

As Introduced

**136th General Assembly
Regular Session
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S. B. No. 176

Senator Blessing

To enact sections 1350.01, 1350.011, 1350.02, 1
1350.03, 1350.04, and 1350.05 of the Revised 2
Code to enact the Digital Fair Repair Act. 3

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

Section 1. That sections 1350.01, 1350.011, 1350.02, 4
1350.03, 1350.04, and 1350.05 of the Revised Code be enacted to 5
read as follows: 6

Sec. 1350.01. As used in this chapter: 7

(A) (1) "Authorized repair provider" means a person that 8
has an arrangement with the original equipment manufacturer 9
under which the original equipment manufacturer grants to the 10
person a license to use a trade name, service mark, or other 11
proprietary identifier for the purposes of offering diagnosis, 12
maintenance, or repair of digital electronic equipment under the 13
name of the original equipment manufacturer, or other 14
arrangement with the original equipment manufacturer to offer 15
such services on behalf of the original equipment manufacturer. 16

(2) "Authorized repair provider" includes an original 17
equipment manufacturer that offers the services of diagnosis, 18
maintenance, or repair of its own digital electronic equipment. 19

(B) "Board-level component" means any electrical part 20

attached to a circuit board, such as microchips, sensors, 21
transistors, and capacitors. 22

(C) "Diagnosis" means the process of identifying any 23
issues that cause digital electronic equipment or parts for such 24
equipment to not be in fully working order. 25

(D) (1) "Digital electronic equipment" means any product 26
that has a value over ten dollars, adjusted annually in the 27
manner described in section 1350.011 of the Revised Code, that 28
depends for its functioning, in whole or in part, on digital 29
electronics embedded in or attached to the product. 30

(2) "Digital electronic equipment" does not include any of 31
the following: 32

(a) A motor vehicle, utility vehicle, low-speed vehicle, 33
or under-speed vehicle, as defined in section 4501.01 of the 34
Revised Code; 35

(b) An all-purpose vehicle, as defined in section 4519.01 36
of the Revised Code; 37

(c) A watercraft, as defined by section 1546.01 of the 38
Revised Code; 39

(d) An aircraft, as defined in section 4561.01 of the 40
Revised Code, an unmanned aerial vehicle system, as defined in 41
section 4561.50 of the Revised Code, or a satellite; 42

(e) A medical device; 43

(f) Construction equipment, as defined in section 1353.01 44
of the Revised Code, including industrial, compact construction, 45
mining, or road-building equipment; 46

(g) A product purchased, installed, and maintained by a 47

public utility, as defined in section 4905.02 of the Revised 48
Code; 49

(h) Safety communications equipment, for which the 50
intended use is emergency response or prevention purposes by an 51
emergency response organization, such as fire and rescue 52
services, law enforcement, or emergency medical services; 53

(i) A device, such as a set-top box, modem, or all-in-one 54
device, that is distributed by a cable service provider, as 55
defined by section 1332.01 of the Revised Code, or a 56
telecommunications carrier, as defined by the 57
"Telecommunications Act of 1996," 47 U.S.C. 153, and delivers 58
internet, video, or voice services to a customer, if the service 59
provider offers equivalent or better, readily available 60
replacement equipment at no charge to the customer; 61

(j) Fire alarm systems, intrusion detection equipment that 62
is provided with a security monitoring service, life safety 63
systems, and physical access control equipment, including 64
electronic keypads and similar building access control 65
electronics. 66

(E) "Documentation" means any manual, diagram, reporting 67
output, service code description, schematic, security code, 68
password, or other guidance or information used in effecting the 69
services of diagnosis, maintenance, or repair of digital 70
electronic equipment or parts for such equipment. 71

(F) "Fair and reasonable terms" means making available 72
parts, tools, or documentation that satisfy the conditions set 73
forth in section 1350.03 of the Revised Code. 74

