

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 366

Senator Blessing

A BILL

To enact sections 1350.01, 1350.02, 1350.03, and 1
1350.04 of the Revised Code to enact the Digital 2
Fair Repair Act. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1350.01, 1350.02, 1350.03, and 4
1350.04 of the Revised Code be enacted to read as follows: 5

Sec. 1350.01. As used in this chapter: 6

(A) "Authorized repair provider" means a person that is 7
unaffiliated with an original equipment manufacturer and that 8
has an arrangement with the original equipment manufacturer, for 9
a definite or indefinite period, under which the original 10
equipment manufacturer grants to the person a license to use a 11
trade name, service mark, or other proprietary identifier for 12
the purposes of offering diagnosis, maintenance, or repair of 13
digital electronic equipment under the name of the original 14
equipment manufacturer, or other arrangement with the original 15
equipment manufacturer to offer such services on behalf of the 16
original equipment manufacturer. 17

"Authorized repair provider" includes an original 18
equipment manufacturer that offers the services of diagnosis, 19

maintenance, or repair of its own digital electronic equipment, 20
and that, with respect to such digital electronic equipment, 21
does not have an arrangement described in this division. 22

(B) "Digital electronic equipment" means any product that 23
depends for its functioning, in whole or in part, on digital 24
electronics embedded in or attached to the product. 25

(C) "Documentation" means any manual, diagram, reporting 26
output, service code description, schematic, or other guidance 27
or information used in effecting the services of diagnosis, 28
maintenance, or repair of digital electronic equipment. 29

(D) "Embedded software" means any programmable 30
instructions provided on firmware delivered with digital 31
electronic equipment, or with a part for such digital electronic 32
equipment, for purposes of equipment operation, including all 33
relevant patches and fixes made by the manufacturer of such 34
digital electronic equipment or part for these purposes. 35

(E) (1) "Fair and reasonable terms" for obtaining a part, 36
tool, or documentation means costs and terms, including 37
convenience of delivery and rights of use, equivalent to what is 38
offered by the original equipment manufacturer to an authorized 39
repair provider, using the net costs that would be incurred by 40
an authorized repair provider in obtaining an equivalent part, 41
tool, or documentation from the original equipment manufacturer 42
and accounting for any discounts, rebates, or other incentive 43
programs in arriving at the actual net costs. For documentation, 44
including any relevant updates, "fair and reasonable terms" also 45
means at no charge, except that, when the documentation is 46
requested in physical printed form, a charge may be included for 47
the reasonable actual costs of preparing and sending the copy. 48

(F) "Firmware" means a software program or set of instructions programmed on digital electronic equipment, or on a part for such digital electronic equipment, to allow the equipment or part to communicate within itself or with other computer hardware. 49
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(G) "Independent repair provider" means a person in this state that does not have an authorized repair provider arrangement described in division (A) of this section, that is not affiliated with any other person who has such an arrangement, and that is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment. 54
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"Independent repair provider" includes an original equipment manufacturer and, with respect to that original equipment manufacturer, a person to whom either of the following apply: 60
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(1) The person has an authorized repair provider arrangement described in division (A) of this section with that original equipment manufacturer. 64
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(2) The person is affiliated with another person that has an authorized repair provider arrangement described in division (A) of this section with that original equipment manufacturer, for purposes of those instances in which the person 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. 67
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(H) "Manufacturer of motor vehicle equipment" means a person engaged in the business of manufacturing or supplying components that are used in the manufacture, maintenance, or repair of a motor vehicle. 74
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(I) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component, part, or accessory, that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals. 78
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(J) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, except that the term does not include a motorcycle, recreational vehicle, or mobile home. 84
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(K) "Motor vehicle dealer" means any person engaged in both of the following: 87
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(1) The business of selling at retail, displaying, offering for sale, or dealing in new motor vehicles pursuant to a contract or agreement entered into with the motor vehicle manufacturer, motor vehicle remanufacturer, or motor vehicle distributor; 89
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(2) The services of diagnosis, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to an agreement described in division (K) (1) of this section. 94
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(L) "Motor vehicle manufacturer" means a person engaged in the business of manufacturing or assembling new motor vehicles. 97
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(M) "Original equipment manufacturer" means a person engaged in the business of selling, leasing, or otherwise supplying new digital electronic equipment manufactured by or on behalf of itself, to any person. 99
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(N) "Owner" means a person that owns or leases digital electronic equipment purchased or used in this state. 103
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(O) "Part" means any replacement part, either new or used, 105

made available by an original equipment manufacturer for 106
purposes of effecting the services of maintenance or repair of 107
digital electronic equipment manufactured by or on behalf of, 108
sold by, or otherwise supplied by the original equipment 109
manufacturer. 110

