
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2326 Session of
2020

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ROEBUCK, KAUFER AND COOK, APRIL 20, 2020

REFERRED TO COMMITTEE ON COMMERCE, APRIL 20, 2020

AN ACT

1 Providing for duties of original equipment manufacturers
2 relating to diagnosis, maintenance and repair of digital
3 electronic equipment and for enforcement by Attorney General.

4 The General Assembly of the Commonwealth of Pennsylvania

5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Digital Fair
8 Repair Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Authorized repair provider." The term includes:

14 (1) An individual or business that is unaffiliated with
15 an original equipment manufacturer and has:

16 (i) an arrangement with the original equipment
17 manufacturer, for a definite or indefinite period, under
18 which the original equipment manufacturer grants to the

1 individual or business a license to use a trade name,
2 service mark or other proprietary identifier for the
3 purposes of offering the services of diagnosis,
4 maintenance or repair of digital electronic equipment
5 under the name of the original equipment manufacturer; or

6 (ii) some other arrangement with the original
7 equipment manufacturer to offer the services under
8 subparagraph (i) on behalf of the original equipment
9 manufacturer.

10 (2) An original equipment manufacturer that offers the
11 services of diagnosis, maintenance or repair of its own
12 digital electronic equipment and does not have an arrangement
13 described under paragraph (1) with an unaffiliated individual
14 or business, with respect to the equipment.

15 "Digital electronic equipment." A product that depends for
16 its functioning, in whole or in part, on digital electronics
17 embedded in or attached to the product.

18 "Documentation." A manual, diagram, reporting output,
19 service code description, schematic diagram or similar kind of
20 information provided to an authorized repair provider for
21 purposes of effecting the services of diagnosis, maintenance or
22 repair of digital electronic equipment by the authorized repair
23 provider.

24 "Embedded software." Programmable instructions provided on
25 firmware delivered with digital electronic equipment or with a
26 part for such equipment for purposes of equipment operation,
27 including all relevant patches and fixes made by the
28 manufacturer of the equipment or part for such purposes.

29 "Fair and reasonable terms." The term includes:

30 (1) For obtaining a part or tool or documentation, at

1 costs and terms, including convenience of delivery, and
2 including rights of use, equivalent to the most favorable
3 costs and terms offered by the original equipment
4 manufacturer to an authorized repair provider, using the net
5 costs that would be incurred by the authorized repair
6 provider in obtaining an equivalent part or tool or
7 documentation from the original equipment manufacturer,
8 accounting for any discounts, rebates or other incentive
9 programs in arriving at the actual net costs.

10 (2) In addition to the requirements under paragraph (1),
11 for documentation, including any relevant updates, at no
12 charge, except that, when the documentation is requested in
13 physical printed form, a charge may be included for the
14 reasonable actual costs of preparing and sending the copy.

15 "Firmware." A software program or set of instructions
16 programmed on digital electronic equipment or on a part for such
17 equipment to allow the equipment or part to communicate with
18 other computer hardware.

19 "Independent repair provider." As follows:

20 (1) The term includes an individual or business that:

21 (i) operates in this Commonwealth;

22 (ii) does not have an arrangement described in the
23 definition of "authorized repair provider" with an
24 original equipment manufacturer;

25 (iii) is not affiliated with any individual or
26 business that has such an arrangement; and

27 (iv) is engaged in the services of diagnosis,
28 maintenance or repair of digital electronic equipment.

29 (2) An original equipment manufacturer or, with respect
30 to that original equipment manufacturer, an individual or

1 business that has an arrangement as described in the
2 definition of "authorized repair provider" with the original
3 equipment manufacturer, or is affiliated with an individual
4 or business that has such an arrangement as described in the
5 definition of "authorized repair provider" with that original
6 equipment manufacturer, shall be considered an independent
7 repair provider for purposes of those instances in which it
8 engages in the services of diagnosis, maintenance or repair
9 of digital electronic equipment not manufactured by or sold
10 under the name of that original equipment manufacturer.

11 "Manufacturer of motor vehicle equipment." A business
12 engaged in the business of manufacturing or supplying components
13 used in the manufacture, maintenance or repair of a motor
14 vehicle.

15 "Motor vehicle." A vehicle designed for transporting persons
16 or property on a street or highway and certified by the
17 manufacturer under all applicable Federal safety and emissions
18 standards and requirements for distribution and sale in the
19 United States. The term does not include:

- 20 (1) a motorcycle; or
21 (2) a recreational vehicle or an auto home equipped for
22 habitation.

