responded to Congress defending Amazon’s right to continue to sell high purity Sodium Nitrite, claiming (inaccurately) it is a “common food additive used to preserve meats and fish, either by itself or mixed with table salt.” Huseman’s information was dangerously false, seemingly confusing the other identically named product sold by Amazon which is used to cure meats containing 6% Sodium Nitrite with the deadly product it sells used for suicide containing 98-99% pure Sodium Nitrite. Using 98-99% pure Sodium Nitrite on food “by itself” as Huseman recommends, would result in immediate death. Amazon ignored the other requests for information sought by Congress, except to make the provably incorrect claim that it “has not found any teen accounts associated with the purchase of industrial sodium nitrite products.”

Throughout our investigation, our firm has been contacted by approximately 60 individuals who’ve lost loved ones to suicide by Sodium Nitrite. The overwhelming majority of those decedents purchased Sodium Nitrite from Amazon. And although Amazon sells products at the largest scale, other smaller sellers have caused deaths as a result of their sales of Sodium Nitrite including Duda Energy, ImTime<sup>2</sup>, Pro Bait, etc. Like Amazon, when we reached out to these sellers, they were empowered to continue selling the chemical because according to them, there was no law that required them to stop.<sup>3</sup>

This level of access to lethal means coupled with the mental crisis our country finds itself in is a combination that makes death highly foreseeable. Earlier this year, the CDC published troubling results from a ten-year studying of high school students measuring the ubiquity of suicidal ideation and attempts. The ubiquity of serious suicide attempts in a 12-month period was far higher than rate of people who actually die, underscoring what suicidologists have long stated -- that the lethality of the means is a huge determinant in whether a suicide attempt will result in death.<sup>4</sup> Surviving a Sodium Nitrite suicide attempt is almost hopeless given that few emergency responders carry the obscure antidote (methylene blue) and those that do rarely can administer it quickly enough.

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<sup>1</sup> Signatories: Lori Trahan, David B. McKinley, P.E., David Cicilline, Kathy Castor, Susan Wild, Jamie Raskin, Mark DeSaulnier

<sup>2</sup> The owner of this website, Kenneth Law, was arrested in Canada and faces 14 counts of counseling or aiding in suicide in connection with his sales of Sodium Nitrite.

<sup>3</sup> It is in fact criminally illegal to knowingly aid in suicide in all fifty states. Basic principles of common law also govern.

<sup>4</sup> On February 13, 2023, the United States Center for Disease Control and Prevention issued the results of the Youth Risk Behavior Survey (“YRBS”), a ten-year study from 2011 to 2021 measuring risk faced by American high school students, revealing the ubiquity of suicidal ideation and attempts. The data collected biennially pertains to incidents in the prior twelve months. The percentage of girls in 2021 who had seriously considered suicide (30%), made a plan (23.5%), attempted (13.3%), required medical attention from an attempt (3.9%) was much higher than the percentage who died from suicide: 0.004%. The percentage of boys in 2021 who had seriously considered suicide (13.3%), made a plan (11.3%), attempted (6.6%), required medical attention from an attempt (1.7%) was much higher than the percentage who died from suicide: .011%.



There is no indication, though that individuals who attempt suicide using Sodium Nitrite are more suicidal than those who try other means. Many of our clients' children ran screaming to them for help, try to vomit to reverse the effects, and can be heard on 911 calls pleading for their life. It's all futile.

The problem of Sodium Nitrite peddling has been discussed tangentially at two prior Congressional hearings<sup>5</sup> and at the White House<sup>6</sup>. So, we are grateful that thanks to the hard work of many house members, including Lori Trahan's office, Congress now has a direct way to regulate the sales of high concentration Sodium Nitrite to individuals.

The YPPA is critical in this moment when youth mental health is in crisis. This federal law is needed now when the problem of unrestricted sales of Sodium Nitrite must be clearly defined and companies peddling this poison have failed to care for the safety of their customers. Companies like eBay and Etsy demonstrated their sense of humanity when they banned Sodium Nitrite sales years ago upon learning of a single death. But, unfortunately, some companies require a law to stop engaging in harmful conduct. And Americans' safety cannot be at the whim of corporations that are too big to care. The YPPA will save lives.

Our clients will never be able to get their kids back, but this law will put an end to the avoidable losses they've suffered.

On behalf of the twelve families who have already come forward publicly, we submit a list of the beloved children and young adults who are missed every moment of every day.

*April 4, 2020 **Demetrios Viglis**, 19, Mechanicsville, VA*  
*August 13, 2020, **Ayden Wallin**, 16, Alta Loma, CA*  
*September 30, 2020, **Kristine Jónsson**, 16, Hilliard, CA*  
*December 26, 2020, **Tyler Schmidt**, 15, Camas, WA*  
*December 27, 2020, **Mikael Scott**, 27, Schertz, TX.*  
*January 7, 2021, **Ethan McCarthy**, 17, Milton, WV*  
*February 24, 2021, **Ava Passannanti**, 19, Tucson, AZ*  
*May 25, 2021, **Tyler Muhleman**, 17, Morgan Hill, CA*  
*July 7, 2022, **Oscar Sura Jr.**, 22, Port St. Lucie, FL*  
*July 15, 2022, **Michael Alan Green Jr.**, 20, Lecanto, FL*  
*August 28, 2022 **Nick Janus**, 19, Chicago, IL*  
*October 1, 2022, **Hannah Allen**, 21, Bath Township, MI*

Sincerely,

/s/ Carrie Goldberg /s/ Naomi Leeds

Carrie Goldberg

Naomi Leeds

C. A. Goldberg, PLLC

<sup>5</sup> See Oral and Written Testimony of Carrie Goldberg, December 1, 2021, Energy and Commerce, Subcommittee on Communications and Technology "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity; See Oral Testimony of Carrie Goldberg, January 25, 2023, Committee on Energy and Commerce Republican roundtable on Big Tech and the Fentanyl Poisoning Crisis.

<sup>6</sup> See Oral Remarks by Carrie Goldberg, June 16, 2022, Launch of the White House Task Force to Address Online Harassment and Abuse.

Congress of the United States  
Washington, DC 20515

January 25, 2022

Mr. Andy Jassy  
President and Chief Executive Officer  
Amazon.com, Inc.  
410 Terry Avenue N. Seattle, WA 98109

Dear Mr. Jassy:

It has come to our attention through the independent reporting of the *New York Times* and our own efforts that Amazon is providing minors and adults with easy access to sodium nitrite, a deadly chemical popularized on Sanctioned Suicide, a website which “provides explicit directions on how to die.”<sup>1</sup> A recent study based on data from the National Poison Data System found that suicide attempts associated with sodium nitrite poisoning in the United States were first reported in 2017 and these reported attempts have been increasing in frequency ever since.<sup>2</sup> Accordingly, our questions are centered around your sale of sodium nitrite from 2016, right before this spike, to the present day. When a person is having suicidal thoughts, limiting fast access to methods by which to die can make the difference between life and death, making the fact that sodium nitrite can be sold and delivered overnight with Amazon Prime, a grave concern.

Our questions are as follows:

- 1) How many sodium nitrite units has Amazon sold in the United States between January 1, 2016 and January 1, 2022? How many units has Amazon sold worldwide in that same timeframe?
  - i) How many units were sold by Amazon (such as via first party vendor arrangements)?
  - ii) How many units were sold by third party sellers?
  - iii) How many units of sodium nitrite were delivered same-day or two-day?
  - iv) How do the sales break down by the product’s level of purity?
  - v) How do the sales break down on a year-by-year basis since 2016?
- 2) Since January 1, 2016, how many minors (known or predicted to be under 18 algorithmically) have purchased sodium nitrite on Amazon?
- 3) How many unique listings for sodium nitrite has Amazon hosted since January 1, 2016?

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<sup>1</sup> Megan Twohey and Gabriel J.X. Dance, *Where the Despairing Log On, and Learn Ways to Die*, N.Y TIMES (Dec. 9, 2021), <https://www.nytimes.com/interactive/2021/12/09/us/where-the-despairing-log-on.html>.

<sup>2</sup> Sean D. McCann, Marit S. Tweet & Michael S. Wahl, *Rising Incidence and High Mortality in Intentional Sodium Nitrite Exposures Reported to US Poison Centers*, 59:12 CLINICAL TOXICOLOGY 1264-1269, (2021).

- 4) Since January 1, 2016, has Amazon received any requests to take down a product listing for sodium nitrite? If so, how many requests and how did Amazon respond?
- 5) Since January 1, 2016, have any reviews been taken down from product pages for sodium nitrite?
  - i) If so, how many reviews has Amazon removed?
  - ii) How many one-star reviews have been left for sodium nitrite products?
  - iii) How many reviews have mentioned the dangers of ingesting sodium nitrite or references to fatalities?
  - iv) Has Amazon ever taken action (e.g.: suspended the customer's ability to leave reviews) against individuals who wrote a review about a sodium nitrite product?
- 6) Since January 1, 2016, how many different customers have purchased sodium nitrite?
  - i) How many customers were individuals?
  - ii) How many customers were businesses?
  - iii) How many customers who bought sodium nitrite purchased it one time only?
- 7) Since January 1, 2016, does Amazon know how many of its customers who have purchased sodium nitrite have died by ingesting it? If so, how many?
- 8) Since January 1, 2016, how many customers have purchased sodium nitrite and then had a considerable drop-off in their Amazon account activity?
- 9) What actions, if any, has Amazon taken to address the dangers of sodium nitrite in the United States? In other countries?
- 10) Does Amazon provide any clear labeling on its product pages for sodium nitrite that indicate its toxicity in specific concentrations?
- 11) Does Amazon provide any clear labeling on its product pages for sodium nitrite that indicate what to do in the event of ingestion in large concentrations?
- 12) Does Amazon have an internal policy system or procedure when it is reported to Amazon that an Amazon product has caused a customer's death? Contributed to a customer's suicide?
- 13) Does Amazon have cookies or other methods to track what website directed a customer to its website? If so, how many visitors to sodium nitrite product pages were on Google immediately before coming to Amazon? How many visitors were on Sanctioned-Suicide.org before coming to Amazon?
- 14) How many searches for sodium nitrite has Amazon had since January 2016? Please break that down by year. Did Amazon retarget ads for sodium nitrite based on any of these searches?
- 15) What did the process involve in making HiMedia a first party vendor? Please provide step-by-step details about the process of contracting with HiMedia, the creation of the sodium nitrite product page, the decision-making around the photography and product description, the role Amazon played

with regards to the product inventory acquisition, shipping, replenishment of inventory, price-setting, customer service, and user complaints.

Please send us your responses to these questions by February 1, 2022.

Sincerely,

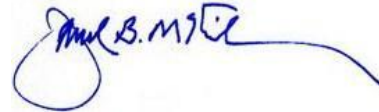


Lori Trahan  
Member of Congress

David Cicilline  
Member of Congress

Susan Wild  
Member of Congress

Jamie Raskin  
Member of Congress



David B. McKinley, P.E.  
Member of Congress

Kathy Castor  
Member of Congress

Mark DeSaulnier  
Member of Congress



**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Subcommittee on Innovation, Data and Commerce**  
**Proposals to Enhance Product Safety and Transparency for Americans**

Statement of Ryan J. Fitts

Vivid Seats LLC

September 27, 2023

Vivid Seats thanks the Subcommittee on Innovation, Data and Commerce for its attention to the health and vitality of the live event ticket market in the United States. We are writing today with regards to the BOSS AND SWIFT Act, the TICKET Act and the Speculative Ticketing Discussion Draft. We strongly support their introduction and intent. While we hope to continue to work with this Subcommittee as the process moves forward, we are grateful for the significant effort made to date in getting the bills to this point.

**I. INTRODUCTION**

Seats is an online ticket marketplace that utilizes its technology platform to connect fans of live events seamlessly with ticket sellers. We offer award-winning customer service and accompany that with the leading loyalty program in the industry that rewards every purchase. Before Vivid Seats and companies like it began offering convenient and trustworthy online resale marketplaces, tickets typically were available only from two sources—a primary ticket seller or an unsafe, non-transparent, often unreliable resale channel. As remains the case today, fans who tried to purchase tickets from primary ticket sellers often found that sales were restricted to an “on-sale” period that was held months before the event. Far too often, fans encountered (and still face today) lengthy wait times during an on-sale process and frustration caused by inexplicable disconnections, disruptions and limited seating options. Fans who were not fortunate enough to

get a ticket through the primary seller had no safe and convenient way to obtain tickets, and fans who had tickets but could not use them had no safe and convenient way to sell them. Simply put, the market was not working to the benefit of fans and there was no reliable way to match buyers with sellers.

Vivid Seats was created to solve this problem by providing fans with a secure, safe, and convenient place to buy and sell tickets to a wide variety of events. Today, if a fan wants to buy a ticket at the last minute, our platform allows her to do that. If a fan wants a ticket to a “sold out” event, our platform may allow her to find one. If a fan wants to search among various ticket options—comparing tickets in different sections on different dates at different prices—our platform allows her to do that, too. And if a fan has a ticket that she cannot use— maybe something came up at work, a sudden illness or other unanticipated conflicts—the fan can sell the ticket on our platform. Just like other internet marketplace industries that facilitate the sale of household goods or crafts between third-party buyers and sellers, we do so in a convenient, consumer-friendly way that offers flexibility important to a modern lifestyle.