(G) "Independent repair provider" means a person in this 75
state that does not have an authorized repair provider 76

arrangement described in division (A) of this section and that 77
is engaged in the services of diagnosis, maintenance, or repair 78
of digital electronic equipment. 79

(H) "Maintenance" means any act necessary to keep 80
currently working digital electronic equipment or parts for such 81
equipment in fully working order. 82

(I) "Medical device" means an instrument, apparatus, 83
implement, machine, contrivance, implant, or other similar or 84
related article, including any component, part, or accessory, 85
that is intended for use in the diagnosis of disease or other 86
conditions, or in the cure, mitigation, treatment, or prevention 87
of disease, in humans or animals. "Medical device" does not 88
include general wellness products intended to maintain or 89
encourage a healthy lifestyle and that are unrelated to the 90
diagnosis, cure, mitigation, prevention, or treatment of a 91
disease or condition. 92

(J) "Modifications" or "modify" means any alteration to 93
digital electronic equipment that is not maintenance and not a 94
repair. 95

(K) "Original equipment manufacturer" means a person that, 96
in the normal course of business, is engaged in the business of 97
selling, leasing, or otherwise supplying digital electronic 98
equipment manufactured by or on behalf of itself, to any person. 99

(L) "Owner" means a person that owns or leases digital 100
electronic equipment purchased or used in this state. 101

(M) "Part" means any piece or component, including board- 102
level components, that is essential to the full functionality of 103
digital electronic equipment, including any auxiliary 104
attachments that improve the performance, safety, operation, or 105

efficiency of such equipment. 106

(N) "Parts pairing" means any practice by a product 107
manufacturer of using software to identify component parts 108
through a unique identifier. 109

(O) "Repair" means any act needed to restore digital 110
electronic equipment or parts for such equipment to fully 111
working order. 112

(P) "Tool" means any software program, hardware implement, 113
or other apparatus used for diagnosis, maintenance, or repair of 114
digital electronic equipment or parts for such equipment. 115

"Tool" includes software or other mechanisms that provide, 116
program, or pair a part; calibrate functionality; or perform any 117
other function required to bring the equipment or part back to a 118
fully functional condition, including any updates. 119

Sec. 1350.011. In November, or as soon as practicable 120
thereafter, each year that begins after the effective date of 121
this section, the director of commerce shall increase or 122
decrease the value threshold above which a product may qualify 123
as digital electronic equipment by multiplying the value 124
threshold that applies for that year by the cumulative 125
percentage change in the consumer price index (all items, all 126
urban consumers) prepared by the bureau of labor statistics of 127
the United States department of labor for the twelve-month 128
period ending on the immediately preceding thirtieth day of 129
September. The amount resulting from the computation, rounded to 130
the nearest one cent, applies to the following calendar year. 131

The director shall publish on a web site maintained by the 132
department of commerce the adjusted amount and the dates to 133
which that amount applies. 134

Sec. 1350.02. (A) (1) For digital electronic equipment and 135
parts sold or used in this state, an original equipment 136
manufacturer shall make available for purposes of diagnosis, 137
maintenance, or repair any documentation, parts, and tools, 138
including any updates to information or embedded software, to 139
both of the following on fair and reasonable terms: 140

(a) Any independent repair provider; 141

(b) The owner of digital electronic equipment manufactured 142
by or on behalf of, or sold or otherwise supplied by, the 143
original equipment manufacturer. 144

(2) Nothing in division (A) (1) of this section requires an 145
original equipment manufacturer to make available a part that is 146
no longer available to the original equipment manufacturer. 147

(3) The documentation, parts, and tools described in 148
division (A) (1) of this section shall be made available either 149
directly by the original equipment manufacturer or by an 150
authorized repair provider. 151

(B) For digital electronic equipment that contains an 152
electronic security lock or other security-related function, the 153
original equipment manufacturer shall make available to the 154
owner and to independent repair providers, on fair and 155
reasonable terms, any special documentation, tools, and parts 156
needed to disable the lock or function, and to reset it when 157
disabled in the course of diagnosis, maintenance, or repair of 158
the digital electronic equipment. Such documentation, tools, and 159
parts may be made available by means of an appropriate secure 160
system. 161

