TTAA Legislative & Regulatory Update

April 4, 2024

U.S. Government Accountability Office Releases Report on Right to Repair

The U.S. Government Accountability Office (GAO) recently released a report on Right to Repair titled, Vehicle Repair: Information on Evolving Vehicle Technologies and Consumer Choice.

The report looked at the effects of changing technologies on the right-to-repair. Further, this report examines how changes in vehicle technologies are affecting competition and consumer choice in the vehicle repair market and NHTSA's and FTC's actions related to this issue. For example, the use of technology to wirelessly transfer vehicle health and repair data with automakers could give dealerships an advantage.

The report concluded that if independent repair shops don't have access to this data, people might have fewer repair choices. In addition, according to some independent repair stakeholders GAO interviewed, the use of telematics systems to wirelessly transfer data between vehicles and automakers could give dealerships a competitive advantage over independent repair shops in conducting some repairs.

The GAO states that the Federal Trade Commission is looking at new ways to categorize consumer complaints, which could help it identify how much this issue negatively affects vehicle owners.

To view the **full report click here**.

This report highlights the need to pass Right to Repair legislation. The REPAIR Act now has 50 bipartisan co-sponsors.

Small Business Owners Call to Pause CTA

TTAA is joining many small business owners across the U.S. calling on Congress to enact the Protect Small Business and Prevent Illicit Financial Activity Act (S. 3625). The legislation, championed by Senator Tim Scott (R-NC), would delay by one year the onerous Corporate Transparency Act (CTA) filing requirements and accompanying jail time and penalties. A similar bill sponsored by Representatives Zach Nunn (R-IA) and Joyce Beatty (D-OH) passed the House late last year 420-1.

Such a delay would allow the ongoing legal battle to play out, be consistent with lawmakers' original intent to give covered businesses two years to file their CTA reports, and give regulators more time to continue their outreach and education of affected entities.

To the first point, two weeks ago a Federal District Court deemed the CTA unconstitutional. The decision was welcome but confusing. Even though the entire law was found to be unconstitutional, the ruling applied to the plaintiffs only – members of the National Small Business Association (NSBA). As the letter reads:

Following the ruling, FinCEN indicated it would continue to enforce the CTA against all small businesses and other entities not named in the lawsuit. This decision effectively creates two classes of small businesses: those that were members of the NSBA as of March 1st will enjoy the protections of the Constitution while the remaining 32 million small businesses targeted by the CTA will not.

Meanwhile, many small business owners will hear about the ruling and conclude that they are no longer obligated to comply, unaware that they are making themselves vulnerable to the CTA's stiff fines and criminal penalties. FinCEN, meanwhile, has no practical means of distinguishing between NSBA members and other small businesses. The NSBA's membership is not public, and the courts have previously ruled that the government cannot compel trade associations like the NSBA to turn over their membership lists.

Second, a two-year deadline was the plan along:

The CTA statute, adopted as part of the National Defense Authorization Act for Fiscal Year 2021, called for a reporting deadline of "not later than 2 years after the effective date of the regulations" for existing entities. This timeframe was designed to give affected entities sufficient time to learn of, understand and comply with the new reporting regime. The two-year initiation period is in keeping with the legislation's preamble which instructs FinCEN to "seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information."

In its rulemaking, however, FinCEN shortened this deadline and gave existing entities just one year to comply. That decision is problematic both in its disregard of congressional intent and its practical implications for CTA compliance rates. The CTA covers tens of millions of legal entities plus all those millions of individuals defined as their so-called "beneficial owners," yet the vast majority of the law's targets remain wholly unfamiliar with their new compliance obligations. They simply need time to learn about the new law.

Finally, affected businesses remain largely unaware of their new reporting obligations, and regulators are far behind in their efforts to engage the business community:

Filing under the CTA began more than two months ago, yet fewer than 2 percent of covered entities have submitted their required information to FinCEN. At this rate, it will take more than ten years for filings to reach FinCEN's estimates of 32 million submissions.

One reason for this low compliance rate is that most business owners are ignorant of the new law. A recent survey conducted by the National Federation for Independent Business found that four out of five small business owners are "not at all familiar" with the new reporting requirements. Meanwhile, as a Tax Notes article highlighted, while the accounting community is best positioned to educate their small business clients regarding their filing obligations under the CTA, they are precluded from doing so it could constitute practicing law without a license.

The CTA is the largest data grab in history outside the Tax Code. Covered businesses and other legal entities need time to learn about their new obligations, particularly as a failure to comply could result in two years in jail and thousands in fines.

The one-year delay called for in the Scott legislation is exactly what the business community needs right now. It would give them time to learn about the CTA, time for the courts to work their will, and time for FinCEN to finish the job educating the public about the new law.

TTAA will keep our members up to date on this important issue.

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