

Model State Right-to-Repair Law

July 24, 2018

Section 1. Short title. This Act may be cited as the Digital Fair Repair Act.

Section 2. Definitions. In this Act:

(a) “Authorized repair provider” means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment, and who does not have an arrangement described in this subsection with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to such equipment.

(b) “Digital electronic equipment” or “equipment” means any product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.

(c) “Documentation” means any manual, diagram, reporting output, service code description, schematic diagram, or similar kinds of information provided to an authorized repair provider for purposes of its effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(d) “Embedded software” means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for such equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of such equipment or part for these purposes.

(e) “Fair and reasonable terms” for obtaining a part or tool or documentation means at costs and terms, including convenience of delivery, and including rights of use, equivalent to what is offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by an authorized repair provider in obtaining an equivalent part or tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates, or other incentive programs in arriving at the actual net costs. For documentation, including any relevant updates, “fair and reasonable terms” means at no charge,

except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

(f) “Firmware” means a software program or set of instructions programmed on digital electronic equipment, or on a part for such equipment, to allow the equipment or part to communicate with other computer hardware.

(g) “Independent repair provider” means an individual or business operating in this State, who does not have an arrangement described in subsection (a) with an original equipment manufacturer, and who is not affiliated with any individual or business who has such an arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment, except that an original equipment manufacturer or, with respect to that original equipment manufacturer, an individual or business who has such an arrangement with that original equipment manufacturer, or who is affiliated with an individual or business who has such an arrangement with that original equipment manufacturer, shall be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured by or sold under the name of that original equipment manufacturer.

(h) “Manufacturer of motor vehicle equipment” means a business engaged in the business of manufacturing or supplying components that are used in the manufacture, maintenance, or repair of a motor vehicle.

(i) “Motor vehicle” means a vehicle that is designed for transporting persons or property on a street or highway and is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States. Motor vehicle does not include:

(1) a motorcycle; or

(2) a recreational vehicle or an auto home equipped for habitation.

(j) “Motor vehicle dealer” means an individual or business who, in the ordinary course of business, is engaged in the business of selling or leasing new motor vehicles to an individual or business pursuant to a franchise agreement, has obtained a license under the [cite to state law], and is engaged in the services of diagnosis, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to that franchise agreement.

(k) “Motor vehicle manufacturer” means a business engaged in the business of manufacturing or assembling new motor vehicles.

(l) “Original equipment manufacturer” means a business engaged in the business of selling or leasing new digital electronic equipment manufactured by or on behalf of itself, to any individual or business.

(m) “Owner” means an individual or business who owns or leases digital electronic equipment purchased or used in this State.

(n) “Part” means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.

(o) “Trade secret” has the meaning given it in [cite to definition in state law, or if no state definition, to 18 U.S.C. 1839].

Section 3. Requirements.

(a) For digital electronic equipment, and parts for such equipment, sold or used in this State, an original equipment manufacturer shall make available, for purposes of diagnosis, maintenance, or repair, to any independent repair provider, or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software. Nothing in this section requires an original equipment manufacturer to make available a part if the part is no longer available to the original equipment manufacturer.

(b) For equipment that contains an electronic security lock or other security-related function, the original equipment manufacturer shall make available to the owner and to independent repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to reset the lock or function when disabled in the course of diagnosis, maintenance, or repair of the equipment. Such documentation, tools, and parts may be made available through appropriate secure release systems.

Section 4. Enforcement by Attorney General. Violation of any of the provisions of this Act is an unlawful practice under the [cite to relevant state fraudulent and deceptive practices act]. All remedies, penalties, and authority granted to the Attorney General by that Act shall be available to him or her for the enforcement of this Act.

Section 5. Limitations.

(a) Nothing in this Act shall be construed to require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

(b) No provision in this Act shall be construed to alter the terms of any arrangement described in section 2(a) in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this Act shall be void and unenforceable.

(c) Nothing in this Act shall be construed to require an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider pursuant to the terms of an arrangement described in section 2(a).

Section 6. Exclusions. Nothing in this Act applies to a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity, or to any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity.

Section 7. Applicability. This Act applies with respect to equipment sold or in use on or after the effective date of this Act.

Section 8. Effective date. This Act takes effect [date].