As Introduced

134th General Assembly
Regular Session S. B. No. 366
2021-2022

Senator Blessing

A BILL

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

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

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

Sec. 1350.01. As used in this chapter:

(A) "Authorized repair provider" means a person that is unaffiliated with an original equipment manufacturer and that has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the person a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering 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.

"Authorized repair provider" includes an original equipment manufacturer that offers the services of diagnosis,
maintenance, or repair of its own digital electronic equipment, and that, with respect to such digital electronic equipment, does not have an arrangement described in this division.

(B) "Digital electronic 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, or other guidance or information used in 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 digital electronic equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of such digital electronic equipment or part for these purposes.

(E)(1) "Fair and reasonable terms" for obtaining a part, tool, or documentation means costs and terms, including convenience of delivery and 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, tool, or documentation from the original equipment manufacturer and 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" also 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 digital electronic equipment, to allow the equipment or part to communicate within itself or with other computer hardware.

(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. "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:

(1) The person has an authorized repair provider arrangement described in division (A) of this section with that original equipment manufacturer.

(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.

(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.
(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.

(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.

(K) "Motor vehicle dealer" means any person engaged in both of the following:

(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;

(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.

(L) "Motor vehicle manufacturer" means a person engaged in the business of manufacturing or assembling new motor vehicles.

(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.

(N) "Owner" means a person that owns or leases digital electronic equipment purchased or used in this state.

(O) "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 by or on behalf of, sold by, or otherwise supplied by the original equipment manufacturer.

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

(a) Any independent repair provider;

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

(2) Nothing in division (A)(1) of 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 digital electronic 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 disable the lock or function, and to reset it when disabled in the course of diagnosis, maintenance, or repair of the digital electronic equipment. Such documentation, tools, and parts may be made available by means of an appropriate secure system.
Sec. 1350.03. A violation of section 1350.02 of the Revised Code is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code. A person injured by a violation of section 1350.02 of the Revised Code has a cause of action and is entitled to the same relief available to a consumer under section 1345.09 of the Revised Code. All powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce section 1350.02 of the Revised Code.

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

(B)(1) Except as provided in division (B)(2) of this section, nothing in this chapter shall be construed to alter the terms of any authorized repair provider arrangement described in division (A) of section 1350.01 of the Revised Code in force between an authorized repair provider and an original equipment manufacturer, including 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.

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

(C) Nothing in this chapter 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 division (A) of section 1350.01 of the Revised Code.

(D) Nothing in this chapter 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.

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

(1) A medical device;

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

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

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

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

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