AMENDMENT TO RULES COMMITTEE PRINT 117-8
OFFERED BY MR. RUSH OF ILLINOIS

Page 1508, after line 13, add the following new section (and update the table of contents accordingly):

SEC. 10109. MAINTAINING COMPETITION AFTER CONSUMERS PURCHASE OR LEASE THEIR MOTOR VEHICLES.

(a) In General.—

(1) Prohibition on motor vehicle manufacturers withholding of data, critical repair information, and tools.—A motor vehicle manufacturer shall not employ any technological barrier or specified legal barrier that impairs the ability of—

(A) a motor vehicle owner or the motor vehicle owner’s designees to access vehicle-generated data pursuant to subparagraphs (A) and (B);

(B) a motor vehicle owner or the motor vehicle owner’s designees, or an aftermarket parts manufacturer, a motor vehicle equipment manufacturer, an aftermarket parts remanufacturer, or a motor vehicle repair facility and their dis-
tributors and service providers to access critical
repair information and tools pursuant to para-
graph (2)(C);

(C) a motor vehicle owner or the motor ve-
hicle owner’s designees to use a vehicle towing
or service provider of their choice. Such choice
must be available through an in-vehicle system
or mobile based application to the original and
subsequent motor vehicle owners or their des-
ignees throughout the life of the motor vehicle.

(D) an aftermarket parts manufacturer, a
motor vehicle equipment manufacturer, an
aftermarket parts remanufacturer, or a motor
vehicle repair facility and their distributors and
service providers to produce or offer compatible
aftermarket parts; or

(E) a motor vehicle owner or the motor ve-
hicle owner’s designees to diagnose, repair, and
maintain a motor vehicle in the same manner
as any motor vehicle manufacturer or motor ve-
hicle dealer.

(2) REQUIREMENT TO PROVIDE MOTOR VEHI-
CLE DATA TO OWNERS.—A motor vehicle manufac-
turer shall—
(A) Effective upon enactment, provide for motor vehicle owners and their designees, without restrictions or limitations (including a fee, license, or requiring use of a device mandated by the motor vehicle manufacturer to decrypt vehicle-generated data), to have access to vehicle-generated data;

(B) commencing within 12 months upon publication of the Final Rule and thereafter—

(i) if the motor vehicle manufacturer utilizes wireless technology or telematics systems to transmit any vehicle-generated data, it shall make available vehicle-generated data to the motor vehicle owner and its designees, directly and wirelessly from the vehicle through a standardized access platform

(C) make available to motor vehicle owners and their designees, aftermarket parts manufacturers, aftermarket parts remanufacturers, and motor vehicle repair facilities, and their distributors and service providers without restrictions or limitations, any critical repair information and tools related to the motor vehicles it
manufactures at a fair, reasonable, and non-
discriminatory cost.

(3) **PROHIBITION ON CERTAIN MANDATES BY**

**MOTOR VEHICLE MANUFACTURERS RELATED TO RE-
PAIRS.**—Outside of recall and warranty repairs, a
motor vehicle manufacturer shall not, within repair
or maintenance service procedures, recommendations, service bulletins, repair manuals, position
statements, or other similar repair or maintenance
guides that are distributed to consumers or to pro-
fessional repairers—

(A) mandate or imply a mandate to use
any particular brand or manufacturer of parts,
tools, or equipment; or

(B) recommend the use of any particular
brand or manufacturer of parts, tools, or equip-
ment unless the motor vehicle manufacturer
provides a prominent notice immediately fol-
lowing the recommendation, in the same font as
the recommendation and in a font size no
smaller than the font size used in the rec-
ommendation, stating that “Vehicle owners can
choose which repair parts, tools, and equipment
to purchase and should carefully consider their
options.”.
(4) CYBERSECURITY.—Nothing in this section shall preclude a manufacturer from employing cryptographic or technological protections necessary to secure vehicle-generated data, safety critical vehicle systems, and vehicles.

(5) PROHIBITION ON CERTAIN LIMITATIONS.—The entity managing the standardized access platform under paragraph (18) of subsection (g), shall not limit the number or types of persons which each motor vehicle owner may designate as simultaneous designees under this subsection.

