

# Senate Bill 948

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Declares that data used to diagnose, maintain or repair motor vehicles that is created, collected or contained in motor vehicle is exclusively owned by motor vehicle owner. Requires manufacturer of motor vehicle to make tools, information, training information, software and wireless capabilities and any other means to activate, code or program electronic controls, and modules used to diagnose, maintain or repair motor vehicle, available to owner, owner's designee and vehicle repair shop.

Creates cause of action against manufacturer for violation. Allows award of attorney fees and costs. Imposes civil penalty for violation.

## A BILL FOR AN ACT

1  
2 Relating to data in motor vehicles.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 7 of this 2011 Act:**

5 (1) **"Data" means information created, collected or contained in a computer, module or**  
6 **other device that is part of a motor vehicle and that is used to diagnose, maintain or repair**  
7 **the motor vehicle.**

8 (2) **"Franchisee" has the meaning given that term in ORS 650.120.**

9 (3)(a) **"Manufacturer" means an individual, corporation, partnership, association, limited**  
10 **liability company or other business entity that manufactures or assembles motor vehicles**  
11 **which, when completed, are owned by the manufacturer.**

12 (b) **"Manufacturer" does not include a manufacturer that sold less than 200 new motor**  
13 **vehicles through one or more franchisees in this state in the previous calendar year.**

14 (4) **"Motor vehicle" means a self-propelled device that is used to transport persons or**  
15 **property upon a public highway and that is primarily manufactured for personal, family or**  
16 **household purposes.**

17 (5)(a) **"Owner" means a person with legal authority or apparent legal authority to make**  
18 **decisions concerning the maintenance or repair of a motor vehicle.**

19 (b) **"Owner" does not include a lessor or a financial institution that has an ownership**  
20 **interest in a motor vehicle exclusively as a result of providing financing for the purchase or**  
21 **lease of the motor vehicle.**

22 (6) **"Owner's designee" means a person who has received permission from the owner of**  
23 **a motor vehicle to make decisions concerning the repair or maintenance of the motor vehicle**  
24 **and who has expressly or impliedly been given the owner's consent to retrieve or use data**  
25 **created, collected or contained in the owner's motor vehicle.**

26 (7) **"Trade secret" has the meaning given that term in ORS 646.461.**

27 (8) **"Vehicle repair shop" has the meaning given that term in ORS 646A.480.**

28 **SECTION 2. Except as provided in ORS 105.925 to 105.945:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (1) Data is exclusively owned by the owner of the motor vehicle from which the data was  
2 created or collected or in which it is contained, and may not be retrieved or used by a person  
3 other than the owner of the motor vehicle without the consent of the owner.

4 (2) If a motor vehicle is owned by more than one person, only one of the owners must  
5 consent to the retrieval or use of the data to diagnose, maintain or repair the motor vehicle.

6 (3) Data collected by the motor vehicle from outside sources using the Internet or other  
7 technologies for exchanging information and that is used for purposes other than to diag-  
8 nose, maintain or repair a motor vehicle is not owned by the owner of the motor vehicle.

9 **SECTION 3.** (1) A manufacturer shall make available to an owner, an owner's designee  
10 and a vehicle repair shop located in this state the tools, information, training information,  
11 software and wireless capabilities and any other means to activate, code or program the  
12 electronic controls and modules used to diagnose, maintain or repair a motor vehicle, in-  
13 cluding but not limited to the same tools, information, training information, software and  
14 wireless capabilities and any other means that are made available to the manufacturer's  
15 franchisees in this state to activate, code or program the electronic controls and modules  
16 used to diagnose, maintain or repair a motor vehicle.

17 (2) The manufacturer shall make the tools, information, training information, software  
18 and wireless capabilities and any other means provided under subsection (1) of this section  
19 available to an owner, an owner's designee and a vehicle repair shop in this state on a  
20 nondiscriminatory basis when compared to the terms and costs upon which the manufac-  
21 turer makes these data available to a vehicle repair shop that is owned by the manufacturer  
22 or the manufacturer's franchisee.

23 **SECTION 4.** (1) An owner, owner's designee or a vehicle repair shop in this state that  
24 has suffered any ascertainable loss as a result of a manufacturer's violation of any provision  
25 of sections 1 to 7 of this 2011 Act shall have a cause of action against the manufacturer.

26 (2) If an owner, owner's designee or vehicle repair shop prevails in an action brought  
27 pursuant to subsection (1) of this section, the court may award reasonable attorney fees and  
28 costs to a prevailing owner, owner's designee or vehicle repair shop.

29 (3) The remedy provided in this section is in addition to any other remedy, civil or  
30 criminal, that may be available under any other provision of law.

31 **SECTION 5.** (1) In addition to any other liability or penalty provided by law, the Director  
32 of the Department of Consumer and Business Services may impose a civil penalty on a per-  
33 son for violation of a provision of sections 1 to 7 of this 2011 Act.

34 (2)(a) The director shall impose a civil penalty under this section in the manner provided  
35 in ORS 183.745.

36 (b)(A) The civil penalty may not exceed \$1,000 for each violation.

37 (B) In the case of a continuing violation:

38 (i) Each day that the violation continues is a separate violation.

39 (ii) The total of all civil penalties may not exceed \$50,000.

40 (c) All penalties recovered under this section shall be paid into the State Treasury and  
41 credited to the General Fund and are available for general government expenses.

42 **SECTION 6.** (1) Sections 1 to 7 of this 2011 Act may not be construed to abrogate, in-  
43 terfere with, contradict or alter the relationship between a manufacturer and a franchisee,  
44 including but not limited to a provision that a franchisee has the exclusive right to diagnose  
45 or repair a motor vehicle under a manufacturer's written warranty or recall repair work.

1       **(2) Any provision in an agreement between a manufacturer and a franchisee that waives,**  
2 **avoids, restricts or limits a manufacturer’s compliance with sections 1 to 7 of this 2011 Act**  
3 **is contrary to public policy and is void and unenforceable.**

4       **SECTION 7.** **Sections 1 to 7 of this 2011 Act do not apply to:**

5       **(1) Tools, information, training information, software and wireless capabilities and any**  
6 **other means to activate, code or program the electronic controls and modules used to diag-**  
7 **nose, maintain or repair a motor vehicle that are trade secrets of a manufacturer unless the**  
8 **tools, information, training information, software and wireless capabilities and any other**  
9 **means are provided, directly or indirectly, to a franchisee.**

10       **(2) Motor vehicle emissions control diagnostics systems that are regulated by the Envi-**  
11 **ronmental Protection Agency pursuant to section 202 of the Clean Air Act (42 U.S.C. 7521).**

12       **SECTION 8.** **Sections 1 to 7 of this 2011 Act apply to data created, collected or contained**  
13 **in motor vehicles on or after the effective date of this 2011 Act.**

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