



September 15, 2023

Sent via email & USPS

Commissioner Tony Guerrero
Connecticut Department of Motor Vehicles
60 State St.
Wethersfield, CT 06161
Tony.Guerrera@ct.gov

Re: Implementation of Public Act No. 23-40 New Section 24 Effective October 1, 2023

Dear Commissioner Guerrero:

On behalf of the above-listed organizations, we are writing to request clarification of your intended implementation of Public Act No. 23-40 new section 24, which could impose burdensome and potentially anti-competitive requirements upon automotive aftermarket service and repair facility operators in the state of Connecticut. Had the legislators involved in adding open recall information requirements to the code sought automotive aftermarket stakeholder input, they would've found that we support consumer education on recalls but that only one means of recall information delivery is at once practical for non-OEM repairers, truly protective of consumers, and non-polluting. We are hopeful that you will consider our comments and questions as you determine how best to interpret and implement new section 24.¹

The statutory language at issue reads as follows:

Section 24(b) During the course of performing repair work or changing the oil or tires and tubes of a motor vehicle, a repairer licensed in accordance with section 14-52 of the general statutes, as amended by this act, or a person, firm or corporation engaged in the business of changing the oil or tires and tubes of a motor vehicle, shall determine whether

¹ We could not locate any official rulemaking on this subject or any other public notice of a planned response or agency interpretation with opportunity to comment. If such action took place, please let us know.

the motor vehicle being repaired or worked upon is subject to an open recall by checking information provided by the manufacturer of the motor vehicle or other known and readily available sources, such as the National Highway Traffic Safety Administration. If the motor vehicle is subject to one or more open recalls, the repairer, person, firm or corporation shall provide the owner of the motor vehicle with written notice of each such open recall at the time of such repair or work. The notice shall include a description of each open recall and a statement that a motor vehicle dealer approved by the manufacturer of the motor vehicle may repair or modify the motor vehicle at no cost to the owner, except as provided in 49 USC 30120, as amended from time to time.

Public Act 23-40 provides different definitions for “repairer” and “new car dealer.” Although new car dealers do repairs, they do not appear to be called “repairers” under the law, and new section 24 refers specifically to “repairers” and “a person, firm or corporation engaged in the business of changing the oil or tires and tubes of a motor vehicle.” **Does new section 24 require new car dealers to provide the same level of open recall information to every customer that comes in regardless of the type of service requested?** We’re asking because our members’ decades of experience in the field indicates OEM authorized dealers (a/k/a new car dealers) do not automatically provide such information to consumers. Depending on your response to the suggestions below, having the Connecticut state government require that only OEM-authorized dealers’ *competition* provide OEM recall information would create an anti-competitive burden in terms of added time, resources, and free statewide referrals.

In terms of the “written notice” required, we recommend giving consumers the following or substantially similar text: “Under Connecticut Public Act 23-40, you are entitled to receive information regarding open recalls applicable to your vehicle. A motor vehicle dealer approved by the manufacturer of the motor vehicle may repair or modify a recalled motor vehicle at no cost to the owner, except as provided in 49 USC 30120, as amended from time to time. You can find your open recall information for free on the National Highway Traffic Safety Administration’s Safer Car app at <https://www.nhtsa.gov/campaign/safercar-app>.”

We recommend providing the option to deliver that written notice by any one of the following methods:

1. Via phone text prior to initiating preventative maintenance or repair;
2. Via email prior to initiating preventative maintenance or repair;
3. Printed on a repair estimate in hard copy or digital format; or
4. If preventative automotive maintenance-only services are requested that do not require a formal written estimate, the written notice can be printed on a separate document in hard copy or digital format.

Consumer access to NHTSA's Safer Car app is a far more efficient and long-lasting way to ensure access to open recalls as they become available and/or get amended over time at an unpredictable rate. After all, the average consumer seeks automotive services only a few times annually. What happens to them the other 362 days of the year? If the goal of the General Assembly and Department of Motor Vehicles is maximum protection for consumers, then giving them direct 24-7 access to open recall information through NHTSA's Safer Car app is the best option. They can control when they access their content *and* never lose it as frequently happens with printouts. Our approach aligns with the legislative history's focus on helping consumers get informed by getting them informed *permanently*.

Our approach also avoids potential unintended consequences associated with an expansive interpretation of new section 24, which may not have been understood by its drafters:

- If new section 24 were interpreted to require hard copy printouts, the significant number of recalls associated with modern vehicles would lead to automotive aftermarket service facilities—which operate on the all-comers model—being required to print out hundreds of pages per week.² Beyond the unaccounted-for costs of printer toner and paper, such printouts would inevitably increase paper and ink pollution in the state.
- If new section 24 were interpreted to require every automotive aftermarket service facility to study and explain all open recalls applicable to each consumer at the time they appear, then:
 - The preventative automotive maintenance service model relying on convenient, fast, reasonably priced, no-appointment service could no longer function in the state of Connecticut due to time constraints and lack of the full repair, ASE-certified mechanics necessary to explain the contents of all open recalls;
 - Preventative automotive maintenance facilities (a/k/a “limited repairers”) would also be forced into a gray area of diagnostics traditionally associated with full repair, and repairers would be forced into providing such diagnostics for free;
 - Aftermarket repair facilities would also need to direct their ASE-certified mechanics away from repairs to take over their greeters’ position to explain the contents of all open recalls resulting in less repairs accomplished each day; and

² See Craft Law Firm data at <https://www.craftlawfirm.com/news/nhtsa-vehicle-recall-data/> describing, among other recalls, Ford F-150 (115 recalls); Buick Regal (97 recalls); Jeep Cherokee (97 recalls); Jeep Grand Cherokee (83 recalls); Ford Explorer (83 recalls); BMW X5 (81 recalls); Subaru Legacy (77 recalls); Dodge Charger (76 recalls); Ford Mustang (76 recalls); and Chevrolet Suburban (74 recalls).

- OEMs would be let off the hook yet again for failing to accomplish the consumer notifications *required* by federal law while giving an unfair advantage to OEM-authorized dealers by hampering all of their competition for preventative automotive maintenance and repair services.

Fortunately, the previously described simple approach of giving consumers NHTSA's Safer Car app raises none of those problems while giving consumers the important vehicle information they need at their convenience and in a format they cannot lose.

We thank you in advance for your consideration of our comments and look forward to hearing from you as soon as possible.

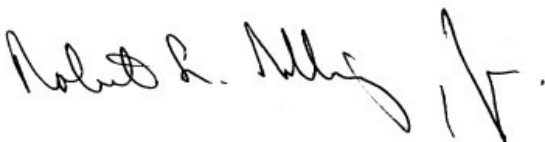
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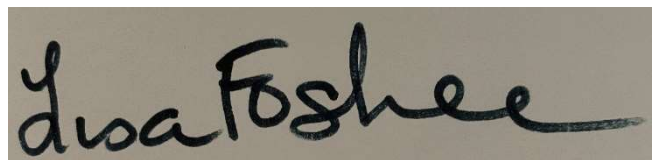
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