(6) NOTIFICATIONS.—Motor vehicle manufacturers and designees must notify vehicle owners either via an on-vehicle screen or through a mobile device that vehicle generated data is being accessed. Notifications must specify whether access will include the need to send an in vehicle command or software updates in order to complete a repair.

(7) LIMITATION.—Notwithstanding subparagraphs (E) and (F) of paragraph (6), the motor vehicle manufacturer, including any affiliates of the motor vehicle manufacturer, and any persons working on behalf of the motor vehicle manufacturer, shall not be considered or treated as, or in the same way, as the motor vehicle owner or as designees of
the motor vehicle owner for any purpose except for
including them in notifications of persistent access
to vehicle-generated data.

(b) **Nullification of Attempts to Restrict**
**Competition and Consumer Rights.**—Except as pro-
vided in paragraphs (4) and (6) of subsection (a) any pro-
vision in a contract executed on or after the date of enact-
ment of this Act by or on behalf of a motor vehicle manu-
facturer that purports to violate subsection (a) shall be
null and void to the extent that it would allow the motor
vehicle manufacturer to avoid its obligations under sub-
section (a).

(c) **Enforcement by the Federal Trade Com-
mission.**—

(1) **Unfair or Deceptive Acts or Prac-
tices.**—

(A) **In General.**—A violation of this Act
shall be treated as an unfair or deceptive act or
practice within the meaning of section 5(a)(1)
of the Commission Act (15 U.S.C. 45(a)(1)).

The Commission shall enforce this section in
the same manner, by the same means, and with
the same jurisdiction, powers, and duties as
though all applicable terms and provisions of
the Commission Act (15 U.S.C. 41 et seq.)
were incorporated into and made a part of this Act.

(B) PRIVILEGES AND IMMUNITIES.—Any person alleging any action taken or refused to be taken by any motor vehicle manufacturer subject to this section, in contravention of the provisions thereof, may apply to the Commission by petition which must briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such motor vehicle manufacturer, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such motor vehicle manufacturer within the time specified has ceased the conduct that is the subject of the complaint and otherwise makes reparation for the injury alleged to have been caused, the motor vehicle manufacturer shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such motor vehicle manufac-
duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint may at any time be dismissed because of the absence of direct damage to the complaint.

(C) Deadline for orders by the Commission.—The Commission shall, with respect to any investigation under this section of the lawfulness of a practice of a motor vehicle manufacturer, issue an order concluding such investigation within 5 months after the date on which the complaint was filed. Any order concluding an investigation under this paragraph shall be a final order and may be appealed to the Federal district court for the District of Columbia.

(d) Fair Competition After Vehicles Are Sold Advisory Committee.—

(1) Establishment.—Not later than ninety 90 days after the date of enactment of this Act, the Federal Trade Commission shall form a “Fair Competition After Vehicles are Sold Advisory Committee”. The Chairman of the Commission shall serve as the chairman of the Advisory Committee.
(2) DUTIES.—The Advisory Committee shall provide recommendations to the Chairman of the Federal Trade Commission on implementation of this Act and competition issues after vehicles are sold, including those facing the vehicle repair industry to include an assessment of existing and emerging barriers related to vehicle repair, as well as ensuring motor vehicle owners’ control over their vehicle-generated data.

(3) FUNCTION.—In carrying out its duties under subsection (b), the Advisory Committee shall—

(A) foster industry collaboration in a clear and transparent manner;

(B) coordinate with and include participation by the private sector, including representatives of—

(i) independent repair facilities;

(ii) motor vehicle parts retailers;

(iii) motor vehicle parts distributors;

(iv) original equipment parts manufacturers;

(v) aftermarket parts manufacturers;

(vi) aftermarket tools manufacturers;

(vii) motor vehicle manufacturers;
(viii) vehicle dealership service centers;

(ix) consumer rights organizations;

(x) automobile insurers;

(xi) members of the public; and

(xii) other interested parties and

(C) assess existing and emerging barriers to competitive vehicle repair.

(4) MEMBERSHIP.—The Advisory Committee shall be composed of the following members:

(A) The Director of the Bureau of Competition, or his or her designee.

(B) The Administrator of the National Highway Traffic Safety Administration, or his or her designee.

(C) At least 11 individuals, appointed by the Chairman of the Federal Trade Commission, with each of the following interests having at least one representative:

(i) Independent repair facilities.

