

Date of Hearing: June 26, 2000

ASSEMBLY COMMITTEE ON TRANSPORTATION
Tom Torlakson, Chair
SB 1146 (Burton) - As Amended: June 21, 2000

SENATE VOTE : 34 - 6

SUBJECT : Motor vehicles: pollution control devices

SUMMARY : Requires the California Air Resources Board (ARB) to adopt regulations to require motor vehicle manufacturers to disclose general information for the repair or manufacture of emissions-related motor vehicle parts to any person licensed to engage in such functions. Specifically, this bill :

- 1) Finds and declares that recent emissions standards adopted and implemented by ARB for motor vehicles have resulted in the development of on-board diagnostic (OBD) computers that interface with the components of the vehicle's emission control system.
- 2) Finds that service, repair, and parts and tools information for interfacing with a vehicle's on-board diagnostic computer system may not be readily available to independent automotive repair technicians and facilities, which may result in a decreased number of independent service providers and an increase in costs to the consumer.
- 3) Defines "covered person" as any person licensed by the Bureau of Automotive Repair (BAR) to engage in the business of service or repair of motor vehicles, or any person who engages in the business of manufacturing or remanufacturing of emissions-related motor vehicle parts.
- 4) Provides definitions for the following technical terms: emissions-related motor vehicle part, enhanced information, Emissions-Related Motor Vehicle Information, Bi-directional Control, and data stream information.
- 5) Requires motor vehicle manufacturers to make available within a reasonable period of time, by reasonable business means as determined by ARB, and at a nondiscriminatory price, the full contents of all manuals, technical service bulletins, and training materials regarding emissions-related motor vehicle

information that are made available to their franchised dealerships.

- 6) Requires motor vehicle manufacturers to make available for sale to all covered persons the manufacturers' enhanced diagnostic tools, and make enhanced data stream information and bi-directional controls related to tools available in electronic format to the equipment and tool companies.
- 7) Requires motor vehicle manufacturers who use reprogrammable computer chips in their vehicles to provide equipment and tool companies with the information provided to dealerships so that these companies can incorporate into aftermarket tools the same reprogramming capability.
- 8) Requires motor vehicle manufacturers to make available, within a reasonable period of time, to all covered persons a general description of their onboard diagnostic systems for

the 1996 and subsequent model years, consisting of specified information for each monitoring system that illuminates the OBD malfunction indicator light.

- 9) Prohibits a manufacturer from using any access or recognition code or any type of encryption for the purposes of preventing a vehicle owner from using an emissions related motor vehicle part that has not been manufactured by that manufacturer or any of its original equipment suppliers, with the exception of the emissions-related on board computers.
- 10) Requires motor vehicle manufacturers to provide information to unspecified persons regarding initialization procedures relating to immobilizer circuits or other lock-out devices to reinitialize vehicle on-board computers that employ integral vehicle security systems if necessary to repair or replace an emissions-related part for proper installation of vehicle on-board computers that employ integral vehicle security systems.
- 11) Requires that all necessary information provided to any covered persons must be provided in a format that is readily accessible to all covered persons, as determined by ARB.
- 12) Provides that any information that can be demonstrated to a court, on a case by case basis, to be a trade secret pursuant to the Uniform Trade Secret Practices Act (Act) shall be

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exempt from disclosure, unless the court, at the request of a covered person seeking disclosure of the information, determines that disclosure of the information is necessary to mitigate anticompetitive effects. In making its determination, the court must consider, among other things, the practices of any motor vehicle manufacturer that results in the fullest disclosure of information.

- 14) Requires the court to preserve the secrecy of a trade secret by any reasonable means.
- 15) Provides that if information is required to be disclosed, the court shall:
 - a) Allow for the imposition of reasonable business conditions and may include punitive sanctions for the improper release of information determined to be a trade secret to competitors of the manufacturer;
 - b) Provide for fair and reasonable compensation to the manufacturer for the disclosure of such information;
 - c) Provide for the dissemination of trade secret information required to be disclosed through licensing agreements and the collection of reasonable licensing fees; and
 - d) Hold a jury trial, if the court determines that disclosure of such information constitutes a taking of personal property, to determine the amount of compensation for the taking, unless waived by the motor vehicle manufacturer.
- 15) Requires ARB to conduct surveys periodically to determine whether the information requirements in this bill are being fulfilled by actual field availability of the information.
- 16) Requires the executive officer of ARB to issue a notice of warning to manufacturers who have failed to comply with any of the above requirements or the regulations adopted by ARB. The manufacturer may request a hearing to contest the notice of violation.

17) Requires ARB to impose a civil penalty of up to \$25,000 per day per violation if, after a hearing, ARB finds that the

manufacturer has failed to comply.

18) Authorizes ARB to provide additional time for compliance prior to imposing a fine if ARB declares that the violation cannot be remedied within 30 days of finding that a violation has occurred.

19) Requires the Department of Consumer Affairs (DCA), in coordination with ARB and BAR, to report annually to the Legislature, until the year 2009, the effectiveness of this bill in furthering the intent of this policy.

EXISTING FEDERAL LAW :

1) Requires the Environmental Protection Agency (EPA) to mandate and regulate the installation of OBDs in all new cars beginning with the 1994 model year in order to monitor, control, and record emissions released by automobile engines.