When fans buy tickets on our platform, they do so with peace of mind. Every ticket sold on Vivid Seats’ platform is backed by our industry-leading 100% Buyer Guarantee—a promise that fans will receive valid tickets that match the description of the tickets for which they paid, and those tickets will be delivered on time for the event—or else fans get their money back. And if the fan has any questions or encounters any issues, we will quickly provide a response from our 300-person call center (located in Coppell, TX) that operates daily from 7:00 a.m. until midnight and typically connects fans with live support in less than one minute.

## **II. THE TICKETING MARKET AND THE IMPORTANCE OF COMPETITION**

Consumers benefit greatly when there is sufficient competition in ticketing markets. Vigorous competition amongst ticket resale platforms encourages us to provide the best experience possible for fans. Our award-winning customer team once again has been recognized by Newsweek as one of America's Best Companies for Customer Service in ticketing. And, to provide the best value possible for our customers, Vivid Seats has created the industry’s leading (and only) loyalty program: When customers buy ten tickets from Vivid Seats, the eleventh is on us. In practice, since sellers who use our marketplace retain the base price from every transaction and we only retain our service fee, our loyalty program returns a significant amount

of service fees back to our customers. We deliver tangible value to our fans in order to encourage repeat customers.

Consumers also benefit from better pricing when ticket marketplaces must compete to win their business. A report from the advocacy group “Protect Ticket Rights” examined 10 recent tours and 25 individual concerts, and it found that fans saved over \$7.5 million on these live music events in the first half of 2023 alone by purchasing on the resale market.<sup>1</sup> Further, a Sports Fans Coalition report focused on sporting events found that fans saved approximately \$260 million since 2017 on sports tickets by purchasing on the resale market.<sup>2</sup>

While most of the many thousands of live events draw no scrutiny, occasionally some underscore the importance of maintaining intense competition in ticketing markets. Some of the most significant challenges are posed by the fact that initial ticket sales are dominated by a large, vertically integrated company that also operates one of the nation’s largest resale platforms. The fact is, without stronger protection, consumers will continue to have difficulty accessing tickets and, if they would like, transferring them efficiently and safely. Fans will struggle to navigate an on-sale environment that pushes them to pay higher prices, particularly by facilitating artificial scarcity of tickets through holdbacks (the practice of restricting the number of tickets available at an on-sale without disclosing what number of tickets are available for purchase by fans). They will continue to encounter practices by primary ticket sellers – such as the delivery of electronic tickets within just hours of an event – that make it more difficult to resell or give away tickets that have already been purchased. And they will be doing so in a digital ticket environment that they cannot control and that forces them to share personally identifiable information (or “PII”) with primary ticket sellers even if they are buying tickets from the resale market. Since electronic tickets “live” on the digital system controlled by the primary seller, these companies can force resale customers to disclose PII when tickets are transferred. This allows these primary ticket sellers to acquire the PII of their competitors’ customers, whether or not these resale buyers ever intended to share their PII. As a result, resale consumers receive unsolicited marketing from entities with which they did not elect to have a financial or commercial relationship.

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<sup>1</sup> See <https://www.protectticketrights.com/files/2023-top-music-concert-ticket-resale-savings-report-09.12.2023545274099.pdf>

<sup>2</sup> [https://www.sportsfans.org/ticket\\_transferability\\_helps\\_sports\\_fans\\_save\\_260\\_million\\_over\\_five\\_years](https://www.sportsfans.org/ticket_transferability_helps_sports_fans_save_260_million_over_five_years).

### **III. SOLUTIONS FOR ISSUES IN OUR INDUSTRY**

If passed by Congress, the TICKET Act and the BOSS AND SWIFT Act would increase transparency and competition throughout the live event ticket market. Below, I highlight several key issues addressed by these important pieces of legislation.

#### **a. The TICKET Act**

The TICKET Act mandates pricing transparency and requires that sellers disclose if they are offering tickets for sale that are not in their possession. We support these key principles and this bill.

**Pricing Transparency.** Vivid Seats believes that all ticketing companies should disclose the “all-in” price (inclusive of fees) at the beginning of transactions. Both primary ticket sellers and resale marketplaces should compete on a level playing field where final pricing is clear to the customer. The TICKET Act would require that all market participants present the all-in price at the beginning of the transaction, enabling fans to clearly understand and compare the prices offered by competitors.

**“Speculative” Tickets vs. Ticket Procurement Services.** Fans have a right to know what they are buying, and they have a right to get what they paid for. Fans can lose out if they buy tickets from a seller who, unbeknownst to the fan, does not yet have the ticket in hand and is unlikely to provide the ticket the fan purchased. That is why Vivid Seats supports the TICKET ACT which makes undisclosed speculative ticket sales unlawful. It also is why we prohibit this type of speculation on our platform. We have an aggressive enforcement team that looks for unauthorized speculative ticket sales, and when we find them, we stop them. Sellers who violate our rules by listing unauthorized speculative tickets can face fines, suspensions, or even bans from our platform. We take our rules on unauthorized speculative ticket sales very seriously because we believe that undisclosed speculative sales lead to bad experiences for fans, and they reflect poorly on the marketplace.

Vivid Seats also recognizes that some fans want the opportunity to make informed purchases from reliable sellers who will procure tickets on their behalf. This option is valuable for fans who want to be certain that they will have tickets to a high-demand event. Purchasing live event tickets can be time consuming and stressful. Many sales require fans to log into a queue – often at a specified time during a workday – with a special passcode and wait for hours.



Even after waiting, many fans are left empty-handed. Our innovative Seat Saver service enables fans to avoid this stress and chaos and pay a pre-screened seller to procure tickets on the fans' behalf for delivery before the event. Akin to other common online products, such as grocery or take-out delivery services, where people pay a third party to perform a task, Vivid Seats' Seat Saver provides peace of mind to skip the long lines and enjoy the event. Our Seat Saver ticket procurement service gives fans a flexible option, other than forced participation in a frustrating on-sale process.

Seat Saver is one of the most reliable ways for consumers to buy hard-to-find tickets; Vivid Seats is proud that our Seat Saver program has a near 100% fulfillment rate for fans. All tickets listed in our Seat Saver Program are prominently disclosed as such, so fans know they are purchasing a procurement service, and every ticket sold is covered by our 100% Buyer Guarantee.

Five state legislatures, California, Maryland, New Jersey, New York and Tennessee, seeing the value that products like our Seat Saver program provide to consumers, have permitted the sale of tickets that a seller does not control, provided that clear disclosures are provided. Like these state laws, the TICKET Act preserves this valuable option for fans while requiring transparency and appropriate disclosures prior to purchase. Although we recommend some language changes and believe that an estimated delivery date and a moneyback guarantee should be required from sellers, the TICKET Act takes a crucial step towards greater transparency in our industry while giving fans a pre-sale option other than participating in a chaotic on-sale.

We also believe that the Speculative Ticketing Discussion Draft represents a positive development for fans and for competition. The draft bill bans ticket sellers from offering tickets for sale unless the seller has actual or constructive possession of the tickets and clarifies that ticket procurement services, such as Seat Saver, are valid options for consumers provided that proper disclosures are made. Although we will propose some language changes, we are supportive of the intent apparent behind the Speculative Ticketing Discussion Draft.

**b. The BOSS AND SWIFT Act**

Like the TICKET Act, The BOSS AND SWIFT Act includes pricing transparency and disclosure requirements for speculative tickets. However, the BOSS AND SWIFT Act includes

additional key provisions that will ensure greater transparency and competition in our industry. We support the vital pro-competition principles included in this bill.

**Transferability.** While there has been vibrant competition in the resale ticketing channel, a single player still dominates the primary channel. This company is leveraging changes in digital ticketing technology and its dominance in the primary space to grow its position in both primary and resale, and one of the key tactics it employs to further this aim is restricting ticket transfer.

The BOSS AND SWIFT Act stands for the proposition that a ticket belongs to the fan who holds it, and the fan should be able to transfer the ticket on a platform of her choice if she does not use the ticket herself. Currently, primary ticket sellers treat many tickets as a revocable “license” to attend an event. This gives primary ticket sellers unchecked power to cancel tickets sold on the resale market or push fans to only use the primary seller’s own resale sites. If this were a physical ticket, the primary ticket sellers would have no ability to deny a ticketholder from selling, gifting, or transferring the ticket to another individual. Why should they have unilateral power to do so simply because tickets are now digital? In short, a digital ticket should be treated like a physical ticket and honored at venues regardless of how it was purchased.

Guaranteeing ticket transferability is good not just for each individual fan who holds a ticket or who wants one, it also is good for the entire ticketing ecosystem because it promotes competition. We compete aggressively with other resale marketplaces, and that competition drives us to innovate to improve the fan experience through better customer service, better prices, better inventory, and better experiences on our websites.

None of this competition, and the resulting innovation, could happen if tickets were not transferable. Unfortunately, today, one powerful player in the primary ticketing channel is leveraging its size and influence to trap consumers in its walled garden by restricting fans’ ability to transfer tickets. Tactics employed to create this friction include withholding delivery of tickets until forty-eight hours before an event, prohibiting fans from transferring tickets altogether or requiring that transfers occur only on the marketplace that the primary ticket seller controls.

These restrictions result in less value and fewer options for fans—both those who have tickets and those who want them—as tickets become available from one source only, if they are available at all. Polling shows over 80% of Americans support transferability, and several states,

including Colorado, New York, Connecticut, Virginia, Illinois, and Utah, have enacted legislation to protect this right.<sup>3</sup> Vivid Seats supports those laws, and we support the BOSS AND SWIFT Act because it would ensure that fans can remain in control of the tickets they purchased, regardless of where they live.

**Holdbacks.** On-sale frustrations will not be solved for fans until Congress requires that primary ticket sellers disclose to fans when they are holding back inventory from the on-sale. To accurately evaluate purchase price, fans must be informed when a venue is holding back inventory. How can a buyer evaluate whether a price is fair unless they can properly understand the availability of the product? Refusing to disclose holdbacks is a deceptive marketing practice. The BOSS AND SWIFT Act will end the practice of creating false sell outs to drive higher prices by requiring venues and their primary ticketing providers to disclose whether additional tickets will be offered for sale by the venue.

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Vivid Seats appreciates the opportunity to submit this testimony today, and we look forward to working with Congress to create the best experiences possible for fans.

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<sup>3</sup><https://www.protectticketrights.com/news/80/Press+Release+National+Poll+Shows+Americans+Want+Government+to+Improve+Live+Event+Ticketing>

September 26, 2023

Honorable Gus Bilirakis  
Chairman, Subcommittee on Innovation,  
Innovation, Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Honorable Jan Schakowsky  
Ranking Member, Subcommittee on  
Data, and Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 205105

Dear Chairman Bilirakis and Ranking Member Schakowsky:

On behalf of the Alliance for American Manufacturing (AAM) – a partnership between leading U.S. manufacturers and the United Steelworkers – we write to raise significant concerns with H.R. 5556, *Reinforcing American-Made Products Act* (Rep. Curtis).

- Contrary to the bill title, this proposal does not “reinforce” Made in USA labeling. Instead, it effectively eliminates state-level Made in USA labeling laws, regulations, and policies and places a dark cloud of uncertainty over state-level enforcement actions and consumers’ rights. This risk of nationwide Made in USA labeling erosion vastly outweighs any uncertain benefits resulting from enactment which have not been clearly outlined.
- This legislation was first introduced in 2015 to address a California state labeling law that was stricter than the standard set by the Federal Trade Commission (FTC). However, that same year California adjusted its state statute with a numerical threshold designed to be aligned with that of the FTC. We have even heard compelling arguments that the new California law is weaker than the FTC’s standard. Thus, this legislation is wholly unnecessary and appears to be a solution in search of a problem.
- Critically, H.R. 5556 would immediately make Made in USA labeling vulnerable to special interests who have long sought to undermine the (FTC’s) “all or substantially all” *standard*. The FTC’s standard would be the only remaining labeling policy nationwide and would, consequently, come under intense pressure by those seeking a weaker standard and loopholes. The standard is derived from Section 45(a) of the FTC Act and could be diluted through simple rulemaking if the makeup of the FTC changes and there are enough commissioners hostile to the policy.
- And, finally, while the bill as drafted ostensibly does not seek to limit state enforcement actions or a consumers’ right of action, it is impossible to predict how its “savings provision” would be construed by a court. We are confident that entities opposed to Made in USA labeling enforcement would endeavor to challenge state actions or consumers’ rights. Such an outcome would put consumers at risk of Made in USA

fraud without little recourse. Only recently has the FTC taken steps to strengthen its own enforcement tools for egregious first-time violations.

Any erosion of Made in USA labeling and enforcement would hurt American manufacturers and consumers, who place great value in a Made in USA claim because of its perceived association to and embodiment of distinctly American values. It is on one hand discouraging that “Made in USA” fraud persists. However, that this fraud persists underscores the value that a “Made in USA” label poses for manufacturers and marketers. We strongly urge that the subcommittee carefully consider the ramifications of any proposed changes to nationwide Made in USA labeling laws and enforcement.

We appreciate your attention to this matter and look forward to continued engagement on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott N. Paul". The signature is fluid and cursive, with the first name "Scott" and last name "Paul" clearly distinguishable.

Scott N. Paul  
President  
Alliance for American Manufacturing





September 25, 2023

**To: Hon. Gus Bilirakis, Subcommittee Chair**  
**Hon. Jan Schakowsky, Ranking Subcommittee Member**  
**Energy and Commerce Subcommittee on Innovation, Data and Commerce**

**Re: H.R. 1797 - Setting Consumer Standards for Lithium-Ion Batteries Act**

Dear Subcommittee Chair Bilrakis and Subcommittee Ranking Member Schakowsky;

PeopleForBikes is pleased to offer its support for H.R. 1797, the Setting Consumer Standards for Lithium-Ion Batteries Act. The bill would require the U.S. Consumer Product Safety Commission (CPSC) to promulgate a rule “establishing a final consumer product safety standard for rechargeable lithium-ion batteries used in micromobility devices within the jurisdiction of the Commission, including electric bicycles and electric scooters.”