(ii) Motor vehicle parts retailers.

(iii) Motor vehicle parts distributors.

(iv) Original equipment parts manufacturers.

(v) Aftermarket parts manufacturers.
(vi) Aftermarket tools manufacturers.

(vii) Motor vehicle manufacturers.

(viii) Vehicle dealership service centers.

(ix) Consumer rights organizations.

(x) Automobile insurers.

(xi) Trucking company.

(5) MEETINGS.—The Advisory Committee shall meet at least three times per year at the call of the chairman.

(6) REPORT.—On at least an annual basis, the Advisory Committee shall issue a report to the chairman on efforts by the industries represented within the Advisory Committee to implement this Act as well as an assessment of existing and emerging barriers to vehicle repair and motor vehicle owners’ control over their vehicle-generated data, including whether additional types of data, regardless of whether those additional types of data are related to motor vehicle repair, should be included in the definition of vehicle-generated data. A copy of each final report shall be submitted to the Commission prior to the promulgation of a final rule pursuant to subsection (e)(2). A copy of each report shall be provided to the House Committee on Energy and Com-
merce and the Senate Committee on Commerce, Science, and Transportation by the Chairman within 30 days of receipt.

(7) TERMINATION.—The Advisory Committee shall terminate upon an agreement of a majority of the membership. Notice of the termination shall be provided to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation within 30 days of the termination and include a basis for the termination.

(e) RULEMAKING.—

(1) REQUIRED RULEMAKING.—Not later than 6 months after the date of enactment of this Act, the National Highway Traffic Safety Administration, in consultation with the Commission, shall, pursuant to subsection (g)(18), issue a notice of proposed rule-making issuing standards for the standardized access platform and identifying guidance to ensure the security of vehicle-generated data and vehicles as related to the access of vehicle generated data required pursuant to this Act.

(A) As part of this process the Commission, in consultation with the National Highway Traffic Safety Administration, shall further designate an independent entity not controlled by
one or more motor vehicle manufacturers to en-
sure, on an ongoing basis, that access to the
platform is secure based on all applicable inter-
national standards. The independent entity
shall consist of a cross-section of industry
stakeholders, including, but not limited to,
aftermarket part manufacturers, telematics
service providers, and motor vehicle manufac-
turers. The platform’s administrators’ respon-
sibilities include managing cybersecure access of
vehicle generated data, managing legitimate
data requests, data standardization and harmo-
nization, and dispute resolution.

(B) The notice of proposed rulemaking
shall also require motor vehicle manufacturers
and motor vehicle dealers to inform vehicle own-
ers of their rights under this Act at the point
of purchase, or lease, of a motor vehicle.

(C) The National Highway Traffic Safety
Administration, in consultation with the Com-
mission, shall issue final regulations no later
than 2 years after the date of enactment of this
Act, pursuant to subsection (g)(18).

(2) AUTHORITY FOR ADDITIONAL RULES.—The
Commission, in consultation with the National High-
way Traffic Safety Administration, may promulgate regulations to—

(A) pursuant to subsection (g)(17), define one or more additional specified legal barriers to—

(i) motor vehicle repair;

(ii) control by a motor vehicle owner of the motor vehicle owner’s vehicle-generated data; or iii. a combination of clauses i and ii;

(B) pursuant to subsection (g)(19), specifically include within the definition of “technological barrier” one or more prohibited practices, but any such regulations shall not limit the definition to one or more specifically prohibited practices; or

(C) add additional types of data to the definition of vehicle-generated data under subsection (g)(21), regardless of whether those types of data are related to motor vehicle repair, taking cybersecurity and privacy into consideration, to allow consumers and their designees to directly access additional types of vehicle-generated data, and for additional pur-
poses, than they would be on the effective date of this Act.

