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REPORT
No. 95-294

CLEAN AIR ACT AMENDMENTS OF 1977

REPORT

BY THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

[To accompany H.R. 6161]

together with

ADDITIONAL, SEPARATE, AND SUPPLEMENTAL VIEWS

And Including Cost Estimate of the Congressional Budget Office

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tion of his authorities and duties under section 207 of the act (pertaining to warranties and recall) to promulgate rules for the purposes stated above.

This does not mean that the Administrator is directed to invade the area of responsibility or jurisdiction of the Federal Trade Commission or the Justice Department. Rather, the section of the bill provides that in executing the authorities and requirements of section 207 of the Clean Air Act, the Administrator may consider the impact such measures may have on free competition and consumer free choice. If the Administrator finds that these measures may adversely affect consumer free choice or free competition, he may promulgate and enforce reasonable rules relating to the execution of warranties recall under the act to prevent, minimize, or eliminate any such adverse effect.

Section 212—Anti-tampering Prohibition

BACKGROUND

Section 203(a)(3) of the existing Clean Air Act makes it a prohibited act

> [f]or any person to remove or render inoperative any device or element of design installed on or in a motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser. . . .

Under this provision, only a manufacturer or dealer may be penalized for removing or rendering inoperative any such device or element of design after the vehicle has been sold and delivered to the customer. Garages, service stations, non-dealer automotive repair centers, and other businesses and persons engaged in providing motor vehicle repair service for pay are not presently subject to this prohibition.

The Committee concluded that this limitation on the anti-tampering prohibition was inequitable and inconsistent with the intent and purpose of the Act. Therefore, the Committee adopted section 212 of the bill.

COMMITTEE PROPOSAL

Section 212 incorporates the Committee's determination that the prohibition against knowingly tampering by manufacturers or dealers after sale and delivery should also apply to garages, service stations, non-dealer automotive repair centers, other persons or businesses engaged in providing motor vehicle repair services for pay, and to persons owning or operating, selling, leasing, trading, and fleet operations.

The Committee adopted this provision to assure that vehicle emission control systems will function as intended during the time the vehicle is in use. In doing so, the Committee took note of the studies by the Environmental Protection Agency, which concluded:

> Emission control system tampering by garage mechanics is more likely to hurt fuel economy than improve it. Such tampering virtually always makes emissions worse, and can cause deterioration in engine durability. EPA, "Factors Affecting Automobile Fuel Economy", (Sept. 1975), p. 2.

In adopting this amendment, the Committee endorses the construction of the terms "knowingly" and "remove or render inoperative" given by the Federal District Court in *United States* v. *Haney Chevrolet, Inc.*, 371 F. Supp. 381, 384–5 (M.D. Fla. 1974):

> The statute states that it is unlawful for a dealer "knowingly to remove or render inoperative" certain emission control devices or elements of design from a vehicle. It is well-settled that an act is done knowingly when it is done voluntarily and intentionally, and not by mistake. The Court interprets that the prohibited act "of removal or rendering inoperative a device or element of design" is complete within the meaning of this statute when the dealer knowingly removes or renders inoperative the emission control devices or elements of design on a particular vehicle and voluntarily relinquishes custody and control of the vehicle, (or custody and control by an agent or employee of the dealer) with the emission control devices or elements of design removed or rendered inoperative.
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> While common sense dictates that the dealer or an agent or employee of the dealer may remove or render inoperative any such emission control devices or element of design on a vehicle for purposes of testing that vehicle while in his custody and control, the statute must be interpreted to prohibit the dealer or his agent or employee from removing or rendering inoperative any such emission control devices or elements of design and thereafter releasing such vehicle from his custody and control without first reengaging and making operative all devices or elements of design previously removed or rendered inoperative by him.

The Committee's language is likewise consistent with the Court's holding of employer's liability under this Act "for improper acts of its employees or agents committed in the scope of their employment", i.e. where "the work was done to serve the [employer's] business interests". *U.S.* v *Haney Chevrolet, Inc.*, supra.

Thus the Committee is requiring that these same principles of law be applied to persons other than a vehicle dealer or manufacturer as are applied to dealers and manufacturers. The Committee does not intend to require application of the Federal prohibition to individual motorists, however.

The Committee bill limits liability for civil penalties to $2,500 maximum per violation for any covered non-dealer, non-manufacturer. This section also contains a provision which is intended to prevent the anti-tampering prohibition from being construed to require use of original equipment manufacturer's parts in any repair, replacement, or maintenance activity.