### **About PeopleForBikes**

The PeopleForBikes Coalition is the sole trade association for U.S. manufacturers, suppliers and distributors of bicycle products, including electric bicycles. Our 335 members represent companies that produce goods in every segment of the bicycle market, from high-end competition bicycles to affordable kids’ bikes. Our members produce the full range of components, parts and accessories used for bicycling, as well as electric bicycles. We also house a nonprofit foundation that speaks for 1.5 million grassroots bicycle advocates and enthusiasts across the United States. PeopleForBikes’ overall mission is to make America the best place in the world to ride a bike by advancing good policy, safe products, improved infrastructure, wider participation and rider education. PeopleForBikes is the voice of the US bicycle industry with regard to regulatory standards and safety.

### **E-Mobility Battery Safety Standards**

PeopleForBikes has consistently urged the CPSC to respond to the risk of fires from e-mobility device batteries by establishing a mandatory federal Consumer Product Safety Standard for lithium-ion traction batteries used with e-mobility devices. In a presentation to CPSC Staff in January of this year, we specifically recommended that the CPSC regulate batteries for all e-mobility products within its jurisdiction, including scooters, hoverboards, self-balancing unicycles, conversion kits and emerging categories of battery-powered e-mobility devices. <https://www.cpsc.gov/s3fs-public/PeopleForBikes-on-Lithium-Battery-Safety-for-ebikes-Meeting-Log.pdf?VersionId=RxMV6q8YsbKyRuADpkRRL85CXMoZYMPL>. While popular media have often referred to various e-mobility devices as “e-bikes” that is simply not the case, as a variety of devices have been identified as the cause of recent fires.

PeopleForBikes therefore supports the broad approach taken in H.R. 1797 as it would be fundamentally unfair to create new battery safety standards for e-bikes without simultaneously requiring similar levels of safety for batteries used with other e-mobility products that compete with e-bikes in the market.

In particular, requirements for batteries and chargers should also apply to so-called “conversion kits” that enable a conventional non-motorized bicycle to be made into a homemade e-bike. Such conversion kits have been cited as a major cause of battery-related fires in New York City and as responsible for some 40% of battery fires in the United Kingdom. <https://www.bbc.com/news/uk-england-london-66497800>

### **What Battery Standards Should Be Considered?**

Importantly, the CPSC has already begun the process of gathering information from stakeholders and the public by hosting a July 27, 2023 Forum on Lithium-ion Battery Safety. 88 FR 37042-44, Docket No. CPSC-2023-0025. PeopleForBikes provided testimony at the Forum and also submitted written comments. <https://www.regulations.gov/docket/CPSC-2023-0025> PeopleForBikes urged the CPSC to include several existing consensus battery and charger standards in any new Consumer Product Safety Standard.

***Such new regulations should reference or rely upon established consensus standards for batteries that address known causes of thermal runaway by requiring an adequate battery management system (BMS) and compatibility between batteries and chargers.***

With respect to e-bikes, those consensus safety standards should include the battery standards in Section 11 of UL 2849 and Section 4.2.3 of EN 15194:2017, both of which have proven highly effective in the field in preventing fires and other thermal events, and are already in use by reputable manufacturers and importers of electric bicycles that comprise PFB’s membership.

### **The 180-Day Timeline**

The timeline for e-bike drive systems to be designed, tested and fully approved under the consensus voluntary national standard, UL 2849 is about two years from initial design, which makes compliance problematic for many manufacturers currently in the process of achieving compliance. H.R. 1797 would establish a relatively short 180-day time period for the CPSC to promulgate a new battery safety regulation. This has the potential to disrupt production and sale of electric bicycles, many of which have batteries that are designed and tested for compliance with international safety standards like EN 15194 and do not present a substantial product hazard to the public. ***To ensure that safe e-bikes may remain on the market following the effective date of any new regulation, PeopleForBikes has also urged the CPSC to permit use of the battery safety provisions of EN 15194 during a transition period if not within the final rule itself.*** Without providing this transition period, a new Consumer Product Safety Standard with an inadequate lead time will have the unintended consequence of safe, proven electric bicycles being unjustifiably taken off the market.

PeopleForBikes respectfully suggests that Congress may wish to consider providing additional guidance to the CPSC requiring consideration of international e-bike battery safety standards, such as those in Section 4.2.3 of EN 15194:2017, as well as a suitable transition period for e-bike batteries that have been tested to those standards, so as to minimize market disruption.

## De Minimis Reform

Establishing a Consumer Product Safety Standard for lithium ion batteries for e-mobility products is just one piece of the puzzle. Replacement batteries for e-scooters and e-bikes have become a staple of online sales for foreign sellers, who have pricing and logistical advantages over more traditional supply channels. Many e-bikes being used by delivery workers are “converted” bicycles, which are assembled using a conversion kit purchased online consisting of a battery, rear hub motor or wheel, and a motor controller. Generic chargers are also available online that may be purchased whether or not they are safe to use with a consumer’s battery or device. These low cost products are sold by overseas entities that have little reason to comply with voluntary safety standards, and are purchased by consumers who may be unaware of the risks they pose.<sup>3</sup> Even if HR 1797 becomes law and the CPSC adopts appropriate regulations for e-mobility batteries, these sellers will continue to sell and ship non-compliant products by utilizing the de minimis process, which is very difficult to monitor for compliance.

***PeopleForBikes therefore urges Congress to act to exclude e-mobility devices, traction batteries and chargers for these devices from de minimis treatment so that they are required to go through a formal Customs entry process.*** Congress should also act to provide adequate resources to U.S. Customs and the CPSC to enable them to effectively perform the critical function of stopping the flow of unsafe products of all kinds into the United States.

## Conclusion

PeopleForBikes supports H.R. 1797 as urgently needed to address battery fires, fatalities and injuries caused by poor quality lithium ion batteries that do not meet any applicable safety standard. As urged by the NYS Division of Homeland Security and Emergency Services, the CPSC “should promulgate mandatory federal product safety standards for lithium-ion batteries in personal mobility devices.” <https://www.regulations.gov/comment/CPSC-2023-0025-0027>. PeopleForBikes stands ready to work with Congress and the CPSC to support rapid rulemaking to adopt a Consumer Product Safety Standard to address battery safety for all mobility devices.

Respectfully submitted,



Matt Moore

Policy Counsel, PeopleForBikes

[matt@peopleforbikes.org](mailto:matt@peopleforbikes.org)

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<sup>3</sup> Recent fatal fire in New York City was reportedly caused by a \$200 battery that was purchased online. [https://meaww.com/who-was-kam-mei-koo-woman-93-dies-in-queens-fire-sparked-by-e-bike-battery-2-others-injured?utm\\_source=flipboard&utm\\_content=other](https://meaww.com/who-was-kam-mei-koo-woman-93-dies-in-queens-fire-sparked-by-e-bike-battery-2-others-injured?utm_source=flipboard&utm_content=other)



# INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

EDWARD A. KELLY  
General President

FRANK V. LÍMA  
General Secretary-Treasurer

September 26, 2023

The Honorable Gus Bilirakis  
Chair  
Subcommittee on Innovation, Data, and  
Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data, and  
Commerce  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chair Bilirakis and Ranking Member Schakowsky,

On behalf of the more than 341,000 professional fire fighters and emergency medical services (EMS) personnel of the International Association of Fire Fighters (IAFF), thank you for including the Setting Consumer Standards for Lithium-Ion Batteries Act (H.R. 1797) in your upcoming Committee markup. Lithium ion (Li-ion) batteries have become a serious danger to our communities due to their prevalence in sparking significant and deadly fires. Despite the prominent role of Li-ion batteries in our communities, the Consumer Product Safety Commission (CPSC) does not have a safety standard for these batteries. The IAFF is proud to endorse H.R. 1797 and urges the Committee to approve it.

Li-ion batteries store a tremendous amount of energy and are commonly used in a wide range of consumer products, including computers, electric mobility devices (like scooters and e-bikes), mobile phones chargers, and more. Unfortunately, Li-ion batteries are also prone to exploding and igniting fires when overcharged. Recent studies have shown these batteries can progress from overheating and smoking to a full explosion in just 15 seconds. In New York City alone, these batteries have caused more than 400 fires in the last four years – resulting in 12 deaths and more than 300 injuries. Li-ion batteries were the cause of a 2022 mass fatality fire in New York which killed 17 people, including 8 children. As these batteries become more commonplace in our communities, fires from these batteries are also occurring more frequently.

Despite the widespread use of Li-ion batteries, the CPSC does not have a safety standard for them. Several standards development organizations, like the Underwriters Laboratory, have created standards for Li-ion batteries but the CPSC has not taken similar action. A CPSC standard on Li-ion batteries will assist in preventing future tragedies by blocking the importation of inferior quality Li-ion batteries which are prone to ignition and explosion. This action is critical to preventing future fires and more loss of life. A CPSC standard for Li-ion batteries is also needed to help us better track incidents involving Li-ion batteries. These data points will be key to assessing the extent of problems related to Li-ion batteries and will inform the nation's fire service professionals on how to best train for, and respond to, these fires.

Thank you again for your work on this critical issue. The IAFF urges you to approve the bill and help advance it for final vote. I look forward to continuing to work with you to improve safety for both fire fighters and the communities we serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward A. Kelly". The signature is written in a cursive style with a prominent initial "E".

Edward A. Kelly  
General President





Dear Senator/Representative:

On behalf of INDA, the Association of the Nonwoven Fabrics Industry and the undersigned companies, we write to express strong industry support for the Wastewater Infrastructure Pollution Prevention and Environmental Safety (WIPPES) Act (H.R. 2964/S. 1350).

Founded in 1968, INDA is a trade association whose member companies include almost all wipes fabric makers, wipes manufacturers, and many brand owners operating in North America.

INDA member companies represent the entire nonwovens value chain including raw materials and roll goods producers, machinery manufacturers, converters, and brand owners. INDA works each day to fulfill our mission of “fostering member and industry success through its activities.” INDA provides thought-leadership in innovation and technology through conference content, recognition awards, and industry reports; protecting markets that are important to our members through focused Product Stewardship; advocating for industry sectors impacted by regulatory or consumer-driven issues; and organizing face-to-face interaction through industry expositions and events.

This bipartisan WIPPES Act takes a straightforward and reasonable approach to addressing the pervasive, but ultimately preventable pollution problem stemming from the improper disposal of non-flushable wipes in the nation’s wastewater systems. We urge you to co-sponsor the WIPPES Act and for Congress to act expeditiously to pass the legislation.

The WIPPES Act’s common sense “Do Not Flush” labeling requirements for non-flushable wipes packaging establishes a simple source management solution through consistent on-package consumer education.

Further, in addition to support from industry members, this bipartisan legislation enjoys support from the clean water sector and environmental advocates who believe the legislation will advance our mutually shared interest to protect public infrastructure and the environment by promoting responsible disposal habits.

Thank you for your leadership to address and develop common-sense and bipartisan solutions to the unique problems related to the flushing of non-flushable wipes. Again, we urge you to co-sponsor H.R. 2964/S. 1350. If INDA can be a resource for you, please do not hesitate to contact Wes Fisher at [wfisher@inda.org](mailto:wfisher@inda.org).

Sincerely,

**Athea Laboratories Inc**  
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**Osprey Corporation**

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**Bethune Nonwovens, Inc.**

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**INDA-Association of the Nonwoven Fabrics Industry**

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# The Cost of Wipes On America's Clean Water Utilities

An Estimate of Increased  
Utility Operating Costs

**The National Association of Clean Water Agencies**

Washington, DC  
September 2020

## Collaborating Organizations

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# The Cost of Wipes on America's Clean Water Utilities

In 2019, the National Association of Clean Water Agencies (NACWA), along with other water associations, conducted a nationwide study of the impact of wipes on the operating costs of America's clean water agencies. NACWA worked closely with other national and state organizations to conduct this analysis. This special report presents the results of NACWA's work.

## Background

It is estimated that North American businesses and households spent some \$2.5 billion on personal wipes in 2019. There are no reliable statistics about how many wipes are flushed down toilets, but there are hundreds of reports each year of clogged household plumbing and costly damage to public sewer systems and treatment plants caused by wipes when they are flushed.

Not all wipes cause damage when flushed and not all wipes are labeled as "flushable." The wipes industry has already taken steps to encourage wipes manufacturers to label their products as flushable or non-flushable based on these products meeting a series of tests. But according to a 2019 study conducted at Ryerson University in Toronto that examined 101 single-use wipes products – including 23 wipes products labeled as "flushable" by the manufacturer - none of these products fell apart or dispersed enough to safely pass through an average home's plumbing system to the public sewer, and through the sewer system for 30 minutes, without "a risk of clogging or causing damage to infrastructure."

Accordingly, this study is designed to help wipe manufacturers, wipe users, and policy makers better understand the cost of wipes when they are either flushed down toilets despite being labeled as "not flushable," or flushed as "flushable" wipes that in practice do not degrade sufficiently to prevent clogs in household plumbing and/or on-site or municipal wastewater collection and treatment infrastructure.