(3) UPDATES.—Not later than 3 years after the date of enactment of this Act, and not less frequently than every 3 years thereafter, the Commission, in consultation with the Fair Competition After Vehicles are Sold Advisory Committee established in subsection (d), shall—

(A) review the final regulations promulgated pursuant to paragraphs (1); and (2), if any such final regulations were promulgated;

(B) consider whether it is necessary to update the final regulations promulgated pursuant to paragraph (1) to ensure that the standardized access platform is effective for motor vehicle owners and their designees and that it is not managed by an entity controlled by one or more motor vehicle manufacturers;

(C) if no final regulations were promulgated pursuant to paragraph (2), promulgate new regulations, or if not, update the final regulations promulgated pursuant to paragraph (2), as necessary to prohibit existing and emerging barriers to vehicle repair and motor vehicle owners’ control over their vehicle-gen-
erated data, including adding additional types
of data to the definition of vehicle-generated
data under subsection (g)(21), regardless of
whether those types of data are related to
motor vehicle repair, taking cybersecurity and
privacy into consideration, to allow consumers
and their designees to directly access additional
types of vehicle-generated data, and for addi-
tional purposes, than they would be on the ef-
effective date of this Act, as included in the an-
nual report required in subsection (d)(6); and

(D) request voluntary comments from
aftermarket parts manufacturers, motor vehicle
repair facilities, motor vehicle manufacturers,
consumer rights organizations, automobile in-
surers, and others for the Commission to collect
information on new, emerging barriers and
other issues relevant to the Commission’s regu-
lations to be considered in each update of the
final regulations.

(f) REPORT TO CONGRESS.—Not later than 2 years
after the date of enactment of this Act, and every 2 years
thereafter, the Commission shall submit to the Committee
on Energy and Commerce of the House of Representatives
and the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) a summary of investigations conducted and orders issued under subsection (b), including descriptions of unfair practices relating to repair and data access restrictions, and a summary of best practices from stakeholders;

(2) actions the Commission is taking adapt to changes and advances in motor vehicle technology to maintain competition in the motor vehicle aftermarket and to ensure motor vehicle owners’ control over their vehicle-generated data;

(3) any recommendations by the Commission for legislation that would improve the ability of the Commission and other relevant Federal agencies to further protect consumers from unfair acts limiting competition in motor vehicle repair and strengthen their control over their vehicle-generated data; and

(4) a description of recommendations from the Advisory Committee annual report that were not included in the most recent rulemaking required under subsection (e) and an explanation as to why the recommendations were not adopted.

(g) DEFINITIONS.—In this Act, the following defini-
(1) **Aftermarket Part.**—The term “aftermarket part” means any part offered for sale or for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer’s production line. Excludes original equipment parts manufactured for a motor vehicle manufacturer.

(2) **Barrier.**—The term “barrier” means a restriction that prohibits, makes more difficult, or tends to make more difficult, the ability of a person to exercise rights under this section.

(3) **Critical Repair Information and Tools.**—The term “critical repair information and tools” means all necessary technical and compatibility information, tools, equipment, schematics, parts nomenclature and descriptions, parts catalogs, repair procedures, training materials, software, and technology, specifically including but not limited to information related to diagnostics, repair, service, calibration or recalibration of parts and systems to return a vehicle to operational specifications.

(4) **Insurer.**—The term “insurer” has the meaning given that term under section 313(r) of title 31, United States Code.

(5) **Motor Vehicle Repair Facility.**—The term “motor vehicle repair facility” means any per-
son or business who, in the ordinary course of its business, is engaged in the business of diagnosis, service, maintenance, repair, or calibration of motor vehicles or motor vehicle equipment.

(6) MOTOR VEHICLE DEALER.—The term “motor vehicle dealer” means a dealer, as defined in section 30102(a) of title 49, United States Code, which has an agreement with a motor vehicle manufacturer related to the diagnostics, repair, or service of a motor vehicle.

(7) MOTOR VEHICLE MANUFACTURER.—The term “motor vehicle manufacturer” means an entity manufacturing a “motor vehicle” as defined in section 30102(a) of title 49, United States Code.

(8) MOTOR VEHICLE.—The term “motor vehicle” has the meaning given such term in section 30102(a) of title 49, United States Code, and of the term “motor vehicle trailer” in section 390 of title 49, Code of Federal Regulations.

(9) MOTOR VEHICLE EQUIPMENT.—The term “motor vehicle equipment” has the meaning given such term in section 30102(a) of title 49, United States Code.