Sec. 1350.02. (A) (1) For digital electronic equipment and 111
parts sold or used in this state, an original equipment 112
manufacturer shall make available for purposes of diagnosis, 113
maintenance, or repair any documentation, parts, and tools, 114
including any updates to information or embedded software, to 115
both of the following on fair and reasonable terms: 116

(a) Any independent repair provider; 117

(b) The owner of digital electronic equipment manufactured 118
by or on behalf of, or sold or otherwise supplied by, the 119
original equipment manufacturer. 120

(2) Nothing in division (A) (1) of this section requires an 121
original equipment manufacturer to make available a part if the 122
part is no longer available to the original equipment 123
manufacturer. 124

(B) For digital electronic equipment that contains an 125
electronic security lock or other security-related function, the 126
original equipment manufacturer shall make available to the 127
owner and to independent repair providers, on fair and 128
reasonable terms, any special documentation, tools, and parts 129
needed to disable the lock or function, and to reset it when 130
disabled in the course of diagnosis, maintenance, or repair of 131
the digital electronic equipment. Such documentation, tools, and 132
parts may be made available by means of an appropriate secure 133
system. 134

Sec. 1350.03. A violation of section 1350.02 of the 135
Revised Code is an unfair or deceptive act or practice in 136
violation of section 1345.02 of the Revised Code. A person 137
injured by a violation of section 1350.02 of the Revised Code 138
has a cause of action and is entitled to the same relief 139
available to a consumer under section 1345.09 of the Revised 140
Code. All powers and remedies available to the attorney general 141
to enforce sections 1345.01 to 1345.13 of the Revised Code are 142
available to the attorney general to enforce section 1350.02 of 143
the Revised Code. 144

Sec. 1350.04. (A) Nothing in this chapter shall be 145
construed to require an original equipment manufacturer to 146
divulge a trade secret to an owner or independent service 147
provider except as necessary to provide documentation, parts, 148
and tools on fair and reasonable terms. 149

(B) (1) Except as provided in division (B) (2) of this 150
section, nothing in this chapter shall be construed to alter the 151
terms of any authorized repair provider arrangement described in 152
division (A) of section 1350.01 of the Revised Code in force 153
between an authorized repair provider and an original equipment 154
manufacturer, including the performance or provision of warranty 155
or recall repair work by an authorized repair provider on behalf 156
of an original equipment manufacturer pursuant to such 157
arrangement. 158

(2) Any provision in the terms of an authorized repair 159
provider arrangement described in division (A) of section 160
1350.01 of the Revised Code that waives, avoids, restricts, or 161
limits the original equipment manufacturer's obligations to 162
comply with this chapter is void and unenforceable. 163

(C) Nothing in this chapter shall be construed to require 164

an original equipment manufacturer or an authorized repair 165
provider to provide to an owner or independent repair provider 166
access to information, other than documentation, that is 167
provided by the original equipment manufacturer to an authorized 168
repair provider pursuant to the terms of an arrangement 169
described in division (A) of section 1350.01 of the Revised 170
Code. 171

(D) Nothing in this chapter applies to a motor vehicle 172
manufacturer, manufacturer of motor vehicle equipment, or motor 173
vehicle dealer acting in that capacity, or to any product or 174
service of a motor vehicle manufacturer, manufacturer of motor 175
vehicle equipment, or motor vehicle dealer acting in that 176
capacity. 177

(E) Nothing in this chapter applies to any of the 178
following: 179

(1) A medical device; 180

(2) A digital electronic product or embedded software 181
found in a medical setting, including diagnostic, monitoring, or 182
control equipment; 183

(3) Any product or service offered in a medical setting. 184

(F) This chapter applies with respect to digital 185
electronic equipment sold or in use on or after the effective 186
date of this section. 187

Section 2. Chapter 1350. of the Revised Code may be cited 188
as the "Digital Fair Repair Act." 189

Section 3. Sections 1 and 2 of this act take effect one 190
hundred twenty days after the effective date of this section. 191