## Study Design

This study was designed to provide reasonable, but conservative estimates of the likely costs of wipes at the national and US state levels. As such, the research leading to such estimates followed a five-step process:

<b>Step 1</b>	Utility Cost Model Cases	<ul style="list-style-type: none"><li>• Assemble utility cost estimates and explore drivers of costs and factors affecting drivers</li><li>• Examine alternative utility-scale models of the cost of wipes</li></ul>
<b>Step 2</b>	Cost Mode Standardization	<ul style="list-style-type: none"><li>• Test cost components, examine alternative model structures, test linear, non-linear regressions</li><li>• Formulate model hypothesis for further testing</li></ul>
<b>Step 3</b>	NACWA Member Estimates	<ul style="list-style-type: none"><li>• Collect data from 15-20 NACWA members applying the standard model and report results</li></ul>
<b>Step 4</b>	Cost Model Verification	<ul style="list-style-type: none"><li>• Interpret utility results and reformulate national model as needed</li><li>• Select and document a best-fit model using statistical measures of "goodness of fit" across all utility results</li></ul>
<b>Step 5</b>	Scale to State and Nation	<ul style="list-style-type: none"><li>• Using nationally consistent measures of as many independent variables as available, scale model to nation, break-out state-by-state</li></ul>

## STEP 1 | UTILITY COST MODEL

NACWA conducted a thorough literature search from which we prepared a standard utility cost model that captured the major costs of wipes as reported by clean water utilities. The standard model considered both capital and operating costs and followed the hydrology of a municipal wastewater utility from collection to treatment, to disposal of residuals.

During this step, we noted that most utilities reported costs of cleaning and maintenance of conveyance infrastructure and fewer reported capital replacement costs associated with wipes. This was taken into consideration in subsequent steps where we requested documented cost data from our sample of wastewater utilities.

NACWA did not document costs associated with plumbing systems or laterals that connected households, businesses, or industries to public collection systems. NACWA also did not document the cost of wipes within on-site septic systems. The literature is clear that these costs exist and for some locations, the literature suggests these costs are substantial. This is the first area where our national model is conservative.

## STEP 2 | MODEL STANDARDIZATION

Based on results of step 1, the following standard cost model emerged:

### Collection System

- Cleaning and unclogging
- Sanitary sewer backup remediation from clogs

### Lift Stations

- Cleaning bar screens of accumulated wipes
- Upgrading screens/etc. to accommodate wipes
- Pump maintenance from clogs due at least in part to wipes
- Pump/grinder pump replacement after failure due to clogs
- Acquisition of new grinder pumps to accommodate wipes
- Extra electricity costs due to wipe-clogged pumps
- Extra disposal costs due to wipes

### Headworks

- Extra maintenance of bar screens due to wipes
- Upgrading screens/etc. to accommodate wipes
- Extra disposal costs due to wipes
- Extra electricity costs due to wipe-clogged pumps

### Treatment Works

- Maintenance of clogged primary clarifier equipment due to wipes
- Maintenance of clogged primary sludge pumps due to wipes
- Maintenance of mechanical mixers in secondary treatment chambers due to wipes
- Maintenance of clogged pumps/equipment in aeration tanks
- Extra vactoring in secondary settling tanks due to wipes clogs
- Maintenance/replacement of activated sludge pumps due to wipes
- Maintenance of chlorine contact tanks due to wipes
- Maintenance of sludge thickening equipment/grinder pumps due to wipes clogs
- Maintenance/replacement of sludge dewatering pumps and centrifuges due to wipes overloading/clogs

### Combined Sewer Overflows (CSOs)

- CSO remediation from clogs
- Fines and penalties for excess CSO events

### General and Administrative Costs

- Public education on proper wipe use and disposal

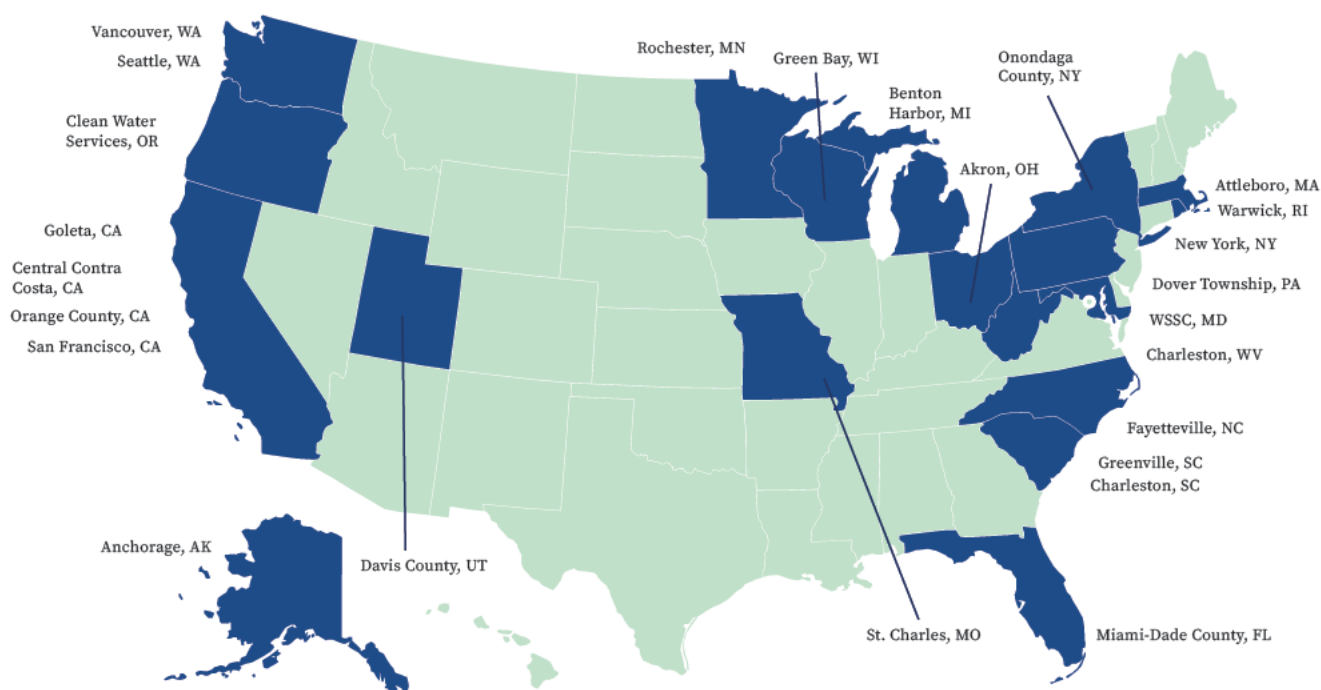
### Environmental

- Sewer overflows due to wipes clogging conveyance networks or causing pumps to fail

These types of costs are widely reported in the literature, although not every utility reported costs in every category. NACWA tested this model with members and adjusted line items to ensure that the model was comprehensive and easy to understand. But it is important to note that costs vary considerably from one utility to the next, depending on their size, the topography with their service area, population density, and many other factors.

### STEP 3 | UTILITY DATA COLLECTION

NACWA provided a standard cost model template to members and other utilities through partner state clean water utility associations. An attempt was made to collect actual costs from a variety of large and smaller utilities located in geographies that were broadly representative of the population of utilities in the US. We encouraged utilities to provide detailed narratives to explain how frequently operating and capital costs were incurred, how costs were calculated (e.g., direct only, or direct plus indirect costs), and any other information that might inform our subsequent analyses. Twenty-five utilities from 19 states (shown in dark blue) provided inputs:



### STEP 4 | MODEL VERIFICATION

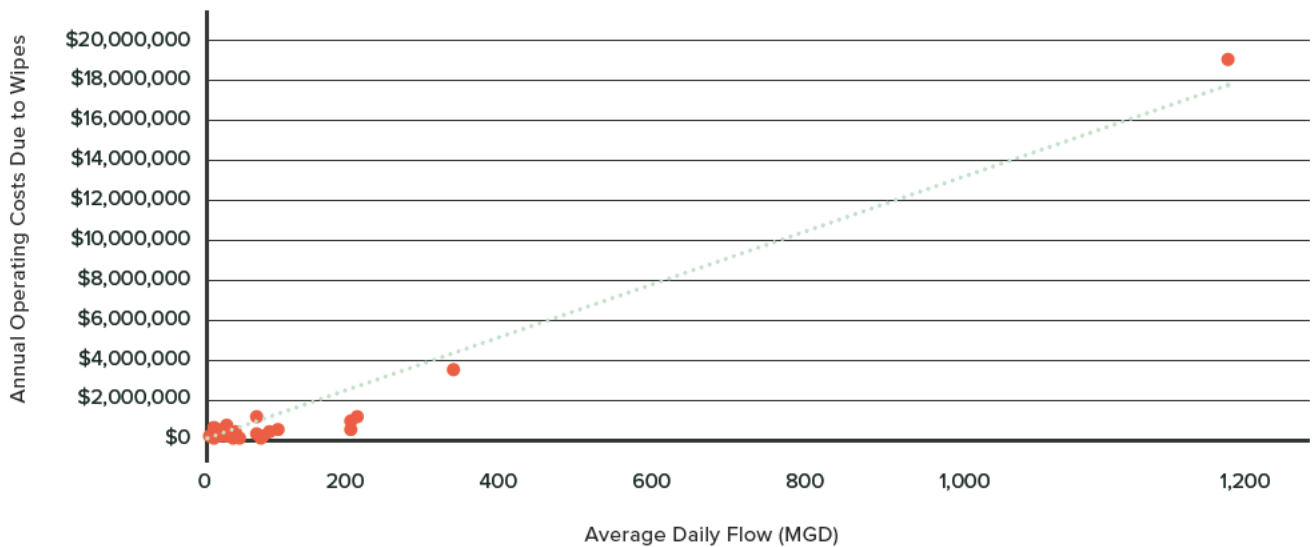
NACWA cleaned, verified, and analyzed data from these 25 utilities to assure that inputs were comparable across all utilities. While some utilities submitted capital costs associated with wipes such as pump replacement from clogged impellers, we concluded that we had insufficient information on capital costs to include them in our national estimate. The inclusions of only operating and no capital costs in our final cost estimate is the second area where our national cost model is conservative.

Annual operating costs associated with wipes were then regressed against four independent variables to test the predictive value of one or more combinations of the following:

- Average Daily Flow
- Miles of Sewers
- Number of Lift Stations
- Population Served

Both linear and non-linear forms of relationships between combinations of independent variables and annual operating costs of wipes were modeled for goodness of fit. Since the independent variables are themselves correlated, not surprisingly, the simplest one-variable models produced nearly as strong a relationship as more complex combinations of independent variables. We chose a simple model using average daily flow as the basis of our final national cost model:

Annual Operating Cost Impact Due to Wipes vs. Average Daily Flow



In the above relationship, variation in flow explains a little more than 95 of the variation in cost ( $R^2=95.4\%$ ), which indicates a strong statistical fit of this regression line to the 25 observations.

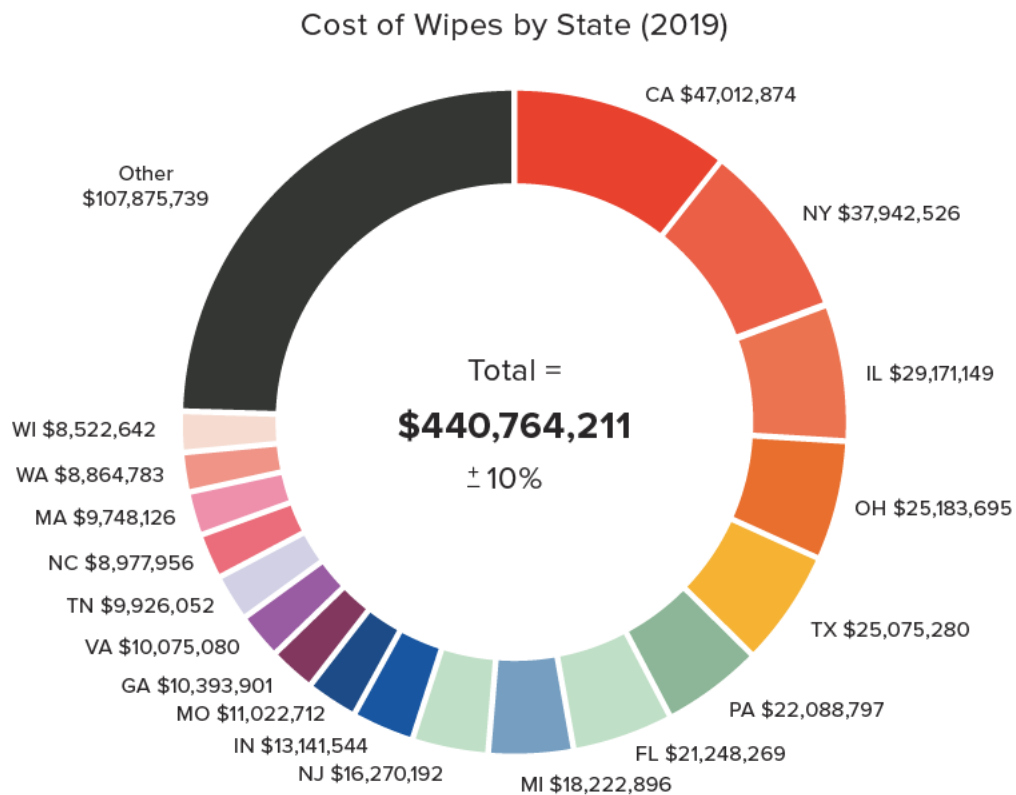
### STEP 5 | SCALE UP TO THE NATION

In the final step, NACWA applied the model above to data extracted from the US Environmental Protection Agency's most recent Clean Watersheds Needs Survey for 14,467 utilities in 50 states plus the District of Columbia and Puerto Rico with collection systems. Treatment-only utilities were excluded from our scale-up since our data collection step indicated that most costs were associated with collection infrastructure. This is the third factor that helps keep our analysis conservative.