(C) An original equipment manufacturer shall not use parts 162
pairing or any other mechanism to do either of the following: 163

(1) Prevent the installation or functioning of any 164
otherwise-functional part, including a non-manufacturer approved 165
replacement part or component; 166

(2) Inhibit or reduce the functioning of any part or 167
board-level component, such that replacement by an independent 168
repair provider or the device owner would cause the device to 169
operate with reduced functionality or performance. 170

Sec. 1350.03. (A) With respect to documentation required 171
to be made available under section 1350.02 of the Revised Code, 172
the original equipment manufacturer shall make such 173
documentation available at no charge, except that, when the 174
documentation is requested in physical printed form, the 175
original equipment manufacturer may charge for the reasonable, 176
actual costs of preparing and sending the documentation. 177

(B) With respect to tools required to be made available 178
under section 1350.02 of the Revised Code, the original 179
equipment manufacturer shall make such tools available, as 180
follows: 181

(1) At no charge, except that, when the tool is requested 182
in physical form, the original equipment manufacturer may charge 183
for the reasonable, actual costs of preparing and sending the 184
tool; 185

(2) Without requiring authorization or internet access for 186
use or operation of the tool; 187

(3) Without imposing impediments to the access or use of 188
the tool to diagnose, maintain, or repair and enable full 189
functionality of digital electronic equipment or parts for such 190
equipment; 191

(4) Without impairing the efficient and cost-effective 192

<u>performance of any such diagnosis, maintenance, or repair.</u>	193
<u>(C) With respect to parts required to be made available</u>	194
<u>under section 1350.02 of the Revised Code, the original</u>	195
<u>equipment manufacturer shall make such parts available, either</u>	196
<u>directly or through an authorized repair provider, to</u>	197
<u>independent repair providers and owners at costs and terms that</u>	198
<u>are equivalent to the most favorable costs and terms under which</u>	199
<u>an original equipment manufacturer offers the part to an</u>	200
<u>authorized repair provider, provided such costs and terms:</u>	201
<u>(1) Account for any discount, rebate, convenient and</u>	202
<u>timely means of delivery, means of enabling fully restored and</u>	203
<u>updated functionality, right of use, or other incentive or</u>	204
<u>preference the original equipment manufacturer offers to an</u>	205
<u>authorized repair provider;</u>	206
<u>(2) Account for any reasonable, actual costs, burdens, or</u>	207
<u>impediments the original equipment manufacturer incurs to</u>	208
<u>provide the part to the owner or to an independent repair</u>	209
<u>provider;</u>	210
<u>(3) Exclude any condition or substantial obligation or</u>	211
<u>restriction that is not reasonably necessary for enabling the</u>	212
<u>owner or independent repair provider to engage in the diagnosis,</u>	213
<u>maintenance, or repair of the digital electronic equipment made</u>	214
<u>by or on behalf of the original equipment manufacturer;</u>	215
<u>(4) Not be conditioned on an arrangement described in</u>	216
<u>division (A) of section 1350.01 of the Revised Code.</u>	217
Sec. 1350.04. <u>(A) Subject to division (B) of this section,</u>	218
<u>a violation of section 1350.02 of the Revised Code is an unfair</u>	219
<u>or deceptive act or practice in violation of section 1345.02 of</u>	220
<u>the Revised Code. A person injured by a violation of section</u>	221

1350.02 of the Revised Code has a cause of action and is 222
entitled to the same relief available to a consumer under 223
section 1345.09 of the Revised Code. All powers and remedies 224
available to the attorney general to enforce sections 1345.01 to 225
1345.13 of the Revised Code are available to the attorney 226
general to enforce section 1350.02 of the Revised Code. 227