23 "Motor vehicle dealer." An individual or business that in
24 the ordinary course of business is engaged in the business of
25 selling or leasing new motor vehicles to an individual or
26 business under a franchise agreement, has obtained a license
27 from the Commonwealth and is engaged in the services of
28 diagnosis, maintenance or repair of motor vehicles or motor
29 vehicle engines under the franchise agreement.

30 "Motor vehicle manufacturer." A business engaged in the

1 business of manufacturing or assembling new motor vehicles.

2 "Original equipment manufacturer." A business engaged in the
3 business of selling or leasing new digital electronic equipment
4 manufactured by or on behalf of itself to an individual or
5 business.

6 "Owner." An individual or business that owns or leases
7 digital electronic equipment purchased or used in this
8 Commonwealth.

9 "Part." A replacement part, either new or used, made
10 available by an original equipment manufacturer for purposes of
11 effecting the services of maintenance or repair of digital
12 electronic equipment manufactured or sold by the original
13 equipment manufacturer.

14 "Trade secret." The term has the meaning given in section
15 102 of the act of February 14, 2008 (P.L.6, No.3), known as the
16 Right-to-Know Law.
17 Section 3. Duties of original equipment manufacturers.

18 (a) Digital electronic equipment being diagnosed, maintained
19 or repaired.--

20 (1) For digital electronic equipment, and parts for
21 digital electronic equipment, sold or used in this
22 Commonwealth, an original equipment manufacturer shall make
23 available, for the purposes of diagnosis, maintenance or
24 repair to an independent repair provider or to the owner of
25 digital electronic equipment manufactured by or on behalf of
26 or sold by the original equipment manufacturer on fair and
27 reasonable terms, any documentation, part or tool, including
28 any update to information or embedded software.

29 (2) Nothing in this section may be construed to require
30 an original equipment manufacturer to make available a part

1 if the part is no longer available to the original equipment
2 manufacturer.

3 (b) Digital electronic equipment with electronic security
4 locks.--

5 (1) For equipment that contains an electronic security
6 lock or other security-related function, the original
7 equipment manufacturer shall make available to the owner and
8 to an independent repair provider, on fair and reasonable
9 terms, any special documentation, tool or part needed to
10 reset the lock or function when disabled in the course of
11 diagnosis, maintenance or repair of the digital electronic
12 equipment.

13 (2) The documentation, tool or part may be made
14 available through an appropriate secure release system.

15 Section 4. Enforcement by Attorney General.

16 A violation of a provision of this act is an unlawful
17 practice under the act of December 17, 1968 (P.L.1224, No.387),
18 known as the Unfair Trade Practices and Consumer Protection Law.
19 All remedies, penalties and authority granted to the Attorney
20 General by that act shall be available to the Attorney General
21 for the enforcement of this act.

22 Section 5. Construction.

23 Nothing in this act may be construed to:

24 (1) Require an original equipment manufacturer to
25 divulge a trade secret to an owner or an independent repair
26 provider, except as necessary to provide any documentation,
27 part or tool on fair and reasonable terms.

28 (2) Alter the terms of an arrangement described in the
29 definition of "authorized repair provider" in section 2 in
30 force between an authorized repair provider and an original

1 equipment manufacturer, including, but not limited to, the
2 performance or provision of warranty or recall repair work by
3 an authorized repair provider on behalf of an original
4 equipment manufacturer under such arrangement, except that a
5 provision in the arrangement that purports to waive, avoid,
6 restrict or limit the original equipment manufacturer's
7 obligations to comply with this act shall be void and
8 unenforceable.

9 (3) Require an original equipment manufacturer or an
10 authorized repair provider to provide to an owner or
11 independent repair provider access to information, other than
12 documentation, that is provided by the original equipment
13 manufacturer to an authorized repair provider under the terms
14 of an arrangement described in the definition of "authorized
15 repair provider" except as necessary to comply with section
16 3.

17 Section 6. Exclusions.

18 Nothing in this act applies to a motor vehicle manufacturer,
19 manufacturer of motor vehicle equipment or motor vehicle dealer,
20 acting in that capacity, or to a product or service of a motor
21 vehicle manufacturer, manufacturer of motor vehicle equipment or
22 motor vehicle dealer, acting in that capacity.

23 Section 7. Applicability.

24 This act applies with respect to equipment sold or in use on
25 or after the effective date of this act.

26 Section 8. Effective date.

27 This act shall take effect in 60 days.