(10) MOTOR VEHICLE OWNER.—The term “motor vehicle owner” means a person with a
present possessive ownership right in a motor vehicle
or a lessee of a motor vehicle. It does not include a
motor vehicle manufacturer or a person operating on
behalf of a motor vehicle manufacturer, a motor ve-
hicle financing company, or a motor vehicle lessor.

(11) PERSON.—The term “person” means an
individual, trust, estate, partnership, association,
company, or corporation.

(12) COMMISSION.—The term “Commission”
means the Federal Trade Commission.

(13) CHAIRMAN.—The term “Chairman” means
the Chairman of the Federal Trade Commission.

(14) REMANUFACTURER.—The term “remanu-
facturer” means a person utilizing a standardized
industrial process by which previously sold, worn, or
non-functional products are returned to same-as-
new, or better, condition and performance. The proc-
ess is in line with specific technical specifications, in-
cluding engineering, quality, and testing standards.
The process yields fully warranted products.

(15) SERVICE PROVIDER.—The term “service
provider” means any designee of a motor vehicle
owner or motor vehicle repair facility employed by
the motor vehicle owner or motor vehicle repair facil-
ity to assist with the diagnosis and repair of a vehi-
cle including wireless and remote technologies, or
with any other wireless and remote services com-
parable to those provided by a vehicle manufacturer.

(16) **SPECIFIED LEGAL BARRIER.**—The term
“specified legal barrier” means one of the following
barriers—

(A) requesting a waiver of a motor vehicle
owner’s right to use a repair facility of the con-
sumer’s choice under this section, requiring a
waiver as a condition for purchasing, leasing,
operating, or obtaining warranty repairs, or of-
fering any compensation or other incentive for
such a waiver; or

(B) a barrier included within the definition
of “specified legal barrier” in regulations pro-
mulgated by the Commission pursuant to sub-
section.

(17) **STANDARDIZED ACCESS PLATFORM.**—The
term “standardized access platform” means a
cybersecure authentication and authorization system
that has the ability to securely access and commu-
nicate vehicle generated data emanating directly
from a motor vehicle via direct local and remote
wireless data connections bidirectionally and in real-
time. The vehicle owner shall be able to access vehi-
cle generated data from such platform. Upon the au-
 thorization of the vehicle owner, via such platform,
 vehicle generated data shall be directly and wire-
 lessly accessible by a designee limited to the time to
 complete the repair or maintenance or for a period
 of time agreed to by the vehicle owner. Access to
 such platform shall be standardized across all makes
 and models and include the ability to send com-
 mands to in-vehicle components needed for purposes
 of maintenance, diagnostics, or repair.

 (18) TECHNOLOGICAL BARRIER.—The term
 “technological barrier” means any technological re-
 striction that prohibits, makes more difficult, or
 tends to make more difficult, the ability of a person
 to exercise rights under this section. It includes, but
 is not limited to, any such restriction specifically
 prohibited by regulations promulgated by the Com-
 mission pursuant to subsection (e).

 (19) TELEMATICS SYSTEM.—The term
 “telematics system” means any system in a motor
 vehicle that collects information generated by the op-
 eration of the vehicle and transmits such informa-
 tion, utilizing wireless communications to a remote
 receiving point where it is stored.
(20) VEHICLE-GENERATED DATA.—The term “vehicle-generated data” means any direct, real-time, in-vehicle data generated, or generated and retained, by the operation of a motor vehicle related to diagnostics, repair, service, wear, and calibration or recalibration of parts and systems required to return a vehicle to operational specifications, as well as any data related to the types of data included within the definition of “vehicle-generated data” in regulations promulgated by the Commission pursuant to subsection (e). Nothing in this definition will allow the vehicle to be taken out of compliance with Federal vehicle safety and emissions laws, regulations and standards.

(h) EFFECTS ON STATE LAW.—

     (1) IN GENERAL.—Except as provided in paragraph (2), this section shall preempt State law only to the extent a State law imposes a duty on a manufacturer that is narrower than the duties described in this section.

     (2) PREEMPTION.—Notwithstanding paragraph (1), this section shall preempt any State law mandating the use of any particular brand or manufacturer of parts, tools, or equipment for the purpose
of maintaining, diagnosing, or repairing a motor vehicle.

(i) SEVERABILITY.—If any provision of this Act is held to be invalid, the remainder of this Act shall not be affected thereby.