



Statement  
of the  
National Association of Mutual Insurance  
Companies  
to the  
House Judiciary Committee Subcommittee on  
Courts, Intellectual Property, and the Internet  
Hearing Entitled  
**“Is There a Right to Repair?”**  
July 18, 2023

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the House Committee on the Judiciary Subcommittee on Courts, Intellectual Property, and the Internet regarding today's hearing: "Is there a Right to Repair?"

NAMIC membership includes more than 1,500 member companies. 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 \$323 billion in annual premiums and our members account for 67 percent of homeowners, 55 percent of automobile, and 32 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 the Subcommittee on Courts, Intellectual Property, and the Internet and Chairman Issa for holding today's important hearing on the right to repair, unfair repair restrictions, and solutions that will enhance consumer choice in the marketplace and reduce 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.

This hearing is timely, as the most recent Consumer Price Index Report<sup>1</sup> showed that the cost of vehicle repairs is up 20 percent since May 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 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/cpi.t02.htm>

<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>

In the face of these daunting challenges and cost pressures, NAMIC members continue to play an essential role 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 a major contributor to the higher costs to consumers. “Right-to-repair” initiatives are critical in reducing crash repair costs, which are 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 with increased cost in that market, parts manufacturers and some body shops are the only ones who benefit from artificial repair restrictions that maximize the prices of parts and labor.

One of these initiatives, which is being discussed today, 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 (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. Responding to anecdotal allegations of safety concerns with aftermarket parts, former IIHS President Brian O’Neill once went as far as to say that “the safety claims are red herrings to try to frighten people.”<sup>9</sup>

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. The financial implications for consumers are no small matter: while the amount of savings differs by the type of vehicle and the type of part, by offering up to 50% lower-cost alternatives to OEM parts, competitive pressure from aftermarket parts manufacturers has also forced OEMs to reduce prices as much as 23% in some instances.<sup>10</sup> One study by the Quality Parts Coalition found that for the top 100 collision repair parts used by consumers from 2009 to 2014, Americans saved \$363 million by

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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>

<sup>9</sup> IIHS “Cosmetic Repair Parts Irrelevant to Safety” Status Report, Vol, 35(2), February 19, 2000.

<sup>10</sup> Sarnoff, Joshua. “Protecting the Consumer Patent Law Right of Repair and the Aftermarket for Exterior Motor Vehicle Repair Parts: The SMART Act, H.R. 1879, 117<sup>th</sup> Congress.” (September 2022)

using independent parts rather than OEM parts.<sup>11</sup> As a result, the cost of all cosmetic crash repair parts is significantly less than if aftermarket parts were absent from the marketplace.<sup>12</sup> This cost containment by market forces also reduces the overall cost of auto insurance for consumers, and can even prevent vehicles from being considered a total loss – a worst case scenario for consumers.

### **Consumer Choice**

Conversations about aftermarket parts are fundamentally rooted in the broader concept of a right to repair, 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 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 authorization 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 is 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 – this staggering number is both a result and an endorsement of consumer choice.<sup>13</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 experience an automobile crash can make informed decisions about how their vehicles should 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 stocked 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 for

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<sup>11</sup> Quality Parts Coalition: [Price Analysis](#) 2019

<sup>12</sup> Lawrence S. Powell, Kathleen McCullough, Patrick Maroney, and Cassandra Cole "Consumer Choice in Auto Repair: The Politics and Economics of Automobile Insurance Repair Practices." [www.namic.org/pdf/101001AutoRepairPractices.pdf](http://www.namic.org/pdf/101001AutoRepairPractices.pdf)

<sup>13</sup> Congressman Bobby Rush press release, Feb 3, 2022.

consumers, it is critical to think about this data and the importance of consumers to have 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.

### **The Importance of the SMART Act**

For nearly two decades, automobile manufacturers have been seeking to abuse design patents to eliminate competition in the auto repair parts marketplace. Specifically, several car companies have been applying for and receiving design patents, not just on the overall design of the car which they have always done, but also on each individual, exterior, collision repair part.<sup>14</sup> To the extent these efforts to monopolize repair parts markets through patent applications are successful, many have subsequently been found deficient or unenforceable in federal courts or by the International Trade Commission, but more recently others have received deference through inconsistent judicial interpretation of patent laws.<sup>15</sup> Monopolizing the market for parts used in a repair is predictably part of what is causing auto repair costs to skyrocket today, placing additional financial stress on consumers at a time when they can least afford it. The FTC's 2021 "Nixing the Fix" report to Congress specifically pointed out that "the misuse of design patents on repair parts to block competition from producing equivalent parts is creating an environment with less competition and a significant pricing increase in the marketplace."<sup>16</sup>

Chairman Issa's narrowly tailored, bipartisan legislation, the Save Money on Auto Repair Transportation, or SMART Act, solves this problem and restores consumer rights. The legislation would reduce the current 14-year window down to 30-months for car companies to enjoy exclusivity for the sale of crash parts – too big of a window would destroy the pricing benefits and economies of scale for the aftermarket manufacturers and distributors. The 30-month "shot-clock" on the car company's period of monopoly would begin "ticking" as soon as a particular car model containing the design-patented part at issue is introduced anywhere in the world. Moreover, the proposal would specify that an act of infringement would be the public sale of the part, not the manufacturing or pre-sale distribution. Thus, it would allow for the manufacturing and stockpiling of parts even during the 30-month period. Importantly, nothing in the legislation will prevent a car company from obtaining design patents for its crash parts and enforcing them against other car companies in the primary market for a full 14 years.

It is equally important to talk about what the SMART act would *not* do, contrary to some assertions. It would not deprive OEMs of the ability to prevent competition from other OEMs, nor would it interfere with

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<sup>14</sup> Quality Parts Coalition: [Design Patents Chart 2017](#)

<sup>15</sup> Specifically, the 2019 *Auto Body Parts Ass'n v. Ford Glob. Techs., LLC*, 930 F.3d 1314 (Fed. Cir. 2019) case appears to have shifted the interpretation of design patent subject matter eligibility and functionality.

<sup>16</sup> Federal Trade Commission, [Nixing the Fix: An FTC Report to Congress on Repair Restrictions](#), May 2021

legitimate innovation incentives to develop new part designs, some of which will certainly benefit consumers. What it will do is make sure that the consumer who buys the car containing patented parts can restore it as they see fit once the exclusivity period has concluded. The SMART act will also not compromise consumer safety. The notion that supporting a broader market for cosmetic exterior parts equates to advocating for the sacrifice of safety is an unsubstantiated and false one – insurers in particular would not endorse a bill that jeopardizes our policyholders' safety. As was noted above, the IIHS has previously and continues to study whether cosmetic exterior parts like fenders, quarter panels, door skins, bumper covers, or trim alter crash tests results – those ongoing studies continue to find that they do not.

Finally, this legislation is especially important as the average age of a vehicle on the road in 2023 is more than 12 years, a number that has increased by 3 years over the past two decades. The growing lifespan of automobiles, combined with their extreme expense noted at the outset, increases the need for accessible, affordable, and reliable repair parts to be made available to vehicle owners in a reasonable and timely fashion. In a universe where typical OEM warranties expire after 3 years or 36,000 miles, the overwhelming majority of cars on our roads are not covered by such warranties, exacerbating the importance of cost-efficient alternative repair parts both for current owners and even for would-be purchasers of used vehicles. There is particularly little appeal to the investment or cost-saving purchase of a used vehicle if a consumer ends up right back in a monopolistic dealer's repair bay, where higher prices are charged because of the absence of real competition.

### **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, at least where cosmetic crash repair parts are concerned, will undoubtedly alleviate some of those pressures for the more than 230 million licensed American drivers on the road today. Momentum is building, as we can see from actions at the local, state, and federal level. The SMART Act is common sense legislation that will give consumers more options during vehicle repair, making the market more competitive, and reducing costs to consumers at an important time.