Results were then summarized by state in terms of the most likely value as well as a lower and upper 95% confidence interval around the most likely value. Statistically, these lower and upper bounds represent a range within which we can be 95% certain the most likely value will fall.

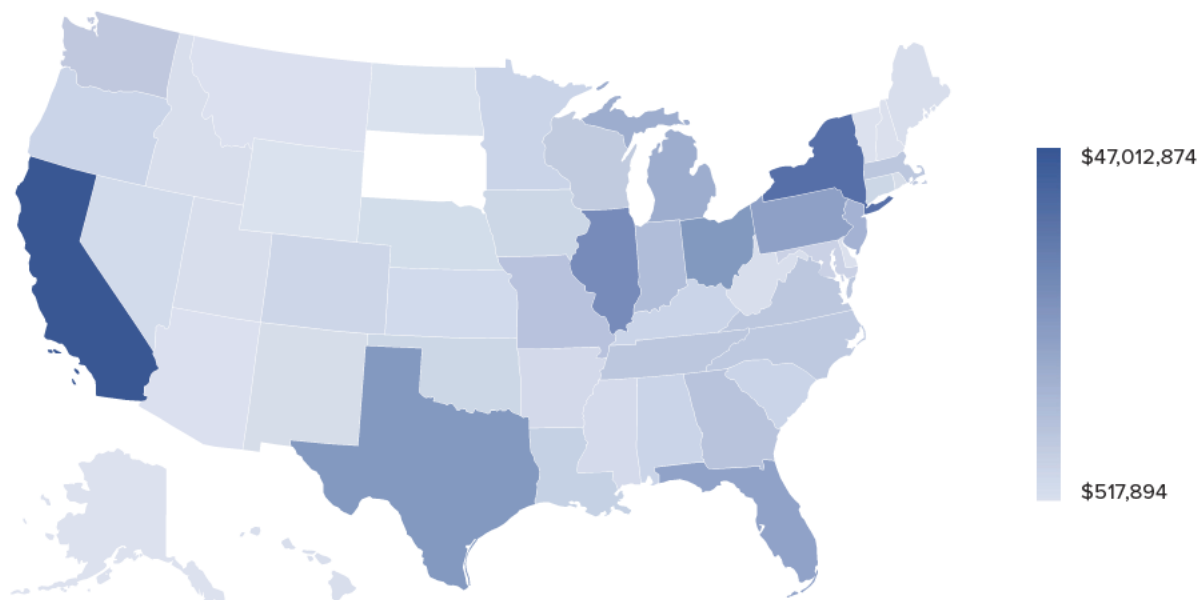
## Results

NACWA estimates that wipes result in about \$441 million a year in additional operating costs at US clean water utilities. The distribution of these costs by state, which generally corresponds with wastewater flow volumes by state, is presented in the graphic below:



Not surprisingly, the 18 states with the highest levels of wastewater collection account for about 75% of total national costs of wipes. Eight states account for about half of the total US costs of wipes.

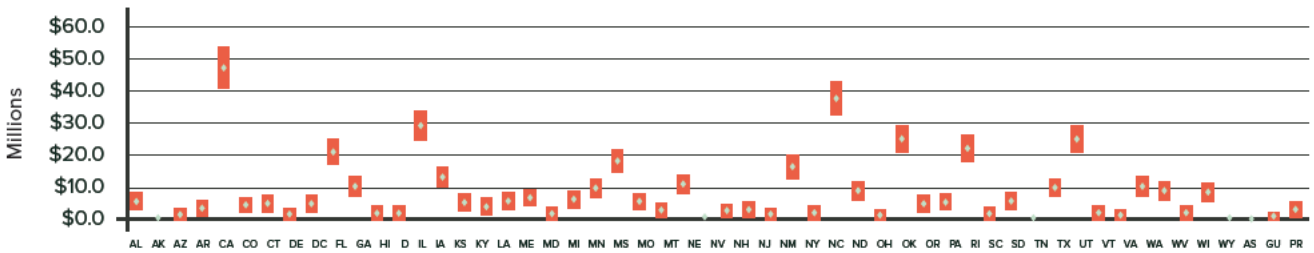
States with the highest costs of wipes tend to be located along the coasts and in heavily populated industrial portions of the Midwest, as indicated in the map below:



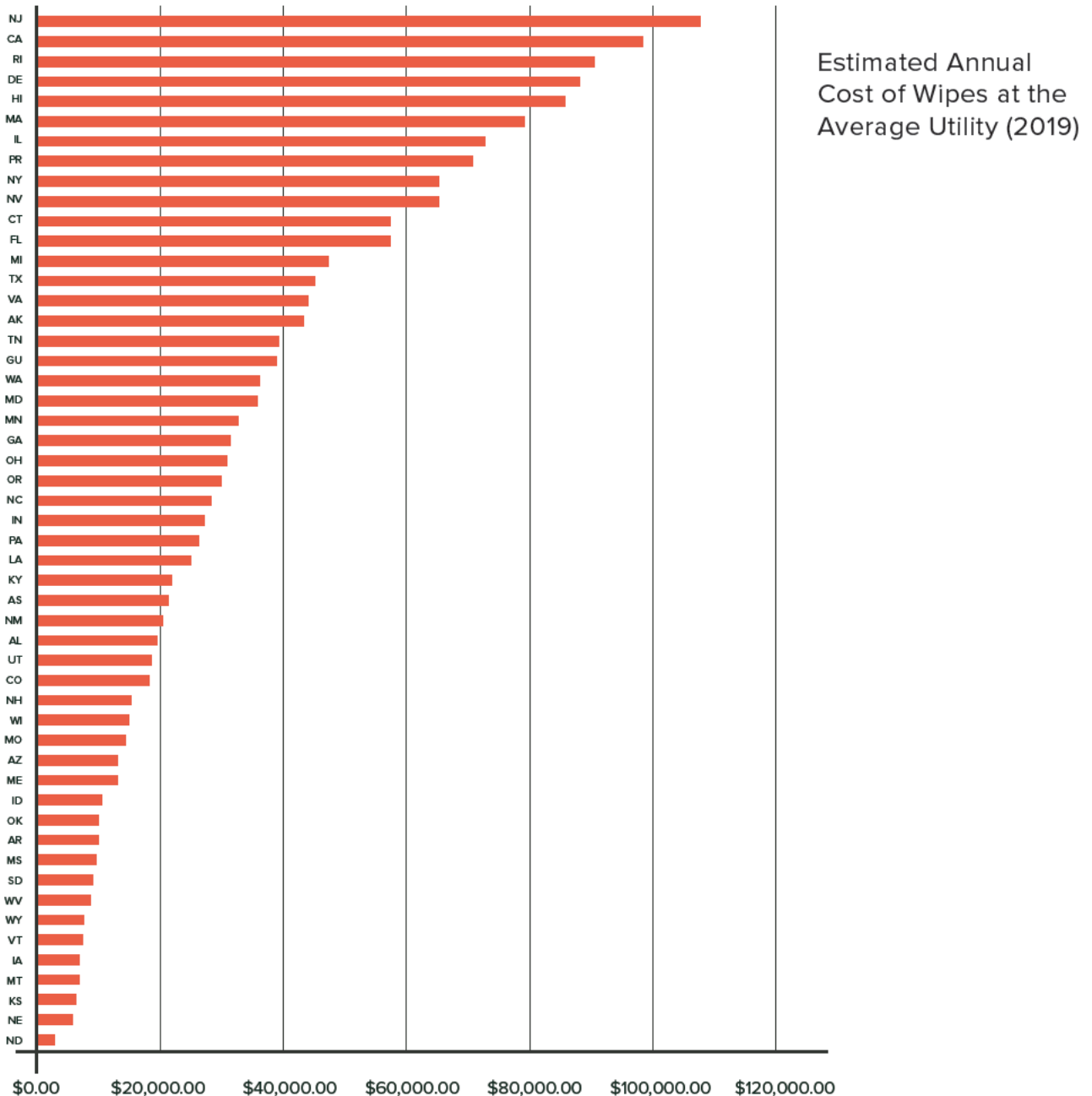


Upper and lower bounds on our estimates of the costs of wipe by state are provided in the graphic below:

Annual Cost of Wipes by State

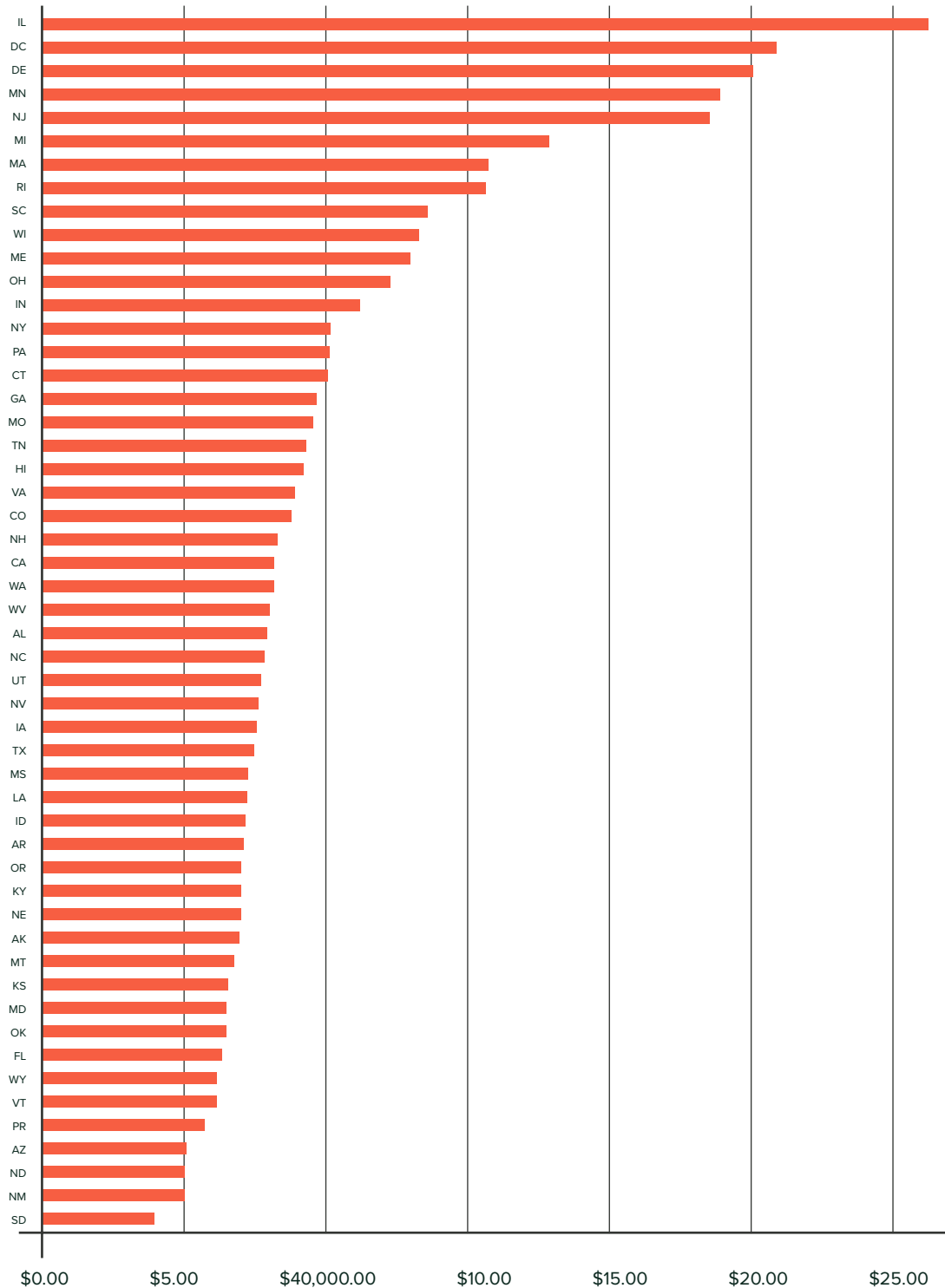


Based on these estimates, wipes impose \$30,467 a year in additional operating costs on the average utility nationwide. In many states, especially those with relatively few utilities with high flows at each, however, the average utility pays significantly more than this figure (see graphic below). Utilities in California and New Jersey, for example, pay on average about \$100,000 a year in additional operating costs because of wipes.



Wipes impose tangible costs at the household level, but these vary considerably from state to state, as shown below. The average annual cost is \$7.65 per household, with a high of just under \$25.00 per household (Illinois) to a low of less than \$5.00 per household (Kansas, Oklahoma, Maryland, Puerto Rico, Vermont, Wyoming, Florida, Arizona, New Mexico, North Dakota, South Dakota).

Estimated Annual Household Cost of Wipes (2019)



## Concluding Thoughts

This is the first comprehensive examination of the cost of wipes on operations of US clean water utilities. Because we made four conservative assumptions that eliminated certain costs from our estimates despite ample anecdotal evidence that they exist in practice, NACWA believes that these estimates are substantially less than actual costs in any given year. First, our estimates did not consider costs associated with household, commercial, or industrial plumbing or laterals that connect these systems to public collection infrastructure. Second, NACWA did not consider damage that wipes may cause to on-site septic systems. Third, NACWA did not include any capital replacement costs in our forecast. Our estimates at the national, state, and utility levels include only operating costs associated with wipes. The study does not include costs associated with Clean Water Act fines for sanitary sewer overflows attributed to wipes. Finally, since our survey data indicated that most of the problems, and therefore costs of wipes, in clean water utilities occur within collection systems, NACWA did not include any costs that wipes may impose on treatment infrastructure or in the environment.

