

SUPPORT HF1156/SF2080

THE DIGITAL FAIR REPAIR BILL

HF1156/SF2080 Counterpoints to AEM/EDA Opposition

Point: Overly broad in light of commitment to future policies.

Counterpoint: No actual changes have been made by AEM/EDA members. Any of these companies could comply immediately with the requirements of HF1156/SF2080 but choose not to. This should raise doubt about the sincerity of future promises.

Details on the R2R Solutions website (<https://r2rsolutions.org/right-to-repair-legislation/>) confirm that OEMS are not intending to provide the same documentation, diagnostics, or firmware options directly to consumers as to their dealers. They will retain control of any repairs they deem “complicated” and thus retain their repair monopolies.

Point: The Right to Repair is Not the Right to Modify.

Counterpoint: This statement is factually correct even when the context is incorrect. The US Copyright Office has already affirmed the right of equipment owners to modify software on their machines. This legal fact is not altered by HF1156/SF2080. Further, HF1156/SF2080 makes no requirements of access to source code, nor any trade secrets, and do not endorse or suggest that anyone should modify their equipment in any illegal manner.

There are no new risks to buyers of used technology as the result of right to repair. It is not difficult for technicians to restore all firmware to the factory original, just as they do for cars and trucks. Further, autos and over-the-road commercial vehicles have traded successfully without increased liability since Auto R2R was passed in 2012.

Buyers and sellers of used equipment have been evaluating condition and use for hundreds of years before concluding a transaction. HF1156/SF2080 does nothing to alter these private arrangements.

Point: HF1156/SF2080 Jeopardizes safety.

Counterpoint: Training of repair technicians is not unique to OEMs. Many thousands of repair techs are trained in the military, at trade schools, community colleges, and on the job. All employers -be they dealerships or independents – are hiring from the same talent pool and are equally interested in developing employee skills. Lack of access to the OEM authentic diagnostics, tools, parts and manuals only serves to make training more difficult and likely less safe.

Point: HF1156/SF2080 will cost Consumers more – by voiding warranties.

Counterpoint: Warranties are not voided by consumer-directed repair under federal law – the Magnuson Moss Warranty Act of 1975. Further, consumers are aware of the difference between an in-warranty (free) repair and paying out of pocket. If a consumer chooses to pay – that’s their choice. Reiterating: Matters of software modification are NOT part of HF1156/SF2080 and will occur and persist with or without HF1156/SF2080.

Point: HF1156/SF2080 Creates new liability for emissions violations.

Counterpoint: Costs of compliance, potential fines, or potential liability related to federal or state emissions standards are not altered by HF1156/SF2080. All applicable fines and laws are federal – and outside the scope of state law. As point of fact – if farmers want to “mod” or “chip” their property – it is legal for them to do so provided they remain in compliance with all emissions laws having nothing to do with HF1156/SF2080.

Point: HF1156/SF2080 Will Diminish Used Equipment Values.

Counterpoint: This point is also irrelevant. Right to Repair has nothing to do with legal modification of software. Software modification is controlled by Copyright Law and is widely and specifically legal. If AEM/EDA do not like current law, they should direct their attention to the US Copyright Office – not Minnesota Legislators.

Point: Industry, not government, should protect consumers

Counterpoint: The fable of the fox guarding the hen house is a suitable rebuttal.

For more information about HF1156/SF2080 and the Digital Fair Repair Coalition, please contact Shep Harris at sharris@fredlaw.com or 612-492-7849.

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