(B) No original equipment manufacturer or authorized 228
repair provider shall be liable for any damage or injury caused 229
to any digital electronic equipment by an independent repair 230
provider or owner that occurs during the course of repair, 231
diagnosis, maintenance, or modification of the digital 232
electronic equipment, including: 233

(1) Indirect, incidental, special, or consequential 234
damages; 235

(2) Loss of data, privacy, or profits; 236

(3) Inability to use, or reduced functionality of, the 237
digital electronic equipment. 238

Sec. 1350.05. (A) Nothing in this chapter shall be 239
construed to require an original equipment manufacturer to 240
divulge a trade secret to any owner or independent service 241
provider except as necessary to provide documentation, parts, 242
and tools on fair and reasonable terms. 243

(B) (1) Except as provided in division (B) (2) of this 244
section, nothing in this chapter shall be construed to alter the 245
terms of any authorized repair provider arrangement described in 246
division (A) of section 1350.01 of the Revised Code in force 247
between an authorized repair provider and an original equipment 248
manufacturer, including the performance or provision of warranty 249
or recall repair work by an authorized repair provider on behalf 250

<u>of an original equipment manufacturer pursuant to such</u>	251
<u>arrangement.</u>	252
<u>(2) Any provision in the terms of an authorized repair</u>	253
<u>provider arrangement described in division (A) of section</u>	254
<u>1350.01 of the Revised Code that waives, avoids, restricts, or</u>	255
<u>limits the original equipment manufacturer's obligations to</u>	256
<u>comply with this chapter is void and unenforceable.</u>	257
<u>(C) Nothing in this chapter shall be construed to require</u>	258
<u>an original equipment manufacturer or an authorized repair</u>	259
<u>provider to provide to any owner or independent repair provider</u>	260
<u>access to information, other than documentation, that is</u>	261
<u>provided by the original equipment manufacturer to an authorized</u>	262
<u>repair provider pursuant to the terms of an arrangement</u>	263
<u>described in division (A) of section 1350.01 of the Revised</u>	264
<u>Code.</u>	265
<u>(D) Nothing in this chapter shall be construed to require</u>	266
<u>an original equipment manufacturer or authorized repair provider</u>	267
<u>to make available any parts, tools, or documentation for the</u>	268
<u>purposes of modifying or making modifications to any digital</u>	269
<u>electronic equipment.</u>	270
<u>(E) Nothing in this chapter shall be construed to require</u>	271
<u>an original manufacturer to make available special</u>	272
<u>documentation, tools, parts, or other devices or implements that</u>	273
<u>would disable or override, without an owner's authorization,</u>	274
<u>anti-theft, privacy, or security measures that the owner</u>	275
<u>activates for digital electronic equipment.</u>	276
<u>(F) Nothing in this chapter shall be construed to require</u>	277
<u>an original equipment manufacturer or authorized repair provider</u>	278
<u>to make available any parts, tools, or documentation required</u>	279

for the diagnosis, maintenance, or repair of digital electronic 280
equipment in a manner that is inconsistent with or in violation 281
of any federal law. 282

(G) Nothing in this chapter applies to a motor vehicle 283
manufacturer, manufacturer of motor vehicle equipment, or motor 284
vehicle dealer acting in that capacity, or to any product or 285
service of a motor vehicle manufacturer, manufacturer of motor 286
vehicle equipment, or motor vehicle dealer acting in that 287
capacity. 288

(H) Nothing in this chapter applies to a medical device or 289
other digital electronic products found in a medical setting 290
that are primarily and customarily used in the cure, mitigation, 291
treatment, or prevention of disease in humans or animals and 292
that are generally not useful for other purposes. 293

(I) Nothing in this chapter applies to a manufacturer or 294
dealer of farming or forestry equipment acting in that capacity, 295
or to any product or service of a manufacturer or dealer of 296
farming or forestry equipment acting in that capacity. 297

(J) This chapter applies after the one hundred twentieth 298
day following the effective date of this section. 299

Section 2. Chapter 1350. of the Revised Code may be cited 300
as the "Digital Fair Repair Act." 301