Other factors must be considered, however, that may affect the cost estimate. First, it must be noted that survey data were insufficient to estimate the probability that wipes will cause problems when flushed, although actual cost data were collected from a wide variety of locations, size systems, conveyance materials, and system configurations, which in itself is an indicator that when flushed, wipes can create problems virtually anywhere. Instead, our forecast assumed that if flushed, wipes will on average, cause problems in collection systems regardless of the type, size, or location of collection infrastructure. Second, while EPA's 2012 Needs Survey contains the most current, internally consistent and nationally comprehensive utility-scale data available, we would have preferred a more recent set of data on which to scale up our model to the nation. Our assumptions in using these data are that on average, flows and population served are the same today as they were in 2012. There is evidence that municipal water use (and by extension, wastewater flows) on average across the US declined as much as 10% between 2000 and 2005. No one knows whether this trend has continued since 2005, although more recent surveys suggest that between 2010 and 2019, demand for municipal water supplies was up in some locations and down in others, but nationally, they appear to have remained steady. Continued growth in population served across the US since 2012 will tend to offset any flow effects in our estimates of costs at the household level.

## Endnotes

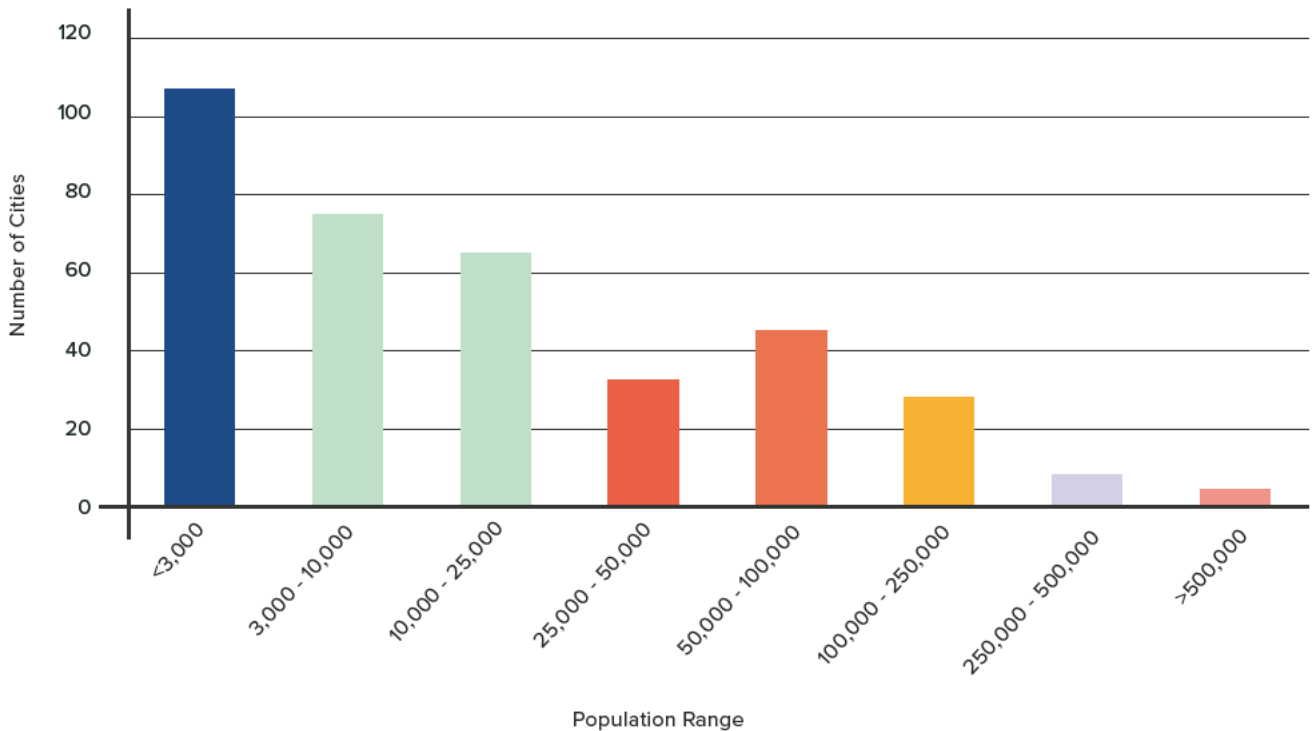
1. This figure is extrapolated from an estimated market of \$2.2 billion in 2015, growing at 3% a year, including general purpose wipes, baby wipes, feminine hygiene wipes, and cosmetic wipes, as reported by Brad Kalil, Director of Market Research and Statistics, INDA, the Association of Nonwoven Fabric Industry, based on Euromonitor International's report, Wipes in the US, and presented at the 2016 World of Wipes Conference in Chicago II June 7-10, 2016.
2. According to INDA's Guidelines for Assessing the Flushability of Disposable Nonwoven Products, as updated in 2018, a product is flushable when it "clears toilets and properly maintained drainage pipe systems...; passes through properly maintained wastewater conveyance systems and is compatible with wastewater treatment, reuse, and disposal systems without causing [problems]; and is unrecognizable in effluent leaving on-site and municipal treatment systems and in digested sludge from wastewater treatment plants..."
3. See: Defining "Flushability" for Sewer Use, Ryerson University, Final Report, prepared for the Municipal Enforcement Sewer Use Group of Canada by Anum Khan, Barry Orr, and Darko Joksimovic, March 31, 2019.
4. For details, see: <https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-2012-report-and-data#access> Note that these data do not contain any entries for collection systems in South Carolina, so cost for that state was estimated based on total population.
5. See, Dieter, C.A., and Maupin, M.A., 2017, Public Supply and Domestic Water Use in the United States, 2015: U.S. Geological Survey Open-File Report 2017-1131, 6 p., <https://doi.org/10.3133/ofr20171131>.
6. See, for example, American Water Works Association, 2019 State of the Water Industry Report, [https://www.awwa.org/Portals/0/AWWA/ETS/Resources/2019\\_STATE%20OF%20THE%20WATER%20INDUSTRY\\_post.pdf](https://www.awwa.org/Portals/0/AWWA/ETS/Resources/2019_STATE%20OF%20THE%20WATER%20INDUSTRY_post.pdf)

# California Addendum

This addendum provides more information about the estimated increased operating costs due to wipes in California communities. The model developed to estimate these costs can be used to complete this type of analysis for any other state.

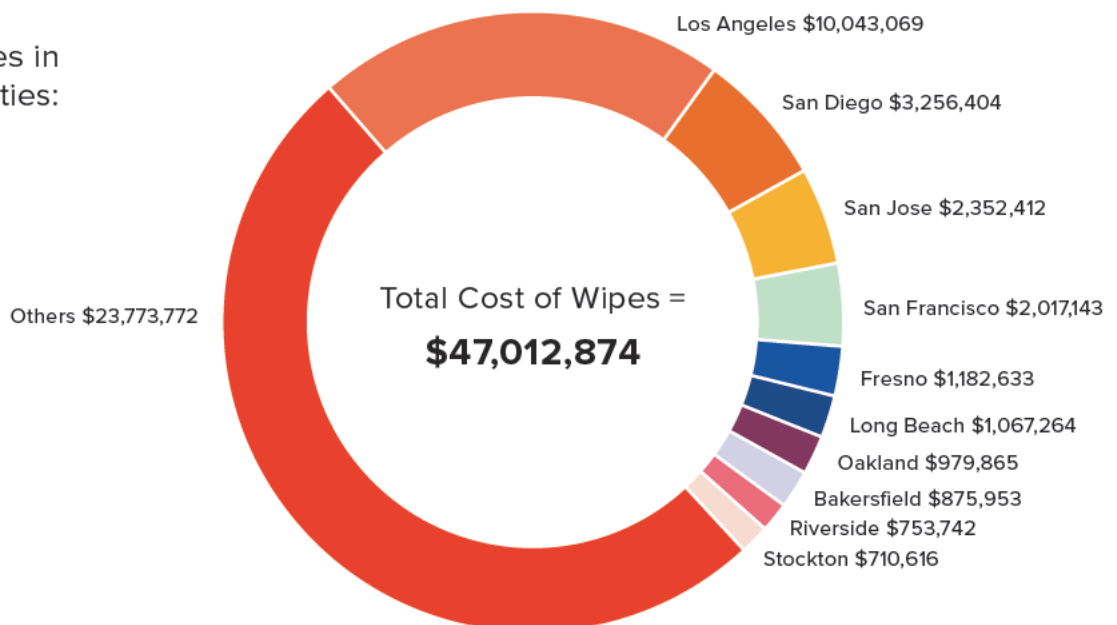
The most recent data show 365 cities in California served by one or more collection systems. These cities are predominantly small, with sewered populations of less than 25,000.

Number of California Cities with Collection Systems by Population Ranges



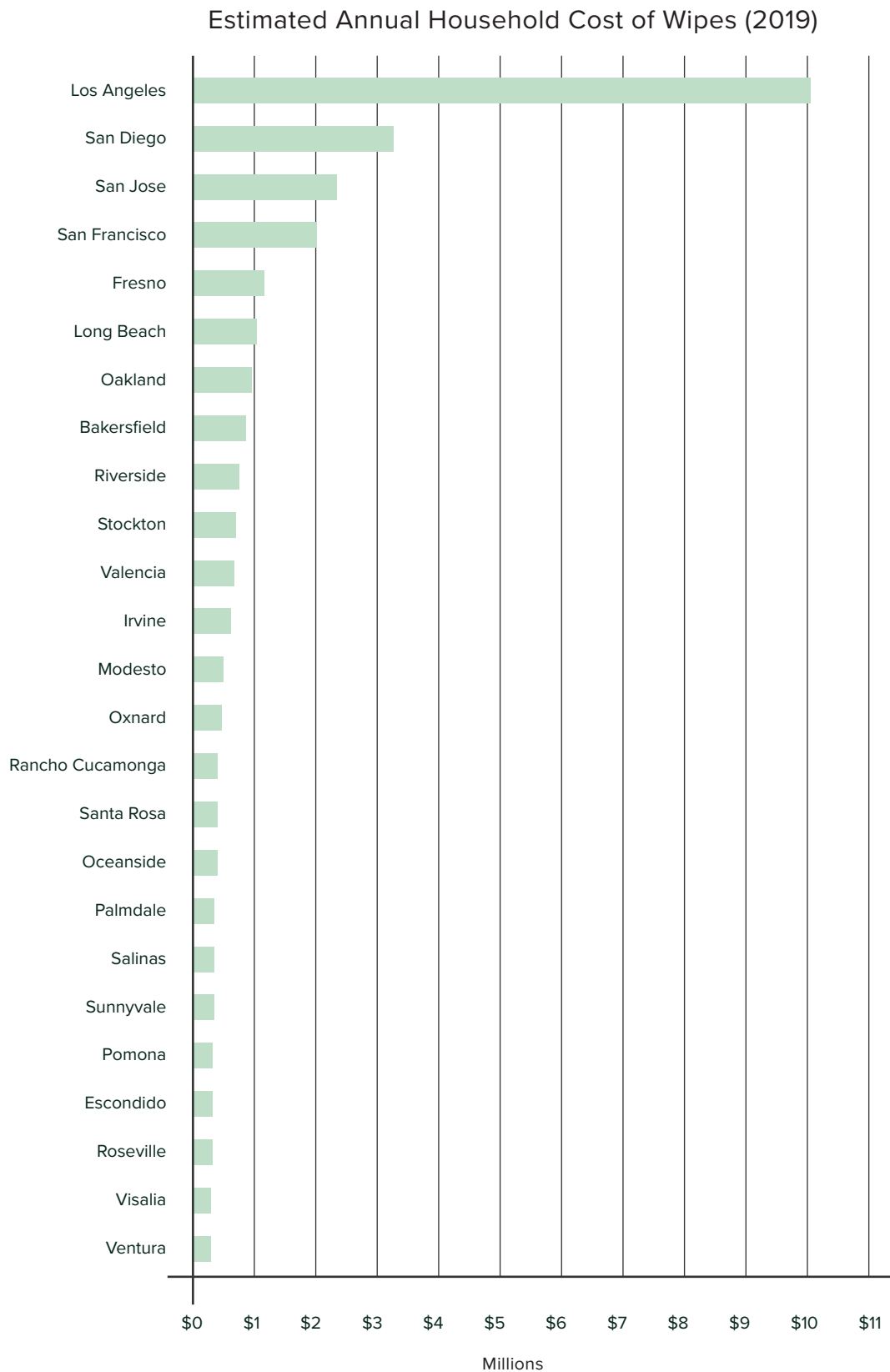
Ten of the largest of these cities account for nearly half of the total cost of wipes for all cities with collection systems in California, \$47,012,874 a year.

Cost of Wipes in California Cities: Top Ten



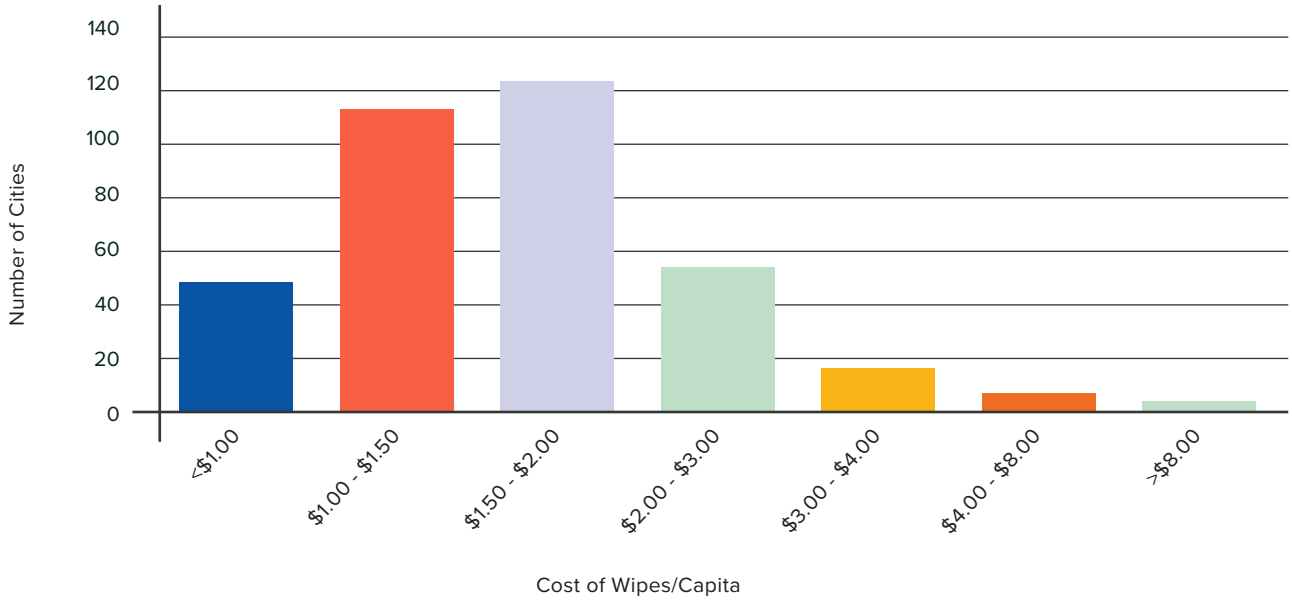


The cost of wipes across these 365 cities ranges from about \$100 a year to about \$9 million a year, with an average cost of wipes of \$129,000 a year. But since there are so many more small and medium sized cities than there are larger ones, the median cost of wipes is much smaller, about \$23,000 a year. The graphic below presents cost of wipes for the top 25 California cities:

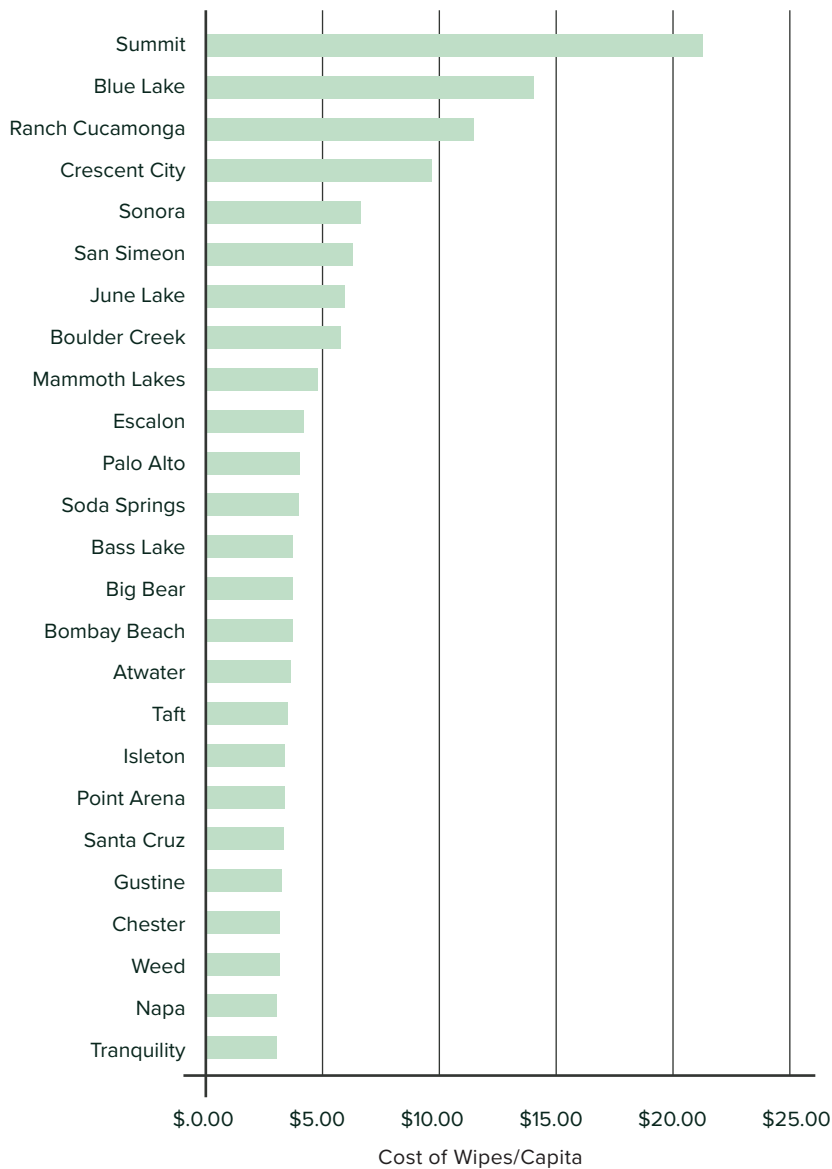


Wipes cost the average individual in California about \$1.85 a year, although that figure varies considerably from city to city, with people in the highest cost city paying \$21.39 a year and those in the lowest cost city paying \$0.23 a year.

## Distribution of Cost of Wipes/Capita Across California Cities



The cost of wipes per capita tends to be higher in smaller cities. In fact, the ten most expensive cities in terms of cost of wipes/capita have populations less than 7,500. With the exception of Palo Alto, Santa Cruz, Atwater, and Napa, the 25 cities with the highest cost of wipes per capita all have populations less than 10,000.



California Cities with the Highest Cost of Wipes/Capita

September 26, 2023

Congressman Gus Bilirakis  
Chairman  
Subcommittee on Innovation, Data,  
and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Congresswoman Jan Schakowsky  
Ranking Member  
Subcommittee on Innovation, Data,  
and Commerce  
2322 Rayburn House Office Building  
Washington, DC 20515

**RE: SEMA Letter in Support of H.R. 906, the REPAIR Act:**

Dear Chairman Bilirakis, Ranking Member Schakowsky, and Members of the Subcommittee,

Thank you to the Subcommittee on Innovation, Data, and Commerce for including [H.R. 906](#), the "Right to Equitable and Professional Auto Industry Repair (REPAIR) Act," in the September 27, 2023, hearing on "Proposals to Enhance Product Safety and Transparency for Americans." SEMA strongly supports the REPAIR Act, a bipartisan bill that protects consumers' rights to decide where and with what parts they can use to repair and maintain their vehicles. The bill provides independent repair shops and aftermarket businesses that produce OEM comparable parts the right to access critical information, tools, and equipment needed to maintain and repair at a fair and reasonable cost. However, it is important that the REPAIR Act is expanded to ensure that it provides similar protections to businesses that manufacture and install parts and equipment that modify or customize vehicles.

SEMA is a non-profit trade association that represents over 7,000 mostly small businesses around the country that manufacture, distribute, and retail specialty parts and accessories for motor vehicles. The specialty automotive aftermarket industry supports over 1.3 million jobs across the U.S. and contributes over \$336 billion to the American economy each year through the production and sale of performance, functional, restoration and styling-enhancement products for use on passenger cars, trucks, SUVs, and special interest collector vehicles. SEMA members market products that enable automotive enthusiasts to personalize the style and upgrade the performance of their motor vehicles, including everything from classic cars to four-wheel drive vehicles to dedicated race cars. Consumers spent over \$52 billion on specialty aftermarket products last year alone.

Modifying and personalizing vehicles is a passion for over 8 million automotive enthusiasts in the United States. Consumers modify their vehicles to improve performance, reliability, and appearance by installing parts and products that interact with the electronic control unit (ECU), On-Board Diagnostics Systems (OBD), and Advanced Driver Assistance Systems (ADAS). SEMA is committed to ensuring that our member companies have the information and vehicle access necessary to manufacture and safely install parts and equipment that accessorizes and customizes vehicles with ADAS. Accordingly, it is imperative that original equipment manufacturer (OEM) data from testing and system calibration is available and able to

accommodate vehicle modifications to maintain the integrity and performance of safety systems after a vehicle has been modified.

SEMA is proud of its capital investments and education programs to help our members and industry businesses produce, sell, and install parts and accessories that enable automotive enthusiasts to modify their vehicles safely. Underscoring this commitment, the association has invested over \$25 million to construct SEMA Garages in California and Michigan that help our member companies manufacture performance products that comply with vehicle emissions standards and safety laws. The SEMA Garage in Plymouth, Michigan, includes a 5,000-plus-square-foot ADAS Technology Center and provides engineering support to members through calibration tools, scanning, and training sessions. The SEMA Garage collects critical ADAS information from vehicles to aid our members in manufacturing safe and compliant aftermarket parts since most auto manufacturers do not provide this information to the industry. The cost of ADAS testing one vehicle make, model, and trim with a single modification can range from \$25,000 to over \$100,000.

Given the growing number of parts and products that interact with a vehicle's computer system, vehicle owners and their repairers of choice need access to vehicle systems and telematics data, which is wirelessly transmitted exclusively to the vehicle manufacturer. Automakers then only provide their authorized dealers with access to this information, which limits consumer choice for vehicle service, repair, and customization. As motor vehicle technology continues to evolve, automotive enthusiasts, aftermarket performance and replacement part manufacturers, installers, and repair businesses must have access to the tools, information, and vehicle systems needed to work on and recalibrate vehicles.

Federal law must ensure a fair and competitive marketplace that protects vehicle owners and the millions of automotive enthusiasts who modify and personalize their vehicles. Eighty-four percent (84%) of Americans agree that you have a right to modify/customize your car and all licensed repair shops should have access to the necessary codes. While the evolution of vehicle technology offers many benefits, it should not be used to reduce competition from independent automotive businesses, nor should it prevent Americans from working on their own vehicles just as they have for over a century.

The bipartisan REPAIR Act would ensure automotive enthusiasts, aftermarket replacement part manufacturers, and repair shops have access to the information and tools needed to maintain and repair vehicles as automotive technology continues to evolve. Independent businesses need access to vehicle repair information to safely, effectively, and cost-efficiently service vehicles. However, access to this information is also important to ensuring that millions of automotive enthusiasts and specialty aftermarket businesses can personalize and modify their vehicles safely.

SEMA strongly supports the REPAIR Act as drafted, but also requests that the bill be expanded to clarify that it protects the right to modify vehicles, ensuring that auto manufacturers cannot employ any technological, legal, or cryptographic barriers that impede the ability of an aftermarket parts manufacturer or a vehicle repair facility to produce or install aftermarket parts and software that are custom, upgrade, or modify a vehicle. SEMA also supports expanding how

the bill defines “critical repair information and tools” to include necessary ADAS recalibrations to return a vehicle to operational specifications.

While ADAS features such as lane departure warning, lane keep assist, forward collision warning, and automatic emergency braking are important safety features that are offered for most new vehicles, they are not currently standardized. Accordingly, automakers are not required to provide information to the aftermarket on the tolerance of this technology. SEMA has committed to helping our members understand how ADAS technology responds after a vehicle has been modified. The REPAIR Act must ensure that automakers are required to provide access to this safety-critical information to ensure that ADAS features operate as designed throughout a vehicle’s lifetime. For example, when a vehicle is modified in a way that impacts where a vehicle’s sensors are pointing (i.e., roll, pitch, and yaw), automakers recommend that a recalibration is performed. However, vehicle manufacturers are not currently required to provide aftermarket businesses with instructions, application guides, proper mounting or functionality windows, or access to make changes outside of the original sensor location/configuration. This presents a challenge to correctly calibrate ADAS and ensure optimal performance after basic modifications, such as installing larger tires and wheels, lift kits, lowering kits, bumpers, grills, push bars, light bars, bike racks, and winches.

It is important that the REPAIR Act compels automakers to provide information and a workable strategy to vehicle owners and their chosen aftermarket providers for accessing the systems (i.e. the code and calibrations in the electronic control modules) so that aftermarket businesses can make the modifications that are necessary to keep vehicles in compliance with safety regulations.

Thank you for taking up the REPAIR Act and your consideration of my comments. I ask members of the committee to support H.R. 906, the REPAIR Act, and expand the bill to ensure it protects vehicle owners' ability to modify and upgrade their vehicles.

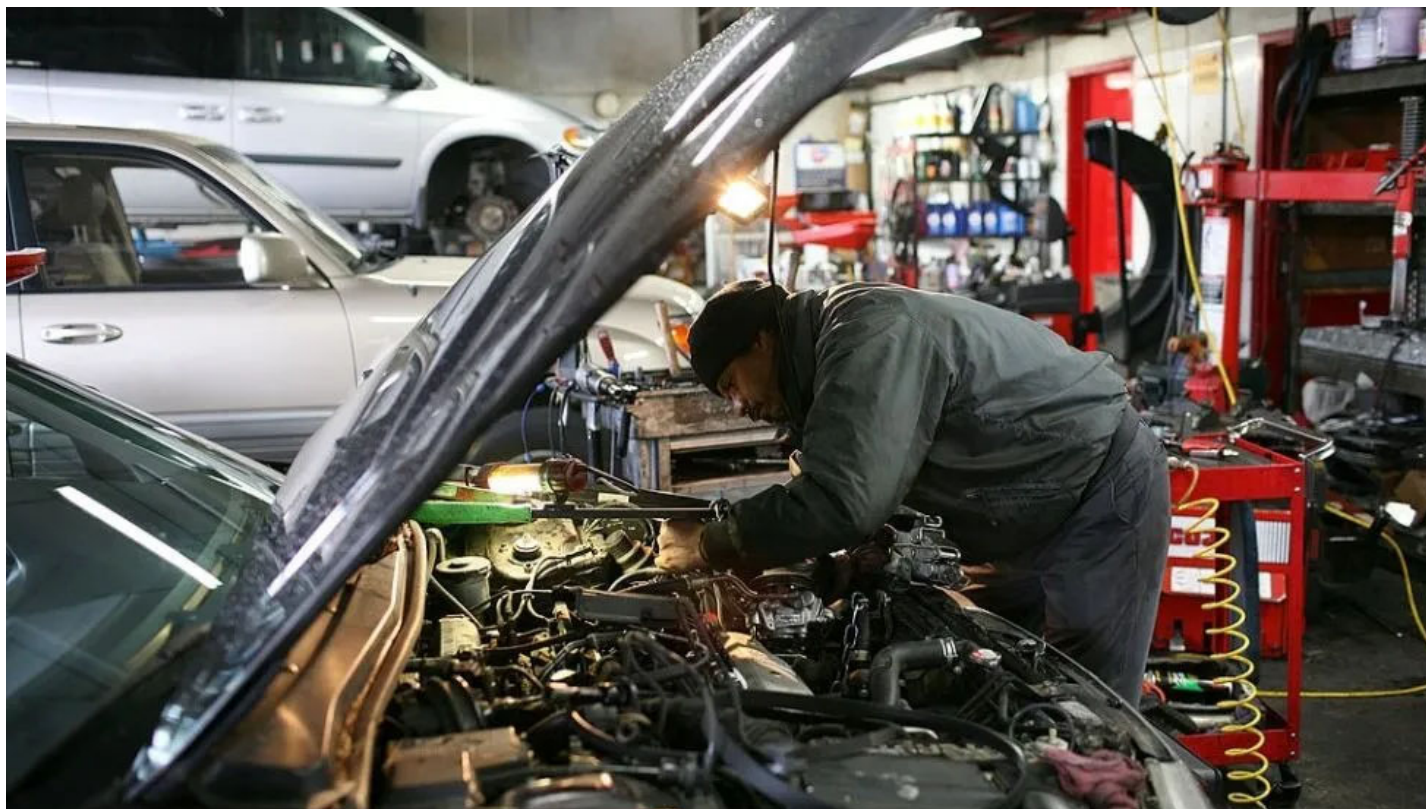
Sincerely,

A handwritten signature in black ink, appearing to read "Mike Spagnola", with a horizontal line underneath.

Mike Spagnola  
President & CEO  
Specialty Equipment Market Association (SEMA)



## REPAIR Act will guarantee the right to safe, affordable and accessible vehicle repair



*Getty Images*

On July 11, a memorandum of understanding (MOU) between vehicle manufacturers and two automotive repair industry groups was released, [detailing an “industry agreement”](#) related to automobile right-to-repair. It is notable that the Alliance for Automotive Innovation omits the size and scope of these two “representatives of the independent repair community” that signed this letter.

More than 30 members of Congress have co-sponsored my bill, [H.R. 906 — the REPAIR Act](#), including original co-sponsors Reps. Marie Gluesenkamp Perez (D-Wash.), Warren Davidson (R-Ohio) and Brendan Boyle (D-Pa.). The Alliance for Automotive Innovation opposes the REPAIR Act, which will empower consumers with options when it comes to vehicle repair.

Vocal supporters of the REPAIR Act, with substantially more representation, did not agree to the stated “renewed commitment” in the MOU, which has no binding mechanism. [REPAIR Act supporters](#) include the Consumer Access to Repair (CAR) Coalition (Allstate, Autozone, Farmers Insurance), Discount Tire, Auto Care Association, Motor & Equipment Manufacturers Association (MEMA), American Motorcyclist Association, and Specialty Equipment Market Association (SEMA), along with automobile and motorcycle enthusiasts across America. Without support from groups representing a majority of employees in aftermarket repair, it is inappropriate to cite this as a “landmark agreement,” which would omit the need for binding action between industries.

Additionally, the stated MOU claims to “affirm a 2014 national agreement on automotive right-to-repair” but excludes the main signatory on that 2014 MOU representing the independent aftermarket, the Auto Care Association. How could the trade association that originally signed the 2014 MOU and still representing hundreds of thousands of businesses around the country not be party to this “landmark agreement?”

All of these groups, representing the vast majority of the independent aftermarket, oppose this MOU as inappropriate for several reasons, not the least of which is that the MOU has no enforcement mechanism. The MOU is voluntary, does not apply to all manufacturers and has no details as to how repair data will be shared in a timely and unrestricted manner.

The reason I introduced the REPAIR Act in the 118th Congress is rooted in the lack of a binding, workable solution to anti-competitive behavior affecting the auto repair industry and consumers alike.

The MOU in question should be seen as a subtle and disguised attempt to dissuade you from recognizing the importance of the REPAIR Act. It is important to recognize the overwhelming support of more than 536,000 businesses that are engaged in the manufacturing, distribution and sale of motor vehicle parts, accessories, tools, equipment and supplies. These businesses provide vehicle service, maintenance and repair for the 292 million registered motor vehicles in our nation.

Moreover, they unanimously affirm that the implementation of the REPAIR Act is the sole means to ensure and safeguard consumer choice within the vehicle repair industry. I reaffirm the overdue need to pass the REPAIR Act, and the public is demanding action from this Congress that guarantees their right to safe, affordable and accessible vehicle repair. My colleagues should recognize that this MOU will not have a lasting effect on a mounting antitrust and consumer choice problem.

If the original equipment manufacturers can control the fate of the car, they own it, not you. It’s a lease, not a sale.

*Dr. [Neal Dunn](#) represents the 2nd District of Florida, which includes all or part of 19 counties in North Florida. He serves on the House Energy and Commerce Committee.*

# Auto Care Service and Retail Outlets

Traditionally, auto care parts, accessories and chemicals have moved through dedicated channels of distribution along do-it-yourself (DIY) and do-it-for-me (DIFM) channels. DIY retail consumers install or consume products purchased in retail outlets or over-the-counter at parts stores. DIFM consumers go straight to a professional automotive technician, purchasing the “job,” in which they also entrust their technician to select and purchase their part or products. In some cases, DIFM parts and products may be specified directly by the consumer for installation by a professional.

The number of total service facilities has increased in recent years, most notably from 2020 to 2021. However, specialty repair shops have seen the largest reduction. Over the past decade, many specialty repair shops have been consolidated into the general repair category, which has grown incrementally over the past several years. Motor vehicle dealer and tire dealer counts increased incrementally from 2021 to 2022.

Retail store counts increased incrementally in 2022 based on using Q4 2021 data as a proxy for 2022 since retail channel outlet data are not available for that year.

## Industry Service Channel Outlets

Outlet Type	2014	2015	2016	2017	2018	2019	2020	2021	2022	CAGR 2014/2022
Motor Vehicle Dealers <sup>1</sup>	16,396	16,545	16,708	16,812	16,753	16,741	16,623	16,676	16,773	0.3%
General Repair Garages <sup>2</sup>	79,240	79,500	80,066	80,225	81,106	81,678	82,454	83,572	85,424	0.9%
Tire Dealers <sup>3</sup>	19,931	19,818	19,863	20,016	20,300	20,299	20,327	20,410	20,424	0.3%
Specialty Repair Shops <sup>3</sup>	7,534	7,322	7,001	6,747	6,420	6,150	6,137	5,834	5,795	-3.2%
Gasoline Stations <sup>3</sup>	104,688	104,961	104,887	105,628	106,466	106,430	107,018	108,148	108,679	0.5%
Oil Change and Lubrication Shops <sup>2</sup>	7,368	7,354	7,449	7,354	7,311	7,276	7,305	7,516	7,693	0.5%
Independent Body Shops <sup>2</sup>	34,381	34,510	34,654	34,629	34,883	35,006	35,053	35,136	35,414	0.4%
<b>Total Number of Outlets</b>	<b>269,538</b>	<b>270,010</b>	<b>270,628</b>	<b>271,411</b>	<b>273,239</b>	<b>273,580</b>	<b>274,917</b>	<b>278,532</b>	<b>280,202</b>	<b>0.5%</b>

Notes: Historical data have been revised. Some channels listed in the “Industry Retail Channels” table include outlets that also perform automotive service.

Sources: <sup>1</sup> NADA Industry Analysis Division <sup>2</sup> Bureau of Labor Statistics, 3Q2022 <sup>3</sup> Bureau of Labor Statistics, 4Q2021

## Industry Retail Channel Outlets

Outlet Type	2014	2015	2016	2017	2018	2019	2020	2021	2022*	CAGR 2014/2022
Auto Parts Stores	36,444	36,453	36,622	36,896	37,103	37,217	37,405	37,843	38,059	0.5%
Department Stores	4,758	4,683	4,665	4,647	4,629	4,611	n/a	n/a	n/a	n/a
Discount Stores	10,188	10,481	10,437	10,389	10,234	10,081	n/a	n/a	n/a	n/a
Hardware Stores and Home Centers	24,522	24,423	24,443	24,165	24,075	24,025	23,830	24,035	24,180	-0.2%
Grocery and Convenience Stores	119,014	119,054	119,324	119,499	119,985	120,069	122,260	124,107	125,530	0.7%
Drug Stores	62,300	62,916	63,697	63,441	64,193	63,989	64,136	64,576	64,757	0.5%
Warehouse Clubs	5,827	5,972	6,073	6,176	6,281	6,388	6,222	n/a	n/a	n/a
<b>Total Number of Outlets</b>	<b>263,053</b>	<b>263,982</b>	<b>265,261</b>	<b>265,213</b>	<b>266,500</b>	<b>266,380</b>	<b>253,853</b>	<b>250,561</b>	<b>252,526</b>	

n/a = Not available.

Notes: \* As of Q4 2021 – data for 2022 not available. Historical data have been revised. Not all department, hardware, home center, grocery, convenience, drug and warehouse club stores sell automotive products.

Sources: Auto Care Association, Bureau of Labor Statistics



# Auto Care Service and Retail Outlet Analysis

Average sales per outlet have been calculated using the channel sales on p. 14 and the number of outlets on p. 17. These channels continued to grow considerably in 2022, partly because of inflation. They are presented in descending order of four-year compounded average annual growth rates (CAGRs) from 2018-2022.

## Auto Parts and Accessories Stores

Year	Sales* (NAICS 441310)	No. of Outlets	Avg. Sales Per Auto Parts Store	YOY Change
2018	\$36,007,630,000	37,103	\$970,478	3.4%
2019	\$37,040,306,300	37,217	\$995,252	2.6%
2020	\$38,401,995,344	37,405	\$1,026,654	3.2%
2021	\$43,040,436,572	37,843	\$1,137,342	10.8%
2022**	\$47,161,009,918	38,059	\$1,239,155	9.0%
4-yr CAGR			6.3%	

## Oil Change and Lubrication Shops

Year	Sales (NAICS 811191)	No. of Outlets	Avg. Sales Per Oil and Lube Shop	YOY Change
2018	\$5,676,475,664	7,311	\$776,429	4.1%
2019	\$5,899,022,866	7,276	\$810,751	4.4%
2020	\$5,699,003,542	7,305	\$780,151	-3.8%
2021	\$6,257,132,247	7,516	\$832,508	6.7%
2022***	\$6,993,585,732	7,693	\$909,084	9.2%
4-yr CAGR			4.0%	

## Motor Vehicle Dealers

Year	Sales (NAICS 441110)	No. of Outlets	Avg. Sales Per Vehicle Dealer	YOY Change
2018	\$82,682,216,070	16,753	\$4,935,368	4.4%
2019	\$86,465,779,423	16,741	\$5,164,911	4.7%
2020	\$80,593,591,111	16,623	\$4,848,318	-6.1%
2021	\$93,472,223,953	16,676	\$5,605,195	15.6%
2022	\$103,210,544,060	16,773	\$6,153,374	9.8%
4-yr CAGR			5.7%	

## Automotive Independent Body Shops

Year	Sales (NAICS 811121)	No. of Outlets	Avg. Sales Per Body Shop	YOY Change
2018	\$38,228,285,760	34,883	\$1,095,900	4.1%
2019	\$40,226,722,410	35,006	\$1,149,138	4.9%
2020	\$34,969,255,239	35,053	\$997,611	-13.2%
2021	\$39,630,852,753	35,136	\$1,127,927	13.1%
2022***	\$44,326,102,553	35,414	\$1,251,655	11.0%
4-yr CAGR			3.4%	

## General Repair Garages

Year	Sales (NAICS 811111)	No. of Outlets	Avg. Sales Per Gen. Rep. Garage	YOY Change
2018	\$41,274,208,640	81,106	\$508,892	2.5%
2019	\$43,041,489,194	81,678	\$526,966	3.6%
2020	\$41,747,267,823	82,454	\$506,310	-3.9%
2021	\$46,353,699,966	84,318	\$549,749	8.6%
2022***	\$51,108,362,141	85,424	\$598,290	8.8%
4-yr CAGR			4.1%	

Notes: (\*) Auto parts and accessories store sales include only those sales to the general public. (\*\*) Outlets based on Q4 2021. (\*\*\*) Outlets based on Q3 2022. Historical data have been revised.