2) Requires manufacturers to make available to the aftermarket any and all information needed to make use of the OBD system and other such information, including instructions for making emission-related repairs, excluding trade secrets.

a) The scope of the information provided includes the direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicle engines.

b) Information for making emission-related diagnosis and repairs does not include information used to design and manufacturer parts, but may include manufacturer changes to internal computer calibrations. Such information need only be provided to the extent that it is provided to the manufacturer's dealerships.

3) Requires all information made available in this section be made available at a fair and reasonable price.

4) Provides for the protection of intellectual property through the federal Patent Act and the federal Copyright Act, which includes the Semiconductor Chip Protection Act.

EXISTING STATE LAW :

1) Authorizes ARB to adopt and implement emission standards for new motor vehicles to control vehicle emissions.

2) Requires the use of OBDs, and requires that prior to selling any new car or new car engine, automobile manufacturers must obtain certification from ARB that the car and engine comply with the state's OBD requirements.

3) Provides for specific tampering protection and requires that the computer-coded engine operating parameters not be

changeable without the use of specialized tools and procedures in order to prevent tampering with vehicle emissions.

4) Provides for the protection of a "trade secret" (trade secret information includes, among other things, formula, patterns, compilations, programs, devices, methods, techniques, and processes), defined as information that:

- a) Has independent economic value;
- b) Is not generally known in the industry, to the public, or to others who can realize economic value from its disclosure or use; and
- c) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

FISCAL EFFECT : Unknown

COMMENTS : Beginning in 1994, regulations required the phased in use of OBD computers in new vehicles. OBD computers monitor, control, and record emissions released by automobile engines and also store information about emissions system faults. OBDS warn drivers of problems through "check engine" lights placed on the dashboards of new vehicles. These "check engine" lights come on when there is an engine malfunction. When the light is activated, trouble codes indicating the source of the problem are stored in the vehicle's computer, and can assist service personnel in diagnosing and fixing the problem. OBDS are used to help California reduce air pollution caused by motor vehicles.

By 1996, all new vehicles were required to be equipped with OBD

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computers and as part of this, the OBD was equipped with an anti-tampering device. Because most new vehicles are under warranty for at least three years and thus serviced at the dealer, aftermarket service providers are just now beginning to see these vehicles. Aftermarket service providers and manufacturers are those who service vehicles after the vehicles are purchased. This includes makers of replacement parts and those, separate of the dealer, who repair vehicles. Over 70% of all vehicle owners take their vehicles to an independent aftermarket service provider after the warranty expires.

Federal law requires that all information necessary to use the OBD system and to make emission-related diagnosis and repair be shared with independent parts makers and service providers in addition to the manufacturer's dealers, but does not require unrestricted access to electronic information stored in the OBD computer. However, both EPA and ARB have indicated that some independent service providers are having difficulty obtaining the information and equipment necessary to diagnose emission-related problems in vehicles and ultimately to service the vehicle. Some contend that even when information is provided, it is not necessarily easily accessible or user friendly.

The impact of OBDS on independent service and parts providers are currently minimal. The supporters assert that the independent repair industry stands to lose \$49 billion in revenues through the year 2008 once the warranties expire. Many independent repair and parts providers could go out of business, leaving consumers with fewer choices. Supporters note that new vehicle dealers traditionally charge 20% more for repairs, and as the market becomes less competitive, consumers are estimated to experience repair cost increases totaling \$17 billion through the year 2008.

According to supporters, this bill is necessary to ensure a competitive market and to give consumers the option of choosing

an independent repair facility rather than the dealer for repairs. Supporters argue that the anti-tampering device on the OBD has effectively locked-out the aftermarket service and part provider, making it difficult to diagnose problems with the vehicle, to repair the vehicle, and to manufacture the appropriate parts for the vehicle. Supporters of the bill believe that access to the information contained in the OBD is necessary to service and repair vehicles and to manufacture and

rebuild aftermarket parts.

Both supporters and opponents agree that changes need to be made to the laws regulating the provision of service and repair information to the aftermarket industry. With the previous version of the measure, opponents argued that the additional information that manufacturers would be required to disclose under the bill actually constituted proprietary and trade secret information. According to opponents, the supporters of this bill have tried unsuccessfully for many years to force manufacturers to turn over their intellectual property so competitors can more easily and cheaply make aftermarket parts.

The measure has since been amended to accommodate the major concerns of all but one of the opponents. Rather than requiring explicit information, the measure allows manufacturers to provide general information and parameters instead of specific details. Manufacturers would still have the ability to contest any required disclosure directly in court without having to go through ARB. The remaining opposition, General Motors Corporation, contends that the bill will still result in costly litigation.

The supporters claim that the information required by the measure may still fall short of alleviating all the difficulties and concerns faced by independent service and parts providers, but they hope that this measure will at least set uniform disclosure standards in the industry. Ford Motor Company currently provides much of the information required by independent service and parts providers. This measure will ensure that other auto manufacturers will, at a minimum, adopt similar practice.

Amendments : The author or committee may wish to specify to whom manufacturers must provide the information required in subdivision 6 of section 4.

REGISTERED SUPPORT / OPPOSITION :

Support

Automotive Repair Coalition
California Automotive Wholesalers' Association
California Consumer Choice
California Retailers Association

Consumer Federation of California
Consumers for Auto Reliability and Safety

Opposition

General